

# NEW JERSEY REGISTER



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**THE JOURNAL OF STATE AGENCY RULEMAKING**

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**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 19, 1988**  
 See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE: SUPPLEMENT JANUARY 17, 1989**

## RULEMAKING IN THIS ISSUE

### RULE PROPOSALS

<b>Interested persons comment deadline</b> .....	590
<b>AGRICULTURE</b>	
"Jersey Fresh" logo program .....	591(a)
<b>COMMUNITY AFFAIRS</b>	
Relocation Assistance and Eviction rules: waiver of Executive Order No. 66(1978) expiration provision .....	592(a)
Council on Affordable Housing: controls on affordability .....	592(b)
Council on Affordable Housing: alternative living arrangements .....	595(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Freshwater wetlands transition areas .....	596(a)
Redelineation of West Branch Rahway River, West Orange .....	605(a)
<b>HEALTH</b>	
Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989 .....	606(a)
Retrovir reimbursement program .....	606(b)
<b>HUMAN SERVICES</b>	
Guardianship services for developmentally disabled persons .....	607(a)
Charity Racing Days for Developmentally Disabled: distribution of proceeds .....	610(a)
<b>INSURANCE</b>	
Private passenger automobile rate filings .....	611(a)
Automobile coverage option survey: PIP and tort threshold .....	619(a)
<b>LABOR</b>	
Public employee safety and health: control of hazardous energy sources .....	620(a)

### TRANSPORTATION

New Jersey Transportation Trust Fund: county and municipal aid .....	623(a)
New Jersey Transportation Trust Fund: municipal aid .....	626(a)
Reimbursed highway safety lighting .....	628(a)
<b>TREASURY-GENERAL</b>	
Public Employees' Retirement System: outstanding loans at retirement .....	629(a)
Police and Firemen's Retirement System: outstanding loans at retirement .....	630(a)
Lottery vendors' code of ethics .....	631(a)

### RULE ADOPTIONS

<b>AGRICULTURE</b>	
Registration and transportation of bees .....	633(a)
Agricultural fairs .....	633(b)
Reporting by small milk dealers .....	634(a)
<b>COMMUNITY AFFAIRS</b>	
Council on Affordable Housing: initial pricing of units ....	635(a)
<b>EDUCATION</b>	
Reimbursement to nonpublic schools for asbestos removal and encapsulation .....	630(b)
<b>HUMAN SERVICES</b>	
Charity Racing Days for Developmentally Disabled: distribution of proceeds .....	636(a)
<b>INSURANCE</b>	
Administrative correction: N.J.A.C. 11:17-2.1 .....	637(a)
<b>TRANSPORTATION</b>	
Property acquisitions: appraisal; payments .....	637(b)
Auctions of buildings and excess land parcels .....	638(a)
NJ TRANSIT: fees charged to municipalities .....	638(b)

(Continued on Next Page)

# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **April 5, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

## RULEMAKING IN THIS ISSUE—Continued

### TREASURY-GENERAL

State Health Benefits Program: enrollment policy ..... 638(c)

### CASINO CONTROL COMMISSION

Late surrender blackjack wagers: 90-day experiment ..... 640(a)

### PUBLIC NOTICES

#### ENVIRONMENTAL PROTECTION

Petition to amend proposed N.J.A.C. 7:9A-1.6, concerning individual subsurface sewage disposal systems:

agency response ..... 641(a)

Mercer County water quality management:

Ewing Township ..... 641(b)

#### EXECUTIVE ORDER NO. 66(1978)

EXPIRATION DATES ..... 642

### INDEX OF RULE PROPOSALS

AND ADOPTIONS ..... 647

#### Filing Deadlines

#### April 3 issue:

Adoptions ..... March 10

#### April 17 issue:

Proposals ..... March 17

Adoptions ..... March 27

#### May 1 issue:

Proposals ..... April 3

Adoptions ..... April 10

#### May 15 issue:

Proposals ..... April 17

Adoptions ..... April 24

## 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)

### DIVISION OF REGULATORY SERVICES

#### Jersey Fresh Quality Grading Premium Program Products and Manner of Use

#### Proposed Amendments: N.J.A.C. 2:71-2.2 and 2.4

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

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Proposal Number: PRN 1989-121.

Submit comments by April 5, 1989 to:

Robert C. Fringer, Director  
 Division of Regulatory Services  
 N.J. Department of Agriculture  
 CN 330  
 Trenton, New Jersey 08625  
 Telephone: (609) 292-5575

The agency proposal follows:

#### Summary

The proposed amendments to the rules for the voluntary "Jersey Fresh Logo" program were developed to aid packers of blueberries, eggplant, peaches, sweet peppers (green, red, yellow bell type) and tomatoes to market a uniformly recognized, higher quality product than U.S.D.A. standards. Uniform high grade products have greater acceptance by the consumer and ultimately increase the demands for the superior quality of these New Jersey grown products.

The Jersey Fresh Quality Grading Premium Program has been developed as the first step in combining the Quality Grading Program "logo" with the Jersey Fresh promotional "logo" so that the graded product can be identified with the same high visibility and consumer recognition as the promotional materials.

#### Social Impact

The people affected by these amendments will be the packers using the logo and consumers. Products packed under the logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers will have more quality products and an identifiable larger supply of quality products available.

#### Economic Impact

The economic impact on voluntary logo packers will be very minimal. Packers' cost will be \$.01 per label, per container or \$1.00 for 1,000 imprinted containers. This cost should be more than offset by increases in the price received by the packers through the sale of high quality produce.

#### Regulatory Flexibility Analysis

The proposed amendments primarily affect farmers, most of which are small businesses; however, the amendments do not impose any reporting, recordkeeping, or other compliance requirements on farmers, unless they voluntarily elect to participate in the Jersey Fresh Premium Grading Program. Should a farmer choose to participate, the costs of participating should be offset by prices received for the produce.

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

2:71-2.2 Use of the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" Logos (referred to as the "logos") on containers of certain fresh fruits and vegetables

(a) (No change.)

(b) The configuration of the Jersey Fresh Quality Grading Program Logo and the Jersey Quality Grading Premium Program Logo are as follows:



(c) Only those persons, firms, partnerships, corporations or associations licensed by the New Jersey Department of Agriculture pursuant to N.J.S.A. 4:10-5 to use the Jersey Fresh Quality Grading Program Logo or Premium Logo shall be permitted to attach the printed label to or have it printed upon a panel of the container in which the agricultural commodity is to be marketed or to employ its use in advertising or in any manner whatsoever. All containers are subject to the approval of the New Jersey Department of Agriculture.

(d) Any person, firm, partnership, corporation or association wishing to employ the Jersey Fresh logo to be used in marketing certain New Jersey produced agricultural commodities shall make application to the New Jersey Department of Agriculture for a license and registration number. The application shall be made in writing, upon a form provided by the [department] Department for this purpose. The application shall reveal such information as is deemed necessary for the enforcement of the Jersey Fresh Quality Grading or Premium logo program. Information given in the application shall be held confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A-1 et seq. [(C. 73, P.L. 1963)] (P.L. 1963, c.73).

(e) Any person, firm, partnership, corporation or cooperative wishing to transfer ownership of containers bearing [the] a "logo" to licensed registrants shall make application to the New Jersey Department of Agriculture for a license. The application shall be made in writing, upon a form provided by the [department] Department. Information given in the application shall be held confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A-1 et seq. [(C. 73, P.L. 1963)] (P.L. 1963, c.73).

#### 2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) **Only the following products may be packed in the Quality Grading Program:** [Only] Sweet anise (fennel), apples, asparagus, blueberries, cabbage, green corn, cucumbers (pickling type), eggplants, endive, escarole, herbs (fresh), leeks, big Boston lettuce, iceberg lettuce, nectarines, okra, common green onions, parsley, peaches, sweet peppers, sweet potatoes, white potatoes, raspberries, romaine, summer squash, fall and winter type squash and tomatoes (fresh market) [, may be identified by the "logo"].

(b) **Only blueberries, eggplant, peaches, sweet peppers (green, red and yellow bell type), and tomatoes may be identified by the Premium "Logo" if graded and packed in accordance with the requirements in N.J.A.C. 2:71-2.5, with the exception that the applicable tolerances will be one-half of those specified for the Jersey Fresh Quality Grading Program.**

[(b)] (c) All agricultural commodities marketed under the "logo" program shall be produced and packed in New Jersey.

AGENCY NOTE: A proposed amendment to N.J.A.C. 2:71-2.4(a) adding a number of products to those eligible for the Quality Grading

Program was published in the February 6, 1989 New Jersey Register at 21 N.J.R. 227(a). Upon adoption of both amendments, the new provisions will be combined.

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Relocation Assistance and Eviction**

**N.J.A.C. 5:11**

Waiver of Executive Order No. 66(1978).

Authorized By: Governor Thomas H. Kean.

**Take notice** that the Relocation Assistance and Eviction rules adopted by the Department of Community Affairs, N.J.A.C. 5:11, are due to expire on March 1, 1989 pursuant to the sunset provision of Executive Order No. 66(1978). As a result of the impending expiration, there would be a lapse in the Department's authority to ensure the orderly administration and enforcement of the statutes governing relocation assistance for persons dislocated by public land acquisition and code enforcement activities.

At the request of Department of Community Affairs Commissioner Anthony M. Villane, Jr., Governor Thomas H. Kean examined the matter and found that a lapse in the Department's ability to enforce the rules would be detrimental to the public welfare and would impede the ability of displaced persons to secure the benefits to which they are entitled by law.

Accordingly, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978) to grant a waiver of the requirements in the Order with regard to any administrative rule and having determined that good cause exists, Governor Kean, on February 3, 1989, directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for the rules found at N.J.A.C. 5:11, and the expiration for these rules be extended for a period of one month from March 1, 1989 through April 1, 1989, inclusive of both dates.

**(b)**

**NEW JERSEY COUNCIL ON AFFORDABLE HOUSING**

**Substantive Rules**

**Definitions; Controls on Affordability**

**Proposed New Rules: N.J.A.C. 5:92-12.1 through 12.9**

**Proposed Repeals: N.J.A.C. 5:92-12.1 and 12.2**

**Proposed Amendments: N.J.A.C. 5:92-1.3, 12.3 through 12.10**

Authorized By: New Jersey Council on Affordable Housing, James L. Logue, III, Chairman.

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

Proposal Number: PRN 1989-112.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

**Summary**

The Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., requires that there be controls on affordability on all sales units developed in response to the constitutional obligation for low and moderate income housing. Lenders on the secondary mortgage market require these controls to end at some point and the Council has required controls on newly created housing units of at least 10 years in most urban areas and at least 20 years in all other areas of the State. Therefore, as the Council's rules are presently written, housing units may go on the open market. The State would then lose an affordable unit and the subsidy necessary to create

another unit. The Council's rules are presently silent on what happens when controls on affordability expire.

The Council, after studying the advisability of various possibilities, is proposing to repeal N.J.A.C. 5:92-12 and adopt new rules that address the continued maintenance of affordable units. The new rules and their underlying principles are described as follows:

1. An affordable housing unit is a precious resource and efforts should be made to retain the affordable housing stock or for money that subsidized the affordable housing unit to be returned if and when an affordable housing unit is sold at fair market value. All returned proceeds should be devoted to the rehabilitation, creation or maintenance of low and moderate income housing;

2. Given the uncertainty of individual situations, 10 or 20 years into the future, the Council does not believe it is prudent to "lock" communities into longer term controls. Rather, the Council decided that municipalities, the State, qualified non-profits and sellers of low and moderate income units should have the ability to make decisions regarding the continued maintenance of affordability;

3. The proposed rules are flexible enough to give municipalities the first opportunity to decide what is in the community's best interest. As controls begin to expire, communities can choose to purchase individual low and moderate income units as they go on sale. Communities then may choose to sell or rent them to income qualified households and continue controls on affordability or to convey the unit at fair market value and utilize the price differential for other low and moderate income housing. The municipality is also able to extend controls by an action of the governing body;

4. When a seller of a low or moderate income housing unit exercises his or her option to convey the unit at fair market value, he or she is allowed to retain five percent of the difference between the controlled price and fair market value as an incentive to attract the highest possible price. The remaining 95 percent is returned to a municipal housing trust fund; and

5. The rules require each sales unit to be controlled by a uniform deed restriction and lien that includes all the options in these rules. Any deviations from the uniform deed restriction and lien must be approved by the Council. The Council believes that the uniform deed restriction will avoid confusion among attorneys, lending institutions, title searchers and municipal officials responsible for being aware that controls exist on individual housing units.

The proposed rules do not alter the Council's rules on rehabilitation of occupied housing units or rental housing.

**Social Impact**

The proposed new rules will have a positive social impact because they allow for the preservation of a precious resource, affordable housing. This is particularly important as land necessary to produce more affordable housing becomes more scarce. The rules also have a positive impact in that they allow subsidies to be recycled for the creation, rehabilitation and maintenance of affordable housing.

**Economic Impact**

The proposed new rules will have a positive economic impact on municipalities since the rules create a vehicle for continued maintenance of low and moderate income housing units. The municipality, by virtue of these rules, has the option to develop housing resources that have never before been available. Owners of low or moderate income housing units opting to sell the unit at fair market value may benefit economically through being permitted to retain five percent of the controlled price/fair market value differential.

**Regulatory Flexibility Statement**

The proposed new rules impose no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules only affect municipalities and individual unit owners.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:92-12.

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

5:92-1.3 Definitions

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

“Authority” means the entity designated by the municipality for the purpose of monitoring the occupancy, resale and rental restrictions of low and moderate income housing units.

“Exempt sales” means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary; and the transfer of ownership by court order.

“Fair market value” means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

“Price differential” means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

“Repayment clause” means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

“Repayment option” means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:92-12.7 at fair market value subject to compliance with the terms of a repayment clause.

SUBCHAPTER 12. CONTROLS ON AFFORDABILITY

[5:92-12.1 General provisions

In developing housing elements, municipalities shall determine measures to assure that low and moderate income units remain affordable to low and moderate income households for an appropriate period of not less than 20 years which may be adjusted as provided pursuant to N.J.A.C. 5:92-12.2. In determining these measures, municipalities may propose alternative methods for assuring continued affordability which shall be reviewed by the Agency for feasibility prior to an award of substantive certification.

5:92-12.2 Length of controls on affordability

(a) Municipalities shall consider imposing controls or rents and resales of low and moderate income units, as set forth in this Subchapter, that extend for a period of 20 years with the following exceptions:

1. Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for at least six years;
2. Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least ten years; and
3. Housing units created through conversion of a non-residential structure or through new construction in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) at the time of substantive certification shall be subject to affordability controls for at least 10 years.]

5:92-12.1 General provisions: new construction of sales units

(a) In developing housing elements, municipalities shall adopt measures to assure that low and moderate income units remain affordable to low and moderate income households for a period of not less than 20 years. The authority shall do so by requiring all conveyances of low and moderate income units subject to the Act to contain the restrictive covenant and mortgage lien adopted by the Council.

(b) Municipalities receiving State Aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) shall adopt measures to assure that

low and moderate income units remain affordable to low and moderate income households for a period of not less than 10 years. The authority shall do so by requiring all conveyances of low and moderate income units subject to the Act to contain the restrictive covenant and mortgage lien adopted by the Council.

5:92-12.2 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units

(a) No municipality shall issue a certificate of occupancy for initial occupancy of a low or moderate income sales unit unless there is a written determination by the authority that the unit is to be controlled by a deed restriction and mortgage lien as adopted by the Council. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien. Amendments to the deed restriction and lien shall be permitted only if they have been approved by the Council. A request for an amendment to the deed restriction and lien may be made by the authority, the municipality or a developer.

(b) No municipality shall permit the initial occupancy of a low or moderate income sales unit prior to issuance of a certificate of occupancy in accordance with (a) above.

(c) Municipalities shall, by ordinance, require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale and shall not issue such certificate unless there is a written determination by the authority that the unit is to be controlled by the deed restriction and mortgage lien required by the Council. Purchasers of low and moderate income sales units shall execute the deed restriction and mortgage lien prior to issuance of a certificate of occupancy regardless of whether the sellers had executed the deed restriction and mortgage lien adopted by the Council upon acquisition of the property. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien.

(d) The certificate of reoccupancy shall not be required in sales for which controls are allowed to expire or in which the repayment option is being exercised pursuant to N.J.A.C. 5:92-12.3.

(e) The mortgage lien and the restrictive covenant shall be filed with the records office of the county in which the unit is located. The lien and restrictive covenant shall be adopted by the Council, unless amendments have been approved by the Council.

(f) The restrictive covenant, including the repayment clause, and the mortgage lien shall have priority over all mortgages on the property except for a first mortgage placed on the property by the mortgagee prior to the expiration of resale controls.

5:92-12.3 Option to buy sales units

(a) The restrictive covenant governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period specified in N.J.A.C. 5:92-12.1. The option to buy shall be available to the municipality, the Department of Community Affairs, the Agency, or a qualified non-profit as determined by the Council.

(b) All restrictive covenants governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:92-12.1.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price shall be available for 90 days. The authority shall notify the municipality, the Department of Community Affairs, the Agency, and the Council that the unit is for sale. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90 day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit. If the owner does not sell the

unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

#### 5:92-12.4 Municipal option

(a) Any municipality that elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:92-12.3 may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rental for a period of up to 20 years; or

2. Convey the unit at fair market value subject to the provisions of (c) below.

(b) Municipalities that purchase low income housing units shall maintain them as low income housing units.

(c) Municipalities that elect to purchase low or moderate income housing units and convey them at fair market value shall:

1. Notify the Council of any proposed sale and sales price 90 days before closing;

2. Notify the Council of the price differential as defined in N.J.A.C. 5:92-1.3;

3. Deposit the price differential in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing; and

4. Notify the Council by February 1 of each calendar year of the balance within this trust account.

(d) Money deposited in trust accounts may not be expended until the municipality submits and the Council approves a repayment housing plan. The Council may approve the repayment housing plan if it determines that it provides a realistic opportunity for the creation, rehabilitation or maintenance of low and moderate income housing.

#### 5:92-12.5 State option

(a) When the Department of Community Affairs or Agency elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:92-12.3, it may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

#### 5:92-12.6 Non-profit option

(a) Non-profit agencies may apply to the Council at any time for the right to purchase low or moderate income units subsequent to the period of controls on affordability of up to 20 years.

(b) Non-profit agencies that have been designated by the Council shall be eligible to purchase low or moderate income units pursuant to N.J.A.C. 5:92-12.3 for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing unit shall be regulated by the restrictive covenant and lien adopted by the Council. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:92-12.1.

#### 5:92-12.7 Seller option

(a) An eligible seller of a low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:92-12.1, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:92-12.3(c) and 5:92-12.6 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:92-12.8, the seller may elect to:

1. Sell to a qualified low and moderate income household at the controlled unit sales price in accordance with existing Council rules, providing the unit is regulated by the restrictive covenant and lien adopted by the Council for a period of up to 20 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the authority, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the authority shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the restrictive covenant and lien required by the Council.

(d) The authority shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the authority may rely on comparable sales data or an appraisal. The authority shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The authority shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The authority shall adopt an appeal procedure by which a seller may submit written documentation requesting the authority to recalculate the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the authority.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing. Money deposited in trust accounts may not be expended until the municipality submits and the Council approves a repayment housing plan. The Council may approve the repayment housing plan if it determines that it provides a realistic opportunity for the creation, rehabilitation or maintenance of low and moderate income housing.

#### 5:92-12.8 Municipal rejection of repayment option

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:92-12.1. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:92-12.7.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the authority and Council of its governing body's action. The authority shall ensure that the deed restriction on all affected housing units reflect the extended period of controls.

#### 5:92-12.9 Continued application of options to create, rehabilitate or maintain low and moderate income units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:92-12.1, the restrictive covenant governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

#### 5:92-[12.3]12.10 Administrative mechanism

Municipalities shall establish an [appropriate administrative mechanism or entity] authority responsible for assuring that low and moderate income housing units remain affordable to low and moderate income households; or they shall enter into a contractual agreement with the Agency to administer these responsibilities.

#### 5:92-[12.4]12.11 Initial pricing

(a) (No change.)

(b) Municipalities shall require that rents, excluding utilities, be set so as not to exceed 30 percent of the gross monthly income of

the appropriate household size. Maximum rent shall be calculated as a percentage of the uncapped Section 8 income limit (as contained in [the Technical] Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

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

(f) Median income by household size shall be established by the uncapped Section 8 income limits, published by HUD, as defined in [subchapter 1] N.J.A.C. 5:92-1.3 (see [Technical] Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

**5:92-[12.5]12.12 Annual indexed increases while controls are in place**

The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, as defined in [subchapter 1] N.J.A.C. 5:92-1.3 (see [Technical] Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

**5:92-[12.6]12.13 Subsidy to ensure affordability prior to the expiration of controls**

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

**5:92-[12.7]12.14 Procedures of resale prior to the expiration of controls**

Persons wishing to sell affordable units shall notify the [municipal entity] authority responsible for assuring affordability of the intent to sell. If no eligible buyer[s] enters a contract of sale for the unit within 90 days of notification, the [municipal entity] authority shall have the option to purchase the unit for the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the [municipal entity] authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. If the request is granted, the seller may offer low income housing units to moderate income households and moderate income housing units to households earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of [N.J.A.C. 5:92-12] **this subchapter.**

**5:92-[12.8]12.15 Eligible capital improvements prior to the expiration of controls**

Property owners of single family, owner-occupied housing may apply to the [municipal entity responsible] authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the [municipal entity] authority if an increase in the maximum sales price is sought.

**5:92-[12.9]12.16 Impact of foreclosure on resale while controls are in place**

A judgement of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by State and/or Federal law or by a lender on the secondary mortgage market (including but not limited to the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:92-[12.10]12.17. Notice of foreclosure shall allow the [municipal entity administering controls on affordability] authority, the municipality, the Department of Community Affairs, the Agency

or a qualified non-profit to purchase the affordable housing unit at the maximum permitted sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure [of the municipal entity] to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the [municipal entity administering controls on affordability] authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

**5:92-[12.10]12.17 Excess proceeds upon foreclosure**

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the [municipal entity] authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution including costs of foreclosure.

(a)

**COUNCIL ON AFFORDABLE HOUSING**

**Substantive Rules**

**Definitions, Terms and Age Restricted Units**

**Proposed Amendments: N.J.A.C. 5:92-1.3 and 11.2**

**Proposed New Rule: N.J.A.C. 5:92-14.3**

Authorized By: New Jersey Council on Affordable Housing,  
James L. Logue III, Chairman.

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

Proposal Number: PRN 1989-111.

Submit comments by April 5, 1989 to:

Douglas V. Opalski, Executive Director  
N.J. Council on Affordable Housing  
CN 813  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

A primary goal of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., is to create housing opportunities for all low and moderate income households. The Council's rules have fostered increased opportunities for low and moderate income people by requiring the price stratification of sales housing; the opportunity for rental housing; and the use of alternative living arrangements to satisfy a portion of the low and moderate income housing need.

The Council's policy has consistently been to balance the needs of "at risk" groups with the needs of other households and families. In order to clarify this policy, the Council is modifying its rules to allow communities to reserve a percentage of their fair share obligation for households of specified ages or households that live in alternative living arrangements. The amendments and new rule include group homes as licensed and/or regulated by the Department of Human Services as an acceptable alternative living arrangement.

The Council is interested in the number of alternative living arrangements that result from the adoption of these amendments and new rule. Therefore, it has established an annual monitoring process, to determine if these rules should be modified in any way.

**Social Impact**

The creation of more affordable housing for at risk groups that cannot afford a conventional housing unit will have a positive social impact.

**Economic Impact**

The proposed amendments and new rule will have a positive economic impact in that they will create more affordable housing opportunities for people that cannot afford to buy or rent a conventional housing unit.

**Regulatory Flexibility Statement**

The proposed amendments and new rule impose no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16

et seq. The amendments provide for municipalities to reserve a percentage of their fair share obligation for households of specified ages or households that live in alternative living arrangements.

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

#### 5:92-1.3 Definitions

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

... "Alternative living arrangement" means a structure in which households maintain private rooms yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to, Class C boarding homes as regulated by the New Jersey Department of Community Affairs, residential health care facilities as regulated by the New Jersey Department of Health, **group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services**, and congregate living arrangements. **All such facilities must be subject to controls on affordability acceptable to the Council.**

#### 5:92-11.2 Terms

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

(c) Housing provided pursuant to a RCA may include the creation of alternative living arrangements [, including but not limited to, congregate housing, Class C and D boarding homes regulated by the Department of Community Affairs and residential health care facilities regulated by the Department of Health]. To qualify as an appropriate component of a RCA, such facilities must be subject to controls on affordability acceptable to the Council.

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

(h) Housing units transferred via a regional contribution agreement may [be age restricted] **include age restricted housing units and alternative living arrangements** provided that the sum of newly constructed age restricted units **and alternative living arrangements** created in the sending and receiving communities does not exceed 25 percent of the sending community's fair share obligation as calculated after credits and adjustments have been granted. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving community.

#### 5:92-14.3 Age restricted units [within an inclusionary development] **and alternative living arrangements**

[Municipalities may provide that certain units within an inclusionary development be restricted for occupancy to residents who have attained a specified age. Municipalities shall age restrict no more than 25 percent of their fair share obligation as calculated after credits and adjustments have been granted, less any units transferred under a Regional Contribution Agreement.]

**(a) Municipalities may address up to 25 percent of their fair share obligation, as calculated after credits and adjustments have been granted, less any units transferred by way of a regional contribution agreement, by creating age restricted housing units and/or alternative living arrangements. The unit of credit for alternative living arrangements shall be the bedroom. Therefore, if two or more people share a bedroom, the municipality shall receive credit for one unit against its fair share obligation.**

**(b) The Council shall monitor alternative living arrangements on an annual basis to determine the impact of this rule.**

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF COASTAL RESOURCES

#### Transition Area Requirements for Freshwater Wetlands

#### Proposed New Rules: N.J.A.C. 7:7A-6, 7, and 16.6 and 16.7

#### Proposed Amendments: N.J.A.C. 7:7A-1.4 and 2.5

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156), particularly 13:9B-16, 17, 18 and 25.

DEP Docket Number: 007-89-02.

Proposal Number: PRN 1989-118.

**Public hearings** concerning this proposal will be held on:

Tuesday, April 11, 1989 at 10:00 A.M.

Cumberland County Board of Freeholders Conference Room  
790 East Commerce St.

Bridgeton, New Jersey

Wednesday, April 12, 1989 at 10:00 A.M.

Somerset County Parks Commission Environmental  
Education Center

190 Lord Sterling Rd.

Basking Ridge, New Jersey

Friday, April 14, 1989 at 10:00 A.M.

Mercer County Administration Building  
Room 211

640 South Broad St.

Trenton, New Jersey

Submit written comments by May 5, 1989 to:

Suzanne Dice-Goldberg, Esq.

Division of Regulatory Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

These proposed new rules will implement the transition area and transition area waiver provisions of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., (the Act). A transition area is an area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the freshwater wetlands ecosystem. The transition area extends from the freshwater wetlands boundary into the uplands for a specific distance and serves as a buffer between human activities and the freshwater wetland.

N.J.S.A. 13:9B-16, 17 and 18 require transition areas adjacent to freshwater wetlands of exceptional and intermediate resource value and prohibit certain types of activities in those transition areas. These provisions of the Act protect the integrity of freshwater wetlands by creating an area subject to Department regulation proximate to certain freshwater wetlands. Within these transition areas, the new rules will provide stringent controls on activities which would have an adverse impact on the freshwater wetland ecosystem.

The proposed new rules set forth activities prohibited in transition areas including the removal, excavation or disturbance of the soil; dumping or filling with any materials; erection of structures; placement of pavements; and destruction of plant life which would alter the existing pattern of vegetation. Some activities are exempted from regulation such as normal property maintenance; minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area; and temporary structures of 150 square feet or less.

The proposed new rules will establish standard transition area widths for freshwater wetlands based on the resource value classification of the wetlands. The standard transition area width proposed for freshwater wetlands of exceptional resource value is 150 feet while the standard width proposed for freshwater wetlands of intermediate resource value is 50 feet.

The proposed new rules will also provide for a reduction of the standard transition area width under specific circumstances through the is-

suance of a transition area waiver by the Department. The rules provide standards for the issuance of transition area waivers, which consider existing site characteristics, such as vegetation and slope, and the nature of the proposed project or activity and its development intensity. A matrix is provided to show the transition area width reduction which results for exceptional resource value freshwater wetlands from various combinations of the above factors. Specific scenarios are given for the reduction of transition areas adjacent to intermediate resource value wetlands. The transition area reductions proposed are based in part on a "Wetlands Buffer Delineation Method" prepared for the Department by Rogers, Golden and Halpern. In addition to site specific and project related factors, transition area waivers can be issued based on certain types of hardship to the applicant and for special activities such as stormwater management and linear development.

The proposed new rules also provide another avenue through which the Department may authorize changes to the standard transition area width. A transition area averaging plan is a type of transition area waiver which allows an applicant to modify the overall shape of a transition area without reducing the total square footage of the transition area. Under a Department approved averaging plan, the applicant may decrease the width of one portion of the transition area while increasing the width of another portion of the same transition area so that the total square footage remains the same. The rules provide an absolute limitation on transition area waivers to implement the Act's requirement that a transition area waiver must result in a transition area which continues to serve the protective purposes of a transition area set out by the Legislature in N.J.S.A. 13:9B-16.

The proposed new rules set out application requirements for transition area waivers and averaging plans as well as the procedures the Department will follow in reviewing applications. Proposed application fees are graduated and differ for properties not exceeding one acre and for properties over one acre. The rules also set a nominal fee of \$100.00 for exemption letters, which are provided by the Department to verify the exempted status of projects which meet the Act's requirements for exemption from freshwater wetlands and transition area requirements.

Also proposed for amendment is the definition of "documented habitat for endangered or threatened species" in N.J.A.C. 7:7A-1.4 and 7:7A-2.5 in order to clarify the use of the term for classifying freshwater wetlands.

The Department has analyzed the anticipated cost of reviewing and processing transition area waiver and averaging plan applications. These analyses include professional staff time required to review applications and, if necessary, to perform on-site inspections. Data regarding person-hour estimates for review activities were obtained from existing permit programs which are currently administered by the Department. These person-hour estimates were multiplied by anticipated hourly staff salaries and associated clerical salaries and overhead costs to arrive at the fee schedule proposed herein. A more detailed analysis has been filed with the Office of Administrative Law, and may be reviewed there at Quakerbridge Plaza, Building 9, Trenton, New Jersey.

The proposed new rules grant certain exemptions from transition area requirements so as not to unduly disrupt certain projects in progress. Among these is an exemption for projects not subject to the jurisdiction of section 404 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (133 U.S.C. §1344) (commonly known as the Federal 404 program) and for which preliminary site plan or subdivision applications have been approved by local authorities prior to July 1, 1989. Since this deadline date is the subject of a current appeal, a judicial decision may result in a different transition area exemption date. See *In re Appeal of Adoption of N.J.A.C. 7:7A-1.4, 7:7A-2.5(b)(2), and 7:7A-2.7(f)*, Docket No. A-5802-87T3 (filed July 19, 1988).

#### Social Impact

The proposed new rules will affect landowners with property adjacent to freshwater wetlands by prohibiting most development activities in transition areas. Limited relief, through reductions of the standard transition area or changes in its shape, may be available through transition area waivers issued by the Department.

#### Economic Impact

Those seeking to develop within the standard transition area will face the economic costs associated with looking elsewhere for such development or applying for transition area waivers, thereby subjecting themselves to potential, additional consulting and application fees.

By establishing fees for Departmental review of proposed activities in transition areas, the Department will be able to support a qualified staff

for the review and processing of waiver applications. The transition area waiver program will provide predictability to applicants, while efficiently carrying out the Act's mandate to prevent environmentally destructive, uncoordinated development. The fees will place part of the program's cost on those who derive economic benefit from using land in transition areas, instead of placing the entire cost of the program on New Jersey's taxpayers.

#### Environmental Impact

The proposed new rules will have a positive environmental impact because transition areas help protect and preserve freshwater wetlands in New Jersey. Freshwater wetlands and transition areas provide flood control and flood prevention, open space, recreational areas, water quality maintenance, removal and storage of water pollutants through physical, chemical and biological processes, aquifer recharge, and habitat for both commercially valuable and endangered wildlife.

Transition areas, like freshwater wetlands, are an essential component of the freshwater wetlands ecosystem. Transition areas provide a variety of unique habitat types within the freshwater wetland ecosystem, which are used by many wildlife species during their life cycle. Transition areas provide habitat for threatened and endangered species and other wildlife species which live near freshwater wetlands. Transition areas also provide refuge for wetlands-dependent wildlife during periods of high water in the freshwater wetland. The fauna of freshwater wetlands use transition areas as corridors for migration and for other movement along waterways and as nesting and feeding areas.

Transition areas also act as a "buffer" to reduce the direct and indirect impacts of adjacent activities upon the freshwater wetlands. Wetlands are commonly degraded by the effects of adjacent upland development activities. Unless prevented, erosion of disturbed soils, stormwater runoff and movement of pollutants from nearby areas can carry deleterious materials into freshwater wetlands, thus impairing the natural biological and physical functions of the wetlands. Transition areas have the natural ability to capture and to biologically process pollutants and foreign materials, thus decreasing their movement into freshwater wetlands.

#### Regulatory Flexibility Statement

The proposed new rules and amendments apply to all persons, including small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., planning to perform construction or development-type activities within a specific distance of certain types of freshwater wetlands. In order to comply with the rules, the small businesses will have to refrain from, or obtain Department approval for, most development near intermediate and exceptional resource value freshwater wetlands. If a waiver or averaging plan waiver is sought, it is likely that small businesses will need to engage the services of environmental, engineering and surveying consultants. Initial costs for these services are estimated to range from \$1,500 to \$3,000 or more depending on the size of the project and property and the extent of freshwater wetlands and transition areas involved. In order to lessen the impact of the rules on the small property owner which may be a small business, the Department has established simplified application and reduced fee requirements for properties under one acre in size. Once a transition area waiver or averaging plan is approved, no annual costs of compliance are anticipated.

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

#### 7:7A-1.4 Definitions

...  
 ["Documented habitats for endangered or threatened species" means freshwater wetland habitats with recorded data on past inhabitation by endangered and threatened species.]

"Documented habitat for threatened or endangered species" means areas for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting, or feeding. Evidence of past use by a species may include, but is not limited to, sightings of the species, or of its sign (for example, skin, scat, shell, track, nest, etc.), as well as identification of its call; and

2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

...  
 "Transition area waiver" means an approval from the Department to modify the size or shape of the standard transition area required

by N.J.A.C. 7:7A-6.1 in order to conduct prohibited activities specified at N.J.A.C. 7:7A-6.2, in what would otherwise be the transition area.  
...

7:7A-2.5 Classification of freshwater wetlands by resource value  
(a) (No change.)

(b) Freshwater wetlands of exceptional resource value shall be freshwater wetlands which exhibit any of the following characteristics:

1. (No change.)

2. Those which are present habitats for threatened or endangered species, or those which are documented habitats for threatened or endangered species, and which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat. [For the purposes of this section, notwithstanding the general definition of "documented habitat" on N.J.A.C. 7:7A-1.4 a habitat shall be considered a documented habitat if the Department makes a finding that the habitat remains suitable for use by the specific documented threatened or endangered species, based upon information available to it, including but not limited to, information submitted by an applicant for a freshwater wetlands permit.]

i. (No change.)

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

## SUBCHAPTER 6. TRANSITION AREAS

### 7:7A-6.1 General provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with the provisions of (a) above and with N.J.S.A. 13:9B-16a:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from wetlands from uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands and nearby waterways.

(c) A transition area is required adjacent to freshwater wetlands of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.5. A transition area is not required adjacent to freshwater wetlands of ordinary resource value as classified in N.J.A.C. 7:7A-2.5 or adjacent to State open waters as defined at N.J.A.C. 7:7A-1.4.

(d) The width of the standard transition area adjacent to a freshwater wetlands of exceptional resource value shall be 150 feet. The width of a transition area shall be the standard width unless modified by the Department through the approval of a transition area waiver pursuant to N.J.A.C. 7:7A-7.

(e) The width of the standard transition area adjacent to a freshwater wetlands of intermediate resource value shall be 50 feet. The width of a transition area shall be the standard width unless modified by the Department through the approval of a transition area waiver.

(f) A person shall not engage in activities prohibited in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area waiver approved by the Department.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6, Appendix A, which is incorporated by reference in this chapter. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless a transition area waiver is approved under N.J.A.C. 7:7A-7.4 or N.J.A.C. 7:7A-7.5. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

(h) The outside boundary of a transition area is determined solely by reference to the freshwater wetlands boundary and is in no way affected by property lines. Therefore, a property within 150 feet of a freshwater wetlands may contain a transition area which arises from a freshwater wetlands on another property. Any property or piece of property encompassing the transition area of a freshwater wetlands is subject to the Act and this chapter, notwithstanding that the freshwater wetland is located on another property.

### 7:7A-6.2 Prohibited activities in transition areas

(a) Except as provided in (b) and (c) below, a person shall not conduct the following prohibited activities in transition areas:

1. Removal, excavation, or disturbance of the soil;

2. Dumping or filling with any materials;

3. Erection of structures;

4. Placement of pavements; and

5. Destruction of plant life which would alter the existing pattern of vegetation.

(b) The following activities may be conducted (that is, are not prohibited) in transition areas, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands:

1. Normal property maintenance;

i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, including mowing of existing lawns, pruning of trees and shrubs, selective cutting of individual trees, and limited planting of native vegetation (that is, plants naturally occurring in transition areas in the local region).

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, clear cutting, removal or destruction of vegetation by cutting, mowing (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes, and the placement of fill, pavement or other impervious surfaces.

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area;

i. For the purposes of this paragraph, "minor and temporary disturbances" means activities which do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands and which activities do not continue for a period of more than six months. Normal construction activities which would be minor and temporary disturbances include the placement of temporary soil erosion and sediment control structures, the removal of human-made debris, and the placement of temporary construction supports.

3. The erection of temporary structures covering a combined total of 150 square feet or less of the transition area.

i. For the purposes of this paragraph, "temporary structures" means sheds or fences which do not have a foundation, or other structures that remain in the transition area for no more than a total of six months.

(c) Projects or activities which are exempt from the requirement of a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-2.7(a), (b), (d), (f) and (g) shall also be exempt from transition area requirements. These transition area exemptions are subject to the same limitations as the corresponding freshwater wetlands permit exemptions. These limitations can be found at N.J.A.C. 7:7A-2.7.

(d) To confirm that an activity or project is exempt, an exemption letter may be requested from the Department through the procedures established for freshwater wetlands permit exemptions in N.J.A.C. 7:7A-2.9, including submittal of the fee specified at N.J.A.C. 7:7A-16.7.

7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property

(a) Any person engaging in prohibited activities in a transition area without Department approval shall be in violation of the Act and this chapter. A transition area may be located on a property even though the freshwater wetlands adjacent to that transition area are located on a different property (see N.J.A.C. 7:7A-6.1(h)).

(b) To determine whether a transition area is required on a parcel, where freshwater wetlands may exist on other nearby parcels, a person may follow the procedures at (c) below or follow those procedures at (b)1 through 7 below as applicable:

1. Locate any freshwater wetlands that may be within 150 feet of the subject parcel property lines and any freshwater wetlands that may be within 50 feet of the subject parcel property lines. If there are no freshwater wetlands on the subject parcel or on land within 150 feet of the subject parcel property line, no transition areas exist on the subject parcel.

2. If there are freshwater wetlands on neighboring land within 150 feet of the parcel boundary, determine if they are classified as freshwater wetlands of ordinary resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8. No transition area is required adjacent to ordinary resource value wetlands.

3. If any of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary cannot be classified as ordinary, determine whether they are freshwater wetlands of intermediate or freshwater wetlands of exceptional resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8.

4. If the freshwater wetlands on the subject parcel or within 150 feet of the subject parcel property boundary are freshwater wetlands of exceptional resource value, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(d).

i. To avoid the necessity of delineating exceptional resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of its boundary.

5. If the freshwater wetlands on land within 150 feet of the subject parcel boundary are freshwater wetlands of intermediate resource value, determine whether any of the freshwater wetlands are within 50 feet of the subject parcel boundary.

6. If there are freshwater wetlands of intermediate resource value on land within 50 feet of the subject parcel boundary, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 50 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(e).

i. To avoid the necessity of delineating intermediate resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater

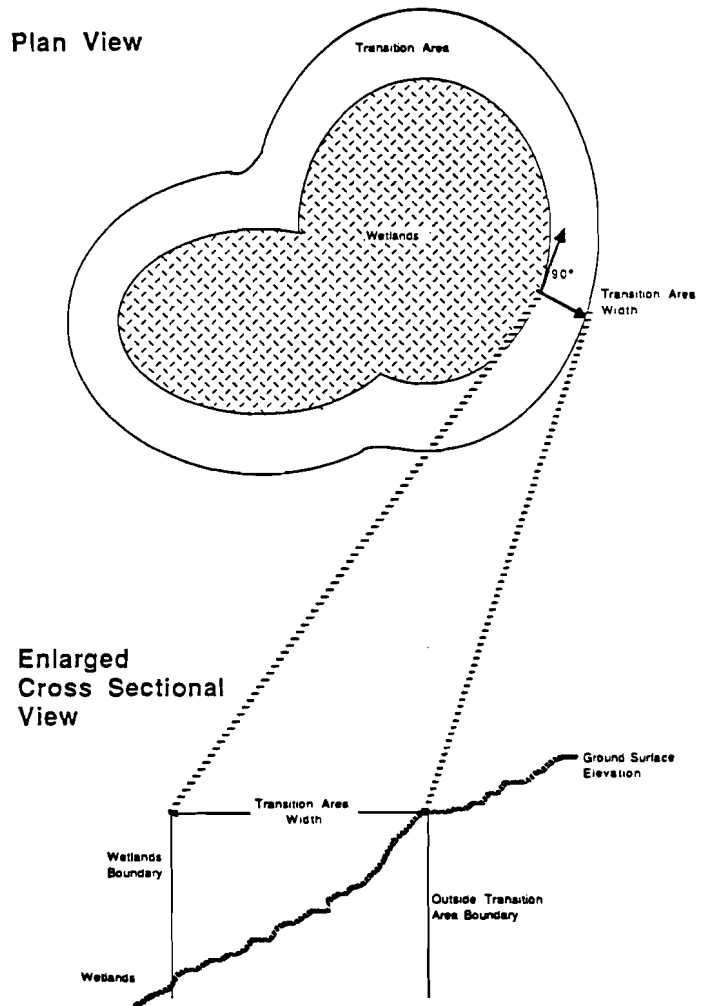
wetlands on other properties by refraining from prohibited activities on the subject parcel within 50 feet of its boundary.

7. It may be necessary to obtain written permission from neighboring property owners to investigate their land to within 150 feet of the subject parcel boundary. If a transition area waiver or letter of interpretation is needed, written permission shall also include permission for the Department to enter the land to verify the information submitted to the Department in the application, and shall follow the form in N.J.A.C. 7:7A-6 Appendix B, which is incorporated by reference in this chapter.

(c) Instead of following the procedures at (b)1 to 7 above, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of the subject parcel property line.

7:7A-6 Appendix A

Example of a transition area adjacent to a freshwater wetland. Depicted are a plan and elevational view.



7:7A-6 Appendix B

Note: All information designated in parentheses in the agreement below shall be completed as specified therein prior to execution of the agreement.

Right of Entry Agreement For Wetlands and Transition Area Delineations

FROM: (adjacent property owner(s) name and address of residency), hereinafter referred to as GRANTOR,

TO: (property owner(s) name (that is, the applicant) and address of residency), hereinafter referred to as the GRANTEE.

The GRANTOR does hereby grant to the GRANTEE, its agents, and the State of New Jersey, Department of Environmental Protection, the right to enter onto the property owned by the GRANTOR designated as (municipal block and lot, municipality, county and state of grantor's property) for the purpose of conducting a site inspection or survey to determine the presence, absence or boundaries of freshwater wetlands and transition areas. This information is required by the New Jersey Department of Environmental Protection, Bureau of Freshwater Wetlands, in order to comply with the requirements set forth in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

The GRANTOR acknowledges that it has received good and sufficient consideration in return for granting the right to enter the above referenced premises for the purpose set forth above and, as such, the GRANTEE shall make available to the GRANTOR a copy of the information collected on the above referenced premises.

The GRANTEE agrees that any activities conducted pursuant to this agreement will be carried out in a manner to not unreasonably interfere with the GRANTOR'S use and occupation of the premises; and

Subsequent to any entry, GRANTEE agrees that it will restore any portion of the premises disturbed by such entry to its condition immediately prior to entry.

The State of New Jersey, for itself, its successors and assigns, agrees to indemnify and hold harmless the GRANTOR, its heirs, successors and assigns, from any and all liability, claims, damages and actions which may result from the negligent use of the site by the State of New Jersey subject to the following exceptions: (a) the State of New Jersey shall have no obligation to indemnify or hold harmless the GRANTOR, its heirs, successors or assigns, or any of them, for any claims or damages for which the State of New Jersey would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1 et seq.); (b) the liability, if any, of the State of New Jersey shall be subject to the availability of State of New Jersey funds; (c) the Agreement of the State of New Jersey to indemnify and hold harmless, as set forth in this paragraph, shall not apply to any claims, actions or damages which may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the site of the time of the execution of this agreement, or at any time prior to the execution of this agreement.

This agreement shall take effect on the date executed by the GRANTOR:

WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_  
GRANTEE  
DATE: \_\_\_\_\_  
WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_  
GRANTOR  
DATE: \_\_\_\_\_

SUBCHAPTER 7. TRANSITION AREA WAIVERS

7:7A-7.1 General provisions

(a) A transition area waiver shall not be granted by the Department pursuant to the Act and this chapter unless it includes conditions as necessary to ensure that a particular project or activity results in minimal environmental impact and unless the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-6.1(a) and (b) are satisfied.

(b) Any person proposing to engage in a prohibited activity within 150 feet of an exceptional resource value wetland, or within 50 feet of an intermediate resource value wetland, shall apply to the Department for a transition area waiver.

(c) The Department may authorize the following through a transition area waiver:

- 1. A reduction in the width of the standard transition area;
- 2. A modification in the shape, but not the square footage, of the standard transition area through a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5;
- 3. A partial elimination of the standard transition area width along a portion of the freshwater wetland to allow special activities as established in N.J.A.C. 7:7A-7.4; or

4. Any combination of (c)1, 2, and 3 above.

(d) Reduction or modification of a transition area shall be based solely on the transition area adjacent to one freshwater wetland. For property with more than one freshwater wetland, the width of the standard transition area and the criteria for reducing the width shall be applied separately to each freshwater wetland. In no case may expansion of a transition area adjacent to one freshwater wetland compensate for reduction of a transition area adjacent to a separate freshwater wetland. However, one transition area waiver application may be used to request transition area waivers for more than one transition area located on a single property.

(e) In determining whether to issue or deny a transition area waiver, the Department shall consider information submitted by the applicant; local, county, state and Federal government agencies; and interested citizens and may consider any other available information.

(f) The Department's authorization of activities under a Statewide general permit or individual freshwater wetlands permit shall automatically include a transition area waiver. The transition area waiver will allow encroachment only in that portion of the transition area bordering on that portion of the freshwater wetland in which the permitted activity is to take place which the Department determines is necessary to accomplish the permitted activity. Any additional prohibited activities in the transition area not directly required for the permitted activity, shall require a separate transition area waiver from the Department pursuant to the Act and this chapter. If the permitted activity involves the placement of fill in the wetland, the post-fill freshwater wetlands boundary will be considered to be the freshwater wetlands boundary for the purposes of this subsection.

7:7A-7.2 Exceptional resource value freshwater wetlands: standards for and extent of transition area width reduction

(a) A transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a transition area waiver for access granted by the Department, pursuant to N.J.A.C. 7:7A-7.1(f), in connection with a freshwater wetlands permit, a transition area adjacent to a freshwater wetland of exceptional resource value shall not be reduced to less than 75 feet.

(b) The Department shall grant a transition area waiver for a transition area adjacent to a freshwater wetland of exceptional resource value only if:

- 1. The proposed activity would have no substantial impact, as determined pursuant to (c), (d) and (e) below, on the adjacent freshwater wetland; or
- 2. The waiver is necessary to avoid an extraordinary hardship to the applicant, as described at (f) below.

(c) For the purposes of N.J.A.C. 7:7A-7, a substantial impact shall be deemed to exist on a freshwater wetland of exceptional resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction:

- 1. The freshwater wetland is designated as an EPA priority wetland by USEPA;
- 2. The freshwater wetland contains a present or "documented habitat for threatened or endangered species" as defined at N.J.A.C. 7:7A-1.4;
- 3. The freshwater wetland is located adjacent to FW1 waters or FW2 trout production waters;
- 4. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;
- 5. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:13-1.2 will be disturbed by the proposed activity;
- 6. The property is located adjacent to a local, State, or Federal wildlife refuge, sanctuary or management area; or
- 7. The proposed activity or project includes one or more of the following:
  - i. A commercial or industrial facility within the following Standard Industrial Classification (SIC) major groups as designated in the Standard Industrial Classification Manual prepared by the Office of Man-

agement and Budget in the Executive Office of the President of the United States.

SIC	Industry Category
22	Textile Mill Products
23	Apparel
24	Lumber & Wood Products
25	Furniture & Fixtures
26	Paper & Allied Products
27	Printing, Publishing & Allied Industries
28	Chemicals & Allied Products
29	Petroleum Refining & Related Industries
30	Rubber & Miscellaneous Plastics Products
31	Leather & Leather Products
32	Stone, Clay, Glass & Concrete Products
33	Primary Metal Industries
34	Fabricated Metal Products
35	Machinery
36	Electrical & Electronic Machinery
37	Transportation Equipment
38	Measuring, Analyzing & Controlling Instruments, Photographic, Medical & Optical Goods
39	Miscellaneous Manufacturing Industries
47	Transportation Services
48	Communications
49	Utilities (Electric, Gas, Sewer), excluding linear development
51	Nondurable Goods Wholesaling
55	Automotive Dealers and Gasoline Service Stations
76	Miscellaneous Repair Services;

		Slope%	Development Intensity		
			Low (0-10%)	Moderate (>10-40%)	High (>40%)
Dominant Vegetational Community	Herbaceous	0-2	100	120	140
		>2	150	150	150
	Scrub-Shrub	0-2	75	75	80
		>2-5	95	115	130
		>5	150	150	150
	Forest	0-2	75	75	75
		>2-5	75	75	85
		>5-10	75	85	95
		>10-15	95	105	115
		>15-20	115	125	135
		>20	135	145	150

- ii. Mineral extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, limestone, or other minerals; or
- iii. Wastewater treatment or septic systems which are located or discharged onsite.

(d) The Department will consider the proposed project to have no substantial impact, and will issue a transition area waiver reducing the standard transition area width to 100 feet, if no activity prohibited pursuant to N.J.A.C. 7:7A-6.2 is conducted within the reduced 100 foot transition area and if all of the following transition area characteristics and proposed project factors are true:

1. The property or proposed project or activity does not fall into any of the categories at (c)1, 2, 4, 6 or 7 above.
2. The existing, pre-development transition area is unvegetated or has a herbaceous vegetational community as the dominant vegetational community as determined in (e)1 below;
3. The property has been part of an "established ongoing farming, ranching or silviculture operation" as defined at N.J.A.C. 7:7A-1.4 within the two years before the transition area waiver application is submitted;
4. The proposed project will include the planting of native trees and shrubs in the reduced 100 foot transition area pursuant to a plan approved by the Department. The planting shall achieve no less than an 85 percent area coverage in the entire 100 foot transition area and ensure no less than 85 percent survival of the plants for no less than three years; and
5. The reduced 100 foot transition area is placed under a permanent conservation easement or restriction, recorded as part of the deed to the property, which provides that the reduced transition area may not be improved, altered or in any way disturbed or cleared except pursuant to the Department-approved planting project.

(e) If the project, activities and/or property do not meet any of the criteria in (c) or (d) above, the Department shall determine the transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described below at (e)1 to 3, as indices of impact on a freshwater wetland of exceptional resource value, using the matrix below.

1. The dominant vegetational community in a transition area is the plant community which covers the most surface area of the transition area contained within the subject property. Vegetational communities are classified as herbaceous, scrub-shrub, or forested.

- i. A herbaceous vegetational community is characterized by the presence of annual and perennial plant species.
- ii. A scrub-shrub vegetational community is characterized by shrub and herbaceous plant species with an average height equal to or less than 20 feet. A forested area with little or no herbaceous or shrub layer (understory) shall be considered a scrub-shrub vegetational community for the purposes of this chapter.
- iii. A forested vegetational community is characterized by tree species with an average height greater than 20 feet accompanied by a herbaceous or shrub layer.

2. The average slope of the ground in the existing pre-activity standard transition area is measured as the arithmetic mean of slope measurements of the transition area taken every 200 feet along the outside transition area boundary. Slope shall be measured as the change in elevation of the ground from the freshwater wetlands boundary to the outside transition area boundary over the width of the standard transition area established in N.J.A.C. 7:7A-6.1.

3. The development intensity of the proposed project is the percentage of the surface area of the property, measured on a horizontal scale, which will be covered by impervious surfaces at the completion of the proposed project. For the purposes of this paragraph, "property" means the municipal tax lot or lots upon which the proposed project will occur. Impervious surfaces are areas which prevent the infiltration and percolation of water into the soil. Impervious cover includes, but is not limited to, pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools. The area used to calculate development intensity shall exclude freshwater wetlands, and State open waters. The sum of the square footage of freshwater wetlands, transition areas, and State open waters on the property is subtracted from the square footage of the entire property. The resulting number is divided into the square footage of all impervious cover which will result on the property upon completion of the proposed project. This quotient is multiplied by 100 percent to obtain the percentage of impervious cover, also known as the development intensity, which can be expressed mathematically as:  $DI = IC / (PA - (FW + TA + SOW)) \times 100\%$ , where:

- i. DI is the development intensity of the project expressed as a percentage;
- ii. IC is the square footage of impervious cover which will exist on the entire subject property or properties which are affected by the

proposed project, at the completion of the proposed project, including pre-existing impervious cover.

iii. PA is the square footage of the property or properties on which the proposed project or activity will occur;

iv. FW is the square footage of freshwater wetlands present on the subject property;

v. TA is the square footage of the transition area based on the standard transition area width established at N.J.A.C. 7:7A-6.1; and

vi. SOW is the square footage of State open waters on the subject property.

(f) An extraordinary hardship to the applicant will be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is or developed as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the local region; and  
ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

#### 7:7A-7.3 Intermediate resource value freshwater wetlands: standards for and extent of transition area width reduction

(a) A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a Department-approved transition area averaging plan, or a transition area waiver granted pursuant to N.J.A.C. 7:7A-7.2(f), in no case shall a transition area adjacent to a freshwater wetlands of intermediate resource value be less than 25 feet wide.

(b) The Department shall grant a transition area waiver for a transition area adjacent to a freshwater wetland of intermediate resource value only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c) and (d) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid a substantial hardship to the applicant, as defined in (e) below.

(c) For the purposes of this subchapter, a substantial impact shall be deemed to exist on a freshwater wetland of intermediate resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction:

1. The freshwater wetland is listed as an EPA priority wetland;

2. The freshwater wetland is a critical habitat for fauna or flora, as determined by the Department. Critical habitat for fauna are areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities. Critical habitat for flora are areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

3. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;

4. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:13-1.2 will be disturbed by the proposed activity;

5. The property is located adjacent to a local, State or Federal wildlife refuge, sanctuary or management area; or

6. The proposed activity or project includes one or more of the operations or activities at N.J.A.C. 7:7A-7.2(c)6.

(d) If the project, activities and/or property do not meet any of the criteria in (c) above, the Department shall determine the transition area width reduction from that of the standard transition area width based on the slope and dominant vegetational community type of the area and the development intensity of the proposed project, as described at N.J.A.C. 7:7A-7.2(e)1 through 3, as indices of the impact on a freshwater wetland of intermediate resource value, using the criteria below:

1. A transition area waiver reducing the transition area width to 25 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and  
iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

2. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to three percent; and  
iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 40 percent.

3. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is scrub-shrub or herbaceous vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

4. A substantial impact on the freshwater wetland shall be deemed to exist, and a transition area waiver shall not be granted pursuant to this section, if the conditions in (d)1, 2 or 3 above are not met.

(e) A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is or developed as authorized by the provisions of the Act and this chapter and this limitation results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

#### 7:7A-7.4 Special activities: standards for granting transition area waivers

(a) The Department shall issue a transition area waiver to reduce or partially eliminate the standard transition area for the special activities listed below at (a)1 through 3, provided the conditions for each activity set forth below at (c), (d), (e) and (f) are met; provided the project is designed to minimize impacts to the freshwater wetland and transition area; and provided the transition area continues to serve the purposes set out at N.J.A.C. 7:7A-6.1(a). Except pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to freshwater wetlands of exceptional resource value shall be no less than 75 feet wide. The special activities are:

1. Stormwater management facilities as defined at (b) below;

2. Linear development as defined at N.J.A.C. 7:7A-1.4; and

3. Activities permitted under specific Statewide general permits listed in (e) below.

(b) If the proposed activity is the construction of a stormwater management facility, the Department will approve a transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative onsite location for the facility.

1. For the purposes of this paragraph, "stormwater management facility" means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with all applicable local, county and state regulations. These facilities may include retention and detention basins and infiltration structures; grassed swales; filter fabric; rip-rap channels and/or stormwater outfalls.

2. An alternative onsite location shall not be considered infeasible merely because it would require one or more of the following:

i. Relocating part or all the stormwater management facility outside of the transition area;

ii. Modifying the type of stormwater management facility;

iii. Redesigning the layout, size, scope or configuration of the buildings, roads or other aspects of the project in order to accommodate the stormwater management facility; or

iv. Reducing the scope or density of the project generating the stormwater.

3. An alternative onsite location shall be considered feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of stormwater management goals.

(c) If the proposed activity is the construction of a linear development as defined at N.J.A.C. 7:7A-1.4, the Department will approve a transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative location for the linear development.

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

i. Modifying the route of the linear development to avoid freshwater wetlands and transition areas; or

ii. Reducing the width of the linear development.

2. An alternative shall be feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.

3. An alternative shall not be excluded from consideration merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained or used to fulfill the basic purpose of the proposed activity.

(d) An alternative location may be considered infeasible if its use for the project would cause other significant adverse environmental consequences.

(e) No substantial impact will be deemed to exist on a freshwater wetland, and a transition area waiver will be granted for the reduction of a transition area in order to conduct activities which are covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a), 3, 4, 8, 15, 16, and 17. A person shall not commence a prohibited activity in a transition area pursuant to this subsection prior to obtaining a transition area waiver from the Department pursuant to this chapter. The limitations of N.J.A.C. 7:7A-7.2(c) and 7.3(c) do not apply to transition area waivers granted under this subsection.

#### 7:7A-7.5 Transition area waivers: standards for averaging plan approval

(a) A transition area averaging plan, a type of transition area waiver, is a plan to modify the overall shape of the transition area without reducing the total square footage of the transition area. An example of transition area averaging is shown in N.J.A.C. 7:7A-7 Appendix A, which is incorporated by reference in this subchapter.

(b) Subject to the limitations of (c) and (d) below, an applicant may change the shape of a transition area consistent with a Department approved transition area averaging plan. Portions of the required transition area width may be reduced or partially eliminated provided that the reduction in width is compensated, on a square footage basis, by the expansion of another portion of the same transition area on the same property, and provided that the resulting transition area continues to serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a).

1. If any of the following conditions exist, the averaging plan shall be deemed to result in a transition area which does not serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a), and, therefore, the transition area averaging plan shall not be approved:

i. The slope of the existing, pre-activity transition area where the reduction is proposed is greater than 25 percent;

ii. The freshwater wetland adjacent to the transition area is a breeding or nesting habitat for "threatened or endangered species", as defined at N.J.A.C. 7:7A-1.4; or

iii. The transition area averaging plan proposes to:

(1) Reduce the transition area to less than 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

(2) Reduce the transition area width to less than 10 feet along more than 20 percent of that portion of the freshwater wetlands boundary which is contained on the property;

(3) Place structures or impervious surfaces within 20 feet of the freshwater wetlands; or

(4) Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of the width of the standard transition area.

(c) A transition area averaging plan shall be based on each individual freshwater wetland and its associated transition area. Any expansion(s) of a transition area to compensate for a reduction elsewhere shall be located on the same transition area as the reduction, shall be adjacent to the same freshwater wetland where the transition area was reduced, and shall be on property owned or legally controlled by the applicant.

(d) In no case shall a transition area adjacent to a freshwater wetland of exceptional resource value cover a total square footage that is less than the square footage which would result from a transition area with a uniform 100 foot width, nor shall the width of any part of the transition area be reduced to less than 75 feet except pursuant to N.J.A.C. 7:7A-7.1(f) (transition area waivers for access to permitted activities).

#### 7:7A-7.6 Application contents for transition area waivers

(a) The application for a transition area waiver shall include the applicable fee for the review and processing of a transition area waiver application specified at N.J.A.C. 7:7A-16.6 and five copies of the following information:

1. A completed FW-1 application form, obtainable at the address at N.J.A.C. 7:7A-1.3, filled out as directed for a transition area waiver in the instructions accompanying the application form;

2. A written description of the location of the proposed activity and property including county, municipality, municipal lot(s), block(s) and street address;

3. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, New Jersey 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries;

4. A preliminary site plan or subdivision map of the property, or out-bound survey map of the property if no preliminary site plan or subdivision map exists, clearly identifying all proposed activities on the entire property, all existing structures on the property, and the freshwater wetland boundary;

i. Note: The freshwater wetlands boundary shown on the site plan or subdivision map shall be visibly flagged and/or staked in the field according to the procedure at N.J.A.C. 7:7A-8.2(c)7.

5. A detailed written description of the proposed activity or activities, describing the total area to be modified by the entire project, and the total square footage of the transition area potentially affected, either temporarily or permanently;

6. A certified mail return receipt card, signed by the receiver, from the U.S. Post Office, showing that a written notice has been forwarded to the municipal clerk, the environmental commission, if any, and planning board of the municipality, and the planning board of the county in which the activity is to occur. The written notice shall include, at a minimum, the following information and statement:

i. The name(s) and address(es) of the property owner(s);

ii. The property location by municipal lot(s) and block(s), municipality, county, and street address;

iii. A description of the proposed project and types of activities in the transition area; and

iv. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection, Bureau of Freshwater Wetlands for a transition area waiver.

A transition area waiver, if approved by the Department, will allow certain prohibited activities, as defined in N.J.A.C. 7:7A-6.2, to occur in a transition area. A transition area is an area adjacent to a freshwater wetlands which minimizes adverse environmental impacts on the freshwater wetlands and serves as an integral component of the freshwater wetlands ecosystem. A transition area can extend up to 150

feet from the freshwater wetlands boundary depending on the resource value classification of the freshwater wetlands.

A copy of the application can be viewed at the address below during normal business hours. The Department welcomes comments on the transition area waiver application. Please submit your written comments within 15 days of receiving this letter along with a copy of this letter to:

Bureau of Freshwater Wetlands  
Division of Coastal Resources  
New Jersey Department of Environmental Protection  
CN 401  
Trenton, New Jersey 08625

The Department will notify the environmental commission, if any, and the planning board of the municipality and the county planning board of the Department's final decision concerning this transition area waiver application";

7. Written consent by the applicant to allow access to the subject property by representatives or agents of the Department for the purpose of conducting site inspections or surveys of the freshwater wetlands and transition areas thereon and, if necessary, written consent by neighboring property owner(s), following the form provided in N.J.A.C. 7:7A-6 Appendix B, to allow access to the neighboring property by representatives or agents of the Department for the purpose of conducting site inspections of the freshwater wetlands and transition areas on the property (see N.J.A.C. 7:7A-6.3(b)7); and

8. Any information establishing a claim of hardship as determined pursuant to N.J.A.C. 7:7A-7.3(e) or 7.2(f).

(b) If the freshwater wetlands boundary on the property has not been confirmed or delineated by the Department through a letter of interpretation pursuant to N.J.A.C. 7:7A-8 and the property is greater than one acre, the applicant shall also provide as part of the transition area waiver application the information required in N.J.A.C. 7:7A-8.2(c)2, 5, 6, 7, 8, and 9.

(c) In addition to the information required in (a) and (b) above, the following information shall be submitted depending on the type of transition area waiver(s) requested in the application:

1. To reduce the width of the standard transition area pursuant to N.J.A.C. 7:7A-7.2 (except pursuant to N.J.A.C. 7:7A-7.2(d)) and N.J.A.C. 7:7A-7.3:

- i. A description of the dominant vegetational community in the standard transition area, as described at N.J.A.C. 7:7A-7.2(e)1;
- ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2; and
- iii. The development intensity of the proposed project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3.

2. To reduce the width of a standard transition area pursuant to N.J.A.C. 7:7A-7.2(d), a proposal containing:

- i. A detailed description of the size and type of the transition area planting project;
- ii. A site plan showing the location of the proposed work and an elevational and plan view of the proposed work;
- iii. A description of the types of native trees and shrubs to be planted and at what spacing, as well as the type of seeding, fertilization and other stabilization activities;
- iv. A monitoring and maintenance plan of the transition area to ensure no less than 85 percent area coverage in the entire reduced 100 foot transition area and no less than 85 percent survival of the plants for three years;
- v. A schedule from initiation to completion of the planting project including the dates of planting and fertilization (rates and types), dates of monitoring measurements, as well as any other activities; and
- vi. Existing soil type(s) and soil conditions in the transition area;
- vii. A permanent, recorded, conservation easement or deed restriction which meets the requirements of N.J.A.C. 7:7A-7.2(d)4; and
- viii. Proof that the standard transition area has been part of an "established ongoing farming, ranching or silviculture operation" within the two years prior to submittal of the application.

3. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:

- i. The total square footage of the standard transition area;
- ii. The total square footage of the transition area to be disturbed by the proposed project;

iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and

iv. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field by reference to permanent onsite monuments.

4. For a special activity waiver for the construction of a stormwater management facility or a linear development pursuant to N.J.A.C. 7:7A-7.4, a written alternatives analysis describing the various alternatives considered including a written description and site plan drawings of each possible alternative considered and the reason(s) each alternative is not considered feasible.

(d) Applicants shall perform recordkeeping activities for transition area waiver applications according to the requirements at N.J.A.C. 7:7A-11.2.

(e) All transition area waiver applications shall be signed according to the signatory requirements at N.J.A.C. 7:7A-11.3.

(f) All application fees shall be paid according to the requirements set forth for payment of permit fees at N.J.A.C. 7:7A-16.1.

7:7A-7.7 Procedure for review of transition area waiver applications

(a) Within 30 days of the receipt of an application for a transition area waiver, the Department shall review the application for completeness and make any necessary requests for additional information or declare the application complete. If the application does not include the fee specified at N.J.A.C. 7:7A-16, no action shall be taken by the Department under this section, the submittal will not be considered an application, and completeness review will not begin.

(b) If additional information is required of an applicant, the Department shall have 15 days after receipt of the information to request clarification of the submitted additional information. In such cases, the application shall not be considered complete until the clarification is received by the Department. If no clarification of the additional information is necessary, the application shall be considered complete as of the date of receipt of the additional information.

(c) Except as indicated in (d) and (h) below, the Department shall issue or deny a transition area waiver within 90 days of receiving a complete transition area waiver application or within 90 days after receipt of the requested additional information or clarification sufficient for the application to be considered complete.

(d) If the transition area waiver application is submitted together with an individual freshwater wetlands permit application concerning the same property, the Department shall approve or deny the transition area waiver within the time period set forth in N.J.A.C. 7:7A-12 for the approval or denial of the individual freshwater wetlands permit application.

(e) Applications may be cancelled by the Department or withdrawn, amended, or resubmitted by the applicant pursuant to N.J.A.C. 7:7A-12.7.

(f) When a transition area waiver is issued pursuant to this subchapter, the Department shall send copies to all municipal and county agencies which received copies of the transition area waiver application.

(g) The Department shall provide notice of application for a transition area waiver the status of all applications, and the final decision concerning all applications in the DEP Bulletin, as set forth in N.J.A.C. 7:7A-12.4.

1. Copies of all transition area waiver applications will be available for public review by interested persons in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(h) Within 20 days of publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application.

1. The Department may issue or deny a waiver without a public hearing unless there is a significant degree of public interest in the application as manifested by written requests for a hearing submitted

within 20 days. If the Department grants a hearing, the application shall not be considered complete until 15 days after the public hearing.

2. If the Department grants a hearing, the Department shall set a date, time and location for the public hearing and shall so notify the applicant. The hearing shall be in the county wherein the transition area is located whenever practicable.

3. The Department and the applicant shall follow the public hearing procedures for freshwater wetlands permits established in N.J.A.C. 7:7A-12.5(e) through (j).

(i) The Department shall establish conditions in transition area waivers as required on a case-by-case basis, to assure compliance with all applicable provisions of this chapter and the Act.

**7:7A-7.8 Duration, effect, modification and transfer of transition area waivers**

(a) A transition area waiver issued by the Department shall be effective for a fixed term of five years.

(b) A transition waiver shall be considered valid after the five year term provided that construction of the permitted project, excluding site preparation, began on or before three years from the transition area waiver's date of issue, and provided that construction is performed on a continuous basis after the expiration of the five year term.

(c) The term of a transition area waiver shall not exceed five years except as described at (b) above. However, a transition area waiver may be renewed by submitting a new application in accordance with the procedures set forth in this subchapter.

(d) The issuance of a transition area waiver does not convey property rights of any sort, or any exclusive privilege.

(e) A transition area waiver may be transferred by the permittee to a new owner or operator only if the transition area waiver has been modified or revoked and reissued as described at (f) below or a minor modification has been made as described at (f) below to identify the new permittee and incorporate any additional requirements the Department determines to be necessary under the Act and this chapter.

(f) A transition area waiver may be modified, revoked, or reissued in accordance with the procedures for permits at N.J.A.C. 7:7A-13.6 for the following causes:

1. For modification as established at N.J.A.C. 7:7A-13.7;
2. For modification or revocation and reissuance as established at N.J.A.C. 7:7A-13.8; or
3. For minor modifications as established at N.J.A.C. 7:7A-13.9.

**7:7A-16.6 Fees for review and processing of requests for transition area waivers**

(a) The fee for the review and processing of a transition area waiver application shall be as follows:

1. If a letter of interpretation has been performed on the property by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

- i. For property of one acre or less: \$100.00; and
- ii. For property over one acre: \$200.00 plus \$20.00 per acre, or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity.

2. If no letter of interpretation for the property has been prepared by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

- i. For property of one acre or less: \$200.00;
- ii. For property over one acre: \$450.00 plus \$25.00 per acre, or any fraction thereof, of the total property.

3. If a letter of interpretation for the property which provides only a determination of the presence or absence of freshwater wetlands has been prepared for a property by the Department pursuant to N.J.A.C. 7:7A-8, the transition area waiver application fee shall be:

- i. For property of one acre or less: \$100.00;
- ii. For property over one acre: \$450.00 plus \$25.00 per acre, or any fraction thereof, of the total property.

4. If, in order to review and process a transition area waiver application, more than one site inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to

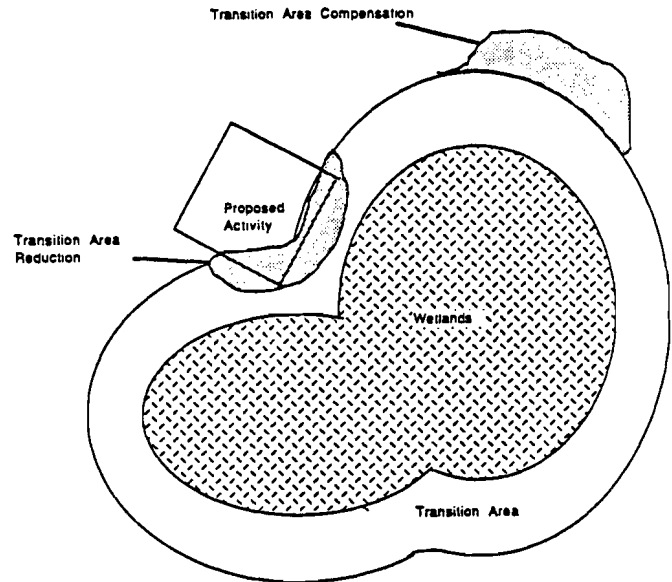
exceed \$1,000. No transition area waiver shall be issued until this additional fee is paid.

**7:7A-16.7 Fees for the review and processing of requests for exemption letters**

The fee for the review and processing of a request for an exemption letter certifying that a project or activity is exempt from freshwater wetlands or open water fill permit requirements, or from transition area requirements, shall be \$100.00.

**7:7A-7 Appendix A.**

Example of a transition area averaging plan.



The square footage in the compensation area is equal to that of the reduction area.

(a)

**DIVISION OF COASTAL RESOURCES  
Redelineation of West Branch Rahway River  
Proposed Amendment: N.J.A.C. 7:13-7.1(d)**

Authorized By: Christopher J. Daggett, Acting Commissioner,  
Department of Environmental Protection

Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 58:16A-50 et seq.

DEP Docket Number: 008-89-02

Proposal Number: PRN 1989-119.

A public hearing concerning this proposed amendment will be held on March 22, 1989 at 1:30 P.M. in Trenton, New Jersey at:

Division of Coastal Resources  
Department of Environmental Protection  
5 Station Plaza, First Floor  
501 East State Street  
Trenton, New Jersey

Submit written comments by April 5, 1989 to:  
Suzanne Dice-Goldberg, Esq.  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1. Delineated floodways, by revising the existing floodway and flood fringe area delineation along the West Branch Rahway River from river station 30,660 upstream to station

31,850 in the vicinity of Pleasant Valley Way and Mountain Avenue, Town of West Orange, Essex County.

This proposed amendment to redelineate the aforementioned portion of the West Branch Rahway River is based on a preliminary stream encroachment application for the construction of a replacement driveway bridge on privately owned land. Review of plans and hydraulic data, submitted by Richard Brown Associates (RBA Group) on behalf of Pouliot, Inc., indicates that the present stream alignment and size of culvert to be used in the new bridge differ from those shown in the original delineation. The revised data are based upon a larger culvert, additional cross-sections showing the present stream alignment, construction plans and a hydraulic model.

The hydraulic model shows a revised 100-year flood profile, varying from 0.7 feet below to 1.5 feet above the present profile, and a revised flood hazard area design profile increasing from 0 to 1.7 feet, with a revised floodway. The construction of a larger culvert will narrow the floodway slightly. Thus, the proposed redelineation shows a reduction in the size of the flood fringe, the floodway, and the flood hazard area.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this map revision is recommended.

#### Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and its surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., (FHACA) and the rules promulgated pursuant thereto, N.J.A.C. 7:13.

The proposed redelineation more accurately determines the location of floodway limits and flood hazard areas. Since the map revision directly affects only the applicant's property in this case, no additional social impact will result beyond what was reasonably foreseeable at the time of the original floodway delineation of the West Branch Rahway River.

#### Economic Impact

The proposed amendment will affect an application for a specific on-site project only. The delineation will reduce the area subject to regulation under the FHACA, and may slightly increase the applicant's property value, resulting in only a minimal economic impact. Outside the boundaries of the applicant's property, no economic impact is expected to result from this amendment beyond what was reasonably foreseeable at the time of the original delineation.

#### Environmental Impact

The purpose of this proposed redelineation is to more accurately define the flood hazard area of West Branch Rahway River within which restrictions on the scope of development apply. This amendment is not expected to have any adverse environmental impact.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. The proposed redelineation is a clarification of the existing delineation and will result in a narrowing of the flood hazard area.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey; and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the West Orange Town Clerk and to the Essex County Planning Board.

## HEALTH

### (a)

#### HOSPITAL REIMBURSEMENT

##### Notice of Extension of Comment Period

Take notice that the Department of Health has extended the comment period to March 17, 1989 for the following proposed rule changes, published in the New Jersey Register on January 17, 1989:

Procedural and Methodological Regulations, N.J.A.C. 8:31B-3.51 through 3.55, 3.58 and 3.59 at 21 N.J.R. 131(b);

Procedural and Methodological Regulations, N.J.A.C. 8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, Appendix II and Appendix IX at 21 N.J.R. 135(a);

Diagnosis Related Groups and DRG Lists, N.J.A.C. 8:31B-5.1 through 5.3 at 21 N.J.R. 138(a).

Submit written comments by March 17, 1989 to:

Alan N. Rosenberg, Director  
Hospital Reimbursement  
New Jersey State Department of Health  
CN 360, Room 601  
Trenton, New Jersey 08625-0360

### (b)

#### DIVISION OF AIDS PREVENTION AND CONTROL

##### Eligibility and Reimbursement for Retrovir for Individuals with AIDS

##### Proposed Amendment: N.J.A.C. 8:61-2.4

Authorized By: David L. Knowlton, Acting Commissioner, New Jersey State Department of Health.

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

Proposal Number: PRN 1989-114.

Submit comments by April 5, 1989 to:

Steven Young  
Division of AIDS Prevention and Control  
363 West State Street, CN 363  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Over 5,000 New Jerseyans have been diagnosed with Acquired Immunodeficiency Syndrome (AIDS), and perhaps 150,000 others in the State are carrying the Human Immunodeficiency Virus (HIV) that causes the syndrome. Public health experts now estimate that 30 percent to 50 percent of those carrying the virus will eventually develop AIDS or ARC (AIDS Related Complex). In New Jersey, this translates to a minimum of 45,000 more cases (and perhaps 75,000) among those already infected.

Although there is no cure or vaccine for AIDS, the Food and Drug Administration (FDA) recently approved the drug called Retrovir, formerly known as Azidothymidine (AZT), which has been determined to prolong the life of an individual with AIDS. Recognizing the high cost of this drug, approximately \$10,000 per year, a Federal supplemental appropriation of \$30,000,000 (Public Law 100-71) was passed to cover the cost of Retrovir. These funds were awarded to states by a formula based on the number of living AIDS patients residing in each state as reported to CDC on July 6, 1987. New Jersey's award was \$1,532,748. Also, the Federal government passed supplemental appropriations to continue this support for an additional six months.

Currently, low income individuals meeting certain income criteria can be reimbursed for the cost of Retrovir by the State Medicaid Program, or by the State's Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program. New Jersey is one of a few states that provides pharmaceutical assistance to disabled persons, which includes individuals who have been diagnosed with AIDS or advanced stages of ARC. The income eligibility for this PAAD Program is approximately \$13,650 for a single person and \$16,750 limit for married couples. For New Jerseyans to benefit from the aforementioned emergency federal appropriation, higher income limits must be established.

Given the availability of PAAD support, coupled with the high cost of this drug, the Department is proposing income limits not to exceed \$30,000, single individual, and up to \$70,000 for a household of five or

more. These levels are consistent with that of neighboring states. If these higher limits were not established, then only those individuals who are eligible for Medicaid, PAAD, or third-party reimbursement would get this drug, and other individuals who could be supported through establishing higher limits would not get this drug until they exhausted their income.

**Social Impact**

The proposed amendment will have a positive impact on those who would otherwise not meet eligibility criteria. Although the State Medicaid Program and PAAD will reimburse certain classes of individuals for the cost of purchasing Retrovir, the high cost of the drug precludes a large number of AIDS patients, whose income exceeds that permitted under the two above-noted programs, from purchasing Retrovir.

Establishment of a new income eligibility criteria will thus permit a larger number of AIDS patients to procure the drug, which, although neither cure nor vaccine, has been determined to prolong the lives of individuals with AIDS.

**Economic Impact**

The proposed amendment will have a beneficial economic impact on those individuals with AIDS, who are individuals ineligible for PAAD or Medicaid benefits, and who meet the income criteria set herein, since this proposed amendment will defray the exorbitant costs associated with the purchase of Retrovir (estimated at approximately \$10,000 per year, per individual).

Further, since the funds for this program were appropriated to the State from the Federal government, there is no expected adverse economic impact on the State.

**Regulatory Flexibility Statement**

The proposed amendment will apply only to individuals suffering from AIDS, as documented by a physician, and will have no effect on small businesses. Therefore, the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are inapplicable to this rule, and a regulatory flexibility analysis is not required.

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

8:61-2.4 Income eligibility

(a) [Any single permanent resident of New Jersey must have an annual income of less than \$25,000 to be eligible for enrollment in the Program.] **In order to be eligible for this program, the individual(s) shall be a permanent resident of New Jersey and must have an annual income in accord with the following standards:**

Number of Persons in Household	Annual Income
One	\$30,000
Two	\$40,000
Three	\$50,000
Four	\$60,000
Five or more	\$70,000

[(b) Any married permanent resident of New Jersey must have a combined (applicant and spouse) annual income of less than \$30,000 to be eligible for PAAD.]

1. An applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receive support from the spouse's income.

2. An applicant and spouse shall be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a state or county psychiatric hospital at least 30 consecutive days prior to application.

[(c)] (b) Income shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.2.

**HUMAN SERVICES**

**(a)**

**DEVELOPMENTAL DISABILITIES**

**Bureau of Guardianship Services**

**General Provisions; Eligibility Requirements; Continuation of Eligibility; Role and Responsibility of BGS; Limitations of Authority of BGS**

**Proposed New Rules: N.J.A.C. 10:45**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12 and 30:4-165.1 et seq., especially 30:4-165.16.

Proposal Number: PRN 1988-572.

Submit comments by April 5, 1989 to:

James M. Evanochko, APO

Division of Developmental Disabilities

222 South Warren St., CN 700

Trenton, N.J. 08625

The agency proposal follows:

**Summary**

As a result of amendatory and supplemental legislation enacted April 12, 1985 (P.L. 1985 c.133), as well as a New Jersey Supreme Court decision, *In re Promulgation of Guardianship Services Regulations*, 103 N.J. 619 (1986), the rules regarding guardianship services which expired on September 19, 1988, in accordance with Executive Order No. 66(1978), required extensive revision. The Department is, therefore, proposing new rules regarding the provision of guardianship services.

The Bureau of Guardianship, within the Division of Developmental Disabilities, has been assigned the responsibility of providing guardianship services to incompetent individuals who are receiving services from the Division. Guardianship services can be provided when there is no other person willing or able to serve as the guardian. Guardianship services covered by these rules are limited to those of the person, not of the property.

In order to receive guardianship services, the person must be eligible for functional or other services from the Division. Guardianship services can be provided to both children and adults.

Division staff who provide guardianship services are responsible for protection of rights of individuals who are developmentally disabled, as well as advocacy on their behalf. Services can be provided through direct contact, interviews with staff and/or service, relatives or other involved parties, participation at case conferences or other meetings and review of records.

The first subchapter (General Provisions) contains two sections, authority and definitions of the terms used in this chapter.

Subchapter 2 (Eligibility Requirements for Guardianship Services) contains the guidelines used in determining the need for guardianship services. Subchapter 3 (Continuation of Eligibility for Guardianship Services) describes under what circumstances guardianship services are continued after the initial appointment of a guardian.

Subchapter 4 (Role and Responsibilities of the Bureau of Guardianship Services) describes those services to be provided. Subchapter 5 (Limitation of Authority; Bureau of Guardianship Services) indicates in what instances the provision of guardianship is limited.

**Social Impact**

The proposed new rules set forth the role of the Division when acting as the guardian of a developmentally disabled person under its services. The rules help assure that guardianship services are provided when there is no interested party willing or able to serve as a guardian. The rules allow for the guardianship services without financial expense to the family or the need to secure legal services to initiate court action.

**Economic Impact**

It is anticipated that the rules will have a positive impact on the families of individuals served by the Division. It assures that guardianship services are provided when there is no interested party willing or able to fulfill that capacity. The current cost of pursuing guardianship of the person is estimated to exceed \$500.00.

There is an anticipated economic impact on the Department of Human Services, which is responsible to provide guardianship services when a guardian is not otherwise available. It is projected that the Division will need to add 20 staff to the Bureau of Guardianship over the next 5 years, at a cost of approximately \$1,538,000.

#### Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis, since they do not impose any requirements on small businesses, as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows:

### CHAPTER 45 GUARDIANSHIP SERVICES

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:45-1.1 Authority

(a) The Department of Human Services is directed to provide comprehensive services, specifically including guardianship services, to eligible developmentally disabled persons, in order that they may be provided with adequate training, care and protection (see N.J.S.A. 30:4-165.1).

(b) The Division of Developmental Disabilities is directed to perform such services for adults who are mentally incompetent, for whom no guardian has been appointed, as would otherwise be rendered by a guardian of the person (see N.J.S.A. 30:4-165.5).

(c) The Commissioner of the Department of Human Services is mandated to make all reasonable and necessary provisions to insure the health, safety, welfare and earliest appropriate release of persons admitted to residential services for the developmentally disabled (see N.J.S.A. 30:4-25.7).

(d) The Bureau of Guardianship Services within the Division of Developmental Disabilities has been assigned the responsibility of providing guardianship services by the Division Director. Guardianship services are limited to the guardian of the person only and not property.

##### 10:45-1.2 Definitions

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

"Bureau of Guardianship Services (BGS)" means the unit within the Division of Developmental Disabilities which has the responsibility and authority to provide guardian of the person services to individuals in need of such services.

"Commissioner" means the Commissioner of the Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which: (1) is attributable to a mental or physical impairment or combination of mental or physical impairments; (2) is manifest before age 22; (3) is likely to continue indefinitely; (4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and (5) reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met. (see P.L. 1985, c. 145).

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Functional or other services" means those services and programs in the Division which are available to provide the persons with developmental disabilities with education, training, rehabilitation, adjustment, treatment, care and protection. Functional or other services shall include residential care, case management, social supervision, and day programming.

"Functional service unit" means any of the following components of the Division: a Developmental Center, a Regional Office of Community Services, or the Bureau of Special Residential Services.

"Guardian" means a person or agency appointed by a court of competent jurisdiction or otherwise legally authorized and responsible to act on behalf of a minor or incompetent adult to assure provision for the health, safety, and welfare of the individual and to protect his or her rights.

"Guardian ad litem" means a person appointed by a court to perform an extremely limited type of guardianship, namely to protect a child's or incompetent adult's interest during a single instance of some form of court proceedings or litigation.

"Guardianship services" means those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with developmental disabilities, for whom it is performing the services of guardian of the person.

"Individual Habilitation Plan (IHP)" means a document that provides an evaluation of the capabilities and needs of an individual with developmental disabilities and sets forth clearly defined and measurable goals and behaviorally stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable. Specific contents of an IHP are elaborated in N.J.S.A. 30:6D-11.

"Mental deficiency" means that state of mental retardation in which the reduction of social competence is so marked that persistent social dependency requiring guardianship of the person shall have been demonstrated or be anticipated (see N.J.S.A. 30:4-23).

"Mental incompetence" means the state or condition of a person who is impaired by reason of physical disability, mental illness or mental deficiency to the extent that he/she lacks sufficient capacity to govern himself/herself and manage his/her affairs.

"Mental retardation" means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

#### SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR GUARDIANSHIP SERVICES

##### 10:45-2.1 Eligibility requirements for adults

(a) An individual 18 years or older is eligible for guardianship services if he or she is receiving functional or other services from the Division and has been:

1. Administratively determined mentally deficient, and consequently in need of guardianship, by the administrative head of the functional service unit, based upon an assessment and recommendation of a team of professional staff, and referred to BGS before April 12, 1985;

2. Adjudicated mentally incompetent by a court of competent jurisdiction and have had BGS appointed by the court as guardian of the person; or

3. Adjudicated mentally incompetent by a court of competent jurisdiction and have had BGS granted power of attorney by the appointed guardian of the person.

(b) Notwithstanding the provisions of (a) above, every person receiving guardianship services from BGS without prior judicial review will be reevaluated pursuant to N.J.S.A. 30:4-165.13 to determine whether the need for such services continues and, if so, application shall be made to a court of competent jurisdiction for appointment of a guardian of the person for that person.

##### 10:45-2.2 Eligibility requirements for children

(a) An individual under the age of 18 years is eligible for guardianship services if he or she is receiving functional or other services from the Division, and:

1. Is orphaned or abandoned, with no legal guardian of the person having been appointed; or

2. Has a legal guardian of the person, who has granted a power of attorney to BGS to make personal decisions on behalf of the child.

(b) In the instance of a child determined eligible for guardianship services on the basis of being orphaned or abandoned, staff of the functional service unit shall verify such status by:

1. Documentation that the child's legal guardian(s) is (are) deceased; or
2. Documentation that the following efforts to locate the child's guardian(s) have been unsuccessful:
  - i. Notice by regular mail and follow-up by certified mail, return receipt requested, to the guardian's last known address, with no response received within 45 days of forwarding the certified letter;
  - ii. Documented inquiry among any known relatives, friends and current or former employers of the guardian(s); and
  - iii. Documented inquiries, unless restricted by law, using the guardian's last known or suspected address, to the local post office, the Division of Motor Vehicles, and any social service and law enforcement agencies known to have had contact with the guardian(s) both in New Jersey and in other states. Failure to receive response to the inquiries within 45 days shall constitute a negative response.
2. The Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled (DADD) shall be notified in writing by BGS within 10 days of initiation of guardianship services for an orphaned or abandoned child.

**SUBCHAPTER 3. CONTINUATION OF ELIGIBILITY FOR GUARDIANSHIP SERVICES**

- 10:45-3.1 Continuation of eligibility for adults
- (a) Eligibility for guardianship services continues for an adult individual as long as:
    1. He or she remains a recipient of functional or other services from the Division; and
    2. None of the following has occurred:
      - i. A court order reversing a previous adjudication of mental incompetency and appointment of BGS as guardian;
      - ii. In the instance of an individual receiving guardianship services on the basis of determination of mental deficiency prior to April 12, 1985, a change of this status resulting from a review and re-evaluation of the IHP pursuant to N.J.A.C. 10:43; or
      - iii. A revocation of a power of attorney by the guardian, or a lapse of the time specified therein.

- 10:45-3.2 Continuation of eligibility for children
- (a) Eligibility for guardianship services continues for a child as long as he or she:
    1. Remains a recipient of functional or other services from the Division;
    2. Remains under the age of 18 years. Prior to reaching the age of majority, an assessment shall be made as to the continuing need for a guardian as an adult, in accordance with the provisions of N.J.S.A. 30:4-165.4 et seq. and N.J.A.C. 10:43; and
    3. Remains without a guardian, or with a power of attorney still in force designating BGS to act on the child's behalf.
      - i. In the instance of a child previously considered abandoned, when a parent or appointed legal guardian who had been inaccessible becomes available to exercise his or her role:
        1. If interim guardianship services are provided, guardianship services shall immediately and automatically cease with written notification to the parent or appointed guardian.
        2. If BGS has been appointed by a court as guardian, a termination or change of guardianship is required by the court.
        3. In the instance of the return of a parent or a guardian who is deemed by BGS to be unsuitable, BGS shall petition the court of competent jurisdiction for termination of the parent guardianship rights.
        4. If a power of attorney lapses or is revoked, BGS shall discontinue services as of the applicable date.

**SUBCHAPTER 4. ROLE AND RESPONSIBILITIES OF BUREAU OF GUARDIANSHIP SERVICES**

- 10:45-4.1 Distinct role of BGS staff
- (a) BGS staff shall be considered distinct and independent from functional service units in terms of their interrelation with individuals receiving services from the Division.

- (b) BGS staff shall focus exclusively on the following:
  1. Protective services;
  2. Safeguarding individual rights;
  3. Substitute decision-making;
  4. Advocacy on behalf of the individual; and
  5. Maximizing the individual's self-determination.

- 10:45-4.2 Functions and duties of BGS staff
- (a) In order to exercise their role and responsibilities, for all clients receiving guardianship services, BGS staff shall be knowledgeable and informed about client status, program and progress by means of one or more of the following:
    1. Direct contact: Most clients should be visited at least annually, more often as necessary, but in any event each client shall be visited no less frequently than once every 18 months;
    2. Interviews with staff, service providers, relatives and other involved parties;
    3. Participation at case conferences, individual habilitation plan sessions and other meetings when feasible;
    4. Review of records; or
    5. Utilization of any other appropriate source of information.

- (b) BGS staff shall be responsible to advocate for individual clients in areas including, but not limited to:
  1. Placement in the least restrictive environment;
  2. Programs and services appropriate to client needs;
  3. The exercise of client rights; and
  4. Self advocacy.
- (c) BGS staff may give or withhold consent for proposed medical or dental procedures and behavior modification involving the use of highly aversive techniques. Such consent shall be premised upon:
  1. Adequate information regarding the procedure, the risks involved, anticipated benefits, the possible alternatives and any experimental or irreversible aspects of the proposed procedure. (A second opinion may be requested.); and
  2. Freedom from coercion by other parties.
- (d) BGS staff may give or withhold consent for access to client records, release of confidential information and/or photographing clients.

- (e) BGS staff may give or withhold approval for major changes of program or transfers.
- (f) BGS staff may give or withhold approval of the IHP.
- (g) Consent or approval as provided for in (c) through (f) above may be withheld for good and valid reason, that is, if there is basis for an informed judgement by BGS staff that what has been proposed would not be in the client's best interest or that the potential risks involved would outweigh any anticipated benefit.
- (h) With respect to the decisions described in (b) through (e) above, BGS staff shall encourage the client to participate in decision-making to the extent of his or her capability. Special care should be taken to ascertain the feelings of the client whenever possible before making a decision.
- (i) With respect to the decisions described in (b) through (e) above, BGS staff shall contact client's family and solicit their input in the decision-making process, unless contraindicated by the client's social history.

- 10:45-4.3 Duty to inform
- Functional service unit staff shall inform BGS staff promptly and comprehensively regarding any significant life events, proposed program changes, or incidents involving individuals being served by BGS.

**SUBCHAPTER 5. LIMITATIONS OF AUTHORITY BUREAU OF GUARDIANSHIP SERVICES**

- 10:45-5.1 Guardianship of person
- The responsibility and authority of BGS shall be restricted to guardianship of the person only, and not of property, pursuant to N.J.S.A. 30:4-165.12.
- 10:45-5.2 Procedures requiring court approval
- (a) In accord with N.J.S.A. 30:6D-5(a), BGS staff shall not consent to the following procedures but may, with the approval of the

Chief of the Bureau, refer the matter to a court of competent jurisdiction for appointment of a guardian ad litem:

1. Shock treatment;
2. Psychosurgery;
3. Sterilization; or
4. Medical, behavioral or pharmacological research.

#### 10:45-5.3 Guardianship services for orphaned or abandoned children

(a) Guardianship services to orphaned or abandoned children initiated on the basis of the procedures delineated in N.J.A.C. 10:45-2.2(b) may be provided on an interim basis for a maximum of one year without judicial appointment.

(b) No later than 10 months after the commencement of guardianship services, petition shall be made to a court of competent jurisdiction for the appointment of a guardian, unless the parent(s) or appointed guardian shall have reassumed their role under the provision of N.J.A.C. 10:45-3.2(a)3i

(c) During the course of providing interim guardianship services to orphaned or abandoned children prior to court appointment, BGS shall render consent in certain critical areas of decision-making only after an administrative review procedure shall have been conducted.

1. Critical areas of decision-making requiring administrative review shall include the following:

- i. A transfer which involves a change of the individual's place of residence;
- ii. A medical procedure which entails major, irrevocable consequences including, but not limited to, amputation of a limb, abortion, removal or transplant of a vital organ; and
- iii. A major change in the individual's IHP, including but not limited to:

(1) Implementation of a behavior modification program involving the use of highly aversive techniques.

(2) Use of psychotropic drugs for behavior management.

2. When the need for consent in a critical area of decision making arises, BGS staff shall renew attempts to locate the child's parent(s), unless the child is orphaned. The extent and time frame for these efforts shall be proportionate to the emergent nature of the situation, but shall be documented. Within one working day of reaching conclusion that the parent(s) is/are unavailable, the matter shall be referred to the Chief of BGS.

3. Within one working day of receipt of the referral, the Chief, BGS, shall request assignment of an Administrative Review Officer by the Director. The Administrative Review Officer shall not have any role of responsibility in a functional service unit of the Division.

4. The Administrative Review Officer shall arrange and schedule an administrative review as soon as possible, but no later than eight working days after his/her designation.

i. Participants shall be a representative of the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled (DADD), a representative of BGS and, at their option, witnesses for either party.

ii. The representative of BGS shall present evidence relating to the unavailability of the parent(s) and the appropriateness of the proposed decision in the best interests of the child.

iii. The representative of DADD shall define that office's position, either of concurrence or disagreement with the proposed action of BGS. In either case, the basis for DADD's position regarding the issue shall also be defined and supported by evidence where appropriate.

iv. After hearing the evidence presented by both parties, the Administrative Review Officer shall render a final decision either to uphold or to reverse the proposed decision of BGS. The final decision shall be communicated to DADD and BGS in writing no later than five working days after the hearing. The final decision shall clearly articulate the positions of the parties, what evidence was presented and considered, and how the determination was reached.

v. A tape recording of the Administrative Review shall be maintained by the Administrative Review Officer for a minimum period of one year.

5. In any situation of extreme medical emergency, where any delay of decision-making on behalf of the child would pose a serious threat

to the child's life or health, BGS shall render a decision without an administrative review. The existence of an extreme medical emergency must be certified in writing by a licensed physician. The physician's certification shall be maintained in the child's client record.

6. The DADD shall be informed of the action of BGS taken pursuant to (c)5 above as soon as possible.

(a)

### **DEVELOPMENTAL DISABILITIES COUNCIL Charity Racing Days for the Developmentally Disabled Distribution of Proceeds; Personal Assistance Services**

#### **Proposed Amendments: N.J.A.C. 10:141-1.4**

Authorized By: Developmental Disabilities Council,

Catherine Rowan, Executive Director.

Authority: N.J.S.A. 5:5-44.2 through 44.6 and 30:1AA-7.

Proposal Number: PRN 1989-128.

Submit comments by April 5, 1989 to:

Susan Richmond, Research Specialist

N.J. Developmental Disabilities Council

108-110 North Broad St.,

Trenton, New Jersey 08625

The agency proposal follows:

#### **Summary**

At the time of the initial proposal for the re-adoption of N.J.A.C. 10:141, Charity Racing Days for the Developmentally Disabled, Distribution of Proceeds, several new eligible services were added to reflect consistent and up-to-date practice in the range of services offered to individuals who are developmentally disabled (see related Notice of Adoption elsewhere in this issue of the Register). Personal assistance services, however, were inadvertently omitted. The Developmental Disabilities Council is proposing that personal assistance services be included as a newly added service for Charity Race Days funding.

#### **Social Impact**

The proposed amendment will have a positive social impact, as the addition of this service to the list of eligible services will enhance and expand upon the eligible agencies' opportunities to receive additional funding for the provision of this service to people who are developmentally disabled. The wide range of services available and the extent of user control of the service will also have a significant positive impact on the lives of those individuals eligible for the services.

#### **Economic Impact**

The proposed amendment will have a positive economic impact, as the addition of this service will contribute to sustaining eligible organizations, in the areas of direct and indirect costs.

Additionally, the provision of this service to developmentally disabled individuals will, in some cases, enhance their ability to engage in employment, which could improve their economic status, and could also enhance their ability to reside in less restrictive and/or less expensive living situations.

#### **Regulatory Flexibility Statement**

The proposed amendment does not impose any additional reporting requirements on the eligible agencies. Agencies are already required to keep records of all developmentally disabled individuals who are receiving services and to report those figures annually to the Developmental Disabilities Council. There will be a minimal amount of additional recordkeeping, to report the additional service figures to the Council; however, the specific amount of such recordkeeping cannot be determined at this time, as it is dependent upon the number of developmentally disabled persons served and the number of eligible services provided by the agency.

**Full text** of the proposed amendment follows (additions indicated in boldface thus):

10:141-1.4 Eligible services

(a) Eligible direct services shall include evaluation services, diagnostic services, treatment, day care, training and education,

sheltered employment, recreation, long and short term living arrangements, counseling, information and referral, protection and advocacy, supported employment, transportation, [and] rehabilitation technology, and personal assistant services.

1. through 14. (No change.)

**15. Personal attendant services, which includes assistance, rendered by a paid attendant, under maximum feasible user control, with tasks aimed at maintaining well-being, personal appearance, comfort, safety, and interaction within the community as a whole. Personal assistance tasks are those tasks which individuals would normally do for themselves if they did not have a disability. These tasks include, but are not limited to:**

- i. Personal maintenance and hygiene activities, such as dressing, grooming, feeding, bathing, respiration and toilet functions, including bowel and bladder functions and catheter and menstrual care;
- ii. Mobility tasks, such as, getting into and out of a bed, wheelchair or tub;
- iii. Household maintenance tasks, such as cleaning, shopping, meal preparation, laundering, and heavy cleaning and home repairs;
- iv. Infant and child-related tasks, such as, bathing, diapering, and feeding;
- v. Cognitive or life management activities, such as money management, planning and decision making;
- vi. Security-related services, such as daily monitoring by telephone; and
- vii. Communication services, such as interpreting for people with hearing or speech disabilities and reading for people with visual disabilities.

## INSURANCE

### (a)

#### DIVISION OF ADMINISTRATION

#### Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

#### Reproposed New Rules: N.J.A.C. 11:3-16

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29A-1 et seq.; P.L. 1988, c. 119, section 8 (enacted September 8, 1988).

Proposal Number: PRN 1989-117.

Submit comments by April 5, 1989 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN-325  
Trenton, New Jersey 08625-0325

The agency proposal follows:

#### Summary

Section 8 of P.L. 1988, c. 119, enacted September 8, 1988, requires the Commissioner of the Department of Insurance to promulgate rules for private passenger automobile insurance that establish rate filing data in a standard format; a standard ratemaking methodology; uniform standards on ratemaking methodologies, data compilation and data submission; standards of efficiency and other standards of measure to be utilized in the review and evaluation of the loss, expense and financial data contained in rate filings; and the format, data specifications and other requirements for informational filings. These proposed rules will implement the new law.

The proposed new rules provide standards for the submission to the Department of Insurance of private passenger automobile rate filings for the voluntary market. At present, these rate filings are not submitted to the Department in a uniform manner, but, rather, according to the chosen format of each filing insurer or rating organization.

Rules concerning the format for the submission of private passenger automobile rate filings were previously proposed on November 5, 1984 at 16 N.J.R. 2934(a). These proposed rules were never adopted. Rules were thereafter pre-proposed on May 19, 1986 at 18 N.J.R. 1083(a). The Department received extensive comments on the first proposal and the

pre-proposal. As a result of these comments and the Department's own internal and continuing review, the Department proposed a substantially revised version of these rules on September 6, 1988 at 20 N.J.R. 2135(a). The Department received substantial comments as a result of that proposal and has significantly revised the contents as contained in these proposed new rules, which supersede the prior proposed rules.

Several commenters upon the September, 1988 proposed rules touched upon common themes; these were carefully considered and the present proposed rules incorporate changes based upon those comments. Although these rules represent a complete redraft, they contain many clarifications or corrections suggested by one or more of the commenters. The comments received and Department responses are summarized below.

**COMMENT:** Requiring extensive, standardized data be collected and filed will increase operating expenses that must be reflected in rates.

**RESPONSE:** A rate filing based on standardized data is now mandated by P.L. 1988, c. 119. Filing standardized data will promote more accurate and competitive rates and expedite the rate review processes.

**COMMENT:** Some specific items of data do not appear necessary to a rate filing.

**RESPONSE:** The Department has reviewed each item of data requested and determined its usefulness in connection with the review of a rate filing. Those deemed necessary are contained in these proposed rules.

**COMMENT:** Some specific items of data are already on file at the Department in the filer's Annual Statement or Excess Profits Report.

**RESPONSE:** Proper review of a rate filing requires a certain body of information presented in a usable format. The format described in these proposed rules is necessary for the orderly review of the filing. It is the filer's task to assemble and present the filing; it is not the reviewer's task to do so from information contained in the statutory Annual Statement, Excess Profits Report and other potential sources.

**COMMENT:** Much of the data required is not currently collected; it will be impossible or very expensive to reconstruct data from the past.

**RESPONSE:** Data not currently collected need not be reconstructed to meet the filing requirements. Systems must be developed and the data collected and reported prospectively thereafter.

**COMMENT:** Too much detail is being required for expense data.

**RESPONSE:** Expense data detail has been reduced in the present proposed rules. In making this decision, the Department was required to balance the usefulness of certain information with the availability of staff to review and analyze it. Personnel and budget constraints are real limits on the Department's ability to regulate rates, and will likely continue to be so in the future.

**COMMENT:** There is no "best" standardized ratemaking methodology; different companies use different specific methodologies to achieve satisfactory rates.

**RESPONSE:** P.L. 1988, c. 119 now mandates that the Department develop a standardized ratemaking methodology, which is being established in the present proposed rules. Each filer may, nevertheless, propose an alternative methodology but must provide the information and calculations for the standardized methodology as well.

**COMMENT:** The proposed ratemaking methodology represents a substantial departure from the general application of the Clifford Formula previously in use for many years.

**RESPONSE:** The preferred methodology described in these proposed rules is a modified version of the Clifford Formula. Besides more clearly articulating the specific calculations and data required, the methodology includes use of a standard interest rate in the treatment of investment income, which rate is tied to the interest rate used by the Internal Revenue Service for discounting loss and loss adjustment expense reserves and is published annually.

**COMMENT:** A company officer is required to certify the completeness and accuracy of the filing; no single person has personal knowledge of all items contained in the filing.

**RESPONSE:** The officer is required to sign on behalf of the company, not as an individual. If the filer expects others to rely on the filing, it should be willing to verify its product as a company organization. The wording of the certification has been modified in the proposed rules to clarify this.

**COMMENT:** Several terms should be defined to improve the rules' clarity.

**RESPONSE:** The present proposed rules include new definitions for "claim", "case reserves", "testimony" and revised definitions for several other terms.

**COMMENT:** The rules should clarify which filings made with the Department must also be submitted simultaneously to the Department of the Public Advocate, Division of Rate Counsel.

**RESPONSE:** The present proposed rules specify that rate change filings be filed also with the Public Advocate, except for informational filings and flex rating filings, which shall be supplied to the Public Advocate upon its request.

**COMMENT:** The rules should specify procedures to be followed in the Department's review of rate filing.

**RESPONSE:** The Department will soon propose companion rules governing procedural aspects of the review of rate filings.

Additionally, many comments were received concerning the extensive exhibits described in the September, 1988 proposal. The present proposed new rules do not contain these exhibits.

Among the more significant changes to present practice and the previously proposed versions of the rules are the following:

1. The submission of specific standards for the Clifford Formula in calculating investment income and the underwriting profit and contingency factor;
2. The requirement for reporting extensive trend and development data;
3. The requirement for filing supporting testimony "up-front" with the filing;
4. The submission of the rating system on a computer disk;
5. The increased amount of data required to be filed; and
6. The inclusion of computational procedures.

The proposed new rules implement, among other statutory provisions, N.J.S.A. 17:29A-14c(4)(a), which authorizes the Commissioner of the Department of Insurance to promulgate rules to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating systems for filers. The proposed new rules require that every New Jersey private passenger automobile insurer and rating organization provide the Department of Insurance with specified data for every private passenger automobile insurance rate filing proposing new base rates. The new rules will ensure that the basic components of a filing, including, but not limited to, loss development, trend, expenses, investment income and loss data, are adequately addressed.

A summary of the provisions of the proposed new rules follows:

Proposed N.J.A.C. 11:3-16.1 contains a statement of purpose and scope, clarifying that the subchapter applies to rate filings affecting voluntary market automobile insurance on private passenger cars only.

Proposed N.J.A.C. 11:3-16.2 contains definitions.

Proposed N.J.A.C. 11:3-16.3 sets forth general data requirements for all filers. Additionally, testimony concerning the filing is required to be filed with it, except for informational and flex rating filings. Certain rate filings (those exceeding the permissible statewide average rate change or "flex" and therefore subject to prior approval) are required to be filed simultaneously with the Department of Insurance and the Public Advocate.

Proposed N.J.A.C. 11:3-16.4 sets forth general format requirements.

Proposed N.J.A.C. 11:3-16.5 sets forth the requirements for submitting the rating system in computer format.

Proposed N.J.A.C. 11:3-16.6 contains the minimum data requirements for a filing.

Proposed N.J.A.C. 11:3-16.7 describes the Department's preferred ratemaking methodology.

Proposed N.J.A.C. 11:3-16.8 provides for remedies for failure to comply with the requirements of the rules.

#### **Social Impact**

The proposed new rules establish uniform data specifications and a standard ratemaking methodology which will aid the Department of Insurance in its review of private passenger automobile insurance rate filings by including in the initial filing all data deemed to be necessary. The proposed new rules will also aid insurers and rating organizations by providing them specific minimum requirements to be met in preparing private passenger automobile rates and in satisfying the data and information requirements of the Department. The proposed new rules will benefit the consumer by providing more accurate auto insurance rates based on more consistent data than is currently available for the evaluation of the merits of each filing. The proposed new rules will also benefit consumers in that the standard ratemaking methodology rewards efficiency and promotes competition in the market.

#### **Economic Impact**

There will be some initial and continuing economic burden on insurers and rating organizations in the necessary alteration of current data gathering techniques. No direct economic impact on consumers is anticipated. While some additional costs may be passed through to consumers in rates, this should be more than offset by the more accurate analysis of rates. The Department of Insurance will benefit from the proposed new rules by an anticipated reduction in the time and effort needed to review each rate filing. The proposed new rules will enable the Department of Insurance to perform more effectively its statutory mandate of regulating private passenger automobile insurance rates.

#### **Regulatory Flexibility Analysis**

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would include insurance companies authorized to write private passenger automobile insurance.

Most insurers that qualify as "small businesses" use the services of a rating organization, such as Insurance Services Offices, Inc., in connection with rate filings. Nevertheless, at least two insurers that independently file private passenger automobile insurance rates appear to qualify as small businesses. Since these rules describe data filing requirements in connection with automobile insurance rates, they do impose reporting, recordkeeping and other requirements on these businesses. These requirements are imposed pursuant to the provisions of P.L. 1988, c. 119 for all private passenger automobile insurers in the voluntary market.

The rules do, however, establish differing compliance and reporting timetables to the extent they can be made consistent with the standardized data and methodology requirements imposed by statute. Insurers not currently collecting and reporting data described in the rules are given until January of 1990 to develop appropriate systems. Data previously uncollected and unreported need not be reconstructed for past years, but it may be reported prospectively as it accumulates after 1990.

The rules describe standard data that must be reported; how that data is collected is left to each insurer. Nevertheless, the data requirements are very specific, as must be expected from rules describing standardized rate filing requirements.

The rules at N.J.A.C. 11:3-16.1(e), exempt small filers, defined as those with less than 0.5 percent of the New Jersey private passenger automobile insurance market, from filing all of the detailed data concerning loss development, factor development and application; trending factor development and application; and changes in premium base and exposures.

Insurers qualifying as small businesses may need to obtain the services of data processing and actuarial consultants if these services are not currently available in house. While all insurers regardless of size currently have available computer systems for current recordkeeping, reporting and rate filing purposes, these systems vary in size and complexity based on each company's current needs. Costs to upgrade computer hardware and software, if required, will vary substantially based upon each insurer's current system.

Adverse economic impact on small businesses has been minimized, as stated above, consistent with the statutorily mandated purpose of the rules to establish for all filers uniform data filing and methodology in connection with the establishment of private passenger automobile insurance rates in the voluntary market.

**Full text** of the proposed new rules follows:

### **SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET AUTOMOBILE INSURANCE ON PRIVATE PASSENGER CARS**

#### **11:3-16.1 Purpose and scope**

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by section 8 of P.L. 1988, c.119.

(b) This subchapter applies to all rating organizations and to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers and rating organizations for the revision of base rates; those informational filings to be made on July 1, 1989 and annually thereafter pursuant to section 8b of P.L. 1988, c.119; and those filings made under the flex rating provisions of section 29 of P.L. 1988, c.119.

(d) Separate insurance companies that are affiliated by a parent subsidiary or other group relationship and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.6 both separately for each company and combined for the group, except when the data is identical for each individual company and the filing contains an explanation. Notwithstanding the provisions of this subsection, a group filer shall report separately for each company any data specifically required to be reported separately by N.J.A.C. 11:3-16.6.

(e) Annual informational filings shall contain all the applicable date and calculations set forth in this subchapter. Any other filings made between two consecutive informational filings need only update the information from the immediately prior informational filing.

(f) Small filers need not provide all of the information required by N.J.A.C. 11:3-16.6 (c), (d) and (e); more limited requirements are described in N.J.A.C. 11:3-16.6(c). Notwithstanding this, any filing by a small filer for a rate change, including flex rating filings, must include sufficient justification for all factors used.

(g) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying the proposed changes. If the filer has not collected portions of this information in the past, they are not required to compile it retrospectively. All filers shall begin collecting this information no later than January 1, 1990, and report data so collected on filings made or required to be made on or after July 1, 1991.

(h) The ratemaking methodology set forth in this subchapter is the Department's preferred procedure. Nothing contained in this subchapter shall preclude the filer, the Public Advocate or the Department from proposing an alternate procedure in addition to those calculations that the filer must supply in accordance with this subchapter.

(i) This subchapter does not apply to rule or form filings which do not incorporate a change in the rating plan.

#### 11:3-16.2 Definitions

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

"Accident year" means the 12-month period covering the occurrences during that period.

"AIRE" means The Automobile Insurance Risk Exchange, established pursuant to N.J.S.A. 39:6A-21.

"All other coverages" means insurance for towing and labor, accidental death and dismemberment, extended medical benefits, additional personal injury protection, rental reimbursement and any other items included in Lines 19.1 19.2 or 21.1 of Page 14 of the Statutory Annual Statement except those items included in "coverages" as defined below.

"Basis point" means an annual interest rate of 0.1 percent (one-hundredth of one percent).

"Case reserves" means the estimated value of the liability assigned to specific known claims whether determined by claim adjusters or set by formula.

"Claim" means a request for payment for a loss which comes under the terms of an insurance contract.

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

"Coverages" means insurance for bodily injury liability, property damage liability, basic personal injury protection, collision, comprehensive, and uninsured/underinsured motorists.

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

"Exposure" means one car insured for one year, or two cars insured for six months each, etc.

"External trend data" means trend data derived from experience outside of insurance industry statistics.

"Filer" means a rating organization or any insurer making its own rates and proposing to establish a new rate or a rate change.

"Flex rating" means a Statewide average rate change as set forth in section 29 at P.L. 1988, c.119.

"Flex rating filing" means a filing made to adjust rates within the limits set by the Commissioner in accordance with the provisions of section 29 of P.L. 1988, c.119.

"IBNR" or "incurred but not reported loss" means losses which have occurred but have not yet been reported as of a specified date including, if applicable, deficiencies/redundancies in case reserves.

"Informational filing" means a filing made on July 1, 1989 and annually thereafter in accordance with section 8b of P.L. 1988, c.119.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues.

"Loss development triangle" means a display of losses showing accident year data by evaluation date. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year. Subsequent evaluations shall be at 12-month intervals.

"Public Advocate" means the Division of Rate Counsel, Department of the Public Advocate of the State of New Jersey.

"Reasonable total rate of return" means that rate of return appropriate for an enterprise given the risk involved.

"Small filer" means a filer with less than 0.5 percent of the New Jersey written premiums for private passenger automobile insurance for the most recently available prior calendar year.

"Testimony" means narrative information given in written question and answer form in support of the practices, procedures and proposed changes in the filing. It also includes the qualifications of the person providing the testimony.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

"UCJF" means the Unsatisfied Claim and Judgment Fund, established pursuant to N.J.S.A. 39:6-61 et seq.

#### 11:3-16.3 General requirements: certification

(a) Each filer shall provide the data required by this subchapter on an MS-DOS formatted disk(s), and in written copy. The disk(s) may be either 5.25 inch double sided, double density, or 3.5 inch high density. The information shall be presented in a Lotus 1-2-3 or compatible spreadsheet. The written copy shall include in the left and top margins the row and column location respectively of all the data in the worksheets. Each page shall also display in the bottom right corner the name of the computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(b) Each filer shall submit testimony simultaneously with the rate filing, except informational and flex rating filings.

(c) Each filing shall be accompanied by the following certification signed by an officer of the filer: "I, \_\_\_\_\_, certify that the attached filing, which includes both the computer disk(s) and the written copy, complies with all statutory and regulatory requirements and contains information that is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(d) Each filer shall transmit every filing simultaneously to both the Department and the Public Advocate, except for informational filings and flex rating filings which shall be initially submitted only to the Department. The filer shall, however, provide to the Public Advocate notice of all filings and a full copy of informational filings and flex rating filings within 10 days of written request.

(e) Filings shall be transmitted to the Department at the following address:

New Jersey Department of Insurance  
Property/Liability Division  
20 West State Street  
CN-325  
Trenton, New Jersey 08625-0325

(f) Filings or notices of filings shall be transmitted to the Public Advocate at the following address:

Department of the Public Advocate  
Division of Rate Counsel  
744 Broad Street  
Newark, New Jersey 07102

## 11:3-16.4 Format and arrangement of rate filings

(a) Each filer shall submit filings in loose leaf form inserted into standard-size, three ring binders. The loose leaf sheets used in the filings shall be eight and one-half inches wide by 11 inches long, and punched for three hole standard binders. Only one side of a page shall be used.

(b) The margin at the top of each page shall show the name(s), NAIC company number(s), NAIC group number, and address of the filer on the left hand side of the page. The right hand side of the page shall contain the section, exhibit, and sheet numbers.

(c) The margin at the bottom of each page shall display the following:

1. On the left hand side, the term "Month Filed", followed by the month the filing was made with the Department;

2. In the center, the page number which shall be consecutive beginning with page number one; and

3. On the right hand side, the term "Proposed Effective Date" followed by the proposed effective date of the filing.

(d) The cover letter accompanying the filing shall provide the name and telephone number of an individual officer or employee who is personally familiar with the filing, who may be contacted for questions or other information, and to whom further correspondence regarding the filing may be directed.

(e) The filer shall include with each filing a completed transmittal form, which can be obtained from the Property/Liability Division of the Department.

## 11:3-16.5 Rating system to be supplied on a computer disk

(a) Each flex filing when made, or other rate filing within 20 days of approval, shall be accompanied by a computer disk(s) (either 5.25 inch double sided, double density or 3.5 inch high density) that contains the rating system to be implemented.

(b) The computer disk shall include a program and data such that when an insured's characteristics (for example, coverages, policy limits, use of auto, territory, etc.) are input, the rate to be charged by coverage is determined. The program shall allow both the input and output information to be printed in hard copy.

(c) The computer disk(s) shall be accompanied by complete and straightforward instructions for use of the program.

(d) The filer shall submit manual rate pages for each flex rating filing when made. The filer shall submit manual rate pages for all other filings within 20 days of notice of Department approval of a rate change.

## 11:3-16.6 Nonfleet private passenger automobile data filing requirements

(a) Each filer shall provide the following data regarding New Jersey premium, loss and loss adjustment expense in all filings:

1. For each coverage, calculate premium at present rates using both the extension of exposures and on-level factor methodologies. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any factors used. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information both at basic limits and at total limits. If the filing is submitted on behalf of a group or companies, provide it separately for each company in the group.

2. For rating organization filings, include data from all companies writing nonfleet private passenger automobile insurance in New Jersey for which the organization has been authorized to file rates. If data from such a company is excluded from, or if data from a non-authorized company is included with, the rate level, trend, loss development, catastrophe factor, expense determination, territorial development, classification relativity, or investment income calculations for any coverage, identify the coverage, the company and its market-share and provide an explanation for its exclusion/inclusion.

3. For rating organization filings, include information from the Annual Statement on losses and premiums. Provide such information separately for the current year of the latest two Annual Statements including the following items on a composite basis for the rating organization's authorized nonfleet private passenger insurers in New Jersey:

i. New Jersey Page 14, Lines 19.1, 19.2, and 21.1 (Exhibit of Premiums and Losses);

ii. Part 2, Lines 19 and 21 (Premiums Earned);

iii. Part 2B, Lines 19 and 21 (Recapitulation of All Premiums); and

iv. Part 3A, Lines 19 and 21 (Unpaid Losses and Adjustment Expenses).

4. For rating organization filings, include composite information from the Annual Statement for all insurers authorizing the rating organization to file for nonfleet private passenger automobile insurance rates in New Jersey. Provide the following information separately for current years of the latest two Annual Statements in the same format and detail as the exhibits in individual company statements:

i. Page 2 (Assets);

ii. Page 3 (Liabilities, Surplus and Other Funds);

iii. Page 4 (Underwriting and Investment Exhibit); and

iv. Exhibit 1 (Analysis of Assets).

5. For rating organization filings, include the following information on companies deviating from the organization's nonfleet private passenger rates for each of the latest five complete calendar years by coverage:

i. A list of all deviating companies;

ii. The total manual premium written at deviated rates;

iii. The percentage of the rating organization's member/subscriber companies' premium written at deviated rates;

iv. The total amount of deviations in dollars;

v. The average percentage deviation for deviating companies; and

vi. The average percentage deviation for all rating organization companies.

6. For rating organization filings, include the following information on companies issuing consent to rate surcharges for nonfleet private passenger automobile rates by coverage for each of the latest five complete calendar years:

i. A list of all issuing companies;

ii. The total manual premium written for risks that have such surcharges;

iii. The percentage of the rating organization's member/subscriber companies' premium written on risks with surcharges;

iv. The total amount of the surcharges in dollars;

v. The average percentage surcharge for companies issuing surcharges; and

vi. The average percentage surcharge for all companies.

7. For rating organization filings, include the following information on companies' incurred dividends for nonfleet private passenger automobile policies for each of the latest five complete calendar years:

i. A list of all companies issuing dividends;

ii. The total manual premium written on policies on which dividends were issued;

iii. The percentage of the rating organization's member/subscriber companies' premium written on policies on which dividends were issued;

iv. The total amount of dividends in dollars;

v. The average percentage dividend for companies issuing dividends; and

vi. The average percentage dividend for all companies.

8. For filings covering a group of companies, provide the information set forth in items (a)2 to 7 preceding, with the group members replacing rating organization authorized insurers.

9. For each coverage and each year used in setting the overall rate level, provide the following information in dollars:

i. Paid losses;

ii. Case reserves;

iii. Loss development factor;

iv. Incurred allocated loss adjustment expenses;

v. Incurred unallocated loss adjustment expenses;

vi. Trend factor;

vii. Total trended and developed incurred losses;

viii. Total trended and developed allocated loss adjustment expenses; and

ix. Total trended and developed unallocated loss adjustment expenses.

10. Whenever New Jersey losses are separated into catastrophe and noncatastrophe losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophe loading, include as many years of data as possible. If the number of years included differs from the number available, provide an explanation. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

11. Territorial rate calculations shall include written premiums, earned premiums, earned exposures, paid losses, incurred losses, and the number of claims by territory for each of the years used to determine the territorial relativities, or for each of the last five years, whichever is greater.

12. Provide all information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

- i. All data reviewed, worksheets used and judgments made;
- ii. A description of the methodology used to arrive at the differentials;
- iii. A description of alternative methodologies used or considered for use by the filer in other states;
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- v. A description regarding the application of these criteria in the selection of a methodology for this filing; and
- vi. A description of the application of the methodology to this filing.

13. For all incurred loss adjustment expense data contained in the filing, show the related incurred losses.

14. Provide a Cause of Loss Report for comprehensive coverage for the most recent five complete calendar years setting forth the information shown in Appendix A.

15. For each of the most recent five complete calendar years, provide the number of insured cars for which payment was made under the theft portion of comprehensive coverage, their aggregate market value, the number of cars recovered and the total recovery on the resale of the cars. Provide this information separately for each company if the filing covers a group of companies.

16. For each of the most recent five complete calendar years, provide the total amount of dollars recovered by subrogation for each coverage. Provide this information separately for each company if the filing covers a group of companies.

(b) Regarding credibility factor development and application in all filings, each filer shall provide all information related to the derivation of credibility factors contained in the filing, specifically including the following information:

1. All data reviewed, worksheets used and judgments made;
2. A description of the methodology used to derive the factors;
3. A description of alternative methodologies used or considered for use by the filer in other states;
4. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
5. A description regarding the application of these criteria in the selection of a methodology for this filing; and
6. A description of the application of the methodology to this filing.

(c) Each filer, except small filers, shall provide the data in paragraphs (c)1 through 10 below regarding loss development factor development and application. Small filers shall provide the data in paragraphs (c) 4, 5, 7, 9 and 10 below.

1. Provide all information related to the derivation of loss development factors contained in the filing specifically including:

- i. All data reviewed, worksheets used and judgments made;
- ii. A description of the methodology used to derive the factors;
- iii. A description of alternative methodologies used or considered for use by the filer in other states;
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

v. A description regarding the application of these criteria in the selection of a methodology for this filing; and

vi. A description of the application of the methodology to this filing;

2. Provide for each coverage complete total limits paid loss development triangles for the 10 latest available accident years at all available development points. Provide the corresponding nine-year, five-year and three-year average loss development factors derivable from these triangles;

3. Provide the information in (c)2 above for basic limits paid losses;

4. Provide the information in (c)2 above for total limits incurred losses;

5. Provide the information in (c)2 above for basic limits incurred losses;

6. Provide the information in (c)2 above for paid allocated loss adjustment expenses;

7. Provide the information in (c)2 above for incurred allocated loss adjustment expenses;

8. Provide the information in (c)2 above for the number of paid claims;

9. Provide the information in (c)2 above for the number of incurred claims; and

10. Provide a statement regarding any changes in the filer's case loss reserving practices during the last five years (for rating organization filings, this shall be provided for the ten largest member companies).

(d) Each filer, except small filers, shall provide the following data regarding trending factor development and application:

1. Include the following trend data described in (d)1i, ii, and iii below, shown separately for frequency and severity, for the latest available five years on both a quarterly and quarterly year ending basis for all coverages on both a countrywide and New Jersey basis. Bodily Injury liability data shall be given at basic and total limits. Property Damage liability data shall be given at basic and total limits. PIP data shall be given at a \$75,000 limit per occurrence. Collision data shall be shown on a \$100.00, \$200.00, \$500.00 and all other deductible basis. Comprehensive data shall be shown on a \$0, \$100.00, \$200.00 and all other deductible basis. Provide this for the following:

- i. Fast-track loss trend data;
- ii. All internal loss trend data on both a paid and incurred basis; and
- iii. Internal and external expense trend data.

2. For all trend data described above, calculate annual trend factors along with "T" statistics, the coefficient of correlation, and seasonality factors by quarter-years. This shall be done from a least-squares regression with time being the independent variable.

i. Include calculations for the latest six, nine, 12, 16 and 20-point periods;

ii. Provide a side-by-side comparison of the actual and fitted data points; and

iii. Include calculations on both an exponential and straight line basis.

3. Provide all information related to the derivation of trend factors contained in the filing specifically including:

- i. All data reviewed, worksheets used and judgments made;
- ii. A description of the methodology used to derive the factors;
- iii. A description of alternative methodologies used or considered for use by the filer in other states;
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- v. A description regarding the application of these criteria in the selection of a methodology for this filing; and
- vi. A description of the application of the methodology to this filing.

4. Provide information, including studies, analyses, and fact sheets, regarding the effects (both countrywide and in New Jersey) of the items described in (d)4i through v below. If the effects have been incorporated into the rate filing, describe in detail the methodologies used. Provide this information for the following:

- i. Changes in seat belt use;
- ii. Changes in the drinking age;
- iii. Changes in the price and amount purchased of gasoline;
- iv. Changes in the average miles traveled by individual drivers; and
- v. Other legislative, regulatory, social, or economic factors that could have an impact on loss frequency or severity.

(e) Each filer, except small filers, shall provide the following data regarding changes in premium base and exposures:

1. Submit data on the mix of policies by different policy terms. For the latest five years, include both the number of policies and the amount of earned premium for different policy terms.

2. Submit data on age and symbol relativities. Submit all information available on such relativities for the latest five years.

3. Calculate the trend in the average model year and symbol relativities and include therein the determination of the rate level change for physical damage coverages. Explain how these trends were calculated and provide all intermediate calculations.

4. Provide the most recent five-year history of the distribution by written exposures and premiums of comprehensive and collision coverages purchased, by deductible amount.

5. Show the actual model year written exposure and premium distribution for comprehensive and collision coverages separately for each of the last five calendar years.

6. Provide the most recent five complete calendar year history of the distribution, by limit of liability, of written exposures and premiums, separately for bodily injury, property damage and combined single limit liability coverages.

(f) Each filer shall provide the following data regarding limiting factor development and application:

1. Limitations on losses and/or loss expenses included in the statistical data used in the filing;

2. Limitations on the extent of the rate level change by coverage;

3. Limitations on the extent of territorial rate changes;

4. Limitations on the extent of classification rate changes; and

5. Any other limitations applied.

(g) Each filer shall provide the data in paragraphs (g)l through 8 below regarding expenses. For rating organization filings and filings that cover a group of companies, provide the data separately for each company.

1. Provide all information related to the derivation of expense provisions contained in the filing specifically including:

i. All data reviewed, worksheets used and judgments made;

ii. A complete description of the methodology used to derive the provisions;

iii. A description of alternative methodologies used or considered for use by the filer in other states;

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

v. Details regarding the application of these criteria in the selection of a methodology for this filing; and

vi. Details on the application of the methodology to this filing.

2. Include earned premium and incurred unallocated loss adjustment expenses for each of the latest five complete calendar years. Provide such information by coverage and groups of coverages (that is, liability and physical damage).

3. Include number of claims (all limits and all deductibles) by coverage and allocated loss adjustment expenses for each of the last five years. Provide such information by coverage and groups of coverages, that is, liability and physical damage).

4. Provide a statement regarding any expense savings activities undertaken in the last five years. (For rating organization filings, this shall be provided for the 10 largest member companies).

5. Provide average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the last five complete calendar years for the following expense categories:

i. Commission and brokerage;

ii. Other acquisition expenses; and

iii. General expense.

6. Provide the derivation of the expense flattening as required by N.J.S.A. 17:29A-37(a). The expense flattening calculation shall ex-

clude the Unsatisfied Claim and Judgment Fund assessment for the excess medical benefits reimbursed to insurers by that fund. The Department will supply the portion of the Unsatisfied Claim and Judgment assessment that is excluded from this. The expense shall be applied by coverage.

7. Provide New Jersey private passenger automobile insurance expense data separately for the most recent three complete calendar years using the format of the Underwriting and Investment Exhibit, Part 4-Expenses of the statutory Annual Statement.

8. Provide AIRE assessments and reimbursements in dollar amounts and as a percent of incurred losses for the most recent five complete calendar years.

(h) Each filer shall provide the following data regarding the percent rate change:

1. Show the overall Statewide rate change as well as the amount of the change attributable to each of the following: loss experience, the loss trend factor, the premium trend factor, a change in expense provisions, law changes, a change in the tax provision, a change in the assessment provision, and other changes.

2. Provide the information described in (h)l above by coverage; by limit (for liability coverages); by deductible (for physical damage coverages); and by territory.

(i) Each filer shall provide the following data regarding proposed rates:

1. Provide proposed rates for each territory and coverage together with their derivation;

2. Provide and describe classification differentials if any proposed changes are being made to the currently approved classification plan. Include an explanation of how classification rates are determined and a sample calculation;

3. Provide the calculations showing that the proposed rates are in compliance with N.J.S.A. 17:29A-36. The base class rates for the territorial calculations shall be inclusive of expense fees but exclusive of residual market equalization charges and policy constants and all driving record surcharges and discounts. The filer's Statewide average base rate shall be determined from the territorial distribution for the latest year of data contained in the filing. In determining rates for principal operators 65 years of age or older, ratios of rates shall be inclusive of expense fees and exclusive of surcharges, discounts and policy constants. (Residual Market Equalization Charges do not apply to these risks); and

4. Provide by coverage a comparison of average statewide rates and expense fees proposed and in use.

(j) Each filer shall provide the following data regarding investment earnings to establish the provision for underwriting profit in the rates:

1. The amount of investment income earned on loss, loss expense, and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey shall be calculated for the latest two years and estimated for the current year and all years during which the proposed rates will be in effect. Calculations shall be provided in detail including the amount of the composite reserves of each type at the beginning and end of each of the specified years.

2. Provide by coverage the estimated average length of time that elapses between the occurrence of an insured loss and its payment. The average shall be a weighted average based on the size of claim payments. Indicate how the length by coverage has changed over the last five years.

3. Provide the average length of time between the effective date of the policy and the receipt of the premium. Provide the derivation of this average length of time. This shall be provided by coverage.

4. Provide the cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses and premium taxes; licenses and fees.

5. Provide the cash flow pattern from policy inception date for losses, allocated loss adjustment expenses and unallocated loss adjustment expenses.

(k) Each filer shall provide the following regarding identification and certification of statistical plans:

1. Identify all statistical plans used or consulted in preparing the filing. Describe the data compiled by each plan; and

2. Provide a certification by an officer on behalf of the filer that all the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of each company's experience.

(l) Each filer shall provide the following information regarding investment earnings on capital and surplus:

1. Given the selected underwriting profit and contingency loadings contained in the filing, indicate the resulting rate of return on equity capital, on total assets, and on assets assigned to insurance operations including consideration of investment income. Show the derivation of all factors used in producing the calculations. Provide justification that these rates of return are reasonable and fair. These calculations shall be performed by coverage.

(m) Each filer shall provide the following data regarding the level of capital/surplus needed:

1. Provide premium to policyholder surplus ratios, and their derivation, for the latest three calendar years for nonfleet private passenger automobile insurance in New Jersey;

2. Provide estimates of comparable ratios, and their derivation, for the years during which the rates will be in effect; and

3. Provide the information in (a) and (b) above for the loss plus loss adjustment expense reserve to policyholder surplus ratio.

(n) Each filer shall also provide the following information:

1. Provide all information on the various preliminary and intermediate steps taken in preparing the filing, including but not limited to, the following items:

i. Agendas and minutes of all meetings held concerning the filing. Both meetings dealing specifically with this filing and those dealing implicitly (for example, through the establishment of companywide practices, etc.) shall be included. Include a list of all attendees at these meetings, their titles, and their affiliations;

2. Provide all information related to the derivation of the profit and contingency loading contained in the filing, specifically including:

i. All data reviewed, worksheets used and judgments made;

ii. A description of the methodology used to arrive at the selected loading;

iii. A description of alternative methodologies used or considered for use by the filer in other states;

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

v. Details regarding the application of these criteria in the selection of a methodology for this filing; and

vi. Details on the application of the methodology to this filing;

3. Provide a copy of the most recent annual report (not the Statutory Annual Statement filed with insurance departments) and 10-K statement (for rating organization filings, this shall be provided for the 10 largest member companies);

4. Show the amount of finance and other miscellaneous charges collected in connection with the sale of private passenger automobile insurance; and

5. Provide a description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company.

(o) Each filer shall also provide any additional information the Commissioner may specifically request as necessary to constitute a proper rate filing. This information may include written explanations or further data required to determine why the filer's experience and projections deviate from standards of efficiency or measurement utilized in the Department's review of loss, expense and financial data contained in the filing, including:

1. Industry-wide trends as reported by rating organizations, statistical agents or other recognized sources; and

2. Industry-wide averages of losses and loss adjustment expenses as reported by "Best's Aggregates and Averages" and other recognized sources.

11:3-16.7 Rate making procedures for private passenger automobile insurance

(a) Every filer shall include in all rate filings a rating system calculated in accordance with the methodology described in this section.

(b) Investment income shall be treated as follows:

1. The calculation of the underwriting profit and contingency loading taking into account investment income on loss, loss adjustment expense and unearned premium reserves shall be calculated in accordance with the Clifford Formula methodology wherein the combined after-tax profit from underwriting and investment income on loss, loss expense and unearned premium reserves is 3.5 percent of premium.

2. No deduction shall be made for prepaid expenses unless there is specific documentation included within the filing supporting the fact that certain expenses are prepaid.

3. No deduction shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such a delay in the remission of premiums.

4. The ratio of unearned premium reserves to premium shall be obtained from the appropriate line of business from New Jersey Page 14 of the statutory Annual Statement. The calculation shall be the direct unearned premium reserve divided by the direct premiums written.

5. The ratio of loss reserves to incurred losses shall be derived from the appropriate line of business from Page 14 of the statutory Annual Statement for New Jersey. The calculation shall be as follows:

i. The average of the loss reserve at the beginning of the year and at the end of the year divided by the incurred losses during the year.

ii. The ratio of reserves to losses incurred shall be calculated for the most recent four calendar years.

iii. If there is a monotonic trend, either up or down in these ratios, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part 3A-Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculation shall be as follows:

i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expenses;

ii. This ratio shall be calculated for the most recent four calendar years ending December 31, 19XX; and

iii. If there is a monotonic trend, either up or down in these ratios, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The interest rate used in the calculation shall be the most recently published value by the Internal Revenue Service to be used in discounting loss and loss adjustment expense reserves for investment income plus 200 basic points.

(c) Underwriting expense provisions shall be determined as follows:

1. New Jersey specific data shall be used in the determination of the expense provision for commission and brokerage. Countrywide data for commissions and brokerage is not acceptable.

2. New Jersey specific data shall be used for premium taxes, licenses and fees. Countrywide values for premium taxes, licenses and fees are not acceptable.

3. New Jersey specific data shall be used, if available, for general expenses and other acquisition expenses. When it is not possible to use New Jersey specific data, countrywide data allocated to New Jersey may be used. In such cases, the basis of allocation of countrywide data to New Jersey shall be explained in specific detail.

4. The projected provision for commission and brokerage, other acquisition expenses and general expenses shall be based on a separate trending of these items. These shall not be determined by simply assuming the same ratio of these items to premiums in the future as has been the case in the past. The basis of the trend shall be a 50/50 weighting of the trend during the past two years of the monthly All Items CPI Index and monthly average weekly wages for fire and casualty insurance employees. This shall be performed by calculating through regression analysis the annual trends for the two indices and then averaging these values on an equal basis.

5. In determining the historic expense provision for commission and brokerage, other acquisition expenses and general expenses on a combined basis, the percentage to premium shall be limited to a maximum of the percentage shown in "Best's Aggregates and Averages" for the same time period for the property/casualty insurance industry.

6. The percentage loading for the UCJF assessment shall be the most recent value established by the Commissioner.

7. The following expense items shall not be incorporated into the expense base for determining rates: fines against the company; lobbying expenses; charitable contributions; political contributions; awards against the company itself for punitive damages and for bad faith claims; and advertising and other expenses incurred in connection with proposed changes in the regulation of insurance. The filing shall include for each of these categories the dollars of expenses that were excluded from the rate base, separately for each year of historic information and separately for each of the above six categories.

(d) The data base to be used shall be as follows:

1. Accident year data shall be used for all coverages, both liability and physical damage.

2. Each filing for a change in basic limits rates shall also include an experience review of increased limits data.

3. Personal injury protection experience shall be limited to the direct (before reinsurance) exposure retained by the insurance companies according to N.J.S.A. 39:6-73.1. Any losses reimbursed to insurers by the UCJF for excess medical benefits shall not be included with the experience contained in the filing.

(e) The trend methodology to be used shall be as follows:

1. With regard to loss trends, the filing shall contain separate determinations of the loss severity from loss frequency trends.

2. The filing shall contain an adjustment for symbol drift, and where appropriate, for model year rating.

(f) Proposed rates for private passenger automobile insurance shall be approved only if, in addition to the other requirements of this

subchapter and any other applicable provisions of law, the filer demonstrates that a reasonable total rate of return on its capital investment attributable to the New Jersey private passenger automobile insurance market will result from the proposed rates.

11:3-16.8 Incomplete filings

(a) Failure to submit the data and calculations required by this subchapter may result in a finding by the Department that the filing is incomplete. The Department shall promptly notify a filer of a finding that its filing is incomplete.

(b) No finding that a filing is incomplete shall be based solely on the filer's failure to include data that was not being collected by the filer or its statistical agent on the date of adoption of this subchapter, provided that the filer has included with the filing a statement identifying the item or items not included and certifying:

1. That the data was not being collected as of the date of adoption of this subchapter; and

2. That the filer has implemented or is implementing a system by which the data will be collected, beginning no later than January 1, 1990.

(c) Except for informational filings made pursuant to section 86 of P.L. 1988, c.119, and flex rating filings made pursuant to section 29 of P.L. 1988, c.119, a finding that a filing is incomplete shall authorize the Department to return the filing with a notice of an incomplete filing and take no further action on the filing until the deficiency is cured.

(d) For informational filings, a finding that a filing is incomplete shall authorize the Commissioner to impose penalties upon the filer as provided in N.J.S.A. 17:29A-23 if the deficiencies are not cured within 30 days of service of notice of an incomplete filing. Each day beginning with the 31st day shall constitute a separate violation.

(e) For flex rating filings, a finding that a filing is incomplete shall authorize the Commissioner to disapprove use of the flex rating system filed, if the deficiency is not cured within 30 days of service of notice of an incomplete filing.

APPENDIX A

NEW JERSEY DEPARTMENT OF INSURANCE

CAUSE OF LOSS REPORT

YEAR ENDING

COMPREHENSIVE  
NEW JERSEY

	WRITTEN EXPOSURE	EARNED EXPOSURE	WRITTEN PREMIUM	EARNED PREMIUM	NO. OF LOSSES	LOSSES PAID	LOSS COST	% LOSS PAID	LOSS FREQ.	AVE. LOSS
FIRE	---	---	---	---	---	---	---	---	---	---
THEFT	---	---	---	---	---	---	---	---	---	---
GLASS	---	---	---	---	---	---	---	---	---	---
PERSONAL EFFECTS	---	---	---	---	---	---	---	---	---	---
MALICIOUS MISCHIEF, VAND.	---	---	---	---	---	---	---	---	---	---
WINDSTORM, EARTHQUAKE, ETC.	---	---	---	---	---	---	---	---	---	---
FLOOD & RISING WATERS	---	---	---	---	---	---	---	---	---	---
ALL OTHER CAUSES	---	---	---	---	---	---	---	---	---	---
TOTAL	---	---	---	---	---	---	---	---	---	---

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance

Coverage Option Survey: Personal Injury Protection and Tort Threshold Option

Proposed Amendments: N.J.A.C. 11:3-22.1, 22.3 and Appendix Forms A and B

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:28-1 et seq., 39:6A-1 et seq., P.L. 1988, c.119.

Proposal Number: PRN 1989-115.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

Summary

The New Jersey Department of Insurance proposes to amend N.J.A.C. 11:3-22.1 to reflect the changes that are required by P.L. 1988, c.119 as they relate to the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362 as amended by P.L. 1984, c.40).

N.J.A.C. 11:3-22.3 provides requirements governing the submission of the coverage option survey. Currently, N.J.A.C. 11:3-22.2(a) requires insurers to report coverage option selections reflecting the number of automobiles with in-force coverage. This subsection also requires the insurer to indicate the tort options selected with respect to each automobile. The proposed amendment requires insurers to indicate whether a lawsuit threshold or no threshold was selected instead of the higher or lower tort threshold required under the current rule. The proposed amendment reflects the change in the law by the passage of P.L. 1988, c.119.

The proposed amendments will also require a change in the Coverage Option Selection Survey Forms A and B, which are appended to the subchapter. The forms must be revised to reflect the selection of a lawsuit threshold or no threshold. The survey forms must also be revised to reflect the \$250.00 personal injury protection medical expense benefit deductible, as well as to delete the requirements for reporting set-off options which have been eliminated by enactment of P.L. 1988, c.119.

Social Impact

The proposed amendment is necessary to obtain accurate information from insurers regarding the selection of thresholds and deductibles.

Economic Impact

The proposed amendments are not expected to result in any economic impact to insurers since they are already required to submit the coverage option survey. The Department of Insurance is not expected to experience any economic impact as a result of the proposed amendments since it already receives and reviews the survey forms. The amendments merely allow the Department to review information based on changes made as a result of the enactment of P.L. 1988, c.119.

Regulatory Flexibility Statement

Some insurers affected by the proposed amendments may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department of Insurance does not expect the proposed amendment to have any impact upon small businesses since the current rule already requires insurers to submit the coverage option survey semi-annually. Moreover, the statute deletes one reporting requirement, information on set-off options selected.

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

11:3-22.1 Purpose

This subchapter requires the submission of data concerning policyholder selection of the various options provided under the New

Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362 as amended by P.L. 1984, c.40, as amended by P.L. 1988, c.119) in order to monitor the implementation and effectiveness of the Act.

11:3-22.3 Coverage option survey requirements

Every automobile insurer, on a biannual basis, shall complete and file with the Commissioner the coverage option survey required by this subchapter. The insurer's biannual survey shall reflect the total number of automobiles with in force coverage as of December 31 and as of June 30 of each year, and shall indicate the personal injury protection and [tort] lawsuit threshold or no threshold option selected with respect to each such automobile. Insurers shall use forms A and B, appended to and incorporated by reference in this subchapter, to report the information required by this section.

(b)-(f) (No change.)

Form A

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19\_\_\_\_ .

Table with 2 columns: Options and Number of Automobiles. Rows include PIP Coverages for Medical Expense Only, PIP Medical Expense Benefit Deductibles (\$250, \$500, \$1,000, \$2,500, [No deductible]), [Reimbursement to Insurance Company of PIP Medical Expenses up to 20% of Non-Economic Loss], Tort Threshold, [\$200] Lawsuit Threshold, and [+Threshold Index Amount] No Threshold.

[+Note: Due to the inflation index, the tort threshold amount is subject to change on January 1 of each year.]

Form B

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE  
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19\_\_\_\_.

P.I.P. Deductible      Full P.I.P. with [Tort Threshold of:] Lawsuit/No Threshold      Medical P.I.P. Only With [Tort Threshold of:] Lawsuit/No Threshold

[Set Off]	Lawsuit Threshold [\$200]	No Threshold [Index Amount†]	Lawsuit Threshold: [\$200]	No Threshold [Index Amount†]
\$250	[With]	[Without]		
\$500	[With]	[Without]		
\$1,000	[With]	[Without]		
\$2,500	[With]	[Without]		

[†Note: Due to the inflation index, the tort threshold amount is subject to change on January 1 of each year.]

**LABOR**

**(a)**

**DIVISION OF WORKPLACE STANDARDS**

**Safety and Health Standards for Public Employees Control of Hazardous Energy Sources**

**Proposed New Rules: N.J.A.C. 12:100-11**

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1989-107.

Submit comments by April 5, 1989 to:  
Alfred B. Vuocolo, Jr.  
Chief Legal Officer  
Office of the Commissioner  
New Jersey Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

The agency proposal follows:

**Summary**

The New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., was enacted on January 17, 1984, to ensure that all public employees are provided with a safe and healthful workplace free from recognized hazards. Pursuant to N.J.S.A. 34:6A-25 et seq., the Department of Labor adopted safety and health standards for public employees effective November 5, 1984 (see 16 N.J.R. 3051(a)), which included the adoption by reference of the General Industry Standards 29 CFR Part 1910, Construction Standards 29 CFR Part 1926 and Agriculture Standards 29 CFR Part 1928.

This proposed new subchapter sets standards for lockout and tagout procedures to be used on energy sources that could cause injury to public employees. This subchapter is based on the proposed standard in the

control of hazardous energy sources which was published in the Federal Register on April 29, 1988 (53 FR 15496).

Public employees, including maintenance workers and public works employees, are frequently required to operate, maintain and repair powered machinery and equipment. They are thereby exposed to the hazard of injury due to unexpected start-up or energization. The prevention of unexpected start-up is accomplished by affixing prescribed types of tagout and lockout devices to the energy isolating devices of the machine or equipment before any repair or maintenance activity starts.

The Public Employees Occupational Safety and Health Advisory Board has reviewed this proposal, in conjunction with the Departments of Health and Community Affairs, and all have responded favorably to these proposed rules.

This subchapter consists of 12 sections. N.J.A.C. 12:100-11.1 and 11.2 address the purpose and scope and definitions of the rules, respectively. N.J.A.C. 12:100-11.3 covers general energy control. N.J.A.C. 12:100-11.4 describes the procedure to be developed by the employer for the control of potentially hazardous energy. N.J.A.C. 12:100-11.5 covers protective materials and hardware. N.J.A.C. 12:100-11.6 covers the subject of periodic inspections. N.J.A.C. 12:100-11.7 describes training of employees, and the communication of the procedures to employees. N.J.A.C. 12:100-11.8 describes the labeling of energy isolating devices. N.J.A.C. 12:100-11.9 covers the notification of employees. N.J.A.C. 12:100-11.10 deals with the application of energy control upon machinery. N.J.A.C. 12:100-11.11 covers the subject of release from control of lockout/tagout devices. N.J.A.C. 12:100-11.12 describes additional requirements, as necessitated by the presence of outside contractor's personnel or group lockout/tagout devices.

**Social Impact**

The proposed new rules will effectively reduce the occurrence of injuries resulting from the unexpected start-up of machinery, which cause great suffering and severe financial loss to employees and employers. By implementing lockout/tagout procedures which will be strictly followed by employees, such severe accidents will be prevented. By training public employees in the use of safe and effective de-energizing procedures, improvements in employee confidence and morale are expected to follow, as employees are relieved of anxieties caused by fear of injury during periods of repair or maintenance work on powered equipment.

**Economic Impact**

The Department does not expect any significant financial impact upon employers as a result of these proposed new rules. Any costs associated with training in these procedures and of acquiring the specified tagout/lockout materials are outweighed by the benefits which accrue from prevention of those accidents, such as few lost work days, decreased medical expenses, and decreased costs for liability and worker compensation insurance.

**Regulatory Flexibility Statement**

The proposed new rules will not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since only public employers in the State of New Jersey will be affected by the proposed new rules. Thus, a regulatory flexibility analysis is not required.

Full text of the proposal follows.

**SUBCHAPTER 11. CONTROL OF HAZARDOUS ENERGY SOURCES**

**12:100-11.1 Purpose and scope**

(a) This subchapter covers servicing or maintenance of machines or equipment in which the unexpected energization, start up, or release of stored energy could cause injury to employees, and establishes minimum performance requirements for the control of such hazardous energy. This subchapter does not address:

1. Construction, agriculture and maritime employment;
2. Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering;
3. Exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations, which is covered by Subpart S of CFR 29, Part 1910, U.S. Department of Labor Occupational Safety and Health Standards; or
4. Oil and gas well drilling and servicing.

(b) This subchapter is applicable to the control of energy sources during servicing or maintenance of machines or equipment with the following exceptions:

1. Work on plug and cord type electrical equipment, for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures;

2. Hot tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, provided that the employer demonstrates that continuity of services is essential, shut-down of the system is impractical, and documented procedures and special equipment are implemented which will provide proven effective protection for employees;

3. Normal production operations; or

4. Servicing or maintenance which takes place during normal production operations, such as lubricating, cleaning, and making minor adjustments and simple tool changes, if it is necessary to perform such servicing or maintenance with the machine or equipment energized, and if such servicing or maintenance is performed using alternative measures which the employer can demonstrate will provide effective protection.

(c) The purpose of this subchapter is to prevent injuries to employees from the unexpected energization, start-up or release of stored energy from machines, equipment, or processes when such employees are engaged in the activities listed in (a) above, and requires employers to establish and implement procedures for affixing the appropriate lockout/tagout devices to energy isolating devices, and to otherwise disable machines, equipment or processes to prevent unexpected energization, start-up or the release of stored energy.

#### 12:100-11.2 Definitions

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

"Affected employee" means a person, other than the authorized employee, whose job includes activities covered by the standards set forth in this subchapter.

"Authorized employee" means a qualified person to whom the authority and responsibility to perform a specific lockout and/or tagout assignment has been given by the employer.

"Energized" means connected to an energy source (mechanical, electrical, hydraulic, etc.) which has not been isolated.

"Energy isolating device" means a device that physically prevents the transmission or release of energy, including, but not limited to, the following: mutually operated electrical circuit breakers; disconnect switches, manually operated switches; slide gates; slip blinds; line valves; blocks and similar devices used to block or isolate energy. The term does not include push buttons, selector switches, and other control circuit type devices.

"Energy source" means any electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy source that is capable of causing injury to employees.

"Hot tap" means a procedure used in repair, maintenance and service activities which involves welding a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam, and petro-chemical distribution systems.

"Lockout/tagout" means the placement of a lock and a tag on the energy isolating device in accordance with an established procedure, indicating that the energy isolating device or the equipment being controlled shall not be operated until removal of the lock and tag.

"Normal production operations" means operations that include those activities which enable the machine or equipment to perform its intended production functions, and which are carried out by employees as part of the production process, with the machine or equipment energized.

"Qualified person" means a person who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and has the

knowledge to implement adequate methods and means for the control and isolation of such energy.

"Servicing or maintenance" means functions that include workplace activities such as installing, construction, adjusting, setting up, inspecting and maintaining or repairing machines or equipment.

"Setting up" means any work that must be performed to place a machine or equipment in an operational mode.

"Tagout device" means a prominent warning device capable of being securely attached to an energy isolating device that identifies the applicator or authority who has control of the energy control procedure, and contains information and/or instructions to prevent the operation of an energy isolating device.

#### 12:100-11.3 General energy control

The employer shall ensure that before an employee performs any activities where the unexpected energization, start up or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked, tagged out and otherwise disabled in accordance with the provisions set forth at N.J.A.C. 12:100-11.10.

#### 12:100-11.4 Procedures

(a) Procedures shall be developed, documented and implemented by the employer for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

(b) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

1. A specific statement as to the intended use of the procedure;
2. Specific procedural steps for the shutting down, isolating, blocking and securing (lock and tags) of energy;
3. Specific procedural steps for the removal and transfer of locks and tags and the responsibility for them; and
4. Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

#### 12:100-11.5 Protective materials and hardware

(a) Locks, tags, chains, adapter pins, or other hardware shall be provided by the employer for securing or blocking energy sources where necessary under this procedure.

(b) The lockout and tagout devices shall be singularly identified, shall be the only authorized device(s) used for locking out and tagging energy sources, shall not be used for other purposes, and shall meet the following requirements.

1. Durability: the devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected;
2. Standardized: the devices shall be standardized in at least one of the following criteria: color; shape; size type or format;
3. Substantial: locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized; and
4. Identifying: the devices shall include provisions for the identification of the employee(s) applying or authorizing the application of the device.

(c) Tagout devices/danger tags shall warn against hazardous conditions if the equipment is re-energized and shall include the legends: Do Not Start, Do Not Open, Do Not Close, Do Not Energize, or similar language.

#### 12:100-11.6 Periodic inspection

(a) The employer shall conduct periodic inspections at least annually to ensure that the energy control procedures of this standard are being implemented. The inspections shall be:

1. Performed by an authorized employee other than the one implementing the energy control procedures; and
  2. Designed to correct any deviations or inadequacies observed.
- (b) The employer shall certify that the inspections have been performed. The certification shall identify the machines or equipment

inspected, the date inspected and the name of the person performing the inspection.

#### 12:100-11.7 Training and communication

(a) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed. The training shall include the following:

1. Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control;

2. Affected employees shall be instructed in the purpose and use of the energy control procedure; and

3. All other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations.

(b) Periodic retraining shall be provided by the employer for all authorized and affected employees whenever a periodic inspection pursuant to N.J.A.C. 12:100-11.6 reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(c) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain the employee's name and dates of training.

#### 12:100-11.8 Energy isolating devices

(a) Energy isolating devices that are used for the control of potentially hazardous energy sources, including valves, shall be marked or labeled to identify the equipment supplied and the type and magnitude of the energy being controlled, unless they are so positioned and arranged that those elements are evident.

1. Valves for machines or equipment shall be permanently marked or labeled; and

2. Valves for pipeline network process operations shall be:

i. Permanently marked or labeled; or

ii. Temporarily marked or labeled prior to each instance of initiation of work on the line.

(b) Energy isolating devices shall be operated only by authorized employees or under the direct supervision of authorized employees.

#### 12:100-11.9 Notification of employees

Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout and tagout controls whenever such controls directly affect their work activities. Notification shall be given before such controls are applied, and before they are removed from the equipment or process.

#### 12:100-11.10 Application of control

(a) The established procedure for the application of energy control (lockout/tagout) shall cover the following elements and actions and shall be in the following sequence:

1. Machine or equipment shutdown: the machine or equipment shall be turned off or shut down by authorized employees using appropriate procedures;

2. Machine or equipment isolation: all energy isolating devices that are needed to control the energy involved shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s);

3. Lockout and tagout device application: appropriate and effective lockout and tagout devices shall be affixed to each energy isolating device by authorized employees, and shall prevent or inhibit reactivation of energy isolation devices and shall be used as follows:

i. Lockout devices shall be affixed in a manner that will hold the energy isolating devices in a "safe" or "off" position;

ii. Tagout devices shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited; and

iii. Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

4. Stored energy: following the application of lockout and tagout devices to energy isolating devices, all potentially hazardous, stored or residual energy shall be relieved, disconnected, restrained, and/or otherwise rendered safe.

i. If there is a possibility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the activity is completed, or until the possibility of such accumulation no longer exists.

5. Verification of isolation: prior to starting work on equipment or processes that have been locked out and tagged out, an authorized employee shall take the steps necessary to verify that isolation and de-energization of the machine or equipment has been accomplished. The steps shall ensure that the lockout and tagout devices are so positioned or located as to isolate and de-energize the equipment or process effectively in accordance with (a)2 and 3 above and that stored energy has been rendered safe in accordance with (a)4 above.

#### 12:100-11.11 Release from control (lockout/tagout)

(a) Before lockout and tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions shall be taken by an authorized employee to ensure the following:

1. The work area shall be inspected for removal of nonessential items and to ensure that components are operationally intact and that all employees have been safely positioned or removed; and

2. Lockout and tagout devices shall be removed from each energy isolating device by the employee who applied the device, with the exception that devices may be removed under the direction of an authorized employee under the following conditions, and only where the authorized employees follow specific procedures which have been developed for those conditions:

i. When the employee who applied a personal lockout/tagout device is not available to remove the device; and

ii. Unique operating conditions involving complex systems, where the employer can demonstrate that it is not feasible to do otherwise.

#### 12:100-11.12 Additional requirements

(a) In situations where the energy isolating device(s) is locked and tagged, and there is a need to test or position the machine or equipment, the following sequence of actions shall be implemented:

1. Clear the machine or equipment of tools and materials and clear employees from the machine or equipment area in accordance with N.J.A.C. 12:100-11.11(a)1;

2. Clear the control of locks and tags with appropriate procedures in accordance with N.J.A.C. 12:100-11.11(a)2;

3. Energize and proceed with testing or positioning; and

4. De-energize all systems and reapply energy control measures in accordance with (d) below to continue the work.

(b) Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this subchapter, the plant or facility employer shall inform them of the lockout/tagout procedures used by the facility.

1. The plant or facility employer shall assure that the lockout/tagout procedures used by outside servicing personnel are compatible with existing in-plant procedures.

(c) When lockout and tagout devices are used by a crew, craft, department, or other group, the affected employees shall be afforded a level of protection equivalent to that provided by personal lockout and tagout devices.

1. Group lockout and tagout devices shall be used in accordance with the procedures required by N.J.A.C. 12:100-11.11(a)1, including, but not necessarily limited to, the following specific requirements:

i. Primary responsibility shall be vested in an authorized employee for a set number of employees working under the protection of a particular group lockout and tagout device;

ii. Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout and tagout of the equipment or process; and

iii. When more than one crew, craft, department, etc., is involved, the responsibility of the overall job-associated lockout/tagout control shall be assigned to an authorized employee designated to coordinate affected work forces and ensure continuity of protection;

(d) Specific procedures shall be implemented during shift or personnel changes to ensure the continuity of lockout and tagout protection in accordance with N.J.A.C. 12:100-11.11(a)1. These procedures shall be developed as follows:

1. For the orderly transfer of lockout and tagout devices between off-going and oncoming employees which will eliminate exposure to hazards from the unexpected energization, start-up, or the release of stored energy of the equipment or process; and

2. To ensure that the equipment or process is being maintained in a safe condition so as to permit continued work by employees following the transfer of control over lockout and tagout devices.

## TRANSPORTATION

### (a)

#### LOCAL AID

#### New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid

**Proposed Amendments: N.J.A.C. 16:20A-1.1, 1.3,  
2.1, 2.2, 2.4, 3.1, 4.1, 4.2, 4.3, 4.4, and Appendices  
I and II**

**Proposed Repeal: N.J.A.C. 16:20A-1.4 and 1.5**

Authorized By: Robert A. Innocenzi, Deputy Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.3.1 et seq., and  
27:7-47.

Proposal Number: PRN 1989-109.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 16:20A will establish new guidelines and procedures for counties and municipalities to follow in the receipt of aid from the State under the New Jersey Transportation Trust Fund, as the State's share of the cost for the improvement of any public road or bridge under the jurisdiction of the county.

Previously, local governments had to award a contract for construction within 12 months of execution of an application/agreement. This amendment now allows 18 months for award of contract. Additionally, local governments will be required to submit certain information prior to advertising, affording the Department an opportunity to review and provide advice to the local government as necessary prior to award. Also, these amendments allow the local government 30 days from receipt of bids to submit bid documents instead of 10 days. This procedure would improve the expeditious handling of contracts by the Department.

N.J.A.C. 16:20A-1.4 and 1.5 are being reserved because these sections applied to the transition period from Federal to State Aid funding and were for initial "start-up" under Trust Fund I and no longer apply.

#### Social Impact

The proposed amendments will impact on counties and municipalities, since they outline new procedures and guidelines to be followed in the receipt of State Aid. The changes are necessary to provide improvement in the processing and handling of contracts, and afford the local government more time for the submission of documentation.

#### Economic Impact

The proposed amendments will not have any major economic impact on the local government or the Department, because there is no effect on funds or the funding sources. The funding level for this program remains at \$35,000,000 annually, at the discretion of the Legislature. Once funds are allocated, that amount remains with the respective county until it is used for the specific project. If the project has changed, the funds may be reallocated.

#### Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, because the rules apply only to the county and municipal governments which are eligible for State Aid. Therefore, a regulatory flexibility analysis is not required.

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

#### CHAPTER 20A

[1984] NEW JERSEY TRANSPORTATION TRUST FUND  
AUTHORITY ACT FEDERAL AID URBAN SYSTEM  
SUBSTITUTION PROGRAM: COUNTY AND MUNICIPAL  
AID

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 16:20A-1.1 Appropriation of funds

[In order to expedite the construction of critically needed county/municipal transportation projects, a Federal Aid Urban System Substitution Program will be implemented on or before October 1, 1984.] As a substitution for Federal Aid Urban System funds, [1984] New Jersey Transportation Trust Fund Authority Act funds are appropriated by the Legislature for the improvement of any public road or bridge under the jurisdiction of a county, regardless of location within that county, and any road or bridge located on the Federal Aid Urban System. Federal Aid Urban System Substitution funds may also be used for county and municipal public transportation projects and other transportation projects [eligible for funding under the Federal Aid Urban System Program on September 30, 1984] **which a county or municipality may be authorized by law to undertake.**

##### 16:20A-1.2 (No change.)

##### 16:20A-1.3 Minimum allotment

The State Aid allotment to each county and Jersey City and Newark shall result in a minimum amount of \$300,000 for transportation projects annually regardless of the combined total of their 1984 Federal Aid Urban System apportionment plus State match. [Local governments in a Federal Aid Urban System loan situation will be required to repay their Federal Aid Urban System loan plus State match over a three-year period commencing on October 1, 1984. If their annual State Aid allotment minus their annual loan payback is less than \$300,000, supplemental funds will be allotted to assure that a minimum of \$300,000 is available annually for transportation improvements.]

##### 16:20A-1.4 [Federal Aid Urban System backlog funds] **(Reserved)**

[Each jurisdiction will also retain any unexpended portions of its 1984 Federal Aid Urban System apportionment and accumulate Federal Aid Urban System backlog funds for use on active local transportation projects previously commenced with Federal Aid Urban System funds. The required match for these latter funds will be provided by the State.]

##### 16:20A-1.5 [Transition: Federal Aid Urban System to State aid]

#### **(Reserved)**

[(a) It is expected that counties and municipalities will expeditiously expend available Federal Aid Urban System funds for the completion of phases of project development commenced under the Federal Aid Urban System Program.

1. As an example, if preliminary engineering or right-of-way acquisition is in the process of being accomplished with Federal Aid Urban System funds, where possible, that phase shall be completed with available Federal Aid Urban System funds.

2. If sufficient Federal Aid Urban System funds are not available to support the cost of succeeding phases such as right-of-way acquisition and construction, these phases shall be completed in conformance with criteria developed for the Federal Aid Urban System Substitution Program (State Aid).

3. Each phase of work (engineering, right-of-way acquisition, construction, etc.) supported with Federal Aid Urban System funds will be subject to all Federal Highway Administration reviews and ap-

provals, projects must be continued through the completion of construction in compliance with appropriate Federal and State laws, rules and regulations governing Federal Aid Urban System projects.

(b) In any instance where a project supported in any part with Federal Aid Urban System funds is either not continued through the completion of construction or not completed in accordance with Federal Highway Administration requirements, the Department of Transportation reserves the right to determine, in coordination with the Federal Highway Administration, the extent of Federal Highway Administration participation in the cost of the completed work. The Department of Transportation, at its discretion, may reduce the county's annual State Aid allotment by an amount equal to the cost of work determined to be non-participating by the Federal Highway Administration.

(c) Subject to the availability of State Capital funds, the Department may elect to refund any existing local preliminary engineering project for which Federal Aid Urban System funds have been authorized as of the effective date of this program but, due to insufficient Federal Aid Urban System backlog funds, succeeding phase of work must be performed with State aid funds. At the discretion of the Department of Transportation, Federal funds withdrawn from such projects will be used:

1. For the payment of incurred but otherwise unbillable costs on Federal Aid Urban System projects which are in an authorized status as of the effective date of this program or;

2. In the event that there is an excess balance of such funds, they may be used for projects on the State System.

(d) It is expected that as soon as possible after June 30, 1984, the Transportation Improvement Program affecting each county will be modified in a way to expedite the use of Federal Aid Urban System backlog funds and reduce the number of Federal Aid Urban System projects. A priority will be assigned to funding those projects where a work phase (preliminary engineering, right-of-way or construction) can be completed prior to September 30, 1986. At the discretion of the Department of Transportation, the State Aid allotment to a jurisdiction with a backlog of Federal Air Urban System funds on July 1, 1987, may be reduced with a backlog of Federal Aid Urban System funds on July 1, 1987, may be reduced by the backlog amount.

(e) After September 30, 1984, the Department of Transportation, at its discretion, may elect to make Federal Aid Urban System and State matching funds available to support projects of a regional or critical nature. After that date, all other new projects will be accomplished in conformance with criteria developed for the Federal Aid Urban System Substitution Program (State Aid) and will not be eligible for Federal Aid Urban System funding.]

#### SUBCHAPTER 2. FEDERAL AND URBAN SYSTEM SUBSTITUTION PROGRAM: STATE AID

##### 16:20A-2.1 Eligible costs

(a) Except as stated below, State participation in project cost shall be limited to 100 percent of the cost of construction including construction supervision, inspection and material testing. **Except as hereinafter provided,** [The] the cost of design engineering and right-of-way acquisition shall be borne totally by the county and municipality.

1. [State Aid participation in projects initiated by municipalities] **Municipalities** qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, [Chapter] c.14 as amended by P.L. 1983, [Chapter] c.384 or for [depressed rural centers aid] **Depressed Rural Centers Aid** may, at the discretion of the Department of Transportation, be [increased up to 100 percent of total including construction,] **reimbursed for design engineering and right-of-way acquisition in addition to the construction providing the amount does not exceed the total amount allocated for the project.** ([see qualified] **A list for Fiscal Year 1989 of eligible municipalities [listed in] is appended to and incorporated herein by reference as Appendices I and II.**)

2. (No change.)

##### 16:20A-2.2 Project approval

(a) Annually, prior to September 30, each county and Jersey City and Newark will be advised for budgetary purposes of the amount

of Federal Aid Urban System Substitution funds they can anticipate for the following calendar year. The Transportation Improvement Program with a State aid element or, at the discretion of the county and Jersey City and Newark, a Capital Transportation Program shall be submitted for approval by the Department prior to February 1 of the next succeeding calendar year.

1. Capital Transportation Programs shall be completed on forms provided by the State. Each project shall be listed by name and location with a brief description as to how each project conforms with the county's overall Transportation Plan. [Except in] (In the case of Jersey City and Newark, conformity shall be with the Municipal Transportation Plan.)

2. Each program shall cover a four-year period and list the phase (engineering, right-of-way, construction) of each project to be undertaken in a specific year. A cost estimate shall be provided for each phase of work. This cost estimate shall indicate the amount of anticipated State participation and the amount of local participation. The total cost of work in the first year of the program (in which State participation is requested) shall not exceed the county's annual share of Federal Aid Urban System Substitution funds. The State reserves the right to recoup State Aid funds that are not obligated by a State/County/Municipal Project Agreement within one year after the Department of Transportation approval of the County/Municipal Capital Transportation Program. Recouped amounts [shall be placed in a discretionary fund for use on other eligible projects throughout the State] **will remain within the allotted county and can only be reallocated by an approved agreement executed by the Department.**

3. (No change.)

4. Each county and Newark and Jersey City shall make reasonable further progress in the attainment and maintenance of National Ambient Air Quality Standards consistent with the New Jersey State Implementation Plan.

5. The Department of Transportation shall advise each county and affected municipality within each county of specific project approvals prior to April 1.

[5.] 6. Concurrently, each county/municipality will be required to execute State/County/Municipal Agreements for each project on forms provided by the State. Each agreement shall specify a date for the completion of the work. In the event work is not completed by that date, the State, at its discretion, may either grant a time extension or recoup the State funds[. Funds that are recouped will be placed in a discretionary fund for use on other eligible projects throughout the State] **for use on other eligible projects throughout the State.**

[6.] 7. (No change in text.)

16:20A-2.3 (No change.)

##### 16:20A-2.4 Standards

(a) (No change.)

(b) [All workmanship] **Construction** and materials shall conform with the **current** New Jersey State Department of Transportation—Standard Specifications for Road and Bridge Construction.

(c) (No change.)

#### SUBCHAPTER 3. PLANS AND SPECIFICATIONS

##### 16:20A-3.1 Local government responsibility

(a) The local government shall be responsible for engaging a professional engineer [registered] **licensed** in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) The local government [will] **shall** provide such maps, reports, construction plans and specifications and contract documents as may be required by the State.

#### SUBCHAPTER 4. CONTRACTS

##### 16:20A-4.1 Award of contract

(a) (No change.)

(b) [Prior to and no later than the] **Fifteen calendar days prior to the time of advertisement,** [for construction bids,] the local government shall submit the following to the Local Aid District Office:

1. and 2. (No change.)

(c) Within [10] **30 calendar days** [, or such longer period as the Local Aid District Office will approve,] following the receipt of

construction bids, the local government shall submit the following to the Local Aid District Office:

1. and 2. (No change.)

(d) When all information relative to the bidding has been approved by the State, the local government shall be advised of the approval of the award of [the] contract.

16:20A-4.2 Contract completion and payment

(a) The State will pay funds on a reimbursement basis after acceptance by the [Local Government Unit] **local government** and the State of [the] work completed. Progress payments may be made on a monthly basis when requested by the [Local Government Unit] **local government** when the total amount of reimbursement requested is not less than \$5,000.

(b) When all the work has been completed satisfactorily, the local government [will] **shall** prepare and submit to the Local Aid District Office the following:

1. (No change.)

2. A certification by the county/municipal chief financial officer that all expenditures are supported by a valid documentation and conform with the [terms of the] State[']s agreement; and

3. (No change.)

(c) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order], action shall be taken to reimburse the county/municipality.

(d) (No change.)

16:20A-4.3 Cost of engineering, inspection and construction supervision

(a) (No change.)

(b) [Local] **Those qualified local** governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the [Engineer] **engineer**. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis. [Claims shall be presented on forms provided by the State.]

(d) (No change.)

16:20A-4.4 Cost of right-of-way acquisition

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

(e) County and municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation [Manual] standards and requirements.

(f) In advance of the institution of **negotiations** for any property, the appraisals shall be submitted by the concerned [county or municipality] **local government** to the appropriate New Jersey Department of Transportation Right of Way Division District Office for review and a fair market value participation certification.

(g) Upon completion of the review in (f) **above** and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's reimbursement participation for a particular parcel, except in condemnation awards resulting from contested court adversary proceedings.

(h) Subject to the availability of funds, the State will participate in the actual amount of such court awards providing they are not substantially in excess of the approved parcel participation amount in which instances, the concerned county or [municipality] **municipal government** shall normally appeal the award.

(i)-(j) (No change.)

(k) Reimbursement claims for lands and/or easements on approved projects and parcels shall be presented on invoice forms provided by the State accompanied by satisfactory evidence of legal ownership of the property by the [county and/or municipality] **local**

**government**, as applicable. Other costs incurred incidental to the right-of-way acquisition shall not be [reimbursable] **reimbursed**.

(l) (No change.)

(m) [These] **The procedures in this section** are limited to direct State funded [, State-Aid] projects and are not applicable to Federally funded State-aid projects.

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

County	Municipality
Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
<b>Hunterdon</b>	<b>Califon Borough</b>
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough
Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
<b>Sussex</b>	<b>Hamburg Borough</b>
Union	Winfield Township
Warren	Alpha Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding

Asbury Park City	<b>Mount Holly Township</b>
Bayonne City	[Montclair Township]
Belleville Township	Neptune Township
Bloomfield Township	Newark City
Bridgeton City	New Brunswick City
Camden City	North Bergen Township
Carteret Borough	Old Bridge Township
<b>Commercial Township</b>	Orange City
<b>Deptford Township</b>	Passaic City
East Orange City	Paterson City
Elizabeth City	<b>Paulsboro Borough</b>
[Englewood City]	Pemberton Township
Garfield City	Pennsauken Township
<b>Glassboro Borough</b>	<b>Penns Grove Borough</b>
<b>Gloucester City</b>	Perth Amboy City
Gloucester Township	Phillipsburg Town
Hamilton Township (Mercer)	Plainfield [City] <b>Township</b>
Hillside Township	<b>Pleasantville City</b>
Hoboken City	[Rahway City]
Irvington Township	Roselle Borough
[Jackson Township]	<b>Salem City</b>
Jersey City	Trenton City
Keansburg Borough	Union City
Kearny Town	Vineland City
Lakewood Township	Weehawken Township
Lindenwold Borough	West New York Town
Lodi Borough	Willingboro Township
Long Branch City	Winslow Township
Millville City	[Woodbridge Township]
<b>Monroe Township (Gloucester)</b>	<b>Woodbury City</b>

**(a)****LOCAL AID****New Jersey Transportation Trust Fund Authority  
Act: Municipal Aid****Proposed Amendments: N.J.A.C. 16:20B-1.1—1.4,  
2.1, 3.1, 3.2, 4.1—4.3, 5.1, App. I and II**

Authorized By: Robert A. Innocenzi, Deputy Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.3.1 et seq., and  
27:7-47 and "New Jersey Transportation Trust Fund Authority  
Act".

Proposal Number: PRN 1989-108.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 16:20B will establish new guidelines and procedures for municipalities to follow in the receipt of aid from the State under the New Jersey Transportation Trust Fund, as the State's share of the cost for the improvement of any public road or bridge under the jurisdiction of the municipality.

Previously, local governments had to award a contract for construction within 12 months of execution of an application/agreement. This amendment now allows 18 months for award of contract. Additionally, local governments will be required to submit certain information prior to advertising, affording the Department an opportunity to review and provide advice to the local government as necessary prior to award. Also, these amendments allow the local government 30 days from receipt of bids to submit bid documents instead of 10 days. This procedure would improve the expeditious handling of contracts by the Department.

**Social Impact**

The proposed amendments will impact on municipalities, since they outline new procedures and guidelines to be followed in the receipt of State Aid. The changes are necessary to provide improvement in the processing and handling of contracts, and affords the local government more time for the submission of documentation.

**Economic Impact**

The proposed amendments will not have any major economic impact on the local governments or the Department, because there is no effect on funds or the funding sources.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, because the rules are applicable only to the municipalities in New Jersey which are eligible for State aid. Therefore, a regulatory flexibility analysis is not required.

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

**CHAPTER 20B****[1984] NEW JERSEY TRANSPORTATION TRUST FUND  
AUTHORITY ACT: MUNICIPAL FUND****SUBCHAPTER 1. GENERAL PROVISIONS****16:20B-1.1 Appropriation of funds**

[1984] New Jersey Transportation Fund Authority Act funds are appropriated by the Legislature as the State's share of the cost for the improvement of public highways under municipal jurisdiction.

**16:20B-1.2 Standards**

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below:

1. (No change.)

2. A policy on Geometrics Design of [Rural] Highways and Streets, 1984;

3. (No change.)

(b) (No change.)

(c) [All workmanship] **Construction** and materials shall conform with the **current** New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

**16:20B-1.3 Resolutions, [Applications] applications and agreements**

(a) Each municipality may submit fully executed **resolution**, application[s] and agreement[s] **forms** for [1984] New Jersey Transportation Trust Fund Authority Act funds to the Local Aid District Office of the New Jersey Department of Transportation.

(b) **Resolution, [Application] application** and agreement forms are available to the municipalities at the district office.

**16:20B-1.4 Procedures**

(a) The **resolution**, application and agreement **form** provides for an engineering description of the existing road or bridge and the description of the proposed road improvement indicating the right-of-way width, paved and graded widths, shoulder widths, type and depth of proposed pavement and an estimate of the cost of the proposed work. The [district offices shall] **Local Aid District Offices will review the form for completeness**, make a field investigation [of] **and evaluate** all projects for which applications have been received.

(b) [Applications] **Projects for which applications have been received** will be evaluated by a [screening committee] **Screening Committee** comprised of municipal engineers, **representing a cross section of New Jersey**, and staff of the New Jersey Department of Transportation appointed by the Commissioner of Transportation. Recommendations will be presented to the Commissioner of Transportation for consideration. In project approval, consideration [will be] **is given** to the volume of traffic, safety [considerations], **service to the public**, growth potential, readiness to [obligate funds] **construct** and local taxing capacity.

[c] Upon approval of the project by the Commissioner of Transportation, the Department will enter into an agreement with the municipality to determine a firm progress and funding schedule for each project.]

[(d)](c) State aid funds for municipal projects in each county will be allocated according to the formula set forth in the legislation appropriating said funds. For the purpose of said formula, population figures will be obtained from the New Jersey Department of Labor and municipal road mileage will be determined by the New Jersey Department of Transportation.

(d) **Separate from the State Aid formula appropriation, the Commissioner shall allocate \$5,000,000 to municipalities qualifying for urban aid under P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) in the same proportion that they receive aid under P.L. 1978, c.14. The proportion is determined by the Department of Community Affairs (a list of eligible municipalities for Fiscal Year 1989 is hereby incorporated by reference and attached as Appendix I).**

(e) **The Commissioner of Transportation may require the municipality to enter into an agreement that will determine a firm progress and funding schedule for each project funded under (d) above.**

16:20B-1.5 (No change.)

16:20B-1.6 (No change.)

**SUBCHAPTER 2. PLANS AND SPECIFICATIONS****16:20B-2.1 Municipal responsibility**

(a) The municipality shall be responsible for engaging a professional engineer [registered] **licensed** in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) (No change.)

**SUBCHAPTER 3. CONTRACTS****16:20B-3.1 Award of Contract**

(a) The municipality [will] **shall** advertise and award the contract,

subject to the approval of the State, in accordance with the provisions of [local] **Local Public Contract Law, N.J.S.A. 40A:11-1 et seq.**

(b) **Fifteen calendar days** [Prior] **prior to the time of** [and no later than the] advertisement [for construction bids], the municipality shall submit the following to the Local Aid District Office:

1. (No change.)
2. Two copies of the engineer's estimate cost[s].
- (c) Within [10] **30 calendar days**, [, or such longer time as the Local Aid District Office will approve,] following the receipt of construction bids, the municipality shall submit the following to the Local Aid District Office:
  - 1.-2. (No change.)
  - (d) (No change.)

16:20B-3.2 Contract completion and payment

- (a) (No change.)
- (b) When all work has been completed satisfactorily, the municipality [will] **shall** prepare and submit to the Local Aid District Office the following:
  1. (No change.)
  2. A certification by the municipal chief financial officer that all expenditures are supported by valid documentation and conform with the term of the State[s] [agreements] **agreement**; and
  3. (No change.)
  - (c)-(d) (No change.)

SUBCHAPTER 4. STATE PARTICIPATION IN COST

16:20B-4.1 General requirements

- (a) (No change.)
- (b) [Subject to the availability of funds, State Aid participation in projects initiated by municipalities] **Municipalities** qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, [Chapter] c.14, as amended by P.L. 1983, [Chapter] c.384 or for Depressed Rural Centers Aid may, at the discretion of the [Department] **Commissioner** of Transportation, be [increased up to 100 percent of total project cost including] **reimbursed** for design engineering [,] **and** right-of-way acquisition [and] **in addition to the construction providing that the amount does not exceed the total amount allocated for the project.** ([see qualified municipalities listed in Appendices I and II] **A list of eligible municipalities for Fiscal Year 1989 is hereby incorporated by reference and attached as Appendices I and II.**)

16:20B-4.2 Cost of engineering, inspection and construction supervision

- (a) (No change.)
- (b) [Local] **Those qualified local** governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.
- (c) Payment for engineering fees shall be made on a reimbursement basis. [Claims shall be presented on forms provided by the State.]
- (d) (No change.)

16:20B-4.3 Cost of right-of-way acquisition

- (a)-(d) (No change.)
- (e) Municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation [Manual] standards and requirements.
- (f) (No change.)
- (g) Upon completion of the review **in (f) above** and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's reimbursement participation for a particular parcel, except[,] in condemnation awards resulting from contested court adversary proceedings.

- (h)-(l) (No change.)
- (m) These procedures are limited to direct State funded [, State-aid] projects and are not applicable to Federally funded State-aid projects.

SUBCHAPTER 5. AUDIT

16:20B-5.1 General provisions

- (a)-(b) (No change.)
- (c) Department of Transportation agreements governed by [N.J.A.C. 16:20B] **this chapter** shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".
- (d)-(e) (No change.)

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
<b>Hunterdon</b>	<b>Califon Borough</b>
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough
Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
<b>Sussex</b>	<b>Hamburg Borough</b>
Sussex	Sussex Borough
Union	Winfield Township
Warren	Alpha Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding

Asbury Park City	[Montclair Township]
Bayonne City	<b>Mount Holly Township</b>
Belleville Township	Neptune <b>Township</b>
Bloomfield Township	Newark City
Bridgeton City	New Brunswick City
Camden City	North Bergen Township
Carteret Borough	Old Bridge Township
<b>Commercial Township</b>	Orange City
<b>Deptford Township</b>	Passaic City
East Orange City	Paterson City
Elizabeth City	<b>Paulsboro Borough</b>
[Englewood City]	Pemberton Township
Garfield City	<b>Penns Grove Borough</b>
<b>Glassboro Borough</b>	Pennsauken Township
<b>Gloucester City</b>	Perth Amboy City
Gloucester Township	Phillipsburg Town
Hamilton Township (Mercer)	Plainfield [City] <b>Township</b>
Hillside Township	<b>Pleasantville City</b>
Hoboken City	[Rahway City]
Irvington <b>Township</b>	Roselle Borough
[Jackson Township]	<b>Salem City</b>
Jersey City	Trenton City
Keansburg Borough	Union City
Kearny Town	Vineland City
Lakewood Township	Weehawken Township
Lindenwold Borough	West New York Town
Lodi Borough	Willingboro Township
Long Branch City	Winslow Township
Millville City	[Woodbridge Township]
<b>Monroe Township</b>	<b>Woodbury City</b>

## (a)

**CONSTRUCTION AND MAINTENANCE  
ENGINEERING SUPPORT****Bureau of Maintenance Engineering  
Reimbursed Highway Safety Lighting****Proposed Amendments: N.J.A.C. 16:26-3**

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-1 et seq.

Proposal Number: PRN 1989-120.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 16:26-3 will effect substantive administrative and procedural changes to comply with the Departmental Reorganization Plan adopted April 18, 1988 (see 20 N.J.R. 937) and Internal Audit Report #1A88-30.

The rules were further reviewed by the staff of Bureau of Maintenance Engineering to reflect current procedures and practices.

Subchapter 3 is being changed to reflect new organizational structure and responsibilities for the administration of the program from the "Electrical Bureau, Division of Transportation Operations and Local Aid" to the "Bureau of Maintenance Engineering, Division of Construction and Maintenance Engineering Support". The "Electrical Bureau" is changed to the "Bureau of Maintenance Engineering" and "Chief Engineer, Transportation Operations and Local Aid" is now "Director, Division of Construction and Maintenance Engineering Support". Revisions have also been made to the rate of reimbursement based upon lumens and the time frame for payment of reimbursement claims.

The Department therefore proposes to amend N.J.A.C. 16:26-3, Reimbursed Highway Safety Lighting.

**Social Impact**

The proposed amendments will effect substantive administrative and procedural changes to reflect the current operations based upon the Department's Reorganization and Internal Audit Report #1A88-30.

Additionally, the proposed amendments provide guidance for local governments to follow in the process for reimbursement of highway safety lighting.

**Economic Impact**

The proposed amendments will have no economic impact on local governments, as reimbursement claims are already being paid on a semi-annual basis. The Department will incur direct and indirect costs in the processing of forms and documents to effect the new organizational changes.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily effects administrative and procedural changes affecting local governments.

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

**CHAPTER 26****[ELECTRICAL BUREAU] BUREAU OF MAINTENANCE  
ENGINEERING****SUBCHAPTER 3 REIMBURSED HIGHWAY SAFETY  
LIGHTING**

16:26-3.1 (No change.)

**16:26-3.2 Inquiries**

All inquiries regarding reimbursed highway safety lighting shall be referred to the [Electrical Bureau, Division of Transportation Operations and Local Aid] **Bureau of Maintenance Engineering, Division of Construction and Maintenance Engineering Support.**

**16:26-3.3 Investigations**

[The Electrical Bureau of the Division of Transportation Operations and Local Aid shall make all necessary field investigations pertaining to requests by local governments for State participation with the local governments in the cost of maintaining existing or proposed highway safety lightings. The results of all investigations shall be made known to all parties concerned and a complete file of all transactions shall be part of the Electrical Bureau's records.] **The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall arrange for any necessary field investigations pertaining to requests by local governments for State participation in the cost of maintaining existing or proposed highway safety lighting. The Bureau of Electrical Engineering of the Division of Traffic Engineering and Local Aid shall conduct the necessary field investigations when requested by the Bureau of Maintenance Engineering. The results of the investigation are to be forwarded to the Bureau of Maintenance Engineering. The Bureau of Maintenance Engineering shall inform the local governments of the results of all investigations and a complete file of all transactions shall be part of the Bureau of Maintenance Engineering's records.**

**16:26-3.4 State aid participation basis**

(a) The rate of reimbursement to county and local government shall be based on the preceding fiscal year appropriations for this program and the number and type of lighting units in the program.

1. Incandescent units will not be [reimbursed at an approximate rate equal to 0.45 times that for the 7,000 lumen mercury vapor source] **eligible for reimbursement.**

2. [11,000 mercury vapor lamps] **Lamps with a lamp lumen output greater than or equal to 7,000 lumens but less than 11,000 lumens will be reimbursed at [a] the base rate [approximately 1.7 times that for a 7,000 lumen mercury vapor source].**

3. [20,000 lumen mercury vapor lamps] **Lamps with a lamp lumen output greater than or equal to 11,000 lumens, but less than 20,000 lumens will be reimbursed at a rate of approximately [2.5] 1.7 times the base rate [that of the 7,000 lumen mercury vapor source].**

4. **Lamps with a lamp lumen output greater than or equal to 20,000 lumens will be reimbursed at a rate of approximately 2.5 times the base rate.**

(b) (No change.)

(c) To be eligible for reimbursement, lighting units must be at least [4,000] **7,000** lumen intensity [after July 1, 1979, approved lighting units must be at least 7,000 lumen intensity] and be of the arc discharge type.

[(d) Incandescent lighting units will not be approved for reimbursement after December 31, 1979 unless local or County government authorizes their conversion through the utility company to the arc discharge type lamp of at least 7,000 lumen intensity prior to December 15, 1979.]

**16:26-3.5 Standards**

Reimbursed highway safety lighting shall conform to the standards set by the Division of [Transportation Operations and Local Aid] **Construction and Maintenance Engineering Support** as to location, lamp intensity, mounting height and type of luminaries.

**16:26-3.6 Approval of agreement**

(a) [The Electrical Bureau of the Division of Transportation Operations and Local Aid] **The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support** shall not enter into any contract obligations with utility companies on reimbursed safety lighting agreements.

(b) Upon approval of a safety lighting location and lamp size, an agreement and copy of a form of resolution is prepared by the [Electrical Bureau] **Bureau of Maintenance Engineering** for execution and adoption by the local government. One copy of the properly executed agreement is returned to the local government, indicating

the number of lighting units and the amount of the State's participation in the cost of maintaining these units with the local government.

#### 16:26-3.7 Termination of agreement

(a) If the [department] **Department** decides to terminate the agreement, the Chief, [Electrical Bureau] **Bureau of Maintenance Engineering**, shall send written notice of intent to terminate to the local government. Formal [departmental] **Departmental** action terminating the agreement shall be sent to the local government.

(b) If the local government decides to terminate this agreement, the [Chief Engineer, Transportation Operations and Local Aid] **Director, Division of Construction and Maintenance Engineering Support** shall be notified in a form of resolution adopted by the local government. Formal [departmental] **Departmental** action terminating the agreement shall be sent to the local government.

#### 16:26-3.8 Extension of agreement

(a) (No change.)

(b) An agreement and a form of resolution for the ensuing year are prepared and mailed to the participating local government on or about December 15 by the [Electrical Bureau] **Bureau of Maintenance Engineering**. The full executed agreement shall be returned by the local government to the State on or before February 15 with a duly certified copy of the resolution.

#### 16:26-3.9 Reimbursement

(a) (No change.)

(b) Reimbursement claims shall be paid [quarterly] **semi-annually** to the participating local government upon presentation of vouchers provided by the State [and supported by certified copies of receipted invoices from the utility company]. **The local government shall provide the following certification statement on the invoice: "This is to certify that the lighting units described in the schedule attached to our reimbursement agreements have been in operation and are expected to remain in service during this 6 month certified period."**

## TREASURY-GENERAL

### (a)

#### DIVISION OF PENSIONS

#### Public Employees' Retirement System Outstanding Loans at Retirement

#### Proposed Amendment: N.J.A.C. 17:2-6.4

Authorized By: Police and Firemen's Retirement System,

Anthony P. Ferrazza, Secretary.

Authority: N.J.S.A. 43:16A-13(7) and P.L. 1988, c.134.

Proposal Number: PRN 1989-106.

Submit comments by April 5, 1989 to:

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

The agency proposal follows:

#### Summary

The purpose of this proposed amendment is to provide procedures for the implementation of P.L. 1988, c.134. This legislation provides that disability retirees and retirees whose retirement is necessitated by medical illness or disability as determined by the board of trustees of the retirement system who have outstanding loan balances at the time of retirement may repay the loan balances by deductions from their retirement benefits in the same monthly amounts that were deducted from their compensation immediately preceding retirement. The legislation is applicable to the Public Employees' Retirement System (PERS), the Teachers' Pension and Annuity Fund (TPAF), and the Police and Firemen's Retirement System (PFRS). Prior to this legislation, the law required that an outstanding loan balance at retirement for all retirees had to be repaid by retention

of all retirement benefits, excluding authorized deductions, until the balance plus interest was repaid.

The proposed amendment revises the current rule on outstanding loans at retirement to clearly outline the repayment options for service retirees and those who retire because of disability. For service retirees, the options are to repay the balance in full before retirement becomes effective, or to have all the retirement benefits retained, excluding authorized deductions like health care premiums and income tax withholding, until the balance is repaid. Retirees on disability pension or whose retirement is necessitated by medical illness or disability as determined by the board of trustees have an additional option of repaying the loan balance by deductions from retirement benefits of the same monthly amount that was deducted from their compensation immediately preceding retirement.

A retiree who does not retire on a disability retirement and wants to establish that his or her retirement is necessitated by medical illness or disability would have to follow the procedures outlined in the amendment. He or she would have to file an application with the board and include with it a report from his or her personal or attending physician and any other physicians' reports, hospital records or other medical evidence he or she can supply concerning his or her illness or disability. The medical evidence would have to be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

#### Social Impact

This proposed amendment will be beneficial to PERS members because it reduces the burden of repayment of outstanding loans against their retirement accounts if they have to retire unexpectedly because of disability or medical illness.

#### Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this amendment. A positive economic impact is expected for those retirees who would be affected by these new provisions, which would allow benefits to continue while deductions are used to repay loans.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Public Employees' Retirement System affect only public employers and employees.

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

#### 17:2-6.4 Outstanding loan

(a) [Members who have a loan outstanding at the time of their retirement will be permitted to repay the outstanding value of their loan, with interest, before their retirement allowance becomes due and payable. The allowance becomes due and payable 30 days after the date the board approves their application for retirement or 30 days after the date of retirement, whichever is later.] **A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:**

**1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:2-6.3; or**

**2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.**

**i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.**

**(b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:**

**1. In the manner prescribed in (a) above; or**

**2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immedi-**

ately preceding retirement until the loan balance, with interest, is repaid.

i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physician's reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

[(b)] (d) [In the event] If a retirant [should die] dies before the [outstanding value of the] loan balance, with interest, is [recovered] repaid, [the group life insurance proceeds will first be used to repay the loan. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from the benefits payable to them.

1. Any] the remaining balance [shall be] is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option I reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant [has] designated multiple beneficiaries to receive [such] these benefits, each beneficiary [will share equally] shares in repaying the [loan from the benefits payable to them] remaining balance in the same proportion in which they are entitled to the benefits.

(a)

**DIVISION OF PENSIONS**

**Police and Firemen's Retirement System  
Outstanding Loans at Retirement**

**Proposed Amendment: N.J.A.C. 17:4-6.4**

Authorized By: Police and Firemen's Retirement System,  
Anthony P. Ferrazza, Secretary.  
Authority: N.J.S.A. 43:16A-13(7) and P.L. 1988, c.134.  
Proposal Number: PRN 1989-113.

Submit comments by April 5, 1989 to:  
Peter J. Gorman  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The purpose of this proposed amendment is to provide procedures for the implementation of P.L. 1988, c.134. This legislation provides that disability retirees and retirees whose retirement is necessitated by medical illness or disability, as determined by the board of trustees of the retirement system, who have outstanding loan balances at the time of retirement may repay the loan balances by deductions from their retirement benefits in the same monthly amounts that were deducted from their compensation immediately preceding retirement. The legislation is applicable to the Public Employees' Retirement System (PERS), the Teachers' Pension and Annuity Fund (TPAF), and the Police and Firemen's Retirement System (PFRS). Prior to this legislation, the law required that an outstanding loan balance at retirement for all retirees had to be repaid by retention of all retirement benefits, excluding authorized deductions, until the balance plus interest was repaid.

The proposed amendment revises the current rule on outstanding loans at retirement to clearly outline the repayment options for service retirees and those who retire because of disability. For service retirees, the options are to repay the balance in full before retirement becomes effective, or to have all the retirement benefits retained, excluding authorized deductions like health care premiums and income tax withholding, until the balance is repaid. Retirees on disability pension or whose retirement is necessitated by medical illness or disability, as determined by the board of trustees, have an additional option of repaying the loan balance by deductions from retirement benefits of the same monthly amount that was deducted from their compensation immediately preceding retirement.

A retiree who does not retire on a disability retirement and wants to establish that his or her retirement is necessitated by medical illness or disability would have to follow the procedures outlined in the amendment. He or she would have to file an application with the board and include with it a report from his or her personal or attending physician and any other physicians' reports, hospital records or other medical evidence he or she can supply concerning his or her illness or disability. The medical evidence would have to be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

**Social Impact**

This proposed amendment will be beneficial to PFRS members because it reduces the burden of repayment of outstanding loans against their retirement accounts if they have to retire unexpectedly because of disability or medical illness.

**Economic Impact**

No significant economic impact on the retirement system is anticipated from the adoption of this amendment. A positive economic impact is expected for those retirees who would be affected by these new provisions, which would allow benefits to continue while deductions are used to repay loans.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Police and Firemen's Retirement System affect only public employers and employees.

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

17:4-6.4 Outstanding loan

(a) [Members who have a loan outstanding at the time of their retirement will be permitted to repay the outstanding value of their loan, with interest, before their retirement allowance becomes due and payable. The allowance becomes due and payable 30 days after the date the Board approves their application for retirement or 30 days after the date of retirement, whichever is later.] **A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:**

1. **In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:4-6.3; or**
2. **By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.**

i. **Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.**

(b) **A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:**

1. **In the manner prescribed in (a) above; or**
2. **By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid.**

i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physicians' reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

[(b)](d) [In the event] If a retirant [shall die] dies before the [outstanding value of the] loan balance, with interest, is [recovered] repaid, [the group life insurance proceeds will first be used to repay the loan. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from the benefits payable to them.

1. Any] the remaining balance [shall be] is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments that are due to the beneficiary or estate. If multiple beneficiaries are to receive [such] these benefits, each beneficiary [will share equally] shares in repaying the [loan from the benefits payable to them] remaining balance in the same proportion in which they are entitled to the benefits.

(a)

## STATE LOTTERY COMMISSION

### Lottery Commission Rules Ethics; Conflict of Interest

#### Proposed Amendment: N.J.A.C. 17:20-8.1

Authorized By: New Jersey State Lottery Commission, Barbara Marrow-Mooring, Executive Director.

Authority: N.J.S.A. 5:9-7(a), (b), and (f); 52:13D-12 et seq.; and Executive Order No. 189(1988)

Proposal Number: PRN 1989-110.

Submit comments by April 5, 1989 to:

Robert C. Wilson  
Administrative Practice Officer  
New Jersey Lottery  
CN 041  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

On July 20, 1988, Governor Kean signed Executive Order No. 189, requiring State agencies to establish Vendor Codes of Ethics. The required language embodied in the Executive Order called for modification of the previously existing Lottery Vendors' Code of Ethics, N.J.A.C. 17:20-8.1. This proposed amendment brings such code into compliance with the provisions required by the Executive Order.

The proposed amendment to N.J.A.C. 17:20-8.1(a) modifies the description of persons with whom lottery vendors are prohibited from dealing or employing, so as to include the immediate family, employer or interested party of a Lottery Commissioner, officer or employee. The amendment also limits the classification of prohibited persons to those exercising purchase functions.

N.J.A.C. 17:20-8.1(b) is amended by modifying the definition of a prohibited business relationship to include the sale of any interest in the lottery vendor. The amendment also adds a requirement that relationships subject to the prohibition be reported to the Executive Commission on Ethical Standards, which is given a limited power to grant waivers of the restrictions.

N.J.A.C. 17:20-8.1(e) is amended so as to broaden the definition of prohibited acts, to include family members, employers or associated persons as provided above, and to add a requirement that solicitations be reported by the vendor to the Attorney General and to the Executive Commission on Ethical Standards.

N.J.A.C. 17:20-8.1(h) is amended by adding a qualifier that restricts the prohibitions of the Lottery Vendors' Code of Ethics from applying to relationships, gifts or contracts offered under the same terms and conditions as are made available to members of the general public. This restriction is also subject to any guidelines promulgated by the Executive Commission on Ethical Standards.

N.J.A.C. 17:20-8.1(i), which embodied an effective date, is proposed for deletion, in view of the fact that such language is no longer needed.

#### Social Impact

The proposed amendment brings the Lottery Vendors' Code of Ethics into conformity with Vendor Codes of Ethics to apply throughout State government. To the extent that they may prevent violations of the Conflicts of Interest Law and preserve the image of integrity in its operations, the amendment redounds to the benefit of the State Lottery, whose revenue contributions are important to the funding of State governmental operations. They also benefit the public in that they will improve the ability of persons generally to understand what is and is not permissible in the often complex world of public contracting.

#### Economic Impact

The proposed amendment has no direct economic impact, and is revenue-neutral. To the extent that it aids the State Lottery in maintaining an image of rectitude and integrity, it preserves and protects the governmental funding provided by the Lottery.

#### Regulatory Flexibility Statement

The proposed amendment affects all lottery vendors, most of whom are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No new record keeping requirements are added, and the only reporting requirements arise under N.J.A.C. 17:20-8.1(c), for certain business relationships, and N.J.A.C. 17:20-8.1(f), for solicitations. Neither these requirements nor the compliance requirements may be altered due to business size as these requirements are mandated by Executive Order No. 189 (1988). Any detriment of affected small businesses is outweighed by the public policy goals which the amendment is proposed to further.

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

17:20-8.1 Lottery [Vendors'] vendors' code of ethics

(a) No Lottery [Vendor] vendor shall employ any person or maintain any business relationship with any person who is a Lottery Commissioner, officer or employee **having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Lottery or with his or her immediate family or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g.** As used in this section, Lottery [Vendor] vendor means any person, firm or corporation engaging or seeking to engage in business with the Division of the State Lottery.

(b) The maintenance of a business relationship shall be deemed to include, but not be limited to, any interest, financial or otherwise, direct or indirect, any business transaction or professional activity involving a Commissioner, officer or employee, **including the sale of any interest in the vendor.** However, it shall not be a violation of this paragraph for a Lottery Commissioner, officer or employee to seek future outside employment or to correspond with a Lottery [Vendor] vendor with respect thereto, provided that:

1. The Director is promptly informed of such activities; and

2. They are **not** violative of State law or such other ethical standards as may apply. (Lottery Commissioners and Division Officers and employees are covered by separate Codes of Ethics. See [(h)] (i) below.)

(c) **Any relationships subject to (b) above shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.**

[(c)] (d) No Lottery [Vendor] vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said Lottery Commissioner, officer or employee.

[(d)] (e) No Lottery [Vendor] vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Lottery [Vendor] vendor or for any other person.

[(e)] (f) No Lottery [Vendor] vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, to any Lottery Commissioner, officer or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such person, or any partnership, firm, or corporation with which such person is employed or associated, or in which such person has an interest within the meaning of N.J.S.A. 52:13D-13g, any fee, commission, compensation, gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. **The solicitation of any fee,**

**commission, compensation, gift, gratuity or other thing of value by any Commissioner, officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.**

[(f)] (g) This Code of Ethics shall also apply to any licensed agent of the New Jersey State Lottery.

[(g)] (h) No Lottery [Vendor] vendor shall, without the written approval of the Director, disclose, directly or indirectly, any information not generally or legally available to the public concerning the affairs of the Division.

[(h)] (i) This code is intended to augment and not replace existing administrative orders and pertinent codes of ethics. **It shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.** If any part of this Code shall be found ineffective or inoperative, such finding shall not affect the other parts of the Code.

[(i)] This Code shall take effect immediately upon adoption by the New Jersey State Lottery Commission.]

# RULE ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF PLANT INDUSTRY

##### Diseases of Bees

##### Registration and Transportation of Bees

##### Adopted New Rules: N.J.A.C. 2:24-2 and 3

Proposed: December 5, 1988 at 20 N.J.R. 2951(a).

Adopted: February 1, 1989 by the State Board of Agriculture,  
Arthur R. Brown, Jr., Secretary.

Filed: February 3, 1989 as R.1989 d.128, **without change, but with a portion not adopted and still pending.**

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-20.

Effective Date: March 6, 1989.

Expiration Date: February 11, 1990.

##### Summary of Public Comments and Agency Responses:

###### No comments received.

The Department is reserving the adoption of proposed N.J.A.C. 2:24-2.1(b) pending approval of that subsection by the State Agricultural Development Committee. Until that provision is adopted, the Division will directly communicate the registration informational requirements for bee yards in New Jersey where bees are over-wintered.

Full text of the adoption follows.

#### SUBCHAPTER 2. REGISTRATION OF APIARIES

##### 2:24-2.1 Registration requirements

(a) All bee yards in New Jersey where bees are over-wintered must be registered annually with the New Jersey Department of Agriculture.

(b) (Reserved.)

(c) The Department of Agriculture shall supply the registrant with any and all appropriate orders, laws and rules.

##### 2:24-2.2 Apiary criteria

(a) Apiaries not on commercial farms shall be permitted if they meet the following criteria:

1. All colonies shall be kept in movable frame hives in accordance with N.J.S.A. 4:6-10;

2. There is adequate fresh water available of at least one gallon per hive per day during brood rearing at apiary site;

3. No colony shall be placed closer than 10 feet from an adjoining property line, unless it is placed behind a six-foot high solid fence or hedge parallel to the adjoining property line extending 10 feet beyond any colony; and

4. No colony shall be located within 25 feet of a public sidewalk, alley, street or road.

(b) Apiaries on commercial farms, as defined in N.J.S.A. 4:1C-1 et seq., are permitted under an accepted management practice of the State Agricultural Development Committee, as follows:

1. All permanent registered yards shall be at least 75 feet from a public road;

2. All permanent registered yards shall be one-half mile from any housing development;

3. There shall be a source of water within one-half mile of a permanent yard; and

4. All bee equipment shall be maintained in good condition; and

5. Acceptable bee management as defined by the New Jersey Beekeepers Association and/or the Eastern Apiculture Society of America shall be employed.

#### SUBCHAPTER 3. TRANSPORT OF BEES

##### 2:24-3.1 Transport requirements

(a) No bees shall be transported in or through New Jersey unless:

1. The hive entrance is covered with screening material of at most

a size 7 per inch mesh, or the colonies are covered with a weather-proof netting of at most a size 8 per inch mesh to prevent the escape of any bees from the vehicle; or

2. The bees are enclosed in a refrigerated containment vehicle that maintains the bees at a constant temperature below 45 degrees Fahrenheit.

(b) Vehicles transporting bees shall not stop, except for refueling, unless certified for entrance into New Jersey, under N.J.A.C. 2:24-1.2.

(c) The vehicle operator or other responsible person shall immediately report to the New Jersey Department of Agriculture, any release of bees, whether accidental or intentional.

### (b)

#### DIVISION OF MARKETS

##### Agricultural Fairs

##### Adopted Repeals and New Rules: N.J.A.C. 2:33

Proposed: December 5, 1988 at 20 N.J.R. 2954(a).

Adopted: February 1, 1989 by the State Board of Agriculture and  
Arthur R. Brown, Jr., Secretary.

Filed: February 3, 1989 as R.1989 d.129, **without change.**

Authority: N.J.S.A. 5:8-121 et seq.

Effective Date: March 6, 1989.

Expiration Date: March 6, 1994.

##### Summary of Public Comments and Agency Responses:

Three comments were received from a promoter, an employee of the promoter, and the promoter's attorney.

COMMENT: The attorney for a fair promoter suggested that the rules were vague and ambiguous and therefore unconstitutional.

RESPONSE: The New Jersey Department of Agriculture believes the rules are quite clear as to requirements for granting the status of an official agricultural fair on their face. No specific examples of any vagueness or ambiguity in the rules were given.

COMMENT: The requirement that an applicant file for official designation as much as 18 months in advance serves no logical purpose.

RESPONSE: The majority of testimony from other agricultural fairs indicates the need for approval at least one year in advance of a fair for their planning purposes.

COMMENT: The rules are vague as to the meaning of the words agriculture and agribusiness.

RESPONSE: The New Jersey Department of Agriculture believes clear definitions of agriculture/agribusiness exist in universally recognized forms. The Department recognizes differences exist in these industries in rural versus urban areas of the State.

COMMENT: The State Board of Agriculture should not discourage new promoters from engaging in agricultural fairs.

RESPONSE: The State Board of Agriculture certainly does not discourage new promoters from engaging in agricultural fairs, as its record in the past two years indicates. Four new out of five fairs were granted official status. But, by law, the Board must require that such fairs are primarily agricultural in nature.

COMMENT: The State Board of Agriculture should meet with interested parties with regard to the proposed agricultural fair rules.

RESPONSE: The State Board of Agriculture has met with the requesting parties at least three times over the last two years and has had two extensive comment periods on these proposed rules. However much it would like to meet with all parties concerned, the New Jersey Department of Agriculture feels the point to close the discussion has been reached. The Department's procedures for reopening rules may be found at N.J.A.C. 2:1-3.7.

COMMENT: A clarification of the local county boards of agriculture's input into pending applications for official agricultural fair status is needed.

RESPONSE: The rules clearly indicate that the county boards of agriculture have the opportunity to comment on all fair applications pending before the State Board of Agriculture, but do not have a veto power and never did.

COMMENT: What relief is available to applicants for "Official Agricultural Fair" designation if it is turned down by the State Board of Agriculture, and who will see to it that the rules are applied equally?

RESPONSE: The State Board of Agriculture expects, as it has done, to approve all legitimate agricultural fair applications for official fair designation. If there is a difference of opinion on this matter, recourse would be available through the judicial system.

The three commenters stated:

COMMENT: The State Board of Agriculture has sided with special interest in promulgating their new rules.

RESPONSE: The State Board of Agriculture's role in promulgating these new rules is only to promote the industry of agriculture and its products through legitimate agricultural fairs. It has not been unduly influenced by any special interest group.

One commenter posed these questions:

COMMENT: If a fair with an existing license does not comply with the rules, does that mean that it will lose its license? Would it have to go to court to contest it?

RESPONSE: Yes to both questions.

COMMENT: One commenter suggested that the promotion of benefits to the community should be the New Jersey Department of Agriculture's objective of not trying to put more obstacles in the path of a legitimate fair operator.

RESPONSE: The Department agrees its rules do not, as modified, put more obstacles in the path of a legitimate fair operator. However, community benefits are not the Department's mandated purpose; the promotion of agriculture is.

Two commenters and an attorney for a commenter stated:

COMMENT: The Department's requirement that a fair be primarily agricultural in nature is not clear.

RESPONSE: The Department believes that the requirements in N.J.A.C. 2:33-1.3(a), that agricultural fairs have as their primary purpose the development and promotion of several or many phases of agriculture or agribusiness, is quite clear.

The Department interprets the word primary to mean being the basic part of an organized whole; thus, while a number of other activities as listed in N.J.A.C. 2:33-1.1(a) can take place at an "official agricultural fair", no one of these other activities can exceed the agricultural portion of the fair. This does not mean that the agricultural portion must be a majority of the activities (50 percent or more), but it does mean the agricultural portion must be the largest of the various activities.

COMMENT: The State Board of Agriculture is the only agency to issue games of chance/skill licenses at agricultural fairs.

RESPONSE: The State Board of Agriculture does not issue games of chance/skill licenses, but only recommends legitimate agricultural fairs for licensing by the Department of Law and Public Safety, which are deemed official in accordance with the statute. All other fairs/carnivals are not recommended by this Department.

COMMENT: The commenters raised issues concerning other groups in the State who need games of chance/skill licenses and the possible effects on them by the proposed agricultural fair rules.

RESPONSE: The State Board of Agriculture's mandate under the statute deals only with the promotion of agriculture and its products through officially designated agricultural fairs.

The N.J. Department of Agriculture has no authority, nor does it desire or intend to become the general licensing authority, for all carnivals in this State.

Full text of the adoption follows:

2:33-1.1 Agricultural fairs: qualifications

(a) Each person, corporation or association certified as an "Official Agricultural Fair" shall hold, at one site, an agricultural exhibition, whose primary purpose is the development and promotion of several, or many, phases of agriculture or agri-business in and of that county, by conducting educational programs, activities, demonstrations, contests, and exhibitions. In addition, the fairs shall conduct two activities related to the following:

1. Manufacturing, commerce and industry;
2. Community development and improvement;
3. Promotion of products and services;
4. Public service events and projects;
5. County interest projects;
6. Cultural works and collections of art;

7. Any activity approved by the entire association for the benefit of the community; and/or

8. Recreational activities.

(b) No person, corporation or association shall operate a fair or exhibition in any county under the designation "Official Agricultural Fair" without obtaining a certificate to operate from the New Jersey Department of Agriculture.

2:33-1.2 Responsibilities of certified fair

(a) Each person, corporation or association certified as an "Official Agricultural Fair" shall:

1. Furnish annually a copy of an audit and reports on forms prescribed by the Department of Agriculture.
2. Comply with all county and municipal health, fire, police and sanitation regulations.

(b) The New Jersey Secretary of Agriculture, or his or her designee, may enter the premises of any "Official Agricultural Fair" at reasonable times to determine compliance with this chapter.

2:33-1.3 Procedure for certification

(a) To receive certification as an "Official Agricultural Fair", all applicants must annually file their proposals with the Department of Agriculture by May 1 of the year preceding the one in which the fair is to be held. A copy shall be submitted to the County Board of Agriculture for its comment.

(b) The County Board of Agriculture shall submit any comments concerning the application to the Department of Agriculture on or before June 1 of the year preceding the fair.

(c) After consideration of the application, and any comments submitted by the County Board of Agriculture, the State Board of Agriculture shall either deny or approve certification of any proposed "Official Agricultural Fair".

(a)

**DIVISION OF DAIRY INDUSTRY  
Reports Required**

**Adopted Amendment: N.J.A.C. 2:52-1.6**

Proposed: December 5, 1988 at 20 N.J.R. 2955(a).

Adopted: February 1, 1989 by Woodson W. Moffett, Jr.,

Director, Division of Dairy Industry.

Filed: February 3, 1989 as R.1989 d.127, **without change.**

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Effective Date: March 6, 1989.

Expiration Date: June 7, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows:

2:52-1.6 Reports required

(a) All processors, dealers and subdealers shall file reports on forms supplied by the Division of Dairy Industry as follows:

1. (No change.)
2. On or before the 15th of the month for the preceding month a report of the following:
  - i. through vi. (No change.)
  - vii. The following licensees shall be exempt from the reporting requirements of this paragraph:
    - (1) Subdealers selling only to home-delivery customers;
    - (2) Dealers and subdealers having monthly sales of less than 250,000 pounds of fluid milk and fluid milk products;
    - (3) (No change.)
    - (4) (No change.)

**COMMUNITY AFFAIRS****(a)****COUNCIL ON AFFORDABLE HOUSING****Substantive Rules****Initial Pricing****Adopted Amendment: N.J.A.C. 5:92-12.4**

Proposed: December 19, 1988 at 20 N.J.R. 3051(a).

Adopted: January 30, 1989 by the New Jersey Council on

Affordable Housing, James L. Logue, III, Chairman.

Filed: February 1, 1989 as R.1989 d.125, **without change**.

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

Effective Date: March 6, 1989.

Expiration Date: June 16, 1991.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.**5:92-12.4 Initial pricing**

(a) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of 10 percent, the monthly principal, interest, taxes, insurance and condominium fees do not exceed 28 percent of an eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary development regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

(b) Municipalities shall require that rents, excluding utilities, be set so as not to exceed 30 percent of the gross monthly income of the appropriate household size. Maximum rent shall be calculated as a percentage of the uncapped Section 8 income limit (as contained in the Technical Appendix) or other recognized standard adopted by the Council that applies to the rental housing unit.

(c) The following criteria shall be considered in determining rents and sale prices:

1. Efficiency units shall be affordable to one person households;
2. One bedroom units shall be affordable to two person households;
3. Two bedroom units shall be affordable to three person households;
4. Three bedroom units shall be affordable to five person households; and
5. Four bedroom units shall be affordable to seven person households.

(d) Municipalities that petition for certification after August 1, 1988 shall require that rents, including an allowance for utilities consistent with the personal benefit expense allowance for utilities as defined by HUD or a similar allowance approved by the Council, be set so as not to exceed 30 percent of the gross monthly income of the appropriate household size as outlined in (b) above.

(e) Housing units that satisfy the criteria in (a) through (d) above shall be considered affordable.

(f) Median income by household size shall be established by the uncapped Section 8 income limits, published by HUD, as defined in subchapter 1 (see Technical Appendix) or other recognized standard adopted by the Council that applies to the rental housing unit.

**EDUCATION****(b)****STATE BOARD OF EDUCATION****Nonpublic School Asbestos Removal and Encapsulation State Aid****Adopted New Rule: N.J.A.C. 6:20-5.7**

Proposed: October 17, 1988 at 20 N.J.R. 2505(a).

Adopted: January 4, 1989 by Saul Cooperman, Commissioner,

Department of Education; Secretary, State Board of Education.

Filed: January 18, 1989 as R.1989 d.93, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, and P.L. 1987, c.154.

Effective Date: March 6, 1989.

Expiration Date: August 9, 1990.

**Summary of Public Comments and Agency Responses:**

The Department received one letter with comments regarding subsection (m) of proposed rule N.J.A.C. 6:20-5.7. The commenter indicated that subsection (m) discriminated against private schools for the handicapped which educate privately placed students.

The Department responded by deleting subsection (m) of the proposed rule. The differential treatment for private schools for the handicapped was unintended. This subsection was originally included in the rule to assist with implementation of subsection (l). The Department now believes subsection (m) to be confusing and unnecessary.

**Full text** of the adoption follows (deletion from proposal shown in brackets with asterisks \*[thus]\*).

**6:20-5.7 Nonpublic school asbestos removal and encapsulation State aid**

(a) For the purpose of the State aid program for asbestos removal and encapsulation for nonpublic schools, the following words and terms shall have the following meanings, unless the context indicates otherwise:

"Completed project" means a project on which all of the work was finished and for which all of the cost of the project was incurred prior to July 1, 1987.

"Currently planned project" means a project for which no funds have been expended and no work was undertaken prior to July 1, 1987.

"Nonpublic school" means an elementary or secondary school within the State other than a public school, offering education for grades kindergarten through 12, or any combination thereof, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964. Nonpublic school shall not mean a nursery school or child care center.

"Project undertaken" means a project on which work was begun prior to July 1, 1987 which is not substantially completed and for which 50 percent or less of the estimated cost of the project was expended prior to July 1, 1987.

"Substantially completed project" means a project on which work was begun prior to July 1, 1987 and for which more than 50 percent of the estimated cost of the project was expended prior to July 1, 1987.

(b) A State aid entitlement for asbestos removal and encapsulation projects under this aid program shall equal 75 percent of the cost of the removal and encapsulation work as shown on the application submitted by the nonpublic school and is subject to the availability of funds.

(c) A nonpublic school shall be reimbursed under the State aid program only for asbestos removal and encapsulation projects in buildings operated for direct education and educational support purposes. No reimbursement shall be made for the repair of roofs, the repair of exterior walls, the repair of windows and window frames and for work in buildings rented by a nonpublic school.

(d) Reimbursement shall only be made to a nonpublic school upon a finding by an accredited assessor recognized by the Department of Health that a current or potential hazard exists or existed, and upon receipt of an application and approval by the State Board of Education.

(e) Reimbursements to nonpublic schools for asbestos removal and encapsulation projects will be made in the order in which applications are received by the Commissioner, of the Department of Education. Applications of nonpublic schools currently planning or undertaking asbestos removal or encapsulation shall be granted priority over applications of nonpublic schools that have completed or substantially completed projects.

(f) A nonpublic school shall only be reimbursed for asbestos removal or encapsulation for 75 percent of the expenditures actually incurred. State aid payments for projects currently planned, undertaken, and substantially completed shall be adjusted when actual expenditures are known. Adjustments to payments in excess of the State aid entitlement shall be made only to the extent State aid funds are available.

(g) A nonpublic school shall not be reimbursed for more than the actual expenditures for an asbestos removal or encapsulation project under both the State program and the Federal Asbestos School Hazard Abatement Program.

(h) A nonpublic school which recovers funds expended for asbestos removal or encapsulation through a legal action shall have its State aid reimbursement adjusted for any such funds recovered.

(i) A nonpublic school shall maintain accounting records which identify all expenditures for which reimbursement is approved.

(j) A nonpublic school receiving a State aid reimbursement shall submit reports as required concerning work progress, expenditures or any other factors which the Commissioner shall deem necessary.

(k) A nonpublic school shall comply with all applicable Federal and State statutes and regulations concerning asbestos removal or encapsulation. State aid funds may be withheld for noncompliance.

(l) A nonpublic school receiving State aid reimbursement for asbestos removal and encapsulation which is a private school for the handicapped, referred to in N.J.S.A. 18A:46-21, shall have its allowable costs for the purpose of determining the "actual cost per pupil" in accordance with N.J.A.C. 6:20-4 reduced by the amount of reimbursement received under this or any other State aid program.

\*[(m) Expenditures by a private school for the handicapped for asbestos removal and encapsulation eligible for reimbursement shall only include the costs related to pupils whose tuition is determined in accordance with N.J.A.C. 6:20-4. When it is necessary to determine costs on a prorated basis because the private school for the handicapped facilities are also used by pupils or programs where tuition is not determined in accordance with N.J.A.C. 6:20-4, such proration shall be made in accordance with directions prepared by the Commissioner.]\*

**HUMAN SERVICES**

**(a)**

**Developmental Disabilities Council  
Charity Racing Days for the Developmentally Disabled  
Distribution of Proceeds  
Readoption with Amendments: N.J.A.C. 10:141**

Proposed: January 3, 1989 at 21 N.J.R. 8(a).  
Adopted: February 6, 1989 by the Developmental Disabilities Council, Catherine Rowan, Executive Director.  
Filed: February 7, 1989 as R.1989 d.132, **without change**.  
Authority: N.J.S.A. 5:5-44.2 through 44.6 and 30:1AA-7.  
Effective Date: February 7, 1989, Readoption.  
March 6, 1989, Amendments.  
Expiration Date: February 7, 1994.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** Two comments were received from independent rehabilitation centers opposing the affiliation requirements contained in the eligibility criteria. One center stated that "to exclude organizations . . . serving the developmentally disabled from a state developed initiative to improve services for the developmentally disabled appears to be highly discriminatory and prejudicial."

The second center felt that the "regulations are unfair" because the center is "prohibited from receiving a share of these funds simply because we are not affiliated with a state organization like NJARC, UCP or the Epilepsy group".

**RESPONSE:** The provisions of N.J.S.A. 5:5-44.2-44.6 and 30:1AA-7, the law authorizing Charity Racing Days for the Developmentally Disabled, do not permit agencies who do not have an affiliation with a national organization of the same type and purpose to be eligible for Charity Racing Days funds. While the Developmental Disabilities Council is sympathetic to the issue of ineligibility of non-profit agencies who do not have the necessary affiliations, the provisions of the law do not permit the Council to deviate from these requirements.

**COMMENTS:** Comments were received by United Cerebral Palsy of Monmouth and Ocean Counties, Inc., questioning whether the distribution of Charity Racing Days funds "cannot be done in a more efficient and integrated fashion by permitting the funding to devolve to the Division of Developmental Disabilities to be distributed through RFP's or to augment existing grants." This agency also disagreed with the Regulatory Flexibility Statement "since the non-profit organization receiving these monies are in fact, small businesses, there is significant reporting, recordkeeping and compliance requirements placed upon these agencies."

**RESPONSE:** The matter of a wholesale re-examination of the Charity Racing Days program is an issue that cannot be addressed through rulemaking procedures, but has been taken under advisement by the Developmental Disabilities Council. Regarding the Regulatory Flexibility Statement, rulemaking in effect at the time of the proposal did not require a regulatory flexibility analysis for non-profit agencies. As of January 17, 1989, Office of Administrative Law requirements have changed which would require such an analysis in the future.

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:141.

**Full text** of the amendments to the readoption follows.

10:141-1.4 Eligible Services

(a) Eligible direct services shall include evaluation services, diagnostic services, treatment, day care, training and education, sheltered employment, recreation, long and short term living arrangements, counseling, information and referral, protection and advocacy, supported employment, transportation, and rehabilitation technology. Such services may be funded directly by an organization from contributions, by grants, or by purchase contracts with public agencies. An explanation of eligible direct services, based on Federal definitions and as published in the 1978 Developmental Disabilities State Plan, follows:

1. Diagnostic services are the provision of coordinated services, including, but not limited to, medical, psychological, social or other services necessary to identify the presence, cause and extent of a developmental disability. Diagnostic services are distinctly different from evaluation services, as it is usually only provided once, per client, and is probably done by a physician or other highly credentialed professional. This service is typically provided upon admission to a program and thereafter only if needed.

2. Evaluation is the systematic appraisal of physical, psychological, vocational, educational, cultural, social, economic or other characteristics of the individual to determine: the extent to which the disability limits or can be expected to limit his or her daily living and work activities; the extent to which the disability can be minimized through the provision of services; the nature and scope of services needed; and objectives which are commensurate with the individual's needs, interests and capacities. All four components of the preceding definition shall be documented. Updates of a client's progress in a service are not considered evaluation, but are simply monitoring of a client's progress in a particular service.

## ADOPTIONS

3. Information and referral is the provision of a current and complete listing of all appropriate resources which are available and accessible to the developmentally disabled person, his or her family and professionals serving the developmentally disabled. Information and referral shall be provided directly to the developmentally disabled client or a parent or professional who calls specifically for a developmentally disabled person, because the person is unable to call for him or herself. Information and referral shall be a distinct and formal service; not the giving of casual, informal information.

4. Counseling is the provision of professional guidance made on the basis of evaluation in order to achieve goals which are mutually agreeable to counselor and client. Counseling must be a distinct, structured service, probably regularly scheduled for the client and may include groups. It must be given to the client directly by specifically trained professionals (for example, social workers, psychologists, psychiatrists, etc.).

5. Protection and advocacy services are the provision of a system of social, legal and other services to help developmentally disabled individuals exercise their rights as citizens and to assist those who are unable to protect themselves from neglect, exploitation or other hazardous situations. These services are provided under a contract and have a distinctly legal orientation. Services should only be given to the disabled individual, not parents.

6. Treatment services are medically related interventions designed to halt, control or reverse conditions which cause or complicate developmental disabilities. Such interventions may include: surgery provision of prosthetic devices, dental treatment, physical therapy, occupational therapy, speech and hearing therapy, and other medical and medically oriented treatments needed by the individual. Each of the treatment services must be provided by professional staff that are specifically credentialed to provide that service and are paid by the Charity Racing Days agency. Consultants are acceptable.

7. Recreational services provide for planned and supervised activities designed to help meet the individual's therapeutic needs for self-expression, social interaction and entertainment and develop skills and interests leading to constructive and enjoyable use of leisure time. Year round, regularly scheduled programs and day camps are included.

8. Long and short term living arrangements are settings for the provision of living quarters for developmentally disabled persons who need some degree of supervision, but who do not require the more intensive services provided by domiciliary care. Short term living arrangements refers to temporary residential care, for example, camps, in and out of home respite care, etc. Long term living arrangements refers to permanent residential care, for example, group homes, skill development homes, etc.

9. Day care services are the provision of comprehensive and coordinated activities providing personal care and other services to pre-school, school age and adult developmentally disabled individuals. The services are provided outside of the residence for a portion of the 24-hour day. Services include creative, educational, social, physical and learning activities designed to provide at least training, counseling, personal care and recreation services. Day care services for pre-school age and school age children are likely to emphasize recreation activities and maturation of the children in order to supplement service being provided by parents or guardians. Day care for adults is likely to emphasize the development of occupational and/or social skills to make the individual as independent as possible. Early intervention services are not considered day care, but are counted under education and training.

10. Education services are the provision of structured learning experiences based on appropriate evaluations and taking place within the least restrictive environment. Curriculum should be designed to develop ability to learn and acquire useful knowledge and basic skills, and to improve the ability to apply them to everyday living. Education services are to be provided to every age group and include infant stimulation, early intervention and adult activities programs, among others. Training services are the provision of a planned and systematic sequence in instruction to: develop skills for daily living, including self-help, motor skills, and communication; enhance emotional, personal, and social development; and provide experiences for gaining occupational and pre-vocational skills. Training services should

## TRANSPORTATION

be based upon appropriate evaluation of the individual and objectives designed to meet the needs of the individual. Education and training must be Department of Human Service or Department of Education contracted.

11. Sheltered employment services are the provision of activities involving work evaluation, occupational skills, training and paid employment for those who cannot be absorbed into the general labor market because of their disability.

12. Supported employment services are the provision of support services including job placement; careful work/job compatibility analysis; training; advocacy with parents, employers, and residential facility operators; mobility training; ongoing assessment and evaluation of worker; and follow up as needed, to an individual involved in paid work in a variety of integrated settings with preference to normalized business settings.

13. Transportation service is the provision of distinct and separate transporting services that is not a usual adjunct to another service, (that is, transportation to a day program), that is provided on an ongoing or as needed basis.

14. Rehabilitation technology services are the provision of systematic application of technologies, engineering methodologies or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation.

## INSURANCE

### (a)

#### DIVISION OF LICENSING AND ENFORCEMENT

##### Licensing Rules

##### Term of License

##### Notice of Administrative Correction: N.J.A.C.

##### 11:17-2.1

**Take notice** that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 11:17-2.1. Language submitted by the Department of Insurance as part of the proposal, published in the February 1, 1988 New Jersey Register at 20 N.J.R. 225(c), was erroneously not published in the notice of proposal, nor did it appear in the notice of adoption published in the April 18, 1988 New Jersey Register at 20 N.J.R. 904(b).

This administrative correction is in accordance with N.J.A.C. 1:30-2.7(a)3 in that the language missing from the last sentence of the subsection can be implied from the license term contained in the subsection's first sentence.

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

11:17-2.1 Term of license

(a) The standard term of an insurance producer license shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August, and November of each year. Licenses shall expire in the fourth year on the last day of the quarter **before the quarter** in which the license was effective.

(b) (No change.)

## TRANSPORTATION

### (b)

#### DIVISION OF RIGHT OF WAY

##### Acquisitions

##### Property Appraisal; Payments

##### Adopted Amendments: N.J.A.C. 16:5-2.2 and 3.1

Proposed: January 3, 1989 at 21 N.J.R. 13(a).

Adopted: February 3, 1989 by Robert A. Innocenzi, Deputy

Commissioner, Department of Transportation.

Filed: February 6, 1989 as R.1989 d.130, **without change**.

**TRANSPORTATION**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-22, 27:7-44.6 and 20:3-1 to 3-50.

Effective Date: March 6, 1989.

Expiration Date: March 6, 1994.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

**16:5-2.2 Property appraisal**

Prior to the institution of negotiation and any price discussions, all properties will be appraised by appraisal specialists who are separate and independent of negotiations responsibilities. Review appraisers will review the completed appraisals and establish the estimate of fair market value which, together with the appraisals, are reviewed and registered at the Department of Transportation headquarters before transmitting the appraisal to the District Office for institution of negotiations.

**16:5-3.1 Advance down payments**

Owners of improved properties where agreement is reached and improvements are taken may, upon acceptance and approval of the amount by the Commissioner, be eligible for advance down payments up to 25 percent of the purchase price, provided the amount of down payment does not exceed 75 percent of their equity in the property.

**(a)**

**DIVISION OF RIGHT OF WAY**

**Property Management**

**Public Auctions**

**Adopted Amendment: N.J.A.C. 16:7-1.3**

Proposed: January 3, 1989 at 21 N.J.R. 13(b).

Adopted: February 3, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: February 6, 1989 as R.1989 d.131, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:12-1.

Effective Date: March 6, 1989.

Expiration Date: March 6, 1994.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

**16:7-1.3 Public auctions**

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

(h) The cashier shall require the successful bidder to make a deposit in cash or by certified check in the amount of at least 25 percent of the bid price and to sign the applicable Departmental bid acceptance forms, a copy of which shall be furnished the bidder as a receipt.

(i) Deleted, existing (j) and (k) recodified as (i) and (j) (No change in text.)

**(b)**

**NEW JERSEY TRANSIT CORPORATION**

**Use or Occupancy of NJ TRANSIT-Owned Property**

**Adopted Amendments: N.J.A.C. 16:77-1.1, 1.4 and 1.5**

Proposed: January 3, 1989 at 21 N.J.R. 13(c).

Adopted: February 6, 1989 by the New Jersey Transit Corporation, Roger E. Nutt, Acting Executive Director.

Filed: February 10, 1989 as R.1989 d.133, **without change.**

Authority: N.J.S.A. 27:25-5(e), (h), (k) and 27:25-7(b).

Effective Date: March 6, 1989.

Expiration Date: January 21, 1990.

**ADOPTIONS**

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

**16:77-1.1 Definitions**

The following words and terms, as used in this chapter, shall have the following meanings:

...  
"Municipality" means a local governing body such as a borough township, city, town or village.

**16:77-1.4 Administrative fees**

(a) Administrative fees will be charged as follows:

1.-4. (No change.)

5. Any application for any type of permit by a municipality . . . \$100.00.

6. (No change in text.)

**16:77-1.5 Permit fees: general conditions**

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

(h) NJ TRANSIT may negotiate lower permit fees when requested to do so by any municipal applicant acting on its own behalf.

**TREASURY-GENERAL**

**(c)**

**DIVISION OF PENSIONS**

**State Health Benefits Program**

**Employer Incentive for Non-Enrollment**

**Adopted New Rule: N.J.A.C. 17:9-1.8**

Proposed: November 21, 1988 at 20 N.J.R. 2863(a).

Adopted: January 31, 1989, by the State Health Benefits Commission, Douglas R. Forrester, Secretary.

Filed: February 2, 1989 as R.1989 d.126, **without change.**

Authority: N.J.S.A. 52:14-17.27 et seq.

Effective Date: March 6, 1989.

Expiration Date: October 3, 1993.

**Summary of Public Comments and Agency Responses:**

The State Health Benefits Commission received three comments on the proposed new rule. The comments were from Arnold S. Cohen, Esq., representing the Sayreville Education Association, Laura M. McGeough, Esq., representing the Sayreville Board of Education, and Richard A. Friedman, Esq., representing the New Jersey Education Association. The Sayreville Board of Education and the Sayreville Education Association both made the same comment that the proposed rule is vague and over-broad, and does not address the specific question of whether an employer, through its collective bargaining agreement, can agree to pay a percentage of the cash saved as a result of nonenrollment in the program by employees who do not need State Health Benefits Program (SHBP) coverage, or who independently elect not to enroll in the plan. The Sayreville Education Association offered the further comment that the proposed rule is an obvious effort to circumvent the current litigation on this issue, and is made in bad faith. The New Jersey Education Association claimed that the proposed rule improperly and unlawfully infringes upon the rights of employers and employees to negotiate appropriate compensation for public employees. It offered four points to support this claim. First, there is no evidence to support the claim by the Commission that the payment of financial benefits in lieu of State Health Benefits Program participation may adversely affect the program. Second, instances on non-participation would be rare and have virtually little impact on the program. Third, it is unfair and unjust to require employees who do not need coverage to forego compensation in instances where the program is of little value to them. Fourth, insurance constitutes a form of compensation, and there is nothing improper or unlawful when employers and employees negotiate to provide monetary compensation in lieu of insurance. The Commission's response to each comment is discussed below.

**Proposed Rule is Vague and Overbroad**

It is difficult to perceive how this proposed rule can be considered vague. It is only three lines in length and simply provides that an employer participating in the program shall not offer an enticement in cash or anything else of value to an employee who elects not to participate in the program or to terminate participation in the program. It is difficult to perceive how a rule on this subject could be more clear. The rule simply and clearly provides that a participating employer may not offer an employee an inducement not to participate in the program.

The comment that the proposed rule is overbroad is a different issue from the comment that the rule is vague. This comment itself is vague because the commentators provided no indication of how or why the rule is overbroad. It suggests either that the Commission has no legal authority to adopt this rule or that the rule goes beyond the legitimate interest and authority of the Commission to adopt rules to administer the program. This comment on overbreadth seems related to the second comment of the Board and the Association that the rule does not address the issue of whether employers and employees can collectively bargain over this issue.

The Commission strongly feels that this rule is not only clearly within its legitimate interest and authority to adopt rules to administer the program, but that it is important that the rule be adopted to insure uniformity of benefits under the program, and to prevent individual employer actions under the program which could lead to nonuniformity. The laws governing health benefits for public employees clearly indicate a long-standing interest on the part of the Legislature to assure uniformity of benefits and equality of treatment of public employees (see N.J.S.A. 18A:16-21, 40A:10-26 and 52:14-17.28). This goal of uniformity has also been recognized by the courts (see *N.J. Patrolmen's Benevolent Association v. New Jersey Health Benefits Association*, 153 N.J. Super. 152, 155-56 (App. Div. 1977) and *N.J. School Boards Association v. State Health Benefits Commission*, 183 N.J. Super. 215, 218-224, (App. Div. 1982)). If individual employers are permitted to offer inducements not to participate in the program, they will be providing a benefit related to health care, that is, cash or something else of value in lieu of health care coverage, which would not be available to all employees participating in the program. The law and rules governing the program make provision for duplication of coverage, N.J.S.A. 52:14-17.31 and N.J.A.C. 17:9-5.7 and 5.9. The contracts with the carriers under the program and the guidelines for contracts for supplementary benefits provide for coordination of benefits to avoid duplication of benefits and reimbursement greater than the actual expenses for health care services. Participation in SHBP by public employers is voluntary, but any employer electing to participate "shall become a participating employer under the program, subject to and in accordance with the rules and regulations of the commission relating thereto." N.J.S.A. 52:14-17.37. The Commission is authorized "to prescribe rules and regulations satisfactory to the carrier or carriers under which employers may participate in the health benefits program provided by this act." N.J.S.A. 52:14-17.36.

**Proposed Rule Does Not Address the Issue of Whether This Subject May Be Collectively Bargained by an Employer and Employee**

The proposed rule does not address this issue because the State Health Benefits Commission has no jurisdiction or legal authority in the area of what are legitimate subjects for collective bargaining between public employers and public employees. This comment is similar to the fourth point of the comment by the New Jersey Education Association. Even though none of these comments is phrased in terms that the rule is contrary to the State public labor laws, the gist of the comments seems to be that public employers and employees are authorized to negotiate this subject under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and the rule conflicts with this authorization.

This issue has been addressed in several court cases. In the *N.J. School Boards Association* case (cited above), the issue was the extension of increases in the benefits under the program as a result of State labor contracts to other participating employers. The argument was made by the appellants that the action by the Commission was contrary to the State labor laws. The court dismissed the argument as without merit and stated that:

Local groups are not forced to participate in the state program. They may voluntarily elect to participate in the program and, if the benefits provided thereunder exceed those agreed upon through the negotiating process or provided for in the budget, a local group is free to withdraw from it at any time consistent with its obligations under existing collective negotiation agreements. 183 N.J. Super. at 223-24.

If the restrictions under the program are greater than those provided under collective bargaining agreements, a participating local employer is free to withdraw from the program.

This issue was also raised in *Fair Lawn Education Association v. Fair Lawn Board of Education*, 79 N.J. 574 (1979). The fourth point in the comment of the New Jersey Education Association is that a cash payment in lieu of health benefits coverage is a form of compensation which may be negotiated under the State labor laws. The *Fair Lawn* case specifically addressed this issue. There the subject was an early retirement incentive program and the issue was whether payments under the program were a form of negotiable compensation. The court held that they were not. It stated that local boards of education did not have unlimited power to negotiate all types of financial benefits for their teaching employees. The authorization to set salaries under the law is limited to compensation which bears some relation to the rendition of past or present service. The payments under the early retirement incentive program were geared to age, not service. The court further stated that the Employer-Employee Relations Act did not enlarge the areas in which a local employer had been delegated the responsibility to act. The Act did not operate to confer authority on a board of education to agree to compensation schemes which bear no relation to the amount and quality of the services which its teaching employees have rendered.

The *Fair Lawn* case raises the question of whether cash payments in lieu of health insurance coverage may be provided by local employers. However, even if payments of this type may be provided, this does not diminish the authority or responsibility of the Commission to adopt reasonable rules to insure uniformity of benefits under SHBP.

**No Evidence to Support Adverse Affect to the Program**

The potential for adverse affect upon the program is substantial and real. If employers are permitted to provide inducements for employees not to participate in the program, many employers will certainly do so. They would reduce their payments to SHBP and give some of the cost savings to employees who do not participate. The loser in these arrangements is the program and employers who do not provide for such payments. Health benefits are provided to public employees through an insurance mechanism. The coverage is available and paid for regardless of whether an employee uses the benefits. The benefits are available when an employee or dependent needs them. If an employer is permitted to provide an inducement to an employee who does not need the coverage, the employee will obviously stay out of the program until the coverage is needed. The employer and employee would not be making payments to the program during the period in which the employee was induced not to participate. This would defeat the insurance nature of the program and constitute a selection against the system. Other participating employers would have to make up the amount not paid by the employer inducing its employees not to join the program. The *Fair Lawn* case, cited above, held that a potential for substantial harm to a State retirement system was sufficient warrant to hold invalid an early retirement incentive program. Here the potential for substantial harm to SHBP is a sufficient basis for declaring that financial inducements not to participate in the program may not be provided by participating employers.

**Instances of Non-participation Would Be Rare and Have Little Impact on the Program**

This point is similar to the last point that there was no evidence of financial harm. The commenter claims that the instances of non-participation will be rare and thus there will be little impact on the overall program. If the commenter's point is accurate, why would local employers want the right to offer inducements not to participate. A similar argument was made in the *Fair Lawn* case. There the court dismissed the argument with a finding that the probability of the early retirement incentive program in *Fair Lawn* being copied by other employers was strong. The potential harm to a State retirement system from the spread of such programs was sufficient to invalidate them. The probability that inducements not to participate in SHBP would be adopted by many participating employers seems too strong to even question. It is something that local employers could offer to their employees which would not cost them anything and could even result in savings to local employers. However, the saving would be at the expense of the program and the participating employers who did not provide the inducements. The potential harm to SHBP from the spread of such inducements is substantial and more than a sufficient basis for adoption of the rule.

**It Is Unfair and Unjust to Require Employees to Forego Compensation in Lieu of Health Benefits Coverage They Do Not Need**

This is the third point made in the comment of the New Jersey Education Association. The point contained no citation to any law or case to

the effect that an employee had any right to or reasonable expectation of compensation in lieu of health benefits coverage. As indicated above, the *Fair Lawn* case raises a question of whether this type of payment can be provided by a local employer. However, the Commission's primary concern is not whether employers can provide the payments, but whether they can provide the payments and continue to participate in the program. It is the Commission's determination that they cannot because it would provide for nonuniformity of benefits and has the potential for increasing the cost of the program from employers who do not offer the inducements not to participate. It can be argued that it is unfair and unjust to participating employers and employees to permit some employers to pay employees not to participate and to reduce their liability to the program, while the employees retain the right to join the program whenever they feel there is a need for the coverage.

**Proposed Rule is an Obvious Attempt to Circumvent Current Litigation and Is Made in Bad Faith**

This was the second comment made by the Sayreville Education Association and goes to the procedure being followed by the Commission on this issue rather than the substance of the rule itself. There is a pending administrative matter on this issue between the Commission and the Sayreville Board of Education. When the issue was raised before the Commission by the Sayreville Board of Education, the Commission acted in accordance with its authority and responsibility to decide cases brought before it. It is well accepted that administrative agencies may act through adjudication or rulemaking. There is no statutory provision or rule which specifically addresses the issue of providing cash payments or other inducements to employees who elect not to participate in the program. However, the Commission felt strongly that providing such inducements is clearly contrary to the long-standing policy of uniformity of benefits mandated by the statutes and recognized by the courts, and the specific statutory provisions concerning participation by local employers in the program. These provisions state that the laws governing the program are to be construed as to local employers the same as for the State and its employees, and that the Commission may prescribe rules for participation by local employers. There is no authorization in the law or the rules of the Commission for cash payments or other inducements to employees not to participate in the program. In accordance with its adjudicatory authority, the Commission advised the Sayreville Board of Education that it could not provide cash payments to its employees who elected not to participate in the program. The Board has requested that this matter be handled as a contested case through the Office of Administrative Law.

Because of the importance of this issue, the Commission feels that it should be specifically addressed in the rules of the Commission. This will provide clear notice to all participating employers that inducements may not be offered to employees not to participate in the program. The proposed rule was not offered in bad faith in an attempt to circumvent the pending litigation. The Commission decided the Sayreville matter in accordance with its adjudicatory authority in a manner consistent with the proposed rule. If the Commission receives a recommended adminis-

trative law decision in the pending matter which differs from the proposed rule, it could still accept the decision and modify or repeal the rule. If the Commission's final decision in the Sayreville matter is consistent with the rule and is subsequently overruled by the courts, the court decision would become the law on the subject.

Full text of the adoption follows.

17:9-1.8 Employer incentives for non-enrollment prohibited

An employer shall not offer a financial enticement of cash or anything else of value to an employee who elects not to enroll or to terminate enrollment in the State Health Benefits Program.

## OTHER AGENCIES

### (a)

**CASINO CONTROL COMMISSION  
Temporary Amendment of Rules of the Games  
Pursuant to Blackjack Experiment  
Late Surrender Wagers**

**N.J.A.C. 19:47-2.8**

Petitioner: Claridge at Park Place, Inc.

Authority: N.J.S.A. 5:12-69(e) (P.L. 1987 c.354), 5:12-70(f) and 5:12-100(e).

**Take notice** that beginning March 15, 1989, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for a period of 90 days for the purpose of determining if a new rule should be adopted which would permit casino licensees to offer a patron the option of modified (late) surrender.

**Specifically**, the experiment would allow a patron to immediately surrender half his or her initial wager after the first two cards are dealt providing the dealer does not have blackjack. If, after the first two cards are dealt, the dealer's first card is an ace or ten value card, the wager will be settled when the dealer's hole card is revealed. The experiment will be conducted on a limited number of blackjack tables at Claridge Park Place, Inc. Casino. A copy of the experimental new rule will be posted in the Claridge during the term of the experiment and may also be obtained from the Casino Control Commission.

**A petition for rulemaking** on this subject was filed with the Commission on April 13, 1988. Should the experiment prove successful, the Commission will propose the new rule for adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Notice of Action on Petition for Rulemaking on Individual Subsurface Sewage Disposal Systems

##### N.J.A.C. 7:9A-1.6(e)

Petitioner: Neil Yoskin, Esq.

Take notice that on January 13, 1989, the Department of Environmental Protection (Department) received a petition for rulemaking concerning individual subsurface sewage disposal systems. Petitioner requests that the Department amend N.J.A.C. 7:9A-1.6(e) to allow administrative authorities to construct or alter individual subsurface disposal systems regardless of their proximity to sanitary sewer lines.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department gives notice that it denies this petition for the reasons set forth below.

The petitioner has requested that the Department amend a rule which has not yet been adopted. N.J.A.C. 7:9A-1.6(e) was proposed, as part of a major rulemaking action, in the August 1, 1988 New Jersey Register (20 N.J.R. 1790(a); DEP Docket No. 026-88-07). The comment period closed on October 14, 1988. At the present time, the Department is reviewing and summarizing the comments received and is preparing responses to them. Since the rule has not yet been adopted, the rulemaking petition must be denied. The petitioner may resubmit a rulemaking petition subsequent to the adoption of the rule, if he so desires.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(b)

### DIVISION OF WATER RESOURCES

#### Amendment to the Mercer County Water Quality Management Plan

##### Public Notice

Take notice that Giancarli Builders has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment, "An Amendment Concerning the Application of Wetlands Policy for Mountainview Development in Ewing Township (Water Quality Management Plan Section 4.5.1.)" would provide for a minor intrusion through a wetlands area running along Bear Creek. Five-thousandths of an acre (0.005 acres) of intrusion will occur due to construction of a concrete driveway culvert serving two of the homes and a temporary intrusion of 0.011 acres to construct a sanitary sewer line crossing.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a public hearing on the proposed WQM Plan amendment. The public hearing will be on Wednesday, April 12, 1989 at 8:30 A.M. in Room 211 of the Mercer County Administration Building, 640 South Broad Street, Trenton, New Jersey. Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to George Horzempa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted by April 27, 1989. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

## OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

N.J.A.C.	Expiration Date
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

## AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

## PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

## COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	9/1/93
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90

## BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92

N.J.A.C.	Expiration Date
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

**DEPARTMENT OF MILITARY AND  
VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90

N.J.A.C.	Expiration Date
7:20A	12/16/93
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/7/89
8:33K	4/16/89
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90

N.J.A.C.	Expiration Date
8:70	8/19/93
8:71	4/2/89

N.J.A.C.	Expiration Date
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

### HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

### HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89

### CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

### INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

### LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

<b>N.J.A.C.</b>	<b>Expiration Date</b>
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	8/20/89
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

**LAW AND PUBLIC SAFETY—TITLE 13**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93

**PUBLIC UTILITIES—TITLE 14**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

**ENERGY—TITLE 14A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
16:1	8/5/90

N.J.A.C.	Expiration Date
16:2	10/3/88
16:5	3/6/94
16:6	9/3/90
16:6	3/6/94
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

#### TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	10/7/93

N.J.A.C.	Expiration Date
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93

#### TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

#### OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

# 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 January 3, 1989 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).**

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 19, 1988**

**NEXT UPDATE: SUPPLEMENT JANUARY 17, 1989**

**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
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 589 and 658	March 6, 1989

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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## ADMINISTRATIVE LAW—TITLE 1

1:1-5.5	Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)	
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)	
1:1-14.3	Interpreters for hearing impaired	20 N.J.R. 2845(c)	
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)	
1:13A	Lemon Law hearings	21 N.J.R. 91(a)	
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)	R.1989 d.20 21 N.J.R. 152(a)

Most recent update to Title 1: TRANSMITTAL 1988-5 (supplement November 21, 1988)

## AGRICULTURE—TITLE 2

2:2	Animal disease control program	20 N.J.R. 2419(a)	R.1989 d.30 21 N.J.R. 154(a)
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)	
2:24-2, 3	Registration and transportation of bees	20 N.J.R. 2951(a)	R.1989 d.128 21 N.J.R. 633(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)	
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28	Sire Stakes conditions	20 N.J.R. 2952(a)	R.1989 d.95 21 N.J.R. 443(a)
2:33	Agricultural fairs	20 N.J.R. 2954(a)	R.1989 d.129 21 N.J.R. 633(b)
2:52-1.6	Reporting by small milk dealers	20 N.J.R. 2955(a)	R.1989 d.127 21 N.J.R. 634(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	
2:76-5.3	Soil and water conservation projects: cost sharing	21 N.J.R. 230(a)	
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)	R.1989 d.49 21 N.J.R. 158(a)
2:76-8	Acquisition of farmland in fee simple	20 N.J.R. 2501(a)	R.1989 d.48 21 N.J.R. 160(a)
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland	21 N.J.R. 231(a)	

Most recent update to Title 2: TRANSMITTAL 1988-8 (supplement November 21, 1988)

## BANKING—TITLE 3

3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)	
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)	
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)	

Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)

## CIVIL SERVICE—TITLE 4

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)	
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)	
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)	

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

## PERSONNEL—TITLE 4A

4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)	R.1989 d.29 21 N.J.R. 19(a)
4A:8	Layoffs	20 N.J.R. 2955(b)	
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)	

Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:11	Relocation assistance and eviction	21 N.J.R. 231(b)		
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	Expired	
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(a)	R.1989 d.66	21 N.J.R. 288(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-4.1	Council on Affordable Housing: adoption of housing element	20 N.J.R. 2613(b)	R.1989 d.41	21 N.J.R. 160(b)
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:91-14	Council on Affordable Housing: amending of certified municipal plan	20 N.J.R. 2613(c)	R.1989 d.42	21 N.J.R. 161(a)
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)	R.1989 d.125	21 N.J.R. 635(a)
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)		

Most recent update to Title 5: TRANSMITTAL 1988-12 (supplement December 19, 1988)

#### MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

#### EDUCATION—TITLE 6

6:2	Appeals to State Board	20 N.J.R. 2615(a)	R.1989 d.67	21 N.J.R. 288(b)
6:3-1.10, 1.12, 1.14, 1.18, 1.21, 1.22, 3.1	School districts: corrections to text	_____	_____	21 N.J.R. 19(b)
6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	20 N.J.R. 235(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)	R.1989 d.86	21 N.J.R. 292(a)
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)	R.1989 d.93	21 N.J.R. 635(b)
6:28	Special education	21 N.J.R. 239(a)		
6:39	High school core proficiencies	20 N.J.R. 235(a)		
6:46-4.1, 4.4-4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)		

Most recent update to Title 6: TRANSMITTAL 1988-10 (supplement December 19, 1988)

#### ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7	Coastal Permit Program	21 N.J.R. 369(a)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	20 N.J.R. 2815(a)	R.1989 d.8	21 N.J.R. 34(a)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)	R.1989 d.28	21 N.J.R. 43(a)
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)	R.1989 d.12	21 N.J.R. 46(a)
7:11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:14	Water pollution control	21 N.J.R. 373(a)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:20A	Water usage certifications for agricultural and horticultural purposes	20 N.J.R. 2663(a)	R.1989 d.36	21 N.J.R. 176(a)
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)	R.1989 d.53	21 N.J.R. 179(a)
7:25-1.5, 8	Clam licenses	20 N.J.R. 2666(a)	R.1989 d.26	21 N.J.R. 55(a)
7:25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)		
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)	R.1989 d.54	21 N.J.R. 190(a)
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	20 N.J.R. 2817(a)	R.1989 d.55	21 N.J.R. 198(a)
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-9.4	General facility standards: correction to text			21 N.J.R. 56(a)
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)	R.1989 d.11	21 N.J.R. 56(b)
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)	R.1989 d.27	21 N.J.R. 57(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)	R.1989 d.62	21 N.J.R. 321(a)
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)	R.1989 d.119	21 N.J.R. 462(a)
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)	R.1989 d.123	21 N.J.R. 483(a)
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)	R.1989 d.61	21 N.J.R. 324(a)

**Most recent update to Title 7: TRANSMITTAL 1988-12 (supplement December 19, 1988)**

**HEALTH--TITLE 8**

8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)		
8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)	R.1989 d.77	21 N.J.R. 295(a)
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)	R.1989 d.79	21 N.J.R. 296(a)
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)	R.1989 d.80	21 N.J.R. 296(b)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)	R.1989 d.78	21 N.J.R. 297(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)	R.1989 d.25	21 N.J.R. 58(a)
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33E-1.2, 1.11	Cardiac diagnostic facilities: pediatric patients; new facilities	20 N.J.R. 2847(a)	R.1989 d.102	21 N.J.R. 498(a)
8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)	R.1989 d.105	21 N.J.R. 499(a)
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)		
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)		
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)		
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(a)		
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)		
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)	R.1989 d.104	21 N.J.R. 500(a)
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)	R.1989 d.87	21 N.J.R. 297(b)
8:43B-18	Hospital anesthesiology standards	20 N.J.R. 2544(a)	R.1989 d.103	21 N.J.R. 501(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-10.2, 10.4, 10.5	Scheduling of controlled dangerous substances	_____	_____	21 N.J.R. 70(b), 70(c), 70(d)
8:66-1	Bureau of Alcohol Countermeasures (recodified from 13:20-31)	_____	_____	21 N.J.R. 70(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b))	20 N.J.R. 871(a)	R.1989 d.3	21 N.J.R. 63(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a))	20 N.J.R. 1766(a)	R.1989 d.5	21 N.J.R. 63(b)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)	R.1989 d.4	21 N.J.R. 63(c)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)		
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)		

**Most recent update to Title 8: TRANSMITTAL 1988-11 (supplement December 19, 1988)**

**HIGHER EDUCATION—TITLE 9**

9:1	Licensing and degree approval standards	20 N.J.R. 2965(a)	R.1989 d.118	21 N.J.R. 444(a)
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-3.2	1989-80 Tuition Aid Grant Award Table	21 N.J.R. 109(a)		
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)		
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

**Most recent update to Title 9: TRANSMITTAL 1988-7 (supplement November 21, 1988)**

**HUMAN SERVICES—TITLE 10**

10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6-5.11, 5.16-5.24	Repeal (see 10:31)	21 N.J.R. 273(a)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)	R.1989 d.120	21 N.J.R. 504(a)
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1, 1.7-1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)		
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)	R.1989 d.33	21 N.J.R. 162(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	Emergency (expires 2-27-89)	R.1989 d.57	21 N.J.R. 207(a)
10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)		
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)	R.1989 d.7	21 N.J.R. 20(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)		
10:87	Food Stamp Program	20 N.J.R. 2689(a)	R.1989 d.121	21 N.J.R. 511(b)
10:87-12.1-12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	20 N.J.R. 2592(a)	R.1989 d.1	21 N.J.R. 21(a)
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)		
10:100-App. A	Supplemental Security Income (SSI) payment levels	Emergency (expires 2-28-89)	R.1989 d.58	21 N.J.R. 208(a)
10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:124-1.2, 1.3, 5.2	Shelters accepting juveniles: corrections to text			21 N.J.R. 162(b)
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)	R.1989 d.132	21 N.J.R. 636(a)

Most recent update to Title 10: TRANSMITTAL 1988-12 (supplement December 19, 1988)

#### CORRECTIONS—TITLE 10A

10A	Names of correctional institutions: administrative change			21 N.J.R. 558(a)
10A:1-11.3, 11.8	Personal property of inmates	20 N.J.R. 2746(a)	R.1989 d.45	21 N.J.R. 163(a)
10A:3-5.10	Collection of urine samples from inmates	21 N.J.R. 10(a)		
10A:4-6.1, 6.3, 6.4	Chronic violator units	21 N.J.R. 10(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:5-5.2	Involuntary placement to protective custody: hearing procedure	20 N.J.R. 2746(b)	R.1989 d.46	21 N.J.R. 163(a)
10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmity care	20 N.J.R. 2969(a)		
10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)	R.1989 d.68	21 N.J.R. 299(a)
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)		
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)		
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)	R.1989 d.32	21 N.J.R. 163(c)
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		
10A:71-3.21, 6.4	State Parole Board: juvenile inmates: conditions of parole	20 N.J.R. 2747(b)		

Most recent update to Title 10A: TRANSMITTAL 1988-10 (supplement December 19, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>INSURANCE—TITLE 11</b>				
11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:3-13.5, 14.1, 14.3, 14.5, 14.6, 14.7, 15.1-15.8	Private passenger automobile coverage: standards for written notice to buyers	20 N.J.R. 2984(a)	R.1989 d.117	21 N.J.R. 558(b)
11:3-16	Private passenger automobile rate filings for voluntary market	20 N.J.R. 2135(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)		
11:4-29	Homeowners price comparison survey	20 N.J.R. 2181(a)	R.1989 d.50	21 N.J.R. 164(a)
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:4-31	Term life insurance comparison survey	20 N.J.R. 2990(a)	R.1989 d.122	21 N.J.R. 566(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:14	Auto body repair facilities: licensure rules	21 N.J.R. 280(a)		
11:17-2.1	Term of insurance producer license: administrative correction	_____	_____	21 N.J.R. 637(a)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		

**Most recent update to Title 11: TRANSMITTAL 1988-8 (supplement December 19, 1988)**

<b>LABOR—TITLE 12</b>				
12:16-4.7, 10, 13.4, 13.7, 22	Employer wage reporting, penalty abatement requests, hearings	21 N.J.R. 281(a)		
12:16-21	Employer reporting of workplace and residential zip codes of employees	20 N.J.R. 2625(a)	R.1989 d.39	21 N.J.R. 167(a)
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:41-1	Job Training Partnership Act: grievance procedures	20 N.J.R. 2626(a)	R.1989 d.38	21 N.J.R. 168(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:60-8	Public works and EDA projects: debarment from contracting	20 N.J.R. 2520(a)	R.1989 d.23	21 N.J.R. 21(b)
12:100-4.2	Public employee safety and health: access to exposure and medical records	20 N.J.R. 2995(a)	R.1989 d.82	21 N.J.R. 299(b)
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-9.18	Public employee safety and health: work in confined spaces	20 N.J.R. 2855(b)	R.1989 d.83	21 N.J.R. 299(c)
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
12:235-3.11-3.23	Workers' Compensation: conduct of compensation judges	20 N.J.R. 2442(c)	R.1989 d.24	21 N.J.R. 23(a)

**Most recent update to Title 12: TRANSMITTAL 1988-10 (supplement December 19, 1988)**

<b>COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A:12-2.10	Local Development Financing Fund program: information confidentiality	20 N.J.R. 2524(a)	R.1989 d.6	21 N.J.R. 26(a)
12A:12-3.9	Tourism matching grants: purchases by grantee	21 N.J.R. 114(a)		
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:80-1	Urban Small Business Incubator Program	20 N.J.R. 2524(b)	R.1989 d.91	21 N.J.R. 299(d)
12A:81-1	Urban Development Program	20 N.J.R. 2527(a)	R.1989 d.92	21 N.J.R. 302(a)
12A:82-1	Neighborhood Development Corporation	20 N.J.R. 2530(a)	R.1989 d.90	21 N.J.R. 304(a)
12A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation Partnership program	21 N.J.R. 433(a)		

**Most recent update to Title 12A: TRANSMITTAL 1988-7 (supplement December 19, 1988)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)		
13:20-31	Bureau of Alcohol Countermeasures (recodified to 8:66-1)			21 N.J.R. 70(a)
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)	R.1989 d.22	21 N.J.R. 26(b)
13:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)		
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)		
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 2359(a)	R.1989 d.40	21 N.J.R. 171(a)
13:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)		
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)	R.1989 d.63	21 N.J.R. 338(a)
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	21 N.J.R. 284(a)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:40-10.1	Professional engineers and land surveyors: contract to provide services	20 N.J.R. 2243(b)	R.1989 d.64	21 N.J.R. 339(a)
13:44-1.1	Qualified graduate of veterinary medicine	20 N.J.R. 2680(b)	R.1989 d.111	21 N.J.R. 446(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-26	Automotive dispute resolution: Lemon Law implementation	20 N.J.R. 2681(b)	R.1989 d.65	21 N.J.R. 339(b)
13:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)		
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)	Expired	
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)		
13:47B	Commercial weighing and measuring devices	20 N.J.R. 2856(a)	R.1989 d.112	21 N.J.R. 446(b)
13:49	State Medical Examiner rules	20 N.J.R. 2687(a)	R.1989 d.35	21 N.J.R. 171(b)
13:49	State Medical Examiner: standards and procedures	20 N.J.R. 2856(b)	R.1989 d.110	21 N.J.R. 447(a)
13:51-3.6	Chemical breath testing: correction to text			21 N.J.R. 171(c)
13:70-1.30	Thoroughbred racing: horsemen's associations and surplus funds	20 N.J.R. 2995(c)	R.1989 d.106	21 N.J.R. 451(a)
13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)	R.1989 d.74	21 N.J.R. 344(a)
13:70-9.29	Thoroughbred racing: apprentice jockey weight allowance	20 N.J.R. 2996(a)	R.1989 d.108	21 N.J.R. 451(b)
13:70-9.30	Thoroughbred racing: apprentice jockey contracts	20 N.J.R. 2996(b)	R.1989 d.107	21 N.J.R. 451(c)
13:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)		
13:71-1.25	Harness racing: horsemen's associations and surplus funds	20 N.J.R. 2997(a)	R.1989 d.109	21 N.J.R. 451(d)
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		

Most recent update to Title 13: TRANSMITTAL 1988-11 (supplement December 19, 1988)

**PUBLIC UTILITIES—TITLE 14**

14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:17	Office of Cable Television: practice and procedure	21 N.J.R. 440(a)		
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		

**Most recent update to Title 14: TRANSMITTAL 1988-2 (supplement December 19, 1988)**

#### ENERGY—TITLE 14A

14A:14	Certificate of need for electrical facilities	20 N.J.R. 2188(b)	R.1989 d.124	21 N.J.R. 573(a)
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**Most recent update to Title 14A: TRANSMITTAL 1988-3 (supplement November 21, 1988)**

#### STATE—TITLE 15

15:2-2, 3	Preclearance of corporation documents and adoption of corporation name	20 N.J.R. 2998(a)	R.1989 d.89	21 N.J.R. 452(a)
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**Most recent update to Title 15: TRANSMITTAL 1988-2 (supplement September 19, 1988)**

#### PUBLIC ADVOCATE—TITLE 15A

**Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)**

#### TRANSPORTATION—TITLE 16

16:5-2.2, 3.1	Property acquisitions: appraisal; payments	21 N.J.R. 13(a)	R.1989 d.130	21 N.J.R. 637(b)
16:7-1.3	Auctions of buildings and excess land parcels	21 N.J.R. 13(b)	R.1989 d.131	21 N.J.R. 638(a)
16:21-1.2, 3.1	State aid to counties and municipalities	20 N.J.R. 2999(a)	R.1989 d.71	21 N.J.R. 307(a)
16:21A-1.3, 3.1	State aid for bridge rehabilitation	20 N.J.R. 3000(a)	R.1989 d.70	21 N.J.R. 307(b)
16:22-1.3, 3.1	State aid for urban revitalization, special demonstration and emergency projects	20 N.J.R. 3000(b)	R.1989 d.69	21 N.J.R. 307(c)
16:28-1.6, 1.14, 1.44	Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County	20 N.J.R. 2630(a)	R.1989 d.19	21 N.J.R. 26(c)
16:28-1.13	Speed limit zone along Route 20 in Paterson	20 N.J.R. 2631(a)	R.1989 d.14	21 N.J.R. 27(a)
16:28-1.17	Speed limit zones along Route 147 in Cape May County	21 N.J.R. 119(a)		
16:28-1.25	Speed limit zones along Route 23 in Sussex County	21 N.J.R. 119(b)		
16:28-1.72	School zone along U.S. 206 in Montaque Township	20 N.J.R. 2862(a)	R.1989 d.51	21 N.J.R. 172(a)
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)		
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)	R.1989 d.114	21 N.J.R. 453(a)
16:28-1.79, 1.81	Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County	20 N.J.R. 2632(a)	R.1989 d.17	21 N.J.R. 28(a)
16:28-1.130	Speed limit zones along Route 66 in Monmouth County	20 N.J.R. 2633(a)	R.1989 d.13	21 N.J.R. 27(b)
16:28A-1.4, 1.11, 1.21, 1.38	Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30	20 N.J.R. 2862(b)	R.1989 d.52	21 N.J.R. 172(b)
16:28A-1.7, 1.22, 1.32, 1.34	Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville	20 N.J.R. 2633(b)	R.1989 d.18	21 N.J.R. 28(b)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)	R.1989 d.76	21 N.J.R. 308(a)
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)	R.1989 d.75	21 N.J.R. 308(b)
16:28A-1.33	No stopping or standing zone along Route 47 in Franklin Township	20 N.J.R. 2634(a)	R.1989 d.15	21 N.J.R. 29(a)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)	R.1989 d.115	21 N.J.R. 453(b)
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)		
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)	R.1989 d.113	21 N.J.R. 453(c)
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)		
16:30-10.9	Midblock crosswalk along U.S. 9 in Galloway Township	20 N.J.R. 2635(a)	R.1989 d.16	21 N.J.R. 29(b)
16:31-1.11	Turn restrictions along Route 21 in Newark	20 N.J.R. 3120(a)	R.1989 d.116	21 N.J.R. 455(a)
16:32-3.5, 3.6, App. A	102-inch truck standard network; Route 47 access	20 N.J.R. 2536(b)	R.1989 d.9	21 N.J.R. 29(c)
16:44-1.2	Classification of prospective bidders for department projects	20 N.J.R. 3004(a)	R.1989 d.88	21 N.J.R. 309(a)
16:49-1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials: intrastate shipments of combustible liquids	20 N.J.R. 3005(a)	R.1989 d.101	21 N.J.R. 456(a)
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)	R.1989 d.56	21 N.J.R. 310(a)
16:54-1.4	Licensing of aeronautical facilities	20 N.J.R. 2638(a)	R.1989 d.31	21 N.J.R. 173(a)
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:76	NJ TRANSIT: private carrier capital improvement	20 N.J.R. 2638(b)	R.1989 d.73	21 N.J.R. 310(b)
16:77-1.1, 1.4, 1.5	NJ TRANSIT: fees charged to municipalities	21 N.J.R. 13(c)	R.1989 d.133	21 N.J.R. 688(b)
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		

Most recent update to Title 16: TRANSMITTAL 1988-11 (supplement November 21, 1988)

#### TREASURY-GENERAL—TITLE 17

17:1-1.18	Public retirement systems: disbursement checks	20 N.J.R. 2639(a)	R.1989 d.37	21 N.J.R. 173(b)
17:2-2.3	Public Employees' Retirement System: eligibility	21 N.J.R. 437(b)		
17:6-1.4	Consolidated Police and Firemen's Pension Fund: candidates for commission membership	21 N.J.R. 438(a)		
17:9-1.8	State Health Benefits Program: enrollment policy	20 N.J.R. 2863(a)	R.1989 d.126	21 N.J.R. 638(c)
17:20-5.3, 6.1, 8.1	Lottery Commission rules: corrections to text			21 N.J.R. 247(a)
17:25	Collection of delinquent educational loans from local government employees	20 N.J.R. 2537(b)	R.1989 d.2	21 N.J.R. 30(a)
17:33	Catastrophic Illness in Children Relief Fund: surcharge collection	21 N.J.R. 121(a)		

Most recent update to Title 17: TRANSMITTAL 1988-11 (supplement December 19, 1988)

#### TREASURY-TAXATION—TITLE 18

18:3	Alcoholic Beverage Tax	21 N.J.R. 122(a)		
18:5	Cigarette Tax	21 N.J.R. 123(a)		
18:6	Unfair Cigarette Sales Act rules	21 N.J.R. 124(a)		
18:6-7.13	Wholesaling of prepackaged cigarettes	20 N.J.R. 2192(b)	R.1989 d.84	21 N.J.R. 311(a)
18:7	Corporation Business Tax	21 N.J.R. 14(a)		
18:7-8.8	Corporation Business Tax: allocable receipts	21 N.J.R. 438(b)		
18:8	Financial Business Tax	21 N.J.R. 16(a)		
18:12-7.1, 7.12	Homestead tax rebate: extension of filing time	21 N.J.R. 16(b)		
18:15-2.15	Farmland assessment of woodland: filing of applications	21 N.J.R. 125(a)		
18:18	Motor Fuels Tax	21 N.J.R. 125(b)		
18:19	Motor fuels retail sales	21 N.J.R. 126(a)		
18:22	Public utility taxes	21 N.J.R. 17(a)		
18:23	Railroad Property Tax	21 N.J.R. 18(a)		
18:24-5.11	Fabricator/contractor sales and use tax liability	21 N.J.R. 439(a)		
18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.1, 6.2, 6.3, 7.10, 8.1, 8.6, 8.7, 8.12, 9.4, 9.10, 12.2, App. A	Transfer inheritance tax rules	20 N.J.R. 2193(a)	R.1989 d.85	21 N.J.R. 311(b)
18:26-32, 11.1, 12.11	Transfer inheritance and estate tax	21 N.J.R. 285(a)		
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)	R.1989 d.94	21 N.J.R. 457(a)

Most recent update to Title 18: TRANSMITTAL 1988-5 (supplement December 19, 1988)

#### TITLE 19—OTHER AGENCIES

19:4-5.3A, 6.28	Hackensack Meadowlands: Planned Development Center specially planned areas (PDC-1)	20 N.J.R. 2247(b)	R.1989 d.21	21 N.J.R. 31(a)
19:8-1.1, 3.1	Tolls on Garden State Parkway	21 N.J.R. 127(a)		
19:8-1.1, 3.1	Tolls on Garden State Parkway: extension of comment period	21 N.J.R. 287(a)		
19:8-10.1	Garden State Parkway: pre-employment screening	20 N.J.R. 2864(a)	R.1989 d.44	21 N.J.R. 173(c)
19:9-1.2	Speed limitation on constructor vehicles	20 N.J.R. 2864(b)	R.1989 d.60	21 N.J.R. 314(a)
19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14, 16.11	Election Law Enforcement: reporting and record keeping	20 N.J.R. 2640(a)	R.1989 d.99	21 N.J.R. 458(a)
19:25-1.7, 4.7, 8.3, 9.6, 10.4, 11.9, 12.2	Campaign reporting	20 N.J.R. 3009(a)	R.1989 d.100	21 N.J.R. 459(a)
19:25-15.4, 15.5, 15.14, 15.16, 15.17, 15.20, 15.26, 15.46	Public financing of general election for governor	20 N.J.R. 2642(a)	R.1989 d.43	21 N.J.R. 173(d)
19:25-16.19	Public financing of gubernatorial primary	Emergency (expires 2-28-89)	R.1989 d.59	21 N.J.R. 209(a)
19:30-5.2	Vendor activities representing conflict of interest	21 N.J.R. 129(a)		
19:75	Atlantic County Transportation Authority: rules of operation	20 N.J.R. 1680(b)	R.1989 d.81	21 N.J.R. 314(c)

Most recent update to Title 19: TRANSMITTAL 1988-5 (supplement October 17, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY</b>				
19:40-1.2	Junket activities and representatives	20 N.J.R. 2644(a)		
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:40-2	Access to information maintained by casino licensees: public hearing	20 N.J.R. 2049(b)		
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:41-9.16	Deletion of endorsement from employee license	20 N.J.R. 2647(a)	R.1989 d.47	21 N.J.R. 175(a)
19:45-1.1, 1.15, 1.24, 1.24A, 1.24B	Wire transfers of funds	20 N.J.R. 3012(a)		
19:45-1.9	Junket activities and representatives	20 N.J.R. 2644(a)		
19:45-1.11A, 1.12	Jobs compendium information; assistant casino manager position	20 N.J.R. 3120(b)		
19:45-1.20	Marking baccarat vigorish	20 N.J.R. 2647(b)	R.1989 d.97	21 N.J.R. 460(a)
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		
19:45-1.40, 1.41	Jackpot payout and hopper fill forms	20 N.J.R. 2050(b)	R.1989 d.34	21 N.J.R. 175(b)
19:45-1.40B	Inspection of slot machine jackpots	20 N.J.R. 2648(a)	R.1989 d.72	21 N.J.R. 314(b)
19:46-1.7, 1.9	Roulette wheels	20 N.J.R. 2445(a)	R.1989 d.96	21 N.J.R. 461(a)
19:47-2.8	Late surrender blackjack wagers: 90-day experiment			21 N.J.R. 640(a)
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)		
19:47-3.3	Marking baccarat vigorish	20 N.J.R. 2647(b)	R.1989 d.97	21 N.J.R. 460(a)
19:47-5.6	Big Six: spin of wheel and wagers	21 N.J.R. 131(a)		
19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.5, 3.6	Junket activities and representatives	20 N.J.R. 2644(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.16	Repeal procedural rule concerning affirmative action	21 N.J.R. 18(b)		
19:53-2	Set-aside goals for minority and women's business enterprises	20 N.J.R. 2446(a)		

**Most recent update to Title 19K: TRANSMITTAL 1988-10 (supplement December 19, 1988)**

# OAL CUSTOMER INFORMATION

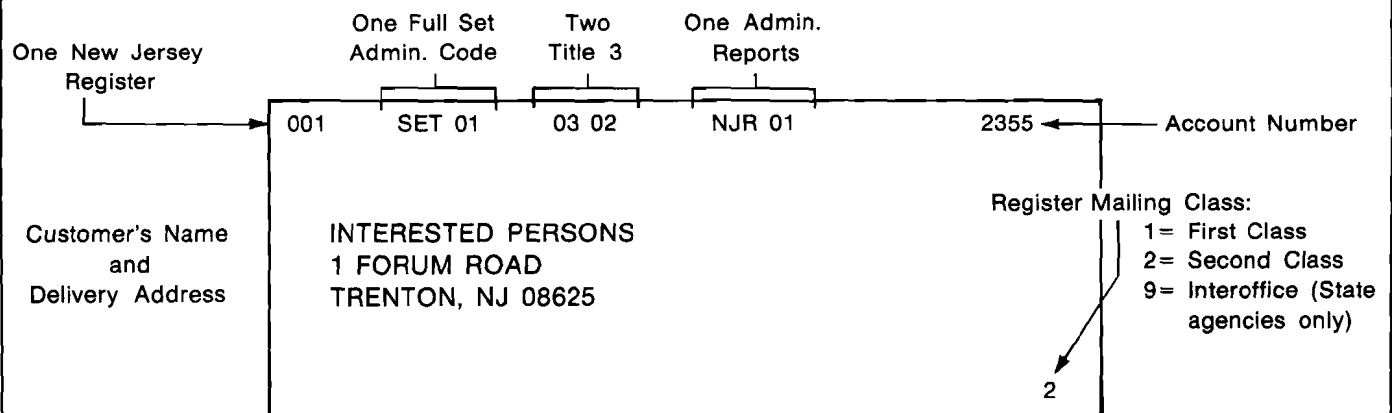
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