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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 27 NUMBER 4
February 21, 1995 Indexed 27 N.J.R. 607-790
(Includes adopted rules filed through January 27, 1995)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 19, 1994

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1995

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 23, 1995**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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Filing Deadlines

March 20 issue:	
Adoptions	February 27
April 3 issue:	
Proposals	March 6
Adoptions	March 13
April 17 issue:	
Proposals	March 17
Adoptions	March 24
May 1 issue:	
Proposals	March 31
Adoptions	April 7

NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Fines for Misconduct

Proposed Amendments: N.J.A.C. 1:1-3.2, 14.10 and 14.14

Authorized By: Jeff S. Masin, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1995-95.

Submit comments by March 23, 1995 to:

Jeff S. Masin, Acting Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed rule amendments implement N.J.S.A. 52:14F-5(t) which authorizes the Office of Administrative Law to promulgate rules for the imposition of fines, not to exceed \$1,000, for misconduct which obstructs or tends to obstruct the conduct of contested cases.

The proposed amendments permit a judge to impose a fine of up to \$1,000 against a party, attorney or other representative for each instance of misconduct which obstructs or tends to obstruct the conduct of a contested case. The proposed rules also set forth two procedures which must be utilized prior to imposition of such a fine.

If the conduct is personally observed by the judge, unmistakably demonstrates willfulness, and requires immediate adjudication to permit continuation of the proceedings, the judge shall inform the involved individual of the problematic actions and allow the individual an immediate opportunity to explain the conduct. If the judge decides to impose the fine, he or she shall issue an order reciting the facts and containing a certification that the judge personally observed the conduct in question.

If the conduct did not occur in the presence of the judge or does not require immediate adjudication, the matter shall proceed by order to show cause. In that instance, the Director of the OAL designates an Office of Administrative Law staff attorney or a deputy attorney general to present the case. The judge instituting the proceedings shall not hear the matter if the appearance of loss of objectivity requires hearing by another judge.

The imposition of a fine for misconduct obstructing the conduct of a contested case is a matter involving the authority of the Office of Administrative Law as a State agency. Therefore, the Director of the Office of Administrative Law is agency head for purposes of review. Currently, N.J.A.C. 1:1-3.2(c)4 provides that the Director is the agency head for purpose of review of sanctions consisting of cost or expenses. The proposed amendment adds fines to that category. Similarly, the proposed amendment to N.J.A.C. 1:1-14.10(k) provides that any interlocutory review of the imposition of a fine should be addressed to the Director of the OAL.

Social Impact

The proposed amendments implement the Legislature's directive to promulgate rules for the imposition of fines for misconduct which obstructs or tends to obstruct the conduct of contested cases. The proposed rules will enhance the administrative law judge's ability to control the conduct of the proceedings and will help ensure that the hearing process proceeds in an orderly and expeditious manner.

Economic Impact

A party, attorney, or representative who engages in misconduct which obstructs or tends to obstruct the conduct of a contested case will be subject to a fine of up to \$1,000. It is not anticipated that this process will be used with great frequency, but certain individuals appearing in the Office of Administrative Law may be subjected to the fine. However,

by providing the administrative law judges with a tool to control misconduct which obstructs the conduct of a hearing, the proposed amendments may result in a more expeditious process and therefore result in cost savings to the State and to the parties engaged in litigation.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the contested case hearing procedures are proposed in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments create a process for imposition of fines on parties, attorney or non-lawyer representatives whose misconduct obstructs the conduct of a contested case.

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

1:1-3.2 Jurisdiction of the Office of Administrative Law

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

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs [or], expenses, or fines;

5.-6. (No change.)

1:1-14.10 Interlocutory review

(a)-(j) (No change.)

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs, [or] expenses, or fines;

5.-6. (No change.)

(l)-(m) (No change.)

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) (No change.)

(b) **If any party, attorney, or other representative of a party, engages in any misconduct which, in the opinion of the judge, obstructs or tends to obstruct the conduct of a contested case, the party, attorney, or other representative may be fined in an amount which shall not exceed \$1,000 for each instance provided:**

1. Where the conduct deemed to obstruct or tending to obstruct the conduct of a contested case occurs under circumstances which the judge personally observes and which he or she determines unmistakably demonstrates willfulness and requires immediate adjudication to permit the proceedings to continue in an orderly and proper manner, the judge shall inform the party, attorney or other representative of the nature of the actions deemed obstructive and shall afford the party, attorney or other representative an immediate opportunity to explain the conduct;

2. Where the judge determines, after providing the party, attorney or other representative, an opportunity to explain, that the conduct does constitute misconduct, the judge shall issue an order imposing sanctions which shall recite the facts and contain a certification by the judge that he or she personally observed the conduct in question and that the party, attorney or other representative engaged in misconduct.

(c) **Where the conduct deemed to obstruct or tending to obstruct a contested case does not require immediate adjudication, or where**

the matter has not occurred in the presence of the judge, the matter shall proceed by order to show cause specifying the acts or omissions alleged to be misconduct. The proceedings shall be captioned "In the Matter of _____, Charged with Misconduct."

(d) In any proceeding held pursuant to (c) above, the matter may be presented by a staff attorney of the Office of Administrative Law, or by the Attorney General. The designation shall be made by the Director of the Office of Administrative Law. The matter shall not be heard by the judge who instituted the proceeding if the appearance of objectivity requires a hearing by another judge.

AGRICULTURE

(a)

DIVISION OF MARKETS

Agricultural Fairs

Proposed New Rules: N.J.A.C. 2:33

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

Authority: N.J.S.A. 5:8-121 et seq.

Proposal Number: PRN 1995-74.

Submit comments by March 23, 1995 to:

H. Vance Young, Jr., Ph.D., Director
Division of Markets
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5536

The agency proposal follows:

Summary

Historically, a fair certified as an "Official Agricultural Fair" has been eligible for State funds when available to offset fair expenses and eligible for a license to conduct amusement games at a reduced annual fee. In the past several years, a number of promoters have requested official "agricultural" status for their fairs in order to qualify for the license to conduct amusement games at the reduced annual fee. For this reason, new rules were adopted in 1989.

On January 18, 1994, the New Jersey Department of Agriculture proposed to readopt N.J.A.C. 2:33 with amendments in the New Jersey Register at 26 N.J.R. 285(a). No comments were received on the proposal; however, the proposal was subsequently submitted to the Office of the Attorney General for comment concerning its legality. While waiting for the comment from the Attorney General the existing rule N.J.A.C. 2:33, Agricultural Fairs, expired on March 6, 1994.

The proposed rules of January 18, 1994 was not adopted on advice from the Attorney General that the proposed rules far exceeded the Department's statutory authority.

The Department of Agriculture proposes new rules as summarized below:

N.J.A.C. 2:33-1.1 Agricultural fairs: qualifications

N.J.A.C. 2:33-1.1(a) requires each "Official Agricultural Fair" to hold, at one site, an agricultural exhibit for the promotion and development of agriculture or agribusiness in and of that county, subsection (b) requires that the fairs conduct at least two additional activities related to manufacturing, community development, product promotion, public service, county interest, culture or recreation. N.J.A.C. 2:33-1.1(b) requires each "Official Agricultural Fair" to obtain certification from the Department of Agriculture as a condition of operation.

N.J.A.C. 2:33-1.2 Responsibilities of certified fair

N.J.A.C. 2:33-1.2(a) requires each certified "Official Agricultural Fair" to furnish a detailed fair status report to the Department of Agriculture; to comply with all governmental health, fire and police regulations; and to furnish on request a copy of the annual fair audit report. The expired rules had required annual filing of the audit report. N.J.A.C. 2:33-1.2(b) authorizes access to the fair premises by the Department of Agriculture to determine compliance.

N.J.A.C. 2:33-1.3 Procedure for certification

N.J.A.C. 2:33-1.3(a) requires applicants for "Official Agricultural Fair" certification to file their proposal to the Department by September 1 of the year preceding the year the fair is to be held. The expired rule required filing by May 1 of the preceding year. Subsection (a) also requires a copy be submitted to the county board of agriculture for comment. N.J.A.C. 2:33-1.3(b) requires the county board of agriculture to submit comments to the Department on such proposal by November 1; the expired rule provided only one month for comment. N.J.A.C. 2:33-1.3(c) requires the State Board of Agriculture to approve or deny certification after consideration of the proposal and comments from the county board of agriculture.

Social Impact

The proposed new rules will have a positive social impact by streamlining the procedures and designating responsibility.

The proposed new rules will also have a positive social impact by extending the annual filing period for a proposal for an "Official Agricultural Fair" from May to September of the year prior to the year the fair will be held. The extension of the proposal comment period for county boards of agriculture from one month to two months should increase interaction of the boards in the certification process and ensure the continuation of quality fairs that showcase New Jersey agriculture. This will lead to better fairs to showcase New Jersey agriculture.

Economic Impact

The proposed new rules will, in the absence of State grants help offset the financial burden of "Official Agricultural Fairs," and have a minimal economic impact on applicants. Costs associated with the applicants process for certification and the Department's certification approval are administrative and minimal. In fact, the rules will help ensure that "Official Agricultural Fairs" are successful by the Department of Agriculture denying certification of non-agricultural fairs. In addition, "Official Agricultural Fairs" qualify for a reduced annual fee for a license to operate games of amusement for which fairs without such certification are not eligible.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Department of Agriculture are dictated by N.J.S.A. 5:8-121 et seq., the Amusements Games Licensing Law, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

Some carnival operators and fair promoters are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules may have an economic impact on such businesses, dependent upon whether or not Department of Agriculture certification is obtained for their fair. There is minimal cost associated with the certification process.

Applicants for certification will incur the administrative and documentary costs of the application process. Those granted certification must annually provide a fair status report and, if requested, a copy of the annual fair audit report. While not necessitated by these rules alone, an accounting/bookkeeping professional would be needed to prepare the audit report. The proposed new rules, in particular the certification process, are relatively simple, and comply with the legislative mandates of N.J.S.A. 5:8-121 et seq. The Amusement Games Licensing Law allows agricultural fairs approved by the Department of Agriculture to be licensed to conduct games of amusement at a greatly reduced fee. The proposed new rules do not differentiate between small and large businesses, but rather make a distinction between "Official Agricultural Fairs" and other commercial fair or carnival enterprises.

Full text of the proposed new rules follows:

CHAPTER 33 AGRICULTURAL FAIRS

SUBCHAPTER 1. GENERAL PROVISIONS

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 agribusiness in and of that county, by conducting educational programs, activities, demonstrations, contests and exhibitions.

PROPOSALS

Interested Persons see Inside Front Cover

BANKING

(b) In addition to the requirements of (a) above, 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.

(c) 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 detailed fair status report on forms prescribed by the Department of Agriculture (see Appendix incorporated herein by reference);
2. Comply with all county and municipal health, fire, police and sanitation regulations; and
3. Furnish on request, a copy of the annual fair audit report.

(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 September 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 November 1 of the year preceding the fair.

(c) After consideration of the proposal, 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", in accordance with the qualifications listed in N.J.A.C. 2:33-1.1(a) and (b).

Date _____

NEW JERSEY AGRICULTURAL FAIR REPORT 19 ____

Name of Fair _____

Date Held _____ Estimated Attendance _____

IMPORTANT: LIST ALL FEATURE/EVENTS WHICH IDENTIFY THIS AS AN AGRICULTURAL FAIR:

LIVESTOCK: PLEASE COUNT EACH ANIMAL

Beef _____	Horses _____	Poultry _____
Goats _____	Dairy _____	Swine _____
Rabbits _____	Sheep _____	Other _____

FAIRGROUNDS

Owned by Fair Association _____

Leased _____ From _____

Other (Specify) _____

Acres Total _____

Acres Used for Parking _____

ORGANIZATION

Is your Fair Association organized as a Non-Profit Corporation?

Yes _____ No _____

If not give organization _____

Accounts Audited Annually Yes _____ No _____

List Name and Address of Officers

Signature

Title

Return this form to:
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Attn: Richard Kuhn

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Mortgage Brokers Notice of Termination of Funding

Proposed New Rule: N.J.A.C. 3:38-1.11
Proposed Amendment: N.J.A.C. 3:38-2.1

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1 and N.J.S.A. 17:11B-13.

Proposal Number: PRN 1995-112.

Submit comments by March 23, 1995 to:
Elaine W. Ballai, Regulatory Officer
Division of Regulatory Affairs
Department of Banking
20 West State Street, CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

In accordance with its statutory mandate to regulate and monitor compliance of licensees in the mortgage banking industry, the Department is proposing a new rule at N.J.A.C. 3:38-1.11 to require notification to the Department of Banking whenever a lending institution or lending company, which supplies funds to a licensee, terminates its agreement with the licensee.

In the past, a number of licensees have ceased business operations or have gone out of business because, among other reasons, the institution or company which had provided funds to the licensee either before or after closing a mortgage transaction, terminated the funding of such

loans. The Department learned that its licensee was no longer in business only when loan applicants began to call with complaints. By the adoption of the proposed new rule, the Department will be able to take prompt action to assist licensees and borrowers if it has immediate knowledge that a licensee may have financial difficulties. The proposed new rule at N.J.A.C. 3:38-1.11 will require that whenever a licensee enters into or renews a funding contract with a lending institution, the contract shall provide that should funding terminate for any reason, immediate written notice is to be provided to the Department of Banking.

The Department is also proposing an amendment at N.J.A.C. 3:38-2.1(f) that would require the licensee to maintain in its records a copy of its contract or agreement with a lender for review by the Department.

Social Impact

Applicants for mortgages generally rely on licensed mortgage lenders to have the financial resources with which to close their mortgage loans. Applicants are sometimes not aware that the mortgage licensee, in many cases, depends on a financial institution such as a bank or lending company to finance these transactions, by means of a warehouse line of credit, table funding or other arrangement. When a mortgage licensee makes a decision to cease its operations, there may be applications pending which involve monies paid by applicants for various fees collected by licensees during the application process. Should the loan not close through no fault of the applicant, such fees must be returned; in the alternative, a supply of funds may be arranged through other lenders to close the loan. By having advance notice that a licensee may cease its business activity, the Department of Banking will be in a position to obtain a list of pending applications so as to assist in the process of closing loans or taking whatever action is deemed necessary to avoid harm to consumers. In addition to aiding the consumer, this proposed rule will assist the mortgage banking industry to maintain its fine reputation for financial service to the community.

Economic Impact

Compliance with proposed new rule N.J.A.C. 3:38-1.11 will have a significant positive economic impact in that a mortgage loan applicant will be less likely to suffer monetary damage, should the mortgage banker licensee cease its business operation unexpectedly. The reasons for this benefit are as set forth in the Social Impact statement above.

Executive Order No. 27 Statement

Real estate settlement procedures and fees are governed by Federal law and regulations, at 12 U.S.C. 2601 et seq. and 24 C.F.R. 3500 et seq. The Federal law and rules, however, are designed to provide protection to the borrower directly, through regulation of disclosure and designation of permissible fees and costs which are permitted to be charged to consumers. The proposed new rule, N.J.A.C. 3:38-1.11, has no direct impact on a licensee's transactions with consumers; rather, it requires the licensee to provide for notice to the Department of Banking whenever its source of mortgage funding is terminated. This is to be effected through the licensee's contract with its funding institution. Therefore, a Federal exceedance analysis is not applicable to this proposal.

Regulatory Flexibility Analysis

The proposed new rule at N.J.A.C. 3:38-1.11 will not result in any costs to small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. because the notice requirement established in this section is to be performed by the licensee's funding institution or funding company pursuant to its contract with the licensee. Such lenders are not small businesses. The proposed new rule will affect small business licensees to a greater extent since it is these licensees who utilize other sources of funds in their mortgage transactions, and whose operations are jeopardized when funds are not available. The effect, however, is expected to be positive in that prompt notice to the Department when a funding arrangement is terminated will assist both the licensee and the consumer in minimizing liability arising from failure to close pending loans. The proposed amendment to N.J.A.C. 3:38-2.1 merely requires a licensee to maintain a copy of its funding institution/company agreement, and should not, therefore, increase a licensee's capital costs.

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

3:38-1.11 Notice of termination of funding

A licensee who enters into or renews a contractual arrangement with a lending institution or lending company for mortgage closing funds shall include in every contract and in every contract renewal form the following clause:

Lender (funding institution or company) hereby agrees that in the event lender terminates funding Licensee at any time and for any reason, Lender will provide written notice of said termination of funding to the Department of Banking, 20 West State Street, CN 040, Trenton, N.J. 08625, Attention: Licensee Examination Unit, by certified mail, return receipt requested. Said notice shall be sent to the Department of Banking prior to or simultaneously with Lender's notice of termination to Licensee.

3:38-2.1 Methods and accounting

(a)-(e) (No change.)

(f) Each licensee shall maintain in its files a copy of its agreement, if any, with a funding institution or funding company which provides mortgage closing funds to the licensee. Said agreement shall comply with the requirements of N.J.A.C. 3:38-1.11.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Layoffs

Reproposed Readoption with Amendments: N.J.A.C. 4A:8

Authorized By: Merit System Board, Linda M. Anselmini,
Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9,
11A:4-12, 11A:6-28, 11A:8-1 through 11A:8-4.

Proposal Number: PRN 1995-110.

A public hearing concerning the proposed readoption with amendments will be held on:

Tuesday, March 14, 1995 at 5:30 P.M.
National Guard Armory
151 Eggerts Crossing Road
Lawrenceville, New Jersey

Please call the Regulations Unit at (609) 633-2640 if you wish to be included on the list of speakers.

Submit written comments by March 23, 1995 to:

Janet Share Zatz
Director of Appellate Practices
and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 6, 1994, the Department of Personnel published the proposed readoption with amendments of N.J.A.C. 4A:8 (see 26 N.J.R. 3518(a)). The comments presented at three public hearings held on September 22, 29 and October 4, 1994, and a large volume of letters received showed considerable controversy regarding many of the proposed amendments. Accordingly, the Merit System Board decided to readopt N.J.A.C. 4A:8 without change, but with an expiration date of May 20, 1995, in order to allow additional time to review concerns with interested parties and formulate revised amendments (see notice of readoption in the February 6, 1995 New Jersey Register). That review has now been completed, and this proposal contains revised amendments which are described more fully below.

Subchapter 1 concerns layoff procedures to be followed by State agencies and by those political subdivisions subject to Title 11A, of the New Jersey Statutes. The subchapter describes the entire process, starting with pre-layoff actions and ending with post-layoff appeals.

N.J.A.C. 4A:8-1.1 explains the division of authority concerning layoff actions. The rule provides that the decision to institute a layoff action rests with the individual appointing authority, while the responsibility for

determining the rights of all affected employees remains with the Department of Personnel. A proposed amendment at N.J.A.C. 4A:8-1.1(a)1 would codify existing practice that non-disciplinary, involuntary demotions are to be treated as layoff actions and are subject to the rules in this chapter.

N.J.A.C. 4A:8-1.2 describes alternative measures available to appointing authorities to lessen the possibility of layoffs. Voluntary furloughs have been added as an additional option, consistent with the newly adopted rule (see 27 N.J.R. 145(a)). In addition, paragraph (c)1 has been amended to clarify that Department of Personnel approval is required for a program of granting leaves without pay (which may be longer than voluntary furloughs) without loss of seniority.

In addition to alternative measures, all of which require employee consent, N.J.A.C. 4A:8-1.3 provides for pre-layoff actions to lessen the possibility, extent or impact of layoffs. Previously, the Board had proposed that reducing workweeks in State service be added as an additional pre-layoff option. This option has been deleted from the current proposal, in response to comments presented on the previous proposal.

N.J.A.C. 4A:8-1.4 describes the role of the Department of Personnel in reviewing appointing authority actions prior to the issuance of layoff notices to employees. This section includes a comprehensive listing of the information that must be provided to the Department of Personnel at least 30 days before the issuance of layoff notices, and explains the remedial action the Department may take upon receipt, or in the absence of timely receipt, of this information. Under the current rules, some appointing authorities have interpreted paragraph (a)7 to mean that a general statement is sufficient regarding the inapplicability of alternative and pre-layoff actions. Such general statements do not provide the Department of Personnel with sufficient information to review layoff plans. Accordingly, the Board proposes at N.J.A.C. 4A:8-1.4(a)7 that instead of a summary, appointing authorities be required to provide a detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable. It is also proposed at N.J.A.C. 4A:8-1.4(a)9 that appointing authorities provide a list of affected negotiations representatives. This information is needed to implement proposed new subsection (e), whereby the Department of Personnel will provide affected negotiations representatives with a copy of the approved layoff plan. Prior to approval by the Department of Personnel, however, the layoff plan will not be released to unions or individual employees. Finally, the Board proposes that subsection (b) be amended to provide for the submission of names of employees who have received a performance rating of either Marginally Below Standards or Significantly Below Standards. This amendment is consistent with the change in terminology in the Performance Assessment Review (PAR) program.

N.J.A.C. 4A:8-1.5 defines the unit of government in which layoffs, and the resulting displacement of employees, are to be confined. In State service, the layoff unit remains an entire department or autonomous agency. An amendment has been proposed at N.J.A.C. 4A:8-1.5(a) to clarify the term "autonomous agency." In a county or municipality, the layoff unit is a department, unless a different layoff unit consisting of one or more departments is approved by the Commissioner of Personnel. A change is proposed in subsection (c) to provide that in State service, a job location shall consist of an entire county. However, cross-references to N.J.A.C. 4A:8-2.2 and 2.3 have been inserted to emphasize that certain displacement options remain within the municipality in which the employee's facility or office is located (see N.J.A.C. 4A:8-1.5(c)3).

The requirements for notice of layoff are set forth in N.J.A.C. 4A:8-1.6. An amendment proposed at N.J.A.C. 4A:8-1.6(a) would provide that such notices are to be served personally, and that certified mail is to be used only if the employee is on a leave of absence or otherwise unavailable. The proposed amendment further provides that if service is by certified mail, the 45 days shall be counted from the first date of notice by the Postal Service to the employee.

Subchapter 2 defines the rights afforded employees in a layoff action and explains the exercise of those rights in State and local service. N.J.A.C. 4A:8-2.1 describes the three types of rights of employees affected by a layoff action: lateral title rights, demotional title rights and special reemployment rights. The current rule defines lateral and demotional title rights in terms of displacing "the least senior employee at a selected job location." Since this language does not apply to every situation, a proposed amendment at N.J.A.C. 4A:8-2.1(a) and (b) would define these terms as the right to "exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee." The Board also

proposes a new subsection (d) concerning the newly established "Specialized Credential" variant title. When an employee holds such a title, title rights will be based on the particular special credential (such as a license or advanced degree). Additional language is proposed at subsection (d) to ensure that this procedure applies only to employees serving in a specialized credential variant title on or before submission of the layoff plan.

In N.J.A.C. 4A:8-2.2, Exercise of lateral and demotional rights, an amendment is proposed to subsection (a) in conjunction with the change to county-wide job locations in State service. Under this proposed amendment, an employee would first have the option to exercise lateral and demotional rights within the municipality in which the facility or office is located, and then to other job locations selected by the employee. For example, if an employee is displaced from a job in a department's central office in Trenton, the employee would first have the option of exercising lateral and demotional rights to other jobs located in Trenton. If no position is available in Trenton, the employee would be given lateral and demotional rights to those counties specified by the employee in which he or she would accept a position. In subsection (c), an amendment is proposed in the order of exercising lateral and demotional rights, based upon changes previously made in the Performance Assessment Review (PAR) program in State service. The amendment would provide that displacement rights would be exercised, following a position held by a probationary employee, against a position held by a permanent employee with a PAR rating of Five (Significantly Below Standards), and then against a position held by a permanent employee with a PAR rating of Four (Marginally Below Standards). The Board also proposes to delete subsection (e) as redundant, since this restriction is covered in subsection (c).

Further changes are proposed to N.J.A.C. 4A:8-2.2 to address specific situations that arise in the exercise of lateral and demotional rights. A new subsection (e) is proposed that provides that when an employee in a professional title has demotional rights to a para-professional or non-professional title, or from a para-professional title to a non-professional title, displacement takes place only if that employee has greater permanent continuous service than the employee in the lower title.

Subsection (f) addresses the situation where an employee is granted rights to a previously held title, which is outside of the demotional path of the employee's current title. Three changes are proposed to this subsection: First, such rights will not be granted when the employee has either lateral rights, or demotional rights to a title with a higher class code than the previously held title. Second, when a provisional or probationary employee is serving in the previously held title, displacement will take place even if that provisional or probationary employee has greater permanent continuous service than the employee exercising "previously held title" rights. Third, when the previously held title is a professional title, such rights are limited to a title held within the employee's last 10 years of service. In the previous proposal, the 10-year limit would have applied to all previously held titles. The application to professional titles only is in response to comments presented as the previous proposal.

The Board also proposes to delete subsection (g), since employees in intermittent titles are subject to furlough procedures set forth in N.J.A.C. 4A:3-3.8, and not the procedures and rights in this chapter. Finally, a new subsection (g) is proposed that would provide that employees who are placed in trainee titles as a result of a layoff action must serve a complete training period if that trainee title is outside of the title series from which the employee was laid off.

In N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, amendments are proposed to subsection (a) based upon the change to county-wide job locations in State service. Under the first amendment, an employee displaced from the municipality in which his or her facility or office was located would have the option to exercise special reemployment rights to that municipality in addition to other job locations selected by the employee. For example, if an employee is displaced from a job in a department's central office in Trenton to a job in Ewing Township (Mercer County), the employee may exercise special reemployment rights to a job vacancy that occurs in Trenton. In addition, the current language referring to a job location which "no longer exists" does not make sense in view of the change to county-wide job locations. Therefore, the new language refers to cases where "no facility or office remains" in the original job location; in other words, no facility or office remains in the county in which the employee worked.

Additional changes in N.J.A.C. 4A:8-2.3 include clarifying language in subsection (c) concerning ranking on a special reemployment list. The current rule provides that ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff. However, to address concerns regarding the effect of changes in the way seniority is measured, the added language provides that ranking will be based on the method for calculating seniority in effect at the time of certification of the special reemployment list. Thus, an employee laid off in 1992 with five years' seniority in the title of Principal Clerk Typist but 10 years' jurisdiction seniority will be entitled to the rank based on 10 years' seniority on a special reemployment list certified after adoption of these rules. Due to the change from title to jurisdiction seniority in N.J.A.C. 4A:8-2.4, all special reemployment lists in existence at the time of adoption of these rules will be reordered based on the jurisdiction seniority of persons on those lists. Another change is the deletion of subsection (e), which concerns intermittent employees. As explained above, intermittent employees are subject to separation from employment through a different process.

A new subsection (e) is proposed that describes the treatment of employees who decline reemployment. This provision distinguishes between those who decline reemployment to a particular job and those who are unavailable for any job due to temporary disability or other good cause. An additional amendment at proposed paragraph (e)1 provides that employees who decline reemployment due to a change in shift or a change from part-time to full-time (or vice versa) shall remain on the special reemployment list.

In N.J.A.C. 4A:8-2.4, the Board proposes that seniority be based on length of continuous permanent service in the jurisdiction (for example, State government) rather than length of permanent service in one or more titles. A "resignation/new appointment" under N.J.A.C. 4A:4-7.9 would not constitute a break in continuous service.

In the previous proposal, in State service, seniority would have included credit for performance evaluations. The previous proposal would have also changed the method of granting "preferred seniority" to one in which employees who are demoted in a layoff action would carry forward their credit for PAR ratings in a subsequent layoff action. The Board has decided not to include such amendments at this time, since it is anticipated that major changes will be made in the State's performance evaluation system. However, following implementation of the new performance evaluation system and a demonstration that the new system meets criteria for compliance and equity, rule amendments will be proposed providing a link between performance and seniority.

N.J.A.C. 4A:8-2.4(c), the current subsection on treatment of leaves of absence, has been rewritten for clarity in two new subsections (d) and (e). Substantively, three situations have been added to those for which no seniority deductions are made: voluntary furloughs; leaves without pay to accept an unclassified appointment; and employment in the Senior Executive Service for those who had permanent service prior to the SES appointment. In addition, the new subsection (d) will provide that in State service, deductions from seniority will be made only for suspensions, leaves of absence and periods of layoff which began on or after March 1, 1987. This provision is necessary due to errors and inconsistencies in the records of State employees prior to the conversion to the automated Personnel Management Information System (PMIS).

In addition, the current N.J.A.C. 4A:8-2.4(e) would be deleted, since there is no need to address aggregate title seniority in a jurisdiction-seniority system. Finally, the current subsection (g) on tie-breakers has been revised to address the changes described above in the way seniority is defined and calculated. In particular, title seniority has been added as a tie-breaker and additional tie-breakers based on performance evaluations have been included.

In N.J.A.C. 4A:8-2.5, the general restriction on reassignments, has been modified to apply only to specified types of involuntary reassignments. The amended rule also contains a requirement at subsection (b) that appointing authorities present specific justification for exceptions to this restriction. Further, when these types of reassignments occur on a voluntary basis, union representatives are to be notified and should be consulted upon request (see N.J.A.C. 4A:8-2.5(c)). An additional amendment contained in subsection (c) requires appointing authorities to post notices of opportunities for such voluntary reassignments.

N.J.A.C. 4A:8-2.6 describes the procedures to be followed when an employee wishes to appeal either the "good faith" of a layoff action or the determination of layoff rights. No amendments are proposed to this section.

Social Impact

The proposed readoption with amendments of N.J.A.C. 4A:8 includes several substantive changes which will have an impact on the way reductions in force are implemented in State and local government. In addition, technical changes will clarify the process, enhancing the understanding among public employers and employees and reducing disputes and appeals.

Among the substantive changes, the proposed amendments to N.J.A.C. 4A:8-1.4(a) will strengthen the ability of the Department of Personnel to perform an effective review of an agency's layoff plan. Providing a copy of the approved layoff plan to union representatives, as set forth in the proposed new subsection N.J.A.C. 4A:8-1.4(e), will improve communications to employees about an impending reduction in force.

A review of the Fiscal Year 1993 layoffs in State government found that over half of the lateral displacements from one job location to another took place within the same county. Therefore, the proposed amendment to N.J.A.C. 4A:8-1.5(c)1 providing for county-wide job locations in State service should reduce the "bumping" that occurs during a layoff. However, the Department of Personnel is aware that displacement within a county may be a hardship for some employees, particularly those who rely on public transportation. Therefore, along with the change to county-wide job locations, proposed amendments to N.J.A.C. 4A:8-2.2 and 2.3 provide that employees will have the option to exercise lateral, demotional and special reemployment rights first within the municipality in which the employee's facility or office is located.

The proposed amendment to N.J.A.C. 4A:8-1.6, Layoff notice, will clearly indicate that personal service is the preferred method of providing an employee with notice of a layoff. If an employee is on a leave of absence or otherwise unavailable for personal service, and certified mail is used instead, the employee will also have a full 45 days' notice, since the 45 days will be counted from the date of notice by the Postal Service.

Extending demotional rights to a "previously held title" provides a valuable option for some employees, but it also has a negative impact on other employees who would not ordinarily be affected by a layoff action. The proposed amendments to N.J.A.C. 4A:8-2.2(f) would ensure that such extended rights will not be granted when the employee has superior options through the exercise of lateral or demotional rights. Although most jobs change over time, technological improvements and legal developments have the most impact on professional-level titles (those requiring a bachelor's or higher level degree). Due to these changes, an employee may have difficulty performing such a job which he or she last performed many years ago. Accordingly, in the case of professional titles, "previously held title" rights will be limited to a title held within an employee's last 10 years of service. It should be noted that in evaluating experience in examinations, the Department of Personnel does not count experience more than 10 years old.

Demotional rights are occasionally granted from a professional title to a para-professional or non-professional title. These situations are similar in some respects to the exercise of "previously held title" rights. Therefore, proposed new subsection N.J.A.C. 4A:8-2.2(e) contains a similar restriction: displacement may be made only on the basis of greater permanent continuous service.

Special reemployment lists have unlimited duration, pursuant to statute see N.J.S.A. 11A:4-7. Individuals have often remained on these lists for years, even after indicating lack of interest in reemployment by declining appointment at the time of certification. A statistical review of special reemployment certifications in State service since October 1992, showed that, out of 10,457 individuals sent certification notices, 4,072 did not respond. If such individuals had been on open competitive lists and failed to respond, they would have been removed from those lists and received no further consideration. However, under current rules, such individuals remain on special reemployment lists. The same statistical review showed that over 2,000 additional individuals remained on special reemployment lists despite declining jobs due to such reasons as not being interested in the particular department. Accordingly, the proposed new subsection N.J.A.C. 4A:8-2.3(e) would ensure that special reemployment lists contain only the names of those individuals who retain a genuine interest in reemployment to that job.

The change from title seniority to jurisdiction seniority, as set forth in the proposed amendment to N.J.A.C. 4A:8-2.4(a), will have a twofold impact. First, employees with many years of service for a jurisdiction will get credit for that service in a layoff action, even if they have relatively little time in their latest job title. Second, the process of

calculating seniority will become less complex, thus making layoff actions easier to administer for appointing authorities and the Department of Personnel.

When career service employees have the opportunity for advancement to the Senior Executive Service or a high-level unclassified appointment, they should not be discouraged by the loss of seniority. Accordingly, the proposed new subsection N.J.A.C. 4A:8-2.4(d) provides that such types of service will not be deducted from seniority.

The proposed amendments to N.J.A.C. 4A:8-2.5, Reassignments, are based on the experience of the State service layoffs in Fiscal Years 1992 and 1993. These amendments will ensure that an appointing authority does not negate all of the displacements resulting from a layoff, while providing significant flexibility to appointing authorities and employees to establish acceptable work patterns following the layoff. Posting requirements will ensure that employees are informed of opportunities for reassignment.

In addition to the amendments described above, the rules in N.J.A.C. 4A:8 proposed for readoption without change will continue to provide a regulatory framework for reductions in force. In the absence of readoption of this chapter, merit system employers and employees would have no guidance on layoffs, other than the provisions of Title 11A, of the New Jersey Statutes.

Economic Impact

The proposed technical amendments are intended to improve the clarity of these rules, and thus reduce costs by lessening the number of disputes and appeals arising from the layoff process. The change from title seniority to jurisdiction seniority should also reduce the costs of administering a layoff, since seniority calculations will be easier under the new system.

The rules proposed for readoption without change continue to provide a fair and equitable system for implementing reductions in force in State and local service. The rules continue to emphasize methods to reduce costs without resorting to layoffs, or to lessen the impact of layoffs when reductions in force are unavoidable.

If this chapter is not readopted, there would be a severe negative impact on public employers and employees, as well as the taxpaying public. Since the provisions of Title 11A of the New Jersey Statutes, provide only broad, general guidance on layoffs, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the layoff procedures governed by these rules are not subject to any Federal requirement or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed readoption with amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules as amended will regulate employment in the public sector.

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

CHAPTER 8 LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title[:], **subject to the approval of the Department of Personnel;**

2. **Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);**

[2.]3. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

[3.]4. Providing employees with optional temporary demotional title changes; and

[4.]5. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees' right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;

2. Separating non-permanent employees;

3. Returning provisional employees to their permanent titles;

4. Reassigning employees; and

5. Assisting potentially affected employees in securing transfers or other employment.

(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions which first place employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;

2. The projected effective date of layoff;

3. Sample copies of the layoff notice and the projected date for issuance;

4. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

6. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

7. A [summary] **detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable; [and]**

8. A summary of consultations with affected negotiations representatives; and

9. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received [an unsatisfactory] a rating of **Marginally Below Standards or Significantly Below Standards** or equivalent [rating] in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)6 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;
2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or pre-layoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) **Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.**

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. **An autonomous agency is one which is in, but not under the supervision of, a principal department.**

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.
2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

- i. The need for a unit larger than a department;
- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;
- iv. The effect upon employee layoff rights; and
- v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. [Job locations may consist of named facilities or geographical areas] **Each job location shall consist of a county.**

2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.

3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice [either] personally [or], **unless the employee is on a leave of absence or otherwise unavailable, in which case** by certified mail. If service is by certified mail, the 45 days shall be counted from the [date of mailing] **first date of notice by the United States Postal Service to addressee.** A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to [displace the least senior employee at a selected job location] **exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee** in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to [displace the least senior employee at a selected job location] **exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee** in the layoff unit holding a title determined to be lower than but related to the affected title of the

employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;

2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;

3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Department of Personnel:

1. Licensure or certification;

2. Specialized education;

3. Specialized client-based or program experience; or

4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

[(d)](e) Affected negotiations representatives shall be permitted to be present at any meeting with individual employees where layoff rights are discussed.

[(e)](f) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided **applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then** to the job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of all job locations (see N.J.A.C. 4A:8-1.5(c)) and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a

job location, the specific position shall be determined based on the level of the permanent title held and seniority in title;

4. The position held by the employee serving in a working test period with the least probationary time;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was [an unsatisfactory] **Significantly Below Standards** or equivalent rating;

6. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was **Marginally Below Standards** or equivalent rating;

[6.]7. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided lateral title rights in the same order as (c)1 through 4 above.

[(e) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, employees whose most recent (within the last 12 months) performance rating in their permanent title was an unsatisfactory or equivalent rating shall have lateral title rights only against vacant positions to be filled or against employees without permanent status.]

(e) When an employee in a professional title is granted demotional title rights to a para-professional or non-professional title, or when an employee in a para-professional title is granted demotional title rights to a non-professional title, displacement may be made only on the basis of greater permanent continuous service. See N.J.A.C. 4A:4-2.5 for definitions of professional, para-professional and non-professional titles.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. [In such cases, displacement] Displacement may be made only on the basis of greater permanent continuous service **except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.**

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

2. Such extended rights shall not be granted when the previously held title is a professional title which was last held on a permanent basis more than 10 years prior to the effective date of the layoff.

[(g) In State service, employees in intermittent titles shall have lateral and demotional rights only to intermittent titles.]

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

[1.]2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where **no facility or office remains** in the original job location [no longer exists], the employee

shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

[2.]3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where **no facility or office remains in the original job location** [no longer exists], the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, **based on the method for calculating seniority in effect at the time of certification of the list.** Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with a lower class code (State service) or lower level (local service).

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

[(e) In State service, employees in intermittent titles shall have special reemployment rights only to intermittent titles and only within the department or autonomous authority in which the layoff occurred.]

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter is the amount of continuous permanent service in [an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title] **the jurisdiction, regardless of title.** Seniority shall be based on total calendar years, months and days in [title] **continuous permanent service** regardless of work week,

work year or part-time status[; however, seniority for State employees in intermittent titles shall be calculated on the basis of hours in regular pay status].

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) Preferred seniority, which means greater seniority than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred seniority.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

[(c) Voluntary furloughs and the following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.]

(c) **The following shall not be deducted from seniority calculations:**

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. **Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff;**

4. **In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and**

5. **In local service, leave to fill elective public office.**

(d) **Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after March 1, 1987.**

[(d)](e) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff [or demotion in lieu of layoff] and reappointment shall be deducted from the employee's seniority.

[(e) An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes.]

(f) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(g) If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system must have been approved by the Department of Personnel.

3. **The employee with the greater amount of continuous permanent service in the employee's current permanent title and other**

titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority;

[3.]4. The employee with the greater seniority in the title before a break in service shall have priority;

[4. The employee with greater continuous permanent service, regardless of title, shall have priority;]

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel.

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel.

[9.]11. Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be [reassigned] **subject to the following types of involuntary reassignments**, except as permitted by the Commissioner for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;

2. In State service, if employed in the original municipality, reassignment to a different municipality; and

3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) Specific justification for such involuntary reassignments must be shown by the appointing authority.

(c) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request. Appointing authorities shall conspicuously post notices of opportunities for voluntary reassignment at all work locations.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Enforcing Agencies

Proposed Amendments: N.J.A.C. 5:23-2.20 and 4.5

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1995-97.

Submit written comments by March 23, 1995 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802
Fax No. (609) 633-6729

The agency proposal follows:

Summary

When new heating equipment is installed, it is necessary for the vents and chimney to which the equipment is connected to be inspected in order to make sure that the heating equipment can be used safely. This ordinarily requires that the heating contractor be present at the time of inspection to remove and then reinstall the chimney vent connector. The proposed amendment at N.J.A.C. 5:23-2.20, however, provides for a certification form, F-370, that, with the approval of the construction official, contractors would be able to file in lieu of removing and reinstalling the connector in the presence of the inspector.

The certification by the contractor would attest to the condition of the existing chimney or vent. Since it would only cover the existing chimney or vent, an inspection of the equipment installation would still be required in any event, but this would not require the presence of the contractor.

A copy of the form (see N.J.A.C. 5:23-4.5) can be obtained by writing to:

Bureau of Technical Services
CN 816
Trenton, New Jersey 08625-0816

Social Impact

The proposed amendment will allow reduction of the regulatory burden on contractors and property owners when new heaters are installed. Any contractor who files a false certification will be subject to civil penalties under N.J.S.A. 52:27D-138 for filing a false written statement.

Inspection of chimneys and vents has become increasingly important as a result of the enactment, in 1987, of the National Appliance Energy Conservation Act. In response to that act, furnace and boiler manufacturers have introduced new technology that results in lower flue gas temperatures which, in turn, increase the likelihood of acidic condensation forming inside of the chimney or vent. This makes the venting arrangements from the appliance more critical because this condensation will, in time, corrode vents and cause water damage in unlined chimneys.

Economic Impact

For those contractors who use the certification procedure, with the consent of the construction official, the proposed amendment should result in decreased costs, since they will not have to spend time being present at the inspection of the heater.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Regulatory Flexibility Analysis

The proposed amendment applies equally to all businesses, whether contractors or persons using their services, regardless of size or form of organization. It is necessary that it do so since its purpose is the

protection of health and safety. The proposed amendment does not impose any undue burdens on "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment is flexible in that it allows the contractor, with the consent of the construction official, to have the option of submitting a certification as to the condition of the chimney or vent in lieu of being present at the inspection and disconnecting and reconnecting the equipment. This flexibility should be of benefit to small business contractors who might have difficulty adjusting their schedules in order to be present for inspections.

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

5:23-2.20 Tests and special inspections

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

(c) **The construction official may accept a chimney certification for replacement of fuel fired equipment (form F-370), signed by the person who installed the replacement fuel fired equipment, in lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent.**

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a) (No change.)

(b) Forms:

1. (No change.)

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
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...
F-370 Chimney Certification for Replacement of Fuel Fired Equipment

3.-5. (No change.)

(c)-(j) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

State Library Assistance Programs

Proposed Readoption with Amendments: N.J.A.C. 6:68

Proposed Repeal and New Rules: N.J.A.C. 6:68-3

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

Authority: N.J.S.A. 18A:2-2, 18A:4-15, 18A:74-3.3, 18A:74-6,
 18A:74-10 and 18A:74-14.

Proposal Number: PRN 1995-104.

Submit written comments by March 23, 1995 to:

Sharon A. McAtee, Director
 State Board Office
 New Jersey Department of Education
 225 East State Street, CN 500
 Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978) and Executive Order No. 22(1994), N.J.A.C. 6:68, State Library Assistance Programs, will expire on August 26, 1996. These rules provide for the administration of funding assistance programs and aid to New Jersey libraries.

Chapter 68 was reorganized substantially at readoption effective February 26, 1990 to create a more uniform format and to provide consistent definitions of terms in its subchapters. Minimal changes in most subchapters are being proposed to clarify language, to add definitions and to ensure that the rules more closely conform to the purpose of authorizing statutes.

The State Board of Education has reviewed the rules and, with the exception of the amendments described below, has determined them to

be necessary, reasonable and proper for the purposes for which they were originally promulgated and is, therefore, proposing them for re-adoption at this time.

A summary of the chapter follows:

The title of the chapter has been amended to "State Library Aid and Grants" to more accurately reflect the purpose of the chapter. N.J.A.C. 6:68-1 describes the general requirements which apply to State funded library grant programs: grant application procedures, criteria for approval, reports and audits required, notification of applicants, appeal procedures and definitions. Unnecessary text is being eliminated from N.J.A.C. 6:68-1.1, and N.J.A.C. 6:68-1.3 is amended to refer to the Department's Grants Bulletin. A definition for "access" is being added to N.J.A.C. 6:68-1.2.

N.J.A.C. 6:68-2 prescribes quantitative criteria for the receipt of per capita State library aid to municipalities with a municipal, association, or joint library. In N.J.A.C. 6:68-2.7, amendments are proposed to allow aid to be reduced proportionately for each criteria not met.

N.J.A.C. 6:68-3 describes grant programs intended to encourage the formation and development of larger units of library service. N.J.A.C. 6:68-3.1 has been repealed, and replaced by a new "purpose" section. Repealed N.J.A.C. 6:68-3.1(b) and (c) have been recodified as N.J.A.C. 6:68-3.3(a) and (b). N.J.A.C. 6:68-3.2, Definitions, has been repealed. New section N.J.A.C. 6:68-3.2 identifies eligible program participants. N.J.A.C. 6:68-3.3 and 3.4 have been repealed.

N.J.A.C. 6:68-4 describes funding to public libraries which have suffered unforeseeable emergencies. N.J.A.C. 6:68-4.1 has been amended to state that the purpose of the emergency aid is to help any public library alleviate unforeseeable, emergency conditions. Current language limits such aid to municipal or county libraries. New language has been proposed to N.J.A.C. 6:68-4.4 to more closely conform to the statute's purpose. New N.J.A.C. 6:68-4.4(a) has been added to require an intent to file for emergency aid. New N.J.A.C. 6:68-4.4(b) has been added to require an application for emergency aid and deadline for submission. Current N.J.A.C. 6:68-4.4(a) has been recodified as N.J.A.C. 6:68-4.4(c). N.J.A.C. 6:68-4.4(c)6 and 7, requirements for corrective action on the cause of emergency and requirements for submission of the applicant's maintenance budget have been deleted as unrealistic requirements. Paragraphs (c)8 and 9 have been recodified as paragraphs (c)6 and 7. Existing N.J.A.C. 6:68-4.5 contains eligibility requirements for emergency aid. This section has been repealed and amended eligibility requirements are now proposed for N.J.A.C. 6:68-4.4. Reserved N.J.A.C. 6:68-4.6 through 4.9 are being deleted.

N.J.A.C. 6:68-5 describes grant programs to encourage and support the construction and expansion of public library buildings. N.J.A.C. 6:68-5.2, which contains only the definition of "Library Construction Advisory Board," is being repealed. The "Library Construction Advisory Board," a temporary board appointed by the State Librarian when construction aid is available, has not been reconstituted. Current Department grant review procedures do not allow a review board of this type. Current N.J.A.C. 6:68-5.3(b) has been repealed as it is duplicative of text found in current N.J.A.C. 6:68-5.5(f)3. New language requiring all projects to meet minimum size criteria in N.J.A.C. 6:68-5.4(f) has been added to N.J.A.C. 6:68-5.3(b). The current N.J.A.C. 6:68-5.3(c) has been amended to clarify language which describes eligible projects. The current N.J.A.C. 6:68-5.3(d) has been amended to separate application requirements from analysis and program requirements. Analysis and program requirements are now contained in a new N.J.A.C. 6:68-5.2(e). The current N.J.A.C. 6:68-5.3(e), (f), and (g) have been recodified as N.J.A.C. 6:68-5.2(f), (g) and (h). New N.J.A.C. 6:68-5.3(e) has eliminated the acquisition analysis requirement. Unnecessary language has been removed from proposed N.J.A.C. 6:68-5.2(h). The current N.J.A.C. 6:68-5.4, 5.5, 5.6, 5.7 and 5.8 have been recodified N.J.A.C. 6:68-5.3, 5.4, 5.5, 5.6 and 5.7, and have been amended to simplify and eliminate unnecessary text. Proposed N.J.A.C. 6:68-5.4(a) shifts authority for exceptions to code to the State Librarian from the Library Construction Advisory Board, which has been eliminated. Proposed N.J.A.C. 6:68-5.4(c) shifts authority for reviewing State Library Aid requirements from the Library Construction Advisory Board to the State Librarian. Unnecessary language has been deleted from proposed N.J.A.C. 6:68-5.4(f), while maintaining its original intent. Proposed N.J.A.C. 6:68-5.4(g) eliminates mention of an outdated text listing minimum standards for providing barrier free access. Proposed N.J.A.C. 6:68-5.7(a) was amended to list the correct grant application form designation, and to delete subsections (b) through (h) concerning the Library Construction Advisory Board.

N.J.A.C. 6:68-6 describes grant programs to support audio-visual public library services on the local, regional, and State level. No changes are being proposed to this subchapter.

N.J.A.C. 6:68-7 describes grant programs intended for improving and expanding library services to persons institutionalized in health, mental health, mental retardation, veterans, residential, correctional and other similar facilities operated by the State, county or municipal governments. N.J.A.C. 6:68-7.1(b) is amended to eliminate duplicative text which is found in N.J.A.C. 6:68-7.4, 7.5 and 7.6. In N.J.A.C. 6:68-7.1(c) language prescribing the membership of the library advisory committee is being deleted to allow institutions flexibility in establishing committees. The subsection also adds language requiring the committees to form plans of service. Definitions in N.J.A.C. 6:68-7.2 have been amended. Bibliographic access is added to expand the definition of "access." Residents of New Jersey veterans' homes have been added to expand the definition of "client(s) or client groups." The definitions for "institutional library," "institutional library services developmental grants," "institutional library services incentive grants," "institutional library services per capita State aid grants," "library advisory committee," "library materials," and "library service" have been deleted since duplicative text is found in N.J.A.C. 6:68-7.3, 7.4, 7.5, and 7.6.

N.J.A.C. 6:68-7.3(a)1 is amended to increase the number of ranges of minimum standards for institutional library services, allowing various client population institutions to meet minimum standards. N.J.A.C. 6:68-7.3(a)2 is amended to broaden the definition of materials required in minimum standards for institutional library services. N.J.A.C. 6:68-7.4(b) has been deleted and recodified as N.J.A.C. 6:68-7.4(a). N.J.A.C. 6:68-7.4(c) has been clarified and recodified as N.J.A.C. 6:68-7.4(b) and authorizes the State Librarian to determine annually the amount of State aid to institutions. N.J.A.C. 6:68-7.5 has been clarified. N.J.A.C. 6:68-7.6 has been amended to eliminate informational language which is not part of the requirements of the program.

N.J.A.C. 6:68-8 describes grant programs for municipal public libraries to maintain, operate and improve municipal branch library services. Much of the language of the current subchapter is being eliminated to allow greater flexibility in administering grants to municipal public libraries. N.J.A.C. 6:68-8.1(a) is amended to eliminate unnecessary text and to require that aid be used to meet community needs. N.J.A.C. 6:68-8.1(b) is deleted to remove text that is duplicated in N.J.A.C. 6:68-8.3(a). N.J.A.C. 6:68-8.2, which lists availability, master plan requirements, eligibility requirements, amounts of awards and criteria for approval for municipal branch library assistance for planning has been amended and replaced with text describing eligibility requirements. N.J.A.C. 6:68-8.3, which lists master plan requirements, eligible projects, amounts of awards, criteria for approval and eligible applicants has been amended and replaced with text describing categories in award of grants and authorization for the State Librarian to set category priorities and fund allocations.

N.J.A.C. 6:68-9 describes the grants available to public libraries for evaluation and development of library collections. N.J.A.C. 6:68-9.2 is being amended to eliminate funding the development of coordinated collections policies. Libraries which have been motivated to develop these policies have been able to do so without grant funds.

N.J.A.C. 6:68-10 describes grants to libraries for housing, protection, preservation, repair, restoration and maintenance of collections of historical or special interest. In N.J.A.C. 6:68-10.2 the definition of "preservation" has been amended to clarify existing language. N.J.A.C. 6:68-10.3 has been amended since the New Jersey State Library has determined that "collection maintenance" should not be eligible for funding under this program. N.J.A.C. 6:68-10.4 has been amended to permit additional funding for privately supported libraries.

Social Impact

The proposed readoption with amendments of N.J.A.C. 6:68 is designed to continue State funded grant programs to New Jersey libraries. Academic, institutional, public, school and special libraries and library collections found in historical societies, museums and media centers in New Jersey contain a vast array of documentary resources. These library resources collectively improve the quality of life for New Jersey residents. They provide information on which to base personal, business and public decisions. They serve as a primary means by which our culture and experience are passed from one generation to another. Library informational resources also assist in continued self-education and self-improvement and provide stimuli for individual contemplation and entertainment.

Access to information is fundamental to education and reasoned social change, to growth and prosperity in business and industry, and to sound and equitable government. The proposed amendments will not have any effect on the existing social impact.

Economic Impact

The proposed amendments are not economic in nature, will not result in further costs or savings and, therefore, are not anticipated to have any differing economic impact.

N.J.A.C. 6:68-2, rules for the State Library Aid, have provided much needed funding for the State's public libraries. The calendar 1992 income aid of \$7,614,134 provided approximately 3.4 percent of the total expenditures by public libraries. The fiscal year 1995 appropriation for per capita aid is \$7,665,000. Readoption of this subchapter is necessary to maintain adequate State support of good library services. No differing impact is anticipated as a result of the proposed amendments.

Proposed rule N.J.A.C. 6:68-3, Incentive for Larger Service Unit Grant Program, will have a positive economic impact on public libraries, since it will continue to act as a catalyst in developing larger units of service for municipal and county libraries. No differing impact is anticipated as a result of the proposed amendments.

Readoption of N.J.A.C. 6:68-4, Emergency Aid, will provide greater flexibility for public libraries to receive funds for unforeseeable emergencies. There have been no emergency grants awarded since 1990. No differing impact is anticipated as a result of the proposed amendments.

N.J.A.C. 6:68-5, Library Construction Incentive Program, has allowed the State to fund grants for new facilities, additions or renovations to public libraries. No amount was appropriated for public library construction for FY 1994. No differing impact is anticipated as a result of the proposed amendments.

The rules in N.J.A.C. 6:68-6, Audio-Visual Public Library Services, have allowed public libraries to provide expanded audio-visual service on a more cost efficient, cost effective basis through cooperative programs, purchases and services. Audio-visual materials provided through public libraries are used by New Jersey residents, businesses and organizations for a wide variety of purposes related to education, information and training; all of which impact on the State's economic well being as a whole. In FY 1993, an appropriation of \$40,000 was made. No differing impact is anticipated as a result of the proposed amendments.

Under the rules of N.J.A.C. 6:68-7, Institutional Library Services, library services have supported literacy, education, and training programs in New Jersey correctional and human services institutions. These programs share a common goal of preparing the residents of institutions to return to their communities as working, productive persons. In FY 1994, an appropriation of \$150,000 was made. No differing impact is anticipated as a result of the proposed amendments.

The rules in N.J.A.C. 6:68-8, Municipal Branch Library Services, provide for State funding to municipal libraries with branches. Data was gathered from a questionnaire sent to all 33 municipal libraries that have branch library facilities. Results of that survey indicated that, because of economic difficulties, only six libraries were able to operate a full service branch facility (open at least 30 hours a week, providing a full-time librarian and programs for children and adults). There is, therefore, a great need to provide State funds as an incentive to local municipalities to expand and upgrade library services in their branch facilities. This program was funded in FY 1994 with an appropriation of \$117,000, the first appropriation since its adoption in 1987. No differing impact is anticipated as a result of the proposed amendments.

Programs initiated under N.J.A.C. 6:68-9, Collection Evaluation and Development, will allow for more effective utilization of library collection budgets. The appropriation for this program was \$150,000 in FY 1994. No differing impact is anticipated as a result of the proposed amendments.

Under the rules of N.J.A.C. 6:68-10, Maintenance of Library Collections, library collections already purchased, cataloged, and available to users will have their useful lives extended. One hundred fifty thousand dollars was appropriated for FY 1994. No differing impact is anticipated as a result of the proposed amendments.

Executive Order No. 27 Statement

The rules proposed for readoption with amendments do not implement Federal requirements and the rules do not exceed any Federal requirements.

Regulatory Flexibility Statement

The proposed amendments primarily affect approximately 4,500 academic, institutional, public, school and special libraries, historical

societies, museums and media centers, some of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the amendments do not impose any reporting, recordkeeping or other compliance requirements on libraries and other similar agencies unless they voluntarily elect to participate in aid programs as cited in N.J.A.C. 6:68. Libraries and other similar agencies seeking to participate in programs under N.J.A.C. 6:68 must submit application forms. Participants must submit interim narrative reports and final narrative and financial reports. These reports are required by the Department of Education and are maintained to ensure accountability of public expenditures. The requirement applies to all agencies, regardless of size. Under the amendments, paperwork requirements remain the same. There should be no capital costs associated with these amendments, nor any need for small businesses to employ professional services. Therefore, no lesser requirements or exceptions are provided based on business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:68.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 6:68-3.

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

CHAPTER 68 STATE LIBRARY [ASSISTANCE PROGRAMS] AID AND GRANTS

6:68-1.1 Purpose

The purpose of this chapter is to describe the library grant programs available from State funds and to establish general rules for the application process [and for the awarding of these funds to libraries. These general rules will govern the State Library grant process unless different procedures are given in the regulations relating to a specific grant program].

6:68-1.2 Definitions

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

...
"Access" means accessibility on site, interlibrary loan of materials, citation/location of materials on databases and cataloging of materials.
...

6:68-1.3 Grant application procedures

(a) (No change.)
(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the [annual program announcement and its supplement] **publication "Grants Bulletin."**

6:68-2.7 [Loss] **Reduction** of aid for failure to meet minimum requirements

(a) Failure to meet the requirements of N.J.A.C. 6:68-2.2 [through 6:68-2.6] and 2.3 will result in the loss of all per capita State Aid.

(b) **Failure to meet the requirements specified in N.J.A.C. 6:68-2.4 through 2.6 will result in the loss of per capita State Aid by a percentage in proportion to the number of requirements not yet achieved, each requirement to have the following weights:**

1. N.J.A.C. 6:68-2.4:
 - i. Employees: 30 percent.
2. N.J.A.C. 6:68-2.5:
 - i. Basic book collection: 10 percent.
 - ii. Annual purchases: 30 percent.
 - iii. Periodicals: 10 percent.
3. N.J.A.C. 6:68-2.6:
 - i. Hours of service: 20 percent.

SUBCHAPTER 3. INCENTIVE FOR LARGER SERVICE UNITS GRANT PROGRAM

6:68-3.1 Purpose

The rules in this subchapter provide for the development and expansion of larger units of library service to the residents of New Jersey, pursuant to the provisions of the State Library Aid Law (P.L. 1967, c.271), N.J.S.A. 18A:7A-6.

6:68-3.2 Eligibility

Any public library is eligible to participate in the program.

6:68-3.3 Categories in award of grants

(a) Each approvable application shall be assigned to one of the two categories as follows:

1. Municipal library assistance aid for the planning and development of joint libraries and cooperative services;
2. County library assistance aid for the planning and development of expanded county library service.

(b) The priority of categories and the percentage of funds allocated to each category shall be established each year by the State Librarian.

SUBCHAPTER 4. EMERGENCY AID

6:68-4.1 Purpose

The purpose of this emergency aid grant program is to help alleviate unforeseeable, emergency conditions in any [municipal or county] **public library.**

6:68-4.4 Method of application

(a) **An intent to file a request for emergency aid must be received by the State Librarian within 90 days of damage or loss.**

(b) **An actual application for emergency aid must be received by the State Librarian within one year of damage or loss.**

[[a)](c) A letter of application for emergency aid under N.J.S.A. 18A:74-6 must be [sent by certified mail] **submitted** to the State Librarian. This letter of application, made by an [authorized representative] **officer** of the library's board of trustees, shall include:

- 1.-5. (No change.)
- [6. Proposed steps to be taken by the library to correct the condition which caused the emergency;
7. The library's maintenance budget for the preceding five years.]
- [8.]6. An assurance that the library holds adequate insurance; and
- [9.]7. Any additional reports or information the State Librarian may request.

[(b) An intent to file a request for emergency aid must be received by the State Librarian within 30 days of damage or loss.

(c) Actual application for emergency aid must be received by the State Librarian within 90 days of damage or loss.]

[6:68-4.5 Eligibility

(a) In order to be eligible for assistance, the library must demonstrate that:

1. Adequate insurance was in effect for 12 months prior to the emergency;
2. Preventive maintenance was budgeted for and performed during each of five years prior to the emergency; and
3. Reasonable effort has been made to correct the condition that caused the emergency. Written documentation, such as copies of bills, requests for quotations, work orders, must be submitted.

6:68-4.6 through 6:68-4.8 (Reserved)

6:68-4.9 (Reserved)]

SUBCHAPTER 5. LIBRARY CONSTRUCTION INCENTIVE PROGRAM

[6:68-5.2 Definitions

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

"Library Construction Advisory Board" means a Board appointed by the State Librarian whose members have had extensive experience

in the planning and construction of at least two public library buildings. The Board shall review and recommend projects for approval to the State Librarian.]

6:68-[5.3]5.2 Eligible projects

(a) (No change.)

(b) [If the project is an addition to an existing building, the new construction for the addition must result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.5(f).] **All projects shall meet the minimum size criteria in N.J.A.C. 6:68-5.4(f).**

(c) The acquisition or [the] substantial renovation of an existing structure may be an eligible project. [In order to be] **If** eligible, the acquisition or the renovation must be extensive and [comprehensive as distinguished from] **clearly not** routine maintenance and repair [projects]. In no case may costs for furnishings and equipment in excess of 30 percent of the total [acquisition or] renovation costs of the project be considered eligible for matching.

(d) An application(s) may be submitted [which combines] **combining** renovation and construction of an addition. An acquisition or renovation application must result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-[5.5(f)]**5.4(f)**.

(e) [An acquisition or] A renovation analysis and program must be prepared by a registered architect and shall be part of the application. The architect shall also certify that the proposed [acquired or] renovated structure and all its component parts shall have a life expectancy of 20 years or more. Studies made by the architect regarding the following shall be submitted in substantiation of the suitability and practicality of the acquisition or renovation:

1. (No change.)

2. [All interior and exterior finishes, general construction, safety factors, ceiling lights, and ventilation] **The building** shall be examined to determine if [the existing structure] **it** is suitable for acquisition or renovation and upon completion will require no more than normal, annual maintenance;

3.-4. (No change.)

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

[(g)](h) The signing of construction contracts before full approval by the State Librarian shall make the project ineligible [for participation in the grant program].

6:68-[5.4]5.3 Eligible project costs

(a) (No change.)

(b) In order to promote the construction of projects in an economical manner, a ceiling periodically shall be set by the State Librarian [describing a] **on** maximum per square foot project cost beyond which project costs will not be eligible in the computation of the State share of funding.

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

6:68-[5.5]5.4 Project criteria

(a) All applications will not be eligible in the computation of the State share of funding.

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

6:68-[5.5]5.4 Project criteria

(a) All applications must meet the requirements and criteria of these regulations. Those interested in applying for possible exceptions must request an interview with the [Library Construction Advisory Board] **State Librarian**. Exceptions to the requirements and criteria may be allowed.

(b) (No change.)

(c) During the calendar year prior to submission of application, the library shall have met the minimum criteria for receipt of State Library Aid (N.J.A.C. 6:68-2) or submit a plan detailing steps to meet all the criteria which is acceptable to the [Library Construction Advisory Board] **State Librarian**.

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

(f) Floor space is meant to include total square footage of space available for public library purposes including outer walls[. This shall include], areas provided for mechanical equipment and maintenance requirements **and storage**. [In calculating square footage, only those

areas shall be included that] **These areas must** have heat, light and ventilation [adequate for public and staff usage, excepting that those areas designated for mechanical, maintenance and storage purposes have heat, light and ventilation] and square footage commensurate with their purposes.

1.-4. (No change.)

(g) Library buildings and facilities shall be designed in accordance with **State and Federal minimum standards for providing barrier-free access for physically handicapped people**. [the minimum standards contained in the "Buildings and Facilities for Providing Access and Usability for Physically Handicapped People," ANSI A117.1—1986. The 1986 edition of this publication with all subsequent amendments and supplements is hereby incorporated by reference and adopted as a rule.

1. This document is available for review at the Division of the State Library, Department of Education, 185 West State Street, CN 520, Trenton, New Jersey 08625-0520.

2. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.]

[3.]1. The applicant shall also comply with N.J.A.C. 5:23-7, Barrier-Free Subcode, pursuant to N.J.S.A. 52:32-4 through 12.

(h)-(j) (No change.)

6:68-[5.6]5.5 Priorities for the receipt of construction grants

(a) General provisions for priorities for the receipt of construction grants shall include the following:

1. (No change.)

2. Within each of the two priority groupings, all applications shall be ranked in terms of ability to pay by the municipalities and counties. The ratio of the average equalized valuation* of the three years preceding the date of the application to the population estimate of the municipality(ies) or county(ies) by the New Jersey Department of Labor for the year preceding the date of application shall be used as the criterion determining this financial ability. The first grant within each priority grouping shall be awarded that applicant demonstrating the least financial resources through the lowest ratio of equalized valuation to population. Each succeeding grant shall be awarded to the remaining applicant whose ability to pay is lowest.

i. First priority in award of grant shall be given to applications [for construction of, acquisition of a building adaptable to, an addition to or renovation of a central or branch building of a] **by municipal, joint or county [library] libraries**.

ii. Second priority in award of grant shall be given to applications [for construction of, acquisition of a building adaptable to, an addition to or renovation of a central or branch building of an] **by association [library] libraries**.

(b) Any [governmental jurisdiction, board of trustees or library commission which has previously received] **previous recipient** of a construction grant shall be placed automatically in the second priority and be ranked last in the priority for two fiscal years succeeding the fiscal year in which the grant was awarded, after which time it shall resume its normal status.

(c) **There shall be no grant for a specific building within five fiscal years from the fiscal year in which a library construction grant previously was awarded.**

*Equalized Valuation as listed in the "Certification of Table of Equalized Valuations" promulgated annually on October 1, by the Division of Taxation, New Jersey Department of Treasury.

6:68-[5.7]5.6 Amount of grant and method of allocation

(a) (No change.)

(b) Should funds be insufficient to allow all projects eligible for a grant to receive at least 25 percent of eligible project costs, funds shall be distributed according to priority ranking (see N.J.A.C. 6:68-[5.6]5.5 until the funds are depleted.

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

[(e) There shall be no grant for a specific building within five fiscal years from the fiscal year in which a library construction grant previously was awarded.]

6:68-[5.8]5.7 Review and approval procedures

(a) Application for a grant must be in the completed official form **MISC03004069, New Jersey State Department of Education Application**. [NJLCIA-2, "Application for Construction Grant."] (b)-(d) (No change.)

(e) The State Librarian shall appoint a Library Construction Advisory Board which is composed of no fewer than three persons who each have had experience in public library services and the construction of at least two public library buildings. The responsibilities of the Library Construction Advisory Board shall include the evaluation of the applicant's building plans, building site and program of service. It shall recommend to the State Librarian for approval those applicants whose projects will result in efficient and effective library buildings.

(f) Applicants seeking an exception to the regulations and criteria enumerated in these regulations must request an interview with the Library Construction Advisory Board. Requests for exceptions must be directed to the State Librarian.

(g) In addition, the Board shall advise the State Librarian on the development and formulation of regulations and criteria for the construction grant program.

(h) The application process shall consist of two phases. In Phase I, a notice of intent shall be submitted by each applicant. Upon acceptance of this document, the State Librarian shall assign a member of the Library Construction Advisory Board to work with each applicant to assist in the preparation of Phase II required documents. In Phase II, a community survey, a building program and schematic plans, including outline specifications, shall be submitted for review by the Library Construction Advisory Board. Applicants may be required to appear before the Board to present the plans. Upon successful completion of Phase I and Phase II, applicants shall receive notification of eligibility for a grant award. Documents required for Phase II must be submitted to the Library Construction Advisory Board within six months of the acceptance of the Phase I document.]

Recodify existing (i) through (o) as (e) through (k). (No change in text.)

SUBCHAPTER 7. INSTITUTIONAL LIBRARY SERVICES

6:68-7.1 Purpose

(a) (No change.)

(b) Three separate institutional [grant] **funding** categories have been developed:

1. Institutional Library Services per capita State aid [grants provide funds to institutions whose library services meet minimum standards and maintain a level of expenditure for library service equal or above the level of the preceding calendar year.];

2. Institutional Library Services Developmental Grants [provide funds to assist institutions in meeting minimum standards for library services.]; **and**

3. Institutional Library Services Incentive Grants [provide funds to institutions whose library services meet minimum standards, for the purpose of expanding or developing library services].

(c) To be eligible for any of the three programs, institutions must establish a library advisory committee[. Membership on the committee will include one person from each of the following: the institutional library staff, representatives of the administration, the departments of the institution, client population, and the community] **to develop and initiate a plan of service**. The primary model for institutional library services is that of public library services.

6:68-7.2 Definitions

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

"Access" means the onsite use of the library facility and its resources and services or the ability to use library materials and services from remote locations[;], **also known as satellites**. [in]In institutions, access includes open hours of the library facility [and] **plus** service hours to rooms, cells or wards unduplicated by library

facility hours. **Access also includes bibliographic access**. Limitations on access include permissions required and restrictions imposed on client use of services.

"Client(s) or client groups" means mentally disabled, mentally retarded, and physically handicapped persons; also adults and juveniles in correctional and related programs, **and persons in New Jersey veterans' homes**. Excluded are [residents of] **persons in** general hospitals, **general** nursing homes and boarding homes.

"Institution" means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, **general** nursing homes and boarding homes.

["Institutional library" means any library, within an institution, directly serving the institutional client group.

"Institutional library services developmental grants" means funds made available to institutions to bring library services up to the minimum standards.

"Institutional library services incentive grants" means funds made available to institutions already meeting minimum standards to expand or develop programs of library services.

"Institutional library services per capita State aid grants" means funds made available to institutions whose library services meet minimum standards and maintain a level of library expenditures for library services equal or above to the level in the preceding calendar year.

"Library advisory committee" is a group within the institution which will assist in the development of a plan for library services.]

...

["Library materials" means print, non-print items and electronic software accessible through a library and its services. Library materials do not include texts or curriculum materials; they do include a range of recreational, cultural, and informational items.

"Library service" is a general term for all of the activities performed and programs offered by libraries in meeting the need of their target groups. As such, it can encompass a range of services, such as information services or circulation services, which are determined in a particular library by its roles and goals. The primary model for institutional library services is the public library services model.]

...

"Titles" are unique monographs (books) or distinctly titled materials held; this is not the same as volumes or items, which includes all multiple copies of a single title. This definition applies to [books, to audio-visual materials, and to computer software] **all materials formats**.

6:68-7.3 Minimum standards for institutional library services

(a) The following minimum standards shall apply to institutional library services:

1. Staff shall be assigned by the institution in accordance with the chart set forth below:

Average [Annual] Daily [Resident] Client Population	Minimum Number of Paid Staff One staff member part-time. Associate librarian [full] part-time . One library clerk, part-time.
Less than 100	
100 to [300] 299	
[301] 300 to [999] 499	[One librarian full-time. Two library clerks, one of whom must be full-time.] Associate librarian full-time. One library clerk, part- time.
500 to 699	One librarian part-time. One library clerk, full-time.
700 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials in all formats to meet the informational, educational, cultural and recreational needs of the population shall be provided as follows:

- i. A minimum of five titles per client or **300 titles, whichever is larger**. Titles can include print and non-print materials; and
- ii. Equipment to support access to and use of library materials.

3.-4. (No change.)

6:68-7.4 Institutional library services per capita State aid [grants]

(a) Per capita State aid [grants] will provide funds to institutions which meet minimum standards for library services and maintain a level of local library expenditures for library services equal to or above the level in the preceding fiscal year. Such institutions will be eligible, annually, for funding of \$1,000 per institution plus a minimum of \$7.50 per capita. Fiscal year is determined by the parent organization.

[(b)] Institutions which meet minimum standards and maintain a level of library expenditures for library services equal to or above the level in the preceding calendar year will be eligible, annually, for a grant of \$1,000 per institution plus a minimum of \$7.50 per capita.]

[(c)](b) The sum payable as State aid, as finally determined by the Assistant Commissioner and State Librarian, shall be payable on October 1. Payment shall be made payable to [the governing body of] each institution qualifying for aid under this chapter.

6:68-7.5 Institutional library services developmental grants

Developmental grants will provide funds to assist institutions in [bringing their] meeting minimum standards for library services [to minimum standards].

6:68-7.6 Institutional library services incentive grants

Incentive grants will provide funds to institutions to develop or expand programs of library services. Institutional library services must meet minimum standards prior to an application for this grant. [Library services may be provided through cooperation with other institutions or with other libraries.]

SUBCHAPTER 8. MUNICIPAL BRANCH LIBRARY SERVICES

6:68-8.1 Purpose

[(a)] The rules in [the] this subchapter provide [funds to any municipal library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries to assist in maintaining, operating and improving] for the maintenance, operation and improvement of municipal branch libraries to meet community needs, pursuant to the provisions of the State Library Development Aid Law, (P.L. 1985, c.297, N.J.S.A. 18A:74-3.2 through 3.4).

[(b)] There are two separate grant programs which are eligible for funding: Program A—Municipal branch library assistance aid for planning, and Program B—municipal branch library assistance aid for operations and improvements.]

6:68-8.2 [Program A—Municipal branch library assistance for planning] Eligibility

[(a)] Municipal branch library assistance aid for planning will be available to fund or update a master plan for municipal branch library service.

(b) The master plan which results from this planning process shall contain the following elements, which may be further defined in the grant application issued annually by the State Library:

1. Goal of the master plan;
2. Objectives of the master plan;
3. Report on the demographic characteristics of each branch library or proposed branch library;
4. Report on library resources of the municipal branch library system;
5. A report on other existing library and information resources in the community;
6. Report on library services of the municipal branch library system;

7. Options for library service through the municipal branch library system;

8. Report on estimated costs for these options;

9. Feasibility of options; and

10. Projected timetable for implementation of the options.

(c) All costs directly associated with the development of a master plan for a municipal branch library system are eligible for funding, except overhead expenses and in-kind costs.

1. Examples of costs that can be included are the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as a community survey or a patron survey; any support costs directly related to the project including data processing and mailing costs.

(d) Amount of award will fall into the following categories:

1. A grant not to exceed \$20,000 will be available for the development of a master plan for library service for a population up to 50,000.

2. A grant not to exceed \$30,000 will be available for the development of a master plan for library service for a population up to 100,000.

3. A grant not to exceed \$40,000 will be available for the development of a master plan for library service for a population over 100,000.

(e) Additional criteria for approval are as follows:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population, N.J.A.C. 6:68-2.

(f) The boards of trustees of municipal libraries located in municipalities which receive State Aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.] Any municipal public library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries is eligible to participate in the program.

6:68-8.3 [Program B—Municipal branch library assistance for operations and improvements] Categories in award of grants

(a) [Any library applying for funding under this program must have a plan for municipal branch library service which has been approved by the State Librarian. This master plan may have been developed under a planning grant provided by Program A of this subchapter or a master plan which contains the same elements required for a master plan funded under Program A and was completed within and approved the five years preceding the application for this program.] Each approvable application shall be assigned to one of the two categories as follows:

1. Municipal branch library assistance for planning; or
2. Municipal branch library assistance for operations and improvements.

(b) [Options for municipal branch library service include but are not limited to:

1. Expansion of branch library hours to include evenings or weekend hours;
2. Expansion of branch library services through additions of staff, materials or equipment;
3. Expansion of branch library service to include adult or children's programming;
4. Expansion of branch library service through programs targeted for special populations;
5. Expansion of branch library services through employment of a coordinator for specialized services; and

6. Expansion of branch library services through cooperation with other types of libraries.] **The priority of categories and the percentage of funds allocated to each category shall be established each year by the State Librarian.**

[(c) Projects funded under this program may involve one branch of the system or several branches of the system.

(d) In general, any operating expense directly associated with the project will be eligible for funding. These include personnel, books and other library materials, equipment and overhead costs such as electricity or heat. Grant funds may not be used for construction or renovation projects costing in excess of \$10,000.

(e) Under this program grant funding shall not exceed \$50,000 per library.

1. Under this program, a municipal library may apply annually for only one branch library grant.

2. The application may be for either a new project or for a continuation of a previously funded grant.

3. Grants may be funded for a total of three years, the initial grant and two continuation grants.

4. Initial and continuation applications will be evaluated by the criteria found in N.J.A.C. 6:68-1.4.

(f) Additional criteria for approval are as follows:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuation", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population N.J.A.C. 6:68-2.

(g) The boards of trustees of municipal libraries located in municipalities which receive State aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.]

SUBCHAPTER 9. COLLECTION EVALUATION AND DEVELOPMENT

6:68-9.2 Eligible projects

(a) Grants will be [available for the following activities which may be provided locally, regionally or statewide.

1. Collection evaluation and/or user studies;
2. Development of a written coordinated collection development plan among a group of public libraries.] **made to public libraries to support individual or coordinated collection evaluations and/or user studies.**

(b) Grants will be [available to a group of public libraries to purchase materials for their collections in accordance with their written coordinated collection development plan. The implementation of the coordinated collection development plan must increase the resource sharing capabilities of the libraries involved.] **made to public libraries to develop collection subject specialties, either individually or as part of a group of libraries sharing a coordinated collection development plan.**

[(c) Subject specialty development grants will be available to a public library(ies) to develop and/or to strengthen specific subject collections through the purchase of materials.]

SUBCHAPTER 10. MAINTENANCE OF LIBRARY COLLECTIONS

6:68-10.2 Definitions

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

...

"Preservation" means the activities and organization associated with maintaining library and archival materials for use, either in their original physical form or in some other [usable way] **permanent and durable format.**

...

6:68-10.3 Eligible projects

(a) Grants will be made to libraries to increase accessibility to historical or special interest collections through projects including identification/inventory, organization and preservation, condition survey, [collection maintenance,] comprehensive preservation program development, emergency planning, disaster recovery, protection, [collection maintenance] housing, materials conversion, repair, conservation treatment and restoration.

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

6:68-10.4 Funding allocation

(a) No less than 75 percent of program funding will be used [each year] for grant awards to publicly supported libraries.

(b) No more than 25 percent of program funding will be used [each year] for grant awards to privately supported libraries.

(c) **When there are insufficient eligible applications from publicly supported libraries to account for 75 percent of program funding, remaining funds may be used for privately supported libraries.**

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Operation of Clinical Laboratories

Proposed Readoption with Amendment: N.J.A.C. 8:44

Authorized By: Public Health Council, John Slade, M.D.,
Chairman.

Authority: N.J.S.A. 26:1A-7 and 45:9-42.34.

Proposal Number: PRN 1995-107.

A **public hearing** concerning this proposal will be held on Monday, March 13, 1995 at 1:15 P.M. at the following address:

Department of Health
Room 106 (Auditorium)
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by March 23, 1995 to:

Gerda Duffy, CLIA Program Manager
Clinical Laboratory Improvement Service
New Jersey Department of Health
CN-361
Trenton, New Jersey 08625-0361
(609) 530-6150

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:44, Chapter IV of the State Sanitary Code, expires on April 20, 1995. On September 18, 1978, the Public Health Council adopted rules pertaining to the operation of clinical laboratories, pursuant to its authority under N.J.S.A. 26:1A-7. The rules were subsequently readopted by the Council on November 7, 1983 and on November 7, 1988 and again on October 21, 1993.

At the time of the last readoption, work had already begun on a complete updating of the rules and, consequently, it was proposed that the readopted rules only remain in effect for 18 months. However, as a result of a number of unforeseen circumstances, the Department's Clinical Laboratory Improvement Service (CLIS) was unable to complete the planned updating of the Chapter IV rules.

Shortly after the readoption, CLIS' director unexpectedly resigned. Additionally, the Federal Health Care Financing Administration transferred much of the CLIA '88 communications and data processing workload from private contractors to the state agencies that had previously only been responsible for CLIA laboratory inspections.

Due to these unforeseen circumstances, CLIS had no choice but to delay the planned revision of the rules. Since it was impossible to revise the rules as planned and since they are due to expire on April 20, 1995, the readoption of the rules with one minor change is again being proposed pursuant to Executive Order No. 66(1978). This change is being made in recognition of a formalized agreement between the Department of Health and an outside proficiency testing program recognized by the Department. The change at N.J.A.C. 8:44-2.5(b) being proposed would clarify that for State licensure purposes, laboratories may enroll in specific surveys provided through a specified outside alternative proficiency testing provider identified by the Department of Health in lieu of participation in the Department's program. However, by formal agreement, reports issued by the provider regarding a participant's performance cannot of itself be construed to indicate compliance with New Jersey State licensure standards.

The current readoption proposal calls for a two-year expiration and, in recognition of the importance of writing new regulations, this project has been assigned a very high priority.

The Public Health Council has reviewed this chapter again and determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated and is proposing this readoption with only one change. Since they provide physicians and other care-givers with information used in the diagnosis, prevention and treatment of disease, reliable clinical laboratory test results are crucial to patient health and safety. The reliability of the test results is dependent upon the proper operation of the laboratory facility and, therefore, it is essential to retain in effect rules which require proper patient specimen collection, identification and processing, accurate analyses and correct reporting of test values.

The rules being proposed for readoption are summarized below:

N.J.A.C. 8:44-2.1 provides definitions for the terms used in the chapter. N.J.A.C. 8:44-2.2 describes the applicability of the rules and notes that the rules do not apply to (1) performance of anatomic pathology, (2) research and teaching laboratories, (3) laboratories operated by the Federal government, (4) blood banks licensed pursuant to N.J.S.A. 26:2A et seq. and (5) clinical laboratories possessing a Federal Certificate of Waiver as defined by CLIA '88.

N.J.A.C. 8:44-2.3 describes the duties and minimum qualifications of a laboratory director who shall be responsible for directing the laboratory's operation.

N.J.A.C. 8:44-2.4 describes the supervisory personnel necessary for a laboratory to operate, and describes the responsibilities and qualifications of both the general supervisor and technical supervisor.

N.J.A.C. 8:44-2.5 requires a laboratory to perform only those tests for which it is licensed, to successfully participate in a proficiency testing program designed to ensure that the laboratory is performing testing in a competent fashion, and to perform only tests within those specialties for which the laboratory director or supervisor have the appropriate qualifications. The rule further describes the qualifications the director or supervisor shall have if the laboratory is to perform tests in a given specialty.

N.J.A.C. 8:44-2.6 describes the technical personnel the laboratory shall have, including the qualifications of such personnel.

N.J.A.C. 8:44-2.7 requires the retention of the original analytical work records, the documentation of test procedures, the provision of adequate space and facilities, the receipt of appropriate test requests, the maintenance of records that document the disposition of patient specimens, and the proper reporting of test results.

N.J.A.C. 8:44-2.8 requires the surveillance of results, the correction of problems, the use of reliable methodologies and in-date testing materials, the proper collection, identification and processing of patient specimens and the performance of quality control procedures.

N.J.A.C. 8:44-2.9 and 2.10 provide that the Public Health Council, on advice of the Commissioner of Health, may amend, delete or promulgate any rules, so long as the rule is no less stringent than applicable Federal regulations.

N.J.A.C. 8:44-2.11 describes the reporting requirements imposed upon laboratory supervisors.

N.J.A.C. 8:44-2.12 and 2.13 describe the limitations on laboratories which handle live microorganisms or viruses pathogenic to humans, animals or birds.

Social Impact

Once readopted, the chapter will ensure that clinical laboratories operate in a fashion which will not endanger the public's health, by assuring that tests are adequately performed and reported. Failure to

readopt the rules could seriously jeopardize the public health and well being.

Since their original adoption in 1978, the rules have been invaluable to the Department in its efforts to eliminate dangerous clinical laboratories. Once readopted, the chapter will make it possible for the Department to continue to pursue its goal of ensuring that authentic and reliable test results are reported by clinical laboratories.

Proficiency testing has long been a standard for measuring the ability of laboratories to perform clinical tests. The proposed amendment will ensure that, through enrollment in either the Department-sponsored program or the College of American Pathologist's CAP surveys program the Department will be able to monitor and evaluate compliance and take immediate action to correct poor performance. This will assure those who utilize the laboratories a minimum standard of performance and that the public's health will be protected.

Economic Impact

Licensure and proficiency testing fees which are required by statute and other regulations (N.J.S.A. 45:9-42.30 and N.J.A.C. 8:45-1.3) comprise the major portion of the regulatory costs borne by New Jersey's laboratories. The costs of compliance with the rules proposed for readoption are small, since most, if not all, of those costs are already incurred in the provision of reliable laboratory services. The records required by the rules, that is, accession records, analytical records and copies of test reports are records which are already an indispensable part of any laboratory operation and the various quality control procedures required by the regulations are no more than is necessary to monitor the accuracy of the reported patient results. Also, since this chapter is being proposed for readoption with only a minor change, no new financial burdens are imposed upon the regulated industry. A positive economic impact will be felt by those New Jersey licensed laboratories which choose to voluntarily enroll in CAP PT surveys for the purpose of obtaining peer accreditation. Those laboratories will now be able to satisfy requirements for both State licensure and peer accreditation without incurring additional cost.

Executive Order No. 27 Analysis

The rules being proposed for readoption, N.J.A.C. 8:44, do impose some standards on clinical laboratories in New Jersey that exceed those contained in the Federal regulations promulgated pursuant to the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88). The more stringent standards are described and justified below.

While N.J.A.C. 8:44-2.3(b)2 requires the director to spend time on the laboratory's premises, the corresponding Federal rule, 42 CFR 493.1445(c), allows the director to fulfill his or her responsibilities by being accessible for telephone or electronic consultation.

If a director does not periodically visit the laboratory and personally observe its practices and procedures, then he or she will only be aware of those problems that the staff are able and willing to recognize and report. It has been the Department's experience that, even with the rule requiring on-site consultations, many directors do not spend sufficient time in the laboratory and that, when serious deficiencies are found, they will claim to have been unaware of the existence of the observed problems. In these cases, the directors themselves propose more on-site time as their plan of correction. It is also significant that in those cases where laboratories were found to pose an imminent threat to the public health, their directors frequently asserted that they knew nothing about the dangerous practices because they had spent little or no time on the laboratories' premises.

While a laboratory may have to pay a director less if he or she never actually visits the facility, what it does pay would represent a cost without any real benefit. On the other hand, if the director does visit the laboratory and does know how it is being operated, then the extra cost, if any, for the on-site time should be offset by the benefit of an increased assurance of reliable patient test results. In addition, even if a laboratory will pay more for an on-site director, this added cost should also be weighed against the resulting decrease results. In addition, even if a laboratory will pay more for an on-site director, this added cost should also be weighed against the resulting decrease in enforcement costs. For example, if the directors of those laboratories that were closed down by the Department had spent an adequate amount of time on the premises, then the owners would not have been free to engage in dangerous practices and the State would not have had to undertake time-consuming and expensive investigations and litigation.

Similarly, while N.J.A.C. 8:44-2.3(b)1 prohibits an individual from serving as director of more than three laboratories, the Federal rule, 42 CFR 493.1445(d), allows one individual to direct five laboratories.

Given the Department's experience with existing directors' inability to supervise three or fewer laboratories of substantial size, the Department is reluctant to allow supervision of over five laboratories. In all likelihood, Federal regulations are based upon the need in some states for laboratory directors to supervise multiple small laboratories. In New Jersey, the size of the average laboratory would prohibit a blanket authorization to supervise five laboratories, as the level of supervision necessary for such large laboratories is substantially greater than that of laboratories of much smaller size and complexity.

Until the issue of laboratory size has been addressed, the three-laboratory limit can be justified for the same reasons as those used above to defend the rule requiring the director to spend time on the laboratory premises.

While N.J.A.C. 8:44-2.4(b)1 and 2 require a general supervisor to be on the laboratory premises during its normal hours of operation, the corresponding Federal rule, 42 CFR 493.1463(a)3, only requires on-site supervision when high complexity testing is being performed by individuals who have no education beyond a high school diploma.

Both State and Federal rules allow high school graduates to work in clinical laboratories, and neither the State rule nor the Federal rule require the graduates to have taken any high school math or science courses beyond the minimum already required for graduation. However, while the State rule only allows the graduates to work under direct supervision, the Federal rule allows them to perform, unsupervised, a wide variety of technically difficult procedures and to operate, unsupervised, a wide variety of sophisticated automated analyzers.

The State rule is necessary, since, without such a rule, there would be nothing to prevent even large laboratories full of sophisticated automated analyzers and doing millions of tests a year from being staffed exclusively by high school graduates who are only directed and supervised via the telephone or computers. Under such circumstances, there is a high potential that errors will frequently go undetected or unrecognized. Depending on the circumstances, the consequences of erroneous test reports can be inestimable. For example, an erroneous bilirubin result on a newborn baby's specimen could lead to mental retardation and, therefore, the cost of even one error might have paid for the salary of an on-site supervisor for many years.

While N.J.A.C. 8:44-2.4(c) essentially requires a general supervisor to have a bachelor of science degree followed by six years of laboratory experience, the Federal rule, 42 CFR 493.1461(c)2, only requires an associate degree in science and two years of experience.

Given the fact that some laboratories perform extremely complex and technically demanding tests such as, for example, virological tissue cultures, that require years of experience to develop the skills necessary to perform and interpret the test, an associate degree and two years of experience cannot assure the necessary level of knowledge and competence. While it may cost more to hire personnel with additional education and training, the benefit to the public health is great because correctly performing and reporting laboratory tests will aid in the diagnosis and treatment of disease decreasing overall morbidity and mortality and in some cases preventing the spread of infectious diseases.

While N.J.A.C. 8:44-2.8(b)1i requires the use of control organisms to check the reliability of each batch of microbiological culture medium, the corresponding Federal rule, 42 CFR 493.1218(f)4, accepts the media manufacturer's in-house quality control in lieu of control checks performed by the laboratory.

The more stringent State rule is necessary because the manufacturer's quality control only assures the reliability of the media at the time it leaves the plant and provides no assurance that the same media will still be viable after distributors have transported and stored it under varying environmental conditions and for various periods of time.

While there is a cost associated with controlling any materials, efficient laboratories can minimize these costs by purchasing large, rather than small, batches of each medium. In microbiology, the cost/benefit ratios are particularly high, since an incorrect microbiological, as opposed to an incorrect chemistry result, will almost invariably have serious consequences. For example, undetected media deterioration can end in a failure to recover a pathological organism which can in turn lead to untreated infections and even the spread of a communicable disease.

While N.J.A.C. 8:44-2.8(b)3i requires the use of two chemistry controls with each batch of 20 specimens tested, the Federal rule, 42 CFR 493.1218(b), only requires the use of controls every 24 hours.

Although the Federal standard is adequate for certain types of test systems with prepackaged reagents, it cannot assure reliable results from methods that still require the analyst to prepare and measure reagents

each time one or more patient specimens are tested. Errors occurring in these types of systems will not be detected unless a control is included with each test run. As already stated above, the cost of even a single erroneous laboratory result can be extremely high and can far exceed that cost of running a few extra controls each day.

While N.J.A.C. 8:44-2.11 and 2.12 require laboratories to report various hazardous substances and communicable diseases to State and local health agencies, the Federal CLIA '88 regulations have no comparable requirements. The CLIA rules are probably silent on this issue since the Federal government gathers its communicable disease data via state agencies rather than directly from physicians and laboratories. Reporting of hazardous substances and communicable diseases is an integral component of maintaining the public health. The reports allow the Department and other public health officials to assess the impact of these dangers upon the public and, if necessary, take measures that would prevent harm. The benefits of this reporting requirement clearly justify the modest costs of data collection and postage.

The amendment being proposed does not exceed those contained in the Federal regulations promulgated pursuant to the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) regarding laboratory enrollment in approved proficiency testing (PT) programs.

N.J.A.C. 8:44-2.5(b) proposes to require enrollment in either the Department-sponsored program or specific CAP surveys for State licensed clinical laboratories and the corresponding Federal rule, 42 CFR 493.801 requires enrollment in HHS-approved programs for all entities performing moderate or high complexity testing.

Currently, there are more than 20 HHS-approved PT programs, including the New Jersey State Department of Health and the College of American Pathologists (CAP). Historically, New Jersey licensed clinical laboratories have enrolled overwhelmingly in either the Department-sponsored or CAP-sponsored programs. Limiting the number of alternative PT provider options for State licensed laboratories is programatically imperative in light of current budgetary constraints. Clearly, both the logistical and financial resources needed to independently approve alternative programs, verify laboratory enrollment, and receive, catalog and review PT data submitted by all Federally approved providers for the purpose of monitoring performance on state licensed laboratories would be prohibitive. More significantly, it would result in a shift of program priorities and dilute the Department's ability to provide for the Department's own program participants. While this proposal grants equivalency to specific CAP surveys, it does not delegate or relinquish the Department's statutory obligation to prescribe minimum standards of performance or monitor laboratories to determine if these standards are being met. Staff who now perform all components of the Department-sponsored program would also perform all documentation and evaluation functions required to ensure state licensure compliance for those laboratories opting for an alternative provider. Unquestionably, access to an unlimited number of alternate providers would severely limit the Department's ability to focus on ensuring accurate test results, require immediate corrective action for laboratories failing to maintain satisfactory performance and respond quickly to issues to quality testing.

Regulatory Flexibility Analysis

There are approximately 350 laboratories in New Jersey. About 95 percent of these facilities have fewer than 100 employees and they would, therefore, be classified as small businesses. Annual licensure and proficiency testing fees are related to the size of the laboratory and, therefore, the small businesses pay considerably smaller fees. Proficiency testing fees vary with the level of services offered, and, since small businesses usually offer fewer services, it is anticipated that their total proficiency testing fees will be lower. The requirements imposed and attendant costs are discussed in the Summary and Economic Impact above. Professional services beyond those of the laboratory staff should not be needed for compliance. Since small businesses usually offer fewer services, it is anticipated that these total fees for proficiency testing will be less. Any waiver or relaxation of the rules proposed for adoption would have a negative impact on patient care, not only because these small businesses represent a significant portion of all of New Jersey's laboratories, but also because the Department has found that the most dangerous violations occur in precisely these types of facilities. Thus, the safety of those patients whose specimens happen to be tested at smaller laboratories would be seriously compromised, unless the rules are uniformly applied to all laboratories regardless of their size.

The proposed amendment regarding proficiency testing is applicable to all New Jersey licensed clinical laboratories. There can be no exemption from the rules or lesser requirements regarding bookkeeping, report-

ing or compliance for small business, because of the need to equitably monitor laboratory performance through proficiency testing for all licensed laboratories and to insure the public health of all citizens.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:44.

Full text of the proposed amendment follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

8:44-2.5 Tests performed

(a) (No change.)

[(b) All clinical laboratories must successfully participate in a proficiency testing program covering all clinical laboratory specialties and subspecialties as made available in which the laboratory is approved to perform tests. Laboratories shall: receive and examine and/or analyze specimens delivered by mail or messenger at such times as designated by the proficiency testing service; and maintain records of all proficiency testing results and interpretations routinely available to the Department of Health. An exception to the requirements of this paragraph may be made provided the Department of Health determines that an appropriate proficiency testing program is not readily available.]

(b) All clinical laboratories shall enroll and successfully participate in either the Department of Health proficiency testing (PT) program, or specifically designated surveys in the College of American Pathologists' CAP Surveys Program. Enrollment in the CAP Surveys Program must cover all clinical laboratory specialties, analytes and/or subspecialties for which a given laboratory is approved to perform tests which have been designated by the Department as requiring proficiency testing. Laboratories shall: enroll and participate in proficiency testing surveys appropriate to their level of service, receive and examine and/or analyze specimens delivered mail or messenger, at such times as designated by the proficiency testing provider; and maintain records of all proficiency testing results in surveys in which they participate and make such records, including results, interpretations and cumulative performance data routinely available to the Department of Health. The Department of Health shall reserve authority to regrade data from the CAP Surveys Program (that is, survey scores and cumulative performance interpretations) through the Clinical Laboratory Improvement Service according to its own licensing standards. Any report issued by the CAP Surveys Program by itself shall not be construed as determinative of compliance with the New Jersey licensing standards.

(c) (No change.)

(a)

EPIDEMIOLOGY AND RESEARCH SERVICES

Cancer Registry

Proposed Readoption with Amendments: N.J.A.C. 8:57A

Proposed Repeal and New Rule: N.J.A.C. 8:57A-1.2

Authorized By: Len Fishman, Commissioner, Department of

Health (in consultation with the Public Health Council).

Authority: N.J.S.A. 26:2-104 et seq.

Proposal Number: PRN 1995-94.

Submit written comments by March 23, 1995 to:

Betsy A. Kohler, MPH

Acting Director

Epidemiology and Research Services

New Jersey State Department of Health

CN 369

Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:57A shall expire on April 20, 1995. The New Jersey State Department of Health has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which it was originally promulgated. However,

for the sake of clarity, the Department proposes that N.J.A.C. 8:57A-1.2 be repealed and a new rule adopted in order to incorporate the numerous changes in language, format, and organization of the material.

N.J.A.C. 8:57A concerns the reporting of cancer and other tumorous and precancerous conditions to the New Jersey State Department of Health and is mandated by N.J.S.A. 26:2-104 through 109. The Department's objectives in establishing rules for such reporting continue to be as follows:

1. To maintain a population-based cancer reporting system for the State of New Jersey. This data base includes all New Jersey residents diagnosed with cancer or other reportable conditions since October 1, 1978;

2. To provide annual New Jersey cancer incidence data by age, race, sex, and geographic area for use in planning and establishing cancer prevention and control activities, and for evaluation of progress made in reducing the cancer problem;

3. To provide data and promote studies related to the identification of high risk groups and occupational patterns of cancer occurrence;

4. To promote the establishment and expansion of cancer registry programs in New Jersey health care facilities; and

5. To provide educational information to the medical profession and useful feedback information to physicians and hospitals.

The Department accordingly is proposing the readoption of N.J.A.C. 8:57A, with amendments.

This chapter, entitled Cancer Registry, defines the disease conditions to be reported to the State Department of Health. Several conditions have been eliminated from the reportable list, including carcinoma in situ of the cervix and the benign conditions which were previously reported. Additional conditions which are listed clarify nomenclature in current practice. The chapter requires that the administrative officers of every health care facility, physicians and dentists, and directors of every independent clinical laboratory shall report to the Cancer Registry.

A change has been made to require hospitals to submit machine-readable data that meet criteria and standards specified by the Department of Health. The submission of machine readable data will facilitate reporting and improve timeliness of reporting. Copies of the pathology report and operative report are no longer required on routine data submissions, but must be submitted on a request basis. Physicians, dentists, and independent laboratories may continue to submit reports on forms provided by the Department of Health, or they may submit electronically.

Reporting of cancer cases must be within six months of the date of diagnosis or within three months of the date of discharge; this requirement has not changed.

The rules also specify that every health care facility and independent clinical laboratory shall allow State Department of Health representatives to obtain all required information from medical, pathological, treatment, and other records and logs, and that these representatives shall have access to or be provided with information on specified cancer patients and other patients for purposes of State Department of Health research studies related to cancer etiology, prevention and control, prior to November 18, 1977. Additional sources of cancer data, including all health care facilities, health care providers, physicians, and dentists have been added to this provision to address changing health care practices of increased outpatient diagnosis and treatment.

Social Impact

The rules proposed for readoption with amendments will have beneficial social impact, since cancer remains a leading cause of morbidity and mortality in this State, as well as the entire nation. The rules expedite the mechanism for reporting cancer and precancerous conditions to the New Jersey State Department of Health. Registry data are used in a variety of research programs aimed at the control and prevention of cancer, as well as special investigations of cancer etiology.

Economic Impact

The rules proposed for readoption with amendments do not significantly increase the economic burden on health care facilities, independent clinical laboratories, physicians and dentists complying with current rules.

The submission of machine-readable data will contain costs for both computerized hospital registries and the New Jersey State Cancer Registry in terms of personnel time, paper, and postage. These savings could be substantial, depending on the size of the reporting facility. More than 70 percent of hospitals have the capacity to report data electronically at the current time. The Department has issued small grants to hospitals

during the past year to assist in the computerization of hospital tumor registries, and intends to continue these grants as funds permit.

There may be small costs incurred by the New Jersey State Cancer Registry in obtaining data from health insurers and other third party payors. Such expenses will be more than offset by cost savings within the New Jersey State Cancer Registry, hospital registries and other reporting sources as information provided by health insurer's suppliants that which is provided by the health care providers.

In the long term, the reporting of cancer data benefits the public, through the provision of important information which can be utilized in the planning of cancer prevention and control activities, resulting in more effective allocation of public health resources.

Executive Order No. 27 Statement

The rules proposed for readoption with amendments do not correspond to any current Federal regulation, since cancer is not a reportable condition on a national level. Congress has recently passed legislation to facilitate reporting of cancer in all states but regulation governing such reporting is state-based. (See P.L.102-515.)

Regulatory Flexibility Analysis

The rule proposed for readoption with amendments will have a minor impact on small businesses which diagnose or treat outpatients with cancer. However, these businesses are required to report cancer only when the case is not seen in a New Jersey hospital. It is difficult to estimate how many physicians or laboratories see non-hospitalized cancer patients. No special considerations will be made for small business, because these rules apply to the reporting of a disease of public health interest. Complete and accurate data are essential for public health policy and planning for cancer control and prevention. Exclusion of data from small businesses would bias the Cancer Registry data. Small businesses, such as physician's offices and independent laboratories, will be able to use the forms provided by the Department, and should not incur any costs for professional services.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:57A.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:57A-1.2.

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

8:57A-1.1 Reporting of cancer

(a) Cases of cancer and other specified tumorous and precancerous diseases[, which shall be specified in a listing to be supplied by the Commissioner of Health and which are initially diagnosed after the effective date of these regulations,] shall be reported to the State Department of Health. **The reportable diseases shall be specified in a listing to be supplied by the Commissioner of Health, in accordance with N.J.A.C. 8:57A-1.2.**

(b) The administrative officer of every health care facility shall [be responsible for reporting] **report** to the State Department of Health every case of cancer or other specified tumorous and precancerous disease when it is initially diagnosed or **when the patient is first admitted or treated for any reason in that facility.** A report shall also be [given] **submitted** for each subsequent primary cancer diagnosed in [an] **that individual. The information to be reported shall be submitted electronically in a standard format specified by the State Department of Health, which shall include patient identifying information, medical history, and cancer treatment.**

1. Health care facility means a facility as defined at N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(c) Every physician, [and] dentist, or other health care provider **who diagnoses or provides treatment for cancer patients** shall report to the State Department of Health an initial diagnosis of each case of cancer or other specified tumorous and precancerous disease not referred to or previously diagnosed in a health care facility in the State of New Jersey. **The information to be reported shall be submitted on forms specified by the State Department of Health (see (b) above). Alternatively, the physician, dentist, or other health care provider may submit the reports electronically.**

(d) The director of every independent clinical laboratory shall report to the State Department of Health **the results of examina-**

tions of tissue specimens and/or hematology examinations indicating the existence of cancer or other specified tumorous and precancerous disease not previously reported from that laboratory. **The information to be reported shall be submitted on forms specified by the State Department of Health (see (b) above). Alternatively, the director may submit the reports electronically.**

(e) Health care insurers and other third party health care payors may report to the State Department of Health cases of cancer based upon selection criteria [in a request from] **specified by the Cancer Registry. The information shall be submitted electronically in a standard format specified by the State Department of Health (see (b) above).**

(f) [The information to be reported shall be provided upon forms supplied by the State Department of Health. The forms shall be completed entirely, or supplemental] **Supplemental information to clarify medical or demographic data** shall be supplied [by submitting copies of the] **upon request of the State Department of Health. This supplemental information shall include, but not be limited to, copies of pathology and/or hematology reports, operative reports, treatment information, history and physical sections of the medical records, and the discharge summary. [A hospital tumor registry abstract form may be used, provided that information required by the State Commissioner of Health is recorded therein according to standardized definitions utilized by the State Department of Health. Machine readable data may be submitted provided the data meet criteria and standards set by the Department of Health.]**

[(g) A copy of the pathology tissue report and/or hematology report shall be required in cases confirmed by laboratory analysis.

(h) A copy of the operative report shall be required in cases who receive surgical cancer treatment.]

[(i)](g) All case reports shall be [sent] **submitted** within six months of the date of diagnosis or within three months of the date of discharge from the reporting facility, whichever is sooner.

[(j)](h) Follow-up reports shall be sent **to the New Jersey State Cancer Registry** on each cancer case at least annually to confirm vital status until the patient's death.

[(k)](i) Every **hospital, health care facility, [and] independent clinical laboratory, physician, dentist, or other health care provider who diagnoses or provides treatment for cancer patients** shall allow representatives of the State Department of Health to obtain information from all medical, pathological, and other pertinent records and logs related to cancer cases, as necessary for fulfilling the functions of the cancer registry program.

[(l)](j) Every **hospital, health care facility, [and] independent clinical laboratory, physician, dentist, or other health care provider who diagnoses or provides treatment for cancer patients** shall allow access to **information** or provide necessary information on specified cancer patients and other patients specified by characteristics for research studies related to cancer **etiology, prevention, and control which are conducted by the State Department of Health [and which]. These studies shall have been approved by the State Commissioner of Health after appropriate review [for assuring] to assure protection of human subjects. This access or provision of information shall include patients who came under the care of the hospital, health care facility, physician, dentist, or other health care provider prior to the effective date of [the regulations] N.J.S.A. 26:2-104 et seq., November 18, 1977.**

8:57A-1.2 Reportable list

(a) If a diagnosis includes the following words, the case shall be reported in accordance with N.J.A.C. 8:57A-1.1:

Cancer
Carcinoma
Leukemia
Lymphoma
Malignant
Sarcoma

(b) Any cases of the reportable diagnoses listed in (e) below which contain the following terms in the final diagnosis shall be reported in accordance with N.J.A.C. 8:57A-1.1:

Compatible with
Consistent with

Probable

Suspect

(c) Basal cell carcinomas of the skin need not be reported, except when diagnosed in the following sites: labia, clitoris, vulva, prepuce, penis and scrotum. Carcinoma *in situ* of the cervix is not reportable. Certain other tumors, along with the more common carcinomas and sarcomas of particular body sites, are reportable, as listed in (e) below under the body site of the primary tumor. The State Registry Office should be contacted for guidance if any uncertainty regarding reporting a particular case exists.

(d) Since "soft tissue" tumors can arise in almost any body site, the primary site soft tissue shall also be consulted for any questionable neoplasm.

(e) The following conditions shall be reported by each New Jersey facility, in accordance with N.J.A.C. 8:57A-1.1:

ADRENAL

Adrenal cortical carcinoma
Chromaffin paraganglioma
Ganglioneuroblastoma
Neuroblastoma
Neuroendocrine carcinoma
Neuroepithelioma
Paraganglioma (+)
Pheochromocytoma
Sympathicoblastoma

ANUS (see G-I tract)

APPENDIX (see G-I tract)

BILE DUCTS (see gall bladder and bile ducts)

BLOOD (see Hematopoietic/Lymphoid)

BLOOD VESSELS (see soft tissues)

BONE AND JOINTS

Adamantinoma
Ameloblastoma, malignant
Angioblastoma (+)
Angiosarcoma
Chondrosarcoma
Chordoma
Ewing's Sarcoma
Fibrosarcoma (medullary, periosteal, central, endosteal)
Giant cell tumor of bone (+)
Giant cell tumor, malignant
Hemangioendothelioma, malignant
Mesenchymal chondrosarcoma
Myeloma
Osteoclastoma (+)
Osteogenic Sarcoma
Osteosarcoma
Parosteal osteoma
Plasmacytoma

BONE MARROW (see Hematopoietic/Lymphoid)

BRAIN AND SPINAL CORD

Astroblastoma
Astrocytoma (Fibrillary, gemistocytic, pilocytic, protoplasmic)
Choroid plexus papilloma, malignant
Ependymblastoma
Ependymoma
Ganglioneuroblastoma
Germinoma
Glioblastoma multiforme
Glioma, all types
Hemangiopericytoma
Medulloblastoma
Medulloepithelioma
Meningioma, malignant
Myxopapillary ependymoma (+)
Neuroblastoma
Oligodendrocytoma or oligodendroblastoma
Oligodendroglioma
Pinealocytoma
Pinealoma (+)

Pineal teratoma, malignant

Pineoblastoma

Pineocytoma (+)

Polarespongioblastoma

Spongioblastoma

Subependymal astrocytoma (+)

Subependymoma (+)

BREAST

Adenocarcinoma

Apocrine carcinoma

Colloid carcinoma

Comedocarcinoma

Cribiform carcinoma

Cystosarcoma phyllodes, malignant only

Ductal carcinoma, in situ

Fibroadenoma, malignant only

Glycogen rich carcinoma

Infiltrating carcinoma of the breast such as:

Carcinoma, NOS

Duct adenocarcinoma

Duct and lobular

Duct carcinoma

Duct and Paget's disease

Ductular

Lobular

Lipid-rich carcinoma

Lobular carcinoma, in situ

Lobular and intraductal, in situ

Lobular neoplasia

Medullary carcinoma

Papillary carcinoma, in situ

Paget's disease

Phyllodes tumor, malignant

Stromal sarcoma of breast

Tubular carcinoma

BRONCHUS (see lung)

CERVIX (see uterus)

COLON (see G-I tract)

EAR (see skin, soft tissue)

ENDOMETRIUM (see uterus)

ESOPHAGUS (see G-I tract)

EYE

Epidermoid carcinoma

Melanoma, malignant

Retinoblastoma

Squamous cell carcinoma

Squamous cell epithelioma

(Tumors of the orbit: See soft tissues and Hematopoietic/Lymphoid)

EXTRA-ADRENAL PARAGANGLIA (see adrenal)

FALLOPIAN TUBE (see uterus)

GALL BLADDER AND BILE DUCTS

Adenocarcinoma

Carcinoma (other)

GASTRO-INTESTINAL TRACT (esophagus, stomach, intestine, appendix, colon, anus)

Adenoacanthoma

Adenocarcinoma

Adenoidcystic carcinoma

(Adeno) carcinoma in Adenomatus polyp with or without invasion of stalk

Adenosarcoma

Apudoma (+)

Argentaffinoma (+)

Bowen's disease of anus

Carcinoid (except benign—e.g. appendix)

Carcinosarcoma

Clear cell leiomyoma

Cloacogenic carcinoma

HEALTH

PROPOSALS

Epidermoid carcinoma
Gastrinoma (+)
Immunoproliferative disease, small intestinal
Kaposi's Sarcoma
Leiomyosarcoma, malignant only
Linitis plastica
Lymphoma
Mixed tumor of esophagus, malignant only
Neuroendocrine carcinoma
Paget's disease of anus
Polypoid adenoma
Signet ring cell carcinoma
Squamous cell carcinoma
Squamous cell epithelioma
Transitional cell carcinoma

HEMATOPOIETIC/LYMPHOID) (Including blood, bone marrow, lymph nodes, spleen, and tumors of hematopoietic or lymphoid histogenesis found in other sites.)

Acute erythremic myelosis
Acute megakaryocytic myelosis
DiGuglielmo syndrome
Erythroleukemia
Gamma heavy chain disease (Franklin's Disease)
Histiocytic medullary reticulosis
Histiocytosis, malignant
Histiocytosis-X
Hodgkin's Disease, all such as:
 Histiocyte predominant
 Lymphocyte depleted
 Lymphocyte predominant
 Mixed cellularity
 Nodular sclerosing
Immunoproliferative Disease, NOS
Letterer-Siwe's Disease
Leukemia, all
Leukemic reticuloendotheliosis
Lymphoma, all
Lymphosarcoma
Lymphoreticular process, malignant
Megakaryocytic myelosis
Megakaryocytosis, malignant
Multiple myeloma
Mycosis fungoides
Myelofibrosis with myeloid metaplasia
Myeloma
Myeloproliferative disease (+)
Myelosclerosis (with myeloid metaplasia) (+)
Panmyelosis, acute
Polycythemia Vera (+)
Reticulosis, malignant
Reticulum cell sarcoma
Sezary's disease or syndrome
Waldenstrom's macroglobulinemia or syndrome

HYPOPHARYNX (see oral cavity)

KIDNEY

Adenocarcinoma
Adenomyosarcoma
Clear cell carcinoma
Hypernephroma
Nephroblastoma
Renal cell carcinoma
Squamous cell carcinoma
Transitional cell carcinoma
Tubular adenoma, borderline or malignant only
Wilms's Tumor

LARYNX AND TRACHEA

Adenocarcinoma
Adenocystic carcinoma
Cylindroma
Squamous cell carcinoma

LIP (see oral cavity)

LIVER

Angiosarcoma
Bile duct carcinoma
Cholangiocarcinoma
Hepatoblastoma
Hepatocellular carcinoma
Hepatoma, malignant only

LUNG AND BRONCHUS

Adenocarcinoma
Adenoid cystic carcinoma
Apudoma (+)
Argentaffinoma (+)
Bronchial adenoma (+)
Bronchial adenoma (carcinoid type)
Cylindroma
Epidermoid carcinoma
Large cell (anaplastic) carcinoma
Neuroendocrine carcinoma
Oat cell carcinoma
Pulmonary blastoma
Small cell (anaplastic) carcinoma
Squamous cell carcinoma
Undifferentiated carcinoma

LYMPH NODE (see Hematopoietic/Lymphoid)

MEDIASTINUM (see Hematopoietic/Lymphoid, soft tissue, or thymus)

MENINGES (see brain)

MUSCLE (see soft tissue)

NERVE (see soft tissue)

NOSE (Nasal cavity, Para-nasal sinus and Nasopharynx)

Adenocarcinoma
Epidermoid carcinoma
Esthesioneuroblastoma
Lymphoepithelioma
Mesenchymoma, malignant
Neuroblastoma
Rhabdomyosarcoma
Sarcoma botryoides
Squamous cell carcinoma

ORAL CAVITY AND SALIVARY GLANDS

Adenocarcinoma
Adenoid cystic carcinoma
Acinic cell carcinoma
Acinic cell tumor (+)
Cylindroma
Epidermoid carcinoma
Lymphoepithelioma
Melanoma
Mixed tumor, salivary gland type, malignant only
Mucoepidermoid carcinoma
Mucoepidermoid tumor (+)
Pleomorphic adenoma, malignant only
Squamous cell carcinoma
Transitional cell carcinoma
Undifferentiated carcinoma
Verrucous carcinoma

OROPHARYNX (see oral cavity)

OVARY

Adenocarcinoma, NOS
Arrhenoblastoma, malignant
Brenner tumor, malignant only
Choriocarcinoma
Clear cell carcinoma
Dysgerminoma
Embryonal carcinoma
Endodermal sinus tumor
Endometrioid carcinoma
Granulosa cell tumor (+)

Granulosa cell carcinoma
 Granulosa cell tumor, malignant
 Granulosa-theca cell tumor (+)
 Gonadoblastoma (+)
 Gynandroblastoma (+)
 Leydig cell tumor, malignant
 Mesonephroid carcinoma
 Mucinous cystadenoma, borderline malignancy (pseudomucinous cystadenoma, borderline malignancy)
 Mucinous cystadenocarcinoma
 Mucinous papillary cystadenoma of borderline malignancy
 Mucinous papillary cystadenoma with low malignant potential
 Papillary cystadenoma, borderline malignancy
 Papillary mucinous cystadenoma, borderline malignancy
 Papillary mucinous tumor of low malignant potential
 Papillary serous cystadenoma, borderline malignancy (papillary serous tumor of low malignant potential)
 Papillary serous cystadenocarcinoma
 Pseudomucinous cystadenocarcinoma
 Seminoma
 Serous papillary cystadenocarcinoma
 Serous papillary cystadenoma of borderline malignancy
 Serous papillary cystadenoma with low malignant potential
 Sertoli-leydig cell carcinoma
 Teratoma, malignant
 Theca-granulosa cell tumor (+)
 Yolk-sac tumor

PANCREAS

Adenocarcinoma
 Cystoadenocarcinoma
 Gastrinoma (+)
 Glucagonoma, malignant only
 Islet cell adenoma (+)
 Islet cell carcinoma
 Pancreatoblastoma
 Papillary cystic tumor (+)
 Squamous cell carcinoma

PARAGANGLIA

Non-chromaffin paraganglioma (+)
 (see also adrenal gland)

PARATHYROID

Carcinoma, all

PARANASAL SINUSES (see nose)**PENIS**

Basal cell carcinoma of Penis and Prepuce (skin of)
 Bowen's disease
 Erythroplasia of Queyrat
 Squamous cell carcinoma
 Verrucous carcinoma

PERICARDIUM (see pleura)**PERITONEUM (see pleura)****PHARYNX (see oral cavity)****PINEAL (see brain)****PITUITARY**

Craniopharyngioma, malignant only

PLACENTA

Choriocarcinoma
 Chorionepithelioma
 Hydatiform mole, malignant (+)
 Invasive mole (+)

PLEURA, PERITONEUM, PERICARDIUM

Fibrosarcoma
 Mesothelioma
 Sarcoma

PROSTATE AND SEMINAL VESICLE

Adenocarcinoma
 Adenoid cystic carcinoma
 Alveolar rhabdomyosarcoma
 Carcinosarcoma

Endometrioid carcinoma

Rhabdomyosarcoma

RECTUM (see G-I Tract)

SALIVARY GLANDS (see oral cavity)

SKIN

Amelanotic melanoma
 Basal cell carcinoma of labia, clitoris, vulva, prepuce, penis and scrotum
 Bowen's disease of anus and penis
 Hutchinson's melanotic freckle
 Lentigo maligna
 Melanocarcinoma
 Melanoma
 Melansarcoma
 Merkel cell tumor
 Mycosis Fungoides
 Pilomatrix carcinoma
 Squamous cell carcinoma with—regional or distant spread only
 Superficial spreading melanoma
 Sweat gland carcinoma

SOFT TISSUE (including retroperitoneum, peripheral nerve)

Alveolar rhabdomyosarcoma
 Alveolar soft parts sarcoma
 Angiofibrosarcoma
 Angiosarcoma
 Angiomyxoma (+)
 Chondrosarcoma
 Clear cell sarcoma of tendons
 Dermatofibrosarcoma protuberans
 Embryonal rhabdomyosarcoma
 Fibromyxosarcoma
 Fibrosarcoma
 Fibrous histiocytoma, malignant
 Granular cell tumor, malignant
 Hemangioendothelial sarcoma
 Hemangioendothelioma, malignant only
 Hemangiopericytoma
 Juvenile rhabdomyosarcoma
 Kaposi's sarcoma
 Leiomyosarcoma
 Liposarcoma
 Lymphangioendothelioma, malignant
 Lymphangiosarcoma
 Mesenchymoma, malignant
 Metastasizing leiomyoma
 Myofibromatosis (congenital generalized fibromatosis)
 Myosarcoma
 Myxosarcoma
 Neuroblastoma
 Neurogenic sarcoma
 Neurilemmoma, malignant
 Neurilemmosarcoma
 Osteosarcoma
 Paraganglioma, malignant
 Pigmented dermatofibrosarcoma protuberans bednar tumor
 Reticulum cell sarcoma
 Rhabdomyoma, malignant
 Rhabdomyosarcoma
 Sarcoma botryoides
 Schwannoma, malignant
 Schwannoma, malignant with rhabdomyoblastomatous differentiation
 Synovial sarcoma
 Xanthofibroma, malignant

SPINAL CORD (see brain)**SPLEEN (see Hematopoietic/Lymphoid)****STOMACH (G-I Tract)****TESTIS**

Carcinoid tumor (+)
 Choriocarcinoma

Chorioepithelioma
 Embryoma
 Embryonal carcinoma
 Embryonal teratoma
 Endodermal sinus tumor
 Germ cell carcinoma
 Gonadal stromal tumor, malignant only
 Gonadoblastoma (+)
 Interstitial cell carcinoma
 Leydig cell carcinoma
 Mesonephroma
 Polyembryoma
 Seminoma
 Sertoli cell carcinoma
 Spermatoblastoma
 Spermatocytic seminoma
 Spermatocytoma
 Teratoblastoma
 Teratocarcinoma
 Teratoma (+)
 Vitelline tumor
 Yolk sac tumor

THYMUS

Epithelioid thymoma, malignant only
 Lymphocytic thymoma, malignant only
 Seminoma
 Spindle cell thymoma, malignant only
 Thymic carcinoid
 Thymoma, malignant

THYROID

Adenocarcinoma
 Anaplastic carcinoma
 Follicular carcinoma
 Giant cell carcinoma
 Hurthle cell adenoma, malignant only
 Hurthle cell tumor, malignant only
 Medullary carcinoma
 Occult sclerosing carcinoma
 Papillary carcinoma
 Undifferentiated carcinoma

TRACHEA (see Larynx)**URINARY BLADDER, URETER, URETHRA**

Adenocarcinoma
 Adenosarcoma
 Carcinosarcoma
 Chemodectoma, malignant only
 Mullerian mixed tumors
 Papillary transitional cell carcinoma
 Paraganglioma (+)
 Pheochromocytoma
 Rhabdomyosarcoma
 Squamous cell carcinoma
 Transitional cell carcinoma

UTERUS, UTERINE TUBES, CERVIX

Adenoacanthoma
 Adenocarcinoma
 Adenosarcoma
 Adenosquamous carcinoma
 Endolymphatic stromal myosis
 Endometrial stromal sarcoma
 Endometrioid carcinoma
 Leiomyosarcoma
 Mesonephric carcinoma
 Mesonephroma
 Mixed mesodermal tumor
 Squamous cell carcinoma

VULVA AND VAGINA

Basal cell carcinoma of vulva, clitoris, and labia
 Clear cell carcinoma
 Mesonephroid carcinoma

Mesonephroma
 Paget's disease
 Squamous cell carcinoma

NOTE: The following superscript indicates the nature of other than overtly malignant reportable tumors listed:

(+) Borderline, reportable

INSURANCE**(a)****DIVISION OF FINANCIAL SOLVENCY****Oversight of Firemen's Relief Associations****Proposed New Rules: N.J.A.C. 11:1-38**

Authorized By: Andrew J. Karpinski, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1C-6e, 17:1-8.1, 43:17-1 et seq., 54:17-4, and 54:17-5.

Proposal Number: PRN 1995-111.

Submit comments by March 23, 1995 to:

Donald Bryan
 Assistant Commissioner
 Regulatory Affairs
 Department of Insurance
 CN 325
 Trenton, NJ 08625

The agency proposal follows:

Summary

These proposed new rules provide for the submission and review of certain information by local firemen's relief associations established pursuant to N.J.S.A. 43:17-1 et seq. and the New Jersey State Firemen's Association established pursuant to N.J.S.A. 43:17-40 et seq.; and establish the procedures by which foreign and alien insurers shall pay monies to the local firemen's relief associations pursuant to N.J.S.A. 54:17-4. These statutes, which have essentially remained unchanged since their enactment in 1885, provide for the establishment of local firemen's relief associations in any municipality where there are or may be organized one or more fire companies. The purpose of the relief association is to establish, provide and maintain a fund for the relief, support or burial of indigent exempt firemen and their families. See N.J.S.A. 43:17-3. These local associations are funded by monies received from the two percent tax on premiums of foreign and alien insurers transacting fire insurance in this State. See N.J.S.A. 54:17-4. In addition, the statutes provide that each local association shall select delegates to the State Firemen's Association. Pursuant to N.J.S.A. 43:17-29, each firemen's relief association may pay to those delegates and the chief of the department that attend the convention of the State Association, the actual expenses incurred by them for such attendance. Pursuant to N.J.S.A. 43:17-45, the executive committee of the New Jersey State Firemen's Association has the supervision and power of control of the funds and all other property of all firemen's relief associations. In addition, pursuant to N.J.S.A. 43:17-45, 43:17-46 and 43:17-47, the executive committee of the State Association may examine the books, bonds and property of any local association whenever deemed necessary; and the secretary of the State Association must annually file with the New Jersey Secretary of State and the Commissioner of Insurance ("Commissioner") a sworn statement identifying each local relief association which has complied with the requirements of N.J.S.A. 43:17-1 et seq.

In *Szabo v. New Jersey State Firemen's Association*, 230 N.J. Super. 265 (Ch. Div. 1988), the court decided a number of issues regarding the expenditure of funds by the local relief associations. In that case, a member of a local fire department was denied membership in a local relief association, and challenged that denial as well as the constitutionality of the entire relief association funding mechanism. While holding that the denial of membership was invalid under applicable statutes governing the relief associations, the court upheld the constitutionality of the funding mechanisms and found that the applicable statutes requiring that certain information be filed with the Commissioner implicitly require that the Commissioner audit such financial information to ensure that the

monies in the possession of and under the control of such firemen's relief associations are properly expended for public purposes. As part of the court's decision, the court ordered, among other things, that:

All local relief associations shall annually cause to be filed with the Secretary of State and the Department of Insurance, a financial report as required by N.J.S.A. 54:17-5 and N.J.S.A. 43:17-31 no later than April 1 of each year. The State Association shall file with the Department of Insurance its annual audited financial statement within three months of the end of its fiscal year. The reports filed by the State and local associations shall be examined, reviewed or audited by the Department of Insurance, or in lieu thereof, if the Department so desires, shall be examined, reviewed or audited in such a manner or by such persons as the Department may direct, which direction may be made by regulation duly promulgated by the Department. Such review, examination or audit shall be conducted to ensure that such monies in the possession of and under the control of such firemen's relief associations are properly expended for public purposes reasonably related to the benevolent programs conducted by such State and local relief associations. No monies shall be expended for private purposes not reasonably related to such benevolent purposes.

The Department thereafter implemented various procedures to comply with the Court's order. The Department now proposes to codify as well as enhance these current procedures. The Department believes that the procedures set forth in these proposed rules will help ensure that the monies in the possession of and under the control of the Firemen's Relief Associations are properly expended for public purposes reasonably related to the benevolent programs that they conduct, in accordance with the intent of the Legislature and the decision of the court in *Szabo*.

Proposed N.J.A.C. 11:1-38.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-38.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-38.3 provides that all local relief associations shall file specified information with the Commissioner no later than April 1 of each year, and that such information shall be subject to audit in accordance with the rules. The rule also reflects the requirements in N.J.S.A. 43:17-45 and 43:17-47 that the State Association annually file with the Commissioner and New Jersey Secretary of State a list of all local relief associations which it determines have complied with N.J.S.A. 43:17-1 et seq., and therefore are entitled to share in monies paid by insurers pursuant to N.J.S.A. 54:17-4.

Proposed N.J.A.C. 11:1-38.4 sets forth the audit and filing procedures. Specifically, the rule provides that the State Association shall cause to be made an audit of each local association to be conducted not less frequently than once every two years, and that such audit shall be conducted by an independent certified public accountant as described in the rules. This rule also provides that the audit shall be conducted to determine whether the monies in the possession of the local association are properly expended for public purposes reasonably related to the benevolent programs conducted by such relief association, and sets forth permitted expenditures. The audit report must include a statement that the certified public accountant finds that the association's funds were expended in accordance with law, and that its accounting and recordkeeping procedures comply with those established by the State Association, except as specifically noted. The rule also sets forth procedures for determining allowable reimbursement for convention expenses.

The rule further requires that the State Association file with the Commissioner a copy of the report of each audit within 30 days after its completion, and include a copy of any plan addressing any material deficiencies set forth in the audit report. Moreover, the State Association shall have conducted and shall file an annual audit of its operations by an independent certified public accountant. This audit shall be conducted for the same purpose, in the same manner, subject to the same standards, and filed with the Commissioner in the same manner, as audits of local relief associations.

Finally, the rule provides that the Commissioner may take additional action, such as issue an Order to Show Cause, request additional information, or independently conduct the audit, the expenses of which shall be borne by the local association involved.

Proposed N.J.A.C. 11:1-38.5 sets forth the procedures by which payments of applicable amounts shall be paid to local relief associations by foreign and alien insurers transacting fire insurance in this State and by surplus lines producers.

Proposed N.J.A.C. 11:1-38.6 sets forth penalties for violations of the subchapter.

Social Impact

These proposed rules codify and enhance existing procedures by which local relief associations shall be audited, as well as codify procedures by which foreign and alien insurers shall make payment to the local relief associations as required by law. This codification of existing procedure will continue to help ensure that monies in the possession of and under the control of such firemen's relief associations are properly expended for public purposes reasonably related to the benevolent programs conducted by such associations. This, in turn, will benefit the public.

Economic Impact

The State Association and local associations will be required to incur any expenses resulting from filing information required pursuant to this subchapter, as well as conducting and filing the required audit. The Department does not believe, however, that these rules should result in any significant additional economic burden. The Department notes that the general filing requirements are imposed by statute rather than these rules. Similarly, the audit requirements are imposed pursuant to statute, as interpreted by the court in *Szabo*. The Department further notes that these rules essentially codify procedures and therefore should not result in any additional costs to the associations. Moreover, through these procedures as codified in these proposed rules, the Department may be in a position to ensure that relief association monies are properly expended for public purposes as required by law as interpreted by the court in *Szabo*.

Insurers will be required to incur any cost in paying the two percent premium tax to the local relief association(s) in accordance with these rules. The Department notes, however, that insurers are required to pay premium tax to the local relief associations pursuant to N.J.S.A. 54:17-4. Moreover, the proposed rules merely codify current procedures by which such payments may be made. Accordingly, the Department does not believe that insurers should experience any adverse or additional economic impact.

In addition, no additional economic impact will be imposed on surplus lines producers as these rules merely refer to requirements and procedures for payment of premium taxes imposed pursuant to N.J.A.C. 11:19-3.

The Department will be required to review the information filed pursuant to these proposed rules. However, as noted previously, these proposed new rules essentially codify existing procedures. Thus, it is not anticipated that the Department will experience any significant additional economic impact.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these rules codify and enhance procedures by which local relief associations are audited, and codify procedures by which foreign and alien insurers make payment to local relief associations in accordance with N.J.S.A. 43:17-1 et seq., 54:17-4, 54:17-5 and 17:22-6.59, as well as the decision of the court in *Szabo*, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping or other 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 proposed new rules apply to firemen's relief associations, which are quasi-public entities created by statute that do not meet the definition of "small business"; and the proposed new rules do not otherwise apply to insurers "resident" in this State, and do not independently impose any new requirements on surplus lines producers.

Full text of the proposed new rules follows:

SUBCHAPTER 38. OVERSIGHT OF FIREMEN'S RELIEF ASSOCIATIONS

11:1-38.1 Purpose and scope

(a) This subchapter sets forth the filing requirements for the New Jersey State Firemen's Association and each local firemen's relief association, the auditing procedures to be utilized by any relief association, and the manner in which payments are to be made by foreign or alien insurers to local relief associations pursuant to N.J.S.A. 54:17-4, and by surplus lines producers pursuant to N.J.S.A. 17:22-6.59.

(b) This subchapter shall apply to the New Jersey State Firemen's Association, all local firemen's relief associations, all foreign and alien insurers transacting fire insurance business in this State, and all licensed producers with surplus lines authority.

11:1-38.2 Definitions

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

"Alien insurer" means an insurer formed under the laws of a country other than the United States, its states, districts, territories, commonwealth and possessions.

"Association" means the New Jersey State Firemen's Association established pursuant to N.J.S.A. 43:17-40 et seq. or any local firemen's relief association established pursuant to N.J.S.A. 43:17-1 et seq.

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

"Department" means the New Jersey Department of Insurance.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State.

"Independent certified public accountant" means an independent certified public account or accounting firm in good standing both with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.

"Local relief association" means a local firemen's relief association established pursuant to N.J.S.A. 43:17-1 et seq.

"State Association" means the New Jersey State Firemen's Association established pursuant to N.J.S.A. 43:17-40 et seq.

11:1-38.3 Filing requirements

(a) All local relief associations shall file with the Commissioner, the Secretary of State, and the secretary of the State Association, no later than April 1 of each year, a sworn statement, which shall contain the following information:

1. The names of its representatives, visitors or trustees and other officers, with the amount of their respective fees or salaries, if any;
2. The names of its beneficiaries during or within the year next preceding the statement;
3. The amount of money paid to each beneficiary;
4. The receipts and, in detail, the expenditures during that year;
5. The amount of money and other property in its possession at the date of mailing the statement; and
6. How its money is invested or secured, or where it is deposited.

(b) The information filed pursuant to (a) above shall be subject to audit in accordance with N.J.A.C. 11:1-38.4.

(c) The State Association shall file with the Commissioner and the Secretary of State not later than June 1 of each year, a list of all local associations which have complied with N.J.S.A. 47:17-1 et seq.

11:1-38.4 Audit and filing requirements

(a) The State Association shall cause to be made an audit of each local relief association to be conducted by an independent certified public accountant. Such an audit shall be conducted not less frequently than once every two years. The audit report shall include a statement that the independent certified public accountant finds that the local relief association properly expended its funds as provided by law, and that its accounting and recordkeeping procedures comply with those established by the State Association, with any exceptions noted.

(b) Each audit shall be conducted to determine whether the monies in the possession of such local relief association are properly expended for public purposes reasonably related to the benevolent programs conducted by such local relief association, and whether the local relief association is in compliance with the accounting and recordkeeping procedures for local relief associations as established by the State Association. No monies shall be expended for private purposes not reasonably related to such benevolent purposes. Permitted expenditures include, but shall not be limited to, the following:

1. Payment of local relief or assistance pursuant to N.J.S.A. 43:17-24;

2. Convention expenses to cover the actual expense incurred by attendees of the annual convention of the State Association, pursuant to N.J.S.A. 43:17-29;

3. Administrative expenses, including printing, stationary and postage, which in the aggregate may not exceed 15 percent of the association's annual receipts, or such lesser amount as may be established by the State Association in its duly adopted bylaws or rules;

4. Insurance expenses; and

5. Any miscellaneous expenses, including, but not limited to, mortgage, safe deposit rental, bank service charges, audit costs, and investments authorized pursuant to N.J.S.A. 43:17-33.

(c) The State Association shall file with the Commissioner a copy of the report of each audit conducted pursuant to this rule within 30 days after completion. The filing shall include a copy of any plan addressing any material deficiencies set forth in the audit report.

(d) The State Association shall have an annual audit of its operations by an independent certified public accountant. Such audit shall be conducted for the same purpose, conducted in the same manner, subject to the same standards, and filed with the Commissioner in the same manner, as audits of local relief associations. The audit report shall be filed with the Commissioner no later than three months after the end of the State Association's fiscal year.

(e) Upon Department review of any audit report and plan to address deficiencies set forth therein, the Commissioner may issue an Order to Show Cause to such association why such additional steps as the Commissioner may deem necessary should not be taken to address the deficiencies.

(f) For purposes of (a) and (d) above, no certified public accountant shall conduct an audit if the individual, or if a firm, any individual employed by the firm, is a member of the State Association or any local relief association. However, this provision shall not disqualify such a firm if the employee is not responsible for the audit of the State Association or the particular local relief association of which he or she is a member.

(g) The Commissioner may, upon review of an audit report or any other information submitted pursuant to this subchapter, request that the State Association or any local relief association provide such additional information as he or she may deem necessary to determine whether monies are properly expended for public purposes pursuant to (b) above.

(h) The Commissioner may, upon review of any audit report submitted pursuant to this subchapter, directly conduct an audit report of the State Association or any local relief association, the expense of which shall be borne by the entity audited for the purpose of determining whether monies are properly expended for public purposes pursuant to (b) above.

(i) Allowable reimbursement for convention expenses set forth in (b)2 above shall be consistent with the schedule for compensation established by the State Association in its duly adopted bylaws or rules pursuant to law.

1. The State Association shall file with the Commissioner by April 1 of each year the schedule of compensation and shall include a description of the basis for such schedule.

11:1-38.5 Payments by insurers to local relief associations

(a) Payment of the appropriate amount of funds to local relief associations by foreign and alien insurers transacting fire insurance in this State pursuant to N.J.S.A. 54:17-4, and by licensed surplus lines producers pursuant to N.J.S.A. 17:22-6.59, shall be made as follows:

1. Each foreign and alien insurer transacting fire insurance in this State shall annually notify the State Association with payment of the appropriate amounts due pursuant to (a)2 below of every locality in this State in which the insurer has fire insurance premium and the premium volume for each locality for the year immediately preceding.

2. The insurer shall, by March 1 of each year, pay to the State Association the total amount due for the year immediately preceding for all localities calculated at the rate set forth in N.J.S.A. 54:17-4.

3. The State Association shall then distribute the monies received from each insurer to each local relief association, based on each

association's share based on the premium volume of each such insurer.

(b) In lieu of the procedures set forth in (a) above, an insurer may pay its obligation pursuant to N.J.S.A. 54:17-4 directly to each local association. Where an insurer utilizes the method of payment set forth in this subsection, in order to receive credit for such payment against its applicable premium tax for payments made, the insurer shall file with the Department a copy of the front and back of each cancelled check.

(c) Every licensed surplus lines producer shall follow the procedures for the remittance of premium taxes and funds to local associations set forth in N.J.A.C. 11:19-3.

11:1-38.6 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as authorized or required by law, including, but not limited to, withholding of monies otherwise distributable from the State Association or any local relief association pursuant to N.J.S.A. 54:17-5.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Proposed Readoption with Amendments: N.J.A.C. 13:18

Proposed Repeals: N.J.A.C. 13:18-5 and 13:18-8

Authorized By: C. Richard Kamin, Director, Division of Motor Vehicles, and C. Richard Kamin, Director, Division of Motor Vehicles, in consultation with Andrew J. Karpinski, Commissioner, Department of Insurance, as to N.J.A.C. 13:18-6.

Authority: N.J.S.A. 39:2-3, 39:3-4e, 39:3-43, 39:3-84, 39:4-54, 39:5-30, 39:6-25, 39:6-86.1, 47:1A-1 et seq., 17:33B-41, 52:14B-3(1), 54:39A-8 and 54:39A-24.

Proposal Number: PRN 1995-113.

Submit written comments by March 23, 1995 to:

C. Richard Kamin, Director
Division of Motor Vehicles
Attention: Legal Staff
225 East State Street
CN 162

Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

The Division of Motor Vehicles (Division) proposes to readopt the provisions of N.J.A.C. 13:18 concerning executive and administrative service in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on March 30, 1995.

The rules contained in N.J.A.C. 13:18 implement various provisions of the Motor Vehicle and Traffic Law, N.J.S.A. 39:1-1 et seq., pertaining to permits for overdimensional and overweight vehicles; standards for connecting devices and towing methods; procedures pertaining to insurer notification to the Division upon termination of motor vehicle insurance; and guidelines for the posting of security deposits by uninsured owners and operators involved in motor vehicle accidents. The rules also implement the provisions of the Motor Fuels Use Tax Act of 1963, N.J.S.A. 54:39A-1 et seq. The chapter also contains the Division's organizational rule as required by N.J.S.A. 52:14B-3(1) and establishes procedures and fees for the inspection and purchase of public records maintained by the Division. The Division has reviewed N.J.A.C. 13:18 in accordance with Executive Order No. 66 (1978) and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." Many of these rules implement the public policy of this State as set forth in the Motor Vehicle and Traffic Law; namely, to foster highway safety by

providing standards for the operation of overdimensional and overweight vehicles and vehicle combinations and to promote financial responsibility for owners and operators of motor vehicles.

A summary of each subchapter and important sections in N.J.A.C. 13:18 follows:

Subchapter 1, Permits for Overdimensional or Overweight Vehicles, sets forth the Division's permit procedures for vehicles which exceed statutory dimension and weight requirements. The subchapter establishes fees, expiration dates, and minimum insurance coverages for said vehicles and sets forth escort vehicle, warning sign, warning flag and vehicle lighting requirements for overdimensional and overweight vehicle combinations which are subject to the subchapter. The proposed amendment to N.J.A.C. 13:18-1.7(b) provides that the Compulsory Motor Vehicle Insurance Law, in addition to the Security-Responsibility Law, shall apply to private utility or house-type trailers and semitrailers for which overdimensional permits have been issued.

Subchapters 2 and 3 are reserved.

Subchapter 4, Motor Fuels Use Tax Act, contains provisions pertaining to the registration of motor fuel users, the issuance of identification cards to users and markers for motor vehicles operated by users, permits, occasional operator permits, submission of tax reports and payments, tax credits and refunds, records, field audits, desk audits, and interest for late payments. The proposed amendment to N.J.A.C. 13:18-4.14, Interest; assessments and refund recovery, conforms that section to N.J.S.A. 54:49-3 as amended by P.L. 1993, c.331, §1 which provides for the payment of interest at the rate of three percentage points above the prime rate for delinquent taxes.

Subchapter 5, Connecting Devices and Towing Methods, sets forth the procedures and standards for the Director's approval of motor vehicle connecting devices offered for sale for use in New Jersey. This subchapter is being repealed in light of 49 C.F.R. §§393.70 and 393.71 pertaining to coupling devices and towing methods which have been adopted by reference by the Division of State Police (see N.J.A.C. 13:60-2) and to reflect existing Division procedure. The Division does not currently issue approvals for connecting devices. Devices meeting the Federal standards may be sold for use in this State.

Subchapter 6, Insurance Verification, pertains to the submission of insurance information to the Division by insurers when a motor vehicle liability insurance policy is cancelled or lapses due to nonpayment of premium. This subchapter also provides the administrative framework for the suspension of motor vehicle registrations as a result of insurance termination. The proposed amendments to N.J.A.C. 13:18-6.9 are technical in nature (that is, substituting statutory citations in place of references to "section 50 of the FAIR Act").

Subchapter 7 is reserved.

Subchapter 8, Overhangs, specifies the overhang enforcement standard for vehicles designed, built and used to transport other motor vehicles. This subchapter is being repealed in light of P.L. 1983, c.126, §1 which deleted the overhang standard from N.J.S.A. 39:3-84.

Subchapter 9, Uninsured Motorists, sets forth the circumstances when an uninsured owner or operator is required to deposit monies with the Division to secure payment of a judgment which may be entered against him or her for damages arising out of a motor vehicle accident.

Subchapter 10 is reserved.

Subchapter 11, Organization of the Division of Motor Vehicles, contains the Division's organizational rule and sets forth the procedures and fees for public inspection and purchase of public records maintained by the Division. The proposed amendments to N.J.S.A. 13:18-11.2 are technical in nature (that is, correcting the address of the Division of Motor Vehicles and correcting the telephone number that the public may utilize when contacting the Division).

Social Impact

The readoption of N.J.A.C. 13:18 will have a beneficial social impact in that the rules contained therein enhance highway safety, provide a source of recovery for certain classes of individuals who are injured by uninsured owners and operators, and reimburse in part the Unsatisfied Claim and Judgment Fund for personal injury protection benefits paid out to persons injured by uninsured owners and operators.

Operators of overdimensional or overweight vehicles must comply with the permit provisions of N.J.A.C. 13:18-1 which are designed to ensure that these vehicles are operated on the public highways in a manner that does not adversely affect the safety of other motorists.

Subchapter 4, Motor Fuels Use Tax Act, promotes the efficient administration of the Motor Fuels Use Tax Act resulting in the collection of State tax revenues.

Subchapter 6, Insurance Verification, implements the public policy of this State as set forth in N.J.S.A. 17:33B-41. One of the primary objectives of N.J.S.A. 17:33B-41 is to ensure that owners of automobiles which are registered or principally garaged in New Jersey maintain automobile liability insurance coverage. The rules proposed for readoption provide an administrative procedure to identify those owners whose insurance coverage has been cancelled because of nonpayment of premium and those owners who have never had insurance coverage. The rules proposed for readoption also provide an administrative framework for suspension action against vehicle registrations and driving privileges when an owner fails to provide acceptable proof of insurance or prove the existence of special circumstances which the Director deems sufficient justification to withhold suspension activity. The rules proposed for readoption assist in reducing the number of uninsured motor vehicles in New Jersey thereby lowering the cost of automobile insurance to the general public.

Subchapter 9, Uninsured Motorists, promotes the public welfare in that it provides a source of recovery for persons who have been injured or damaged by uninsured owners and operators. This subchapter also protects the financial integrity of the Unsatisfied Claim and Judgment Fund by requiring a monetary deposit by an uninsured owner and operator when a qualified individual files a claim against the Fund for payment of personal injury protection benefits.

Subchapter 11 is beneficial to the public in setting further procedures for obtaining information and copies of public records.

Economic Impact

There is an economic impact on the State in funding the Division of Motor Vehicles which is charged with the administration of these rules. The economic impact on the State is partially defrayed by the permit fees, tax payments and decal fees which are collected by the Division.

There is an economic impact on those entities subject to the permit provisions of subchapter 1 since they are subject to the fees specified for the issuance of overdimensional and overweight permits.

There is an economic impact on those entities subject to the Motor Fuels Use Tax Act since they must remit the tax to the Division when same is due and must pay the statutory fees for identification markers (decals) and permits.

Subchapter 6, Insurance Verification, imposes an economic impact on the Division of Motor Vehicles in that the Division is responsible for the implementation and administration of an insurance verification program which satisfies the requirements of N.J.S.A. 17:33B-41. The insurance verification program established by the rules results in a total cost to the Division of approximately \$5.4 million per year. The Division funds this program as provided by law.

Insurers required to submit information pursuant to N.J.A.C. 13:18-6 incur costs in connection with assimilating, preparing and supplying the required insurance information to the Division. Motorists whose driving and registration privileges are suspended by the Division pursuant to N.J.S.A. 17:33B-41 and N.J.A.C. 13:18-6 for failure to maintain liability insurance on a motor vehicle are subject to payment of a \$50.00 license restoration fee and a \$50.00 registration restoration fee to the Division pursuant to N.J.S.A. 39:3-10a and N.J.A.C. 13:21-9.3.

Motorists may seek the rescission of an order of suspension of a vehicle registration or driver license pursuant to N.J.S.A. 17:33B-41(d) and (g) and N.J.A.C. 13:18-6.8. Such rescission requires, among other things, the payment of a civil penalty in the amount of \$4.00 for each day up to 90 days for which motor vehicle liability insurance was not in effect after cancellation for nonpayment of premium. Motorists are not obligated to seek such a rescission of suspension, and those choosing not to request such a rescission do not incur the above mentioned cost.

Motorists who have surrendered registration plates to the Division pursuant to N.J.S.A. 17:33B-41 and who thereafter acquire motor vehicle liability insurance coverage and furnish proof of same to the Division incur a fee in connection with obtaining a valid set of replacement plates for those which have been surrendered. Such motorists are required by N.J.S.A. 13:18-6 to pay a fee as set forth in N.J.A.C. 13:20-34.5(b) to the Division for the set of replacement plates. Such motorists seeking the return of surrendered registration plates which contain the same combination of letters and numbers as had been contained on the surrendered plates must first pay the fee as specified above for replacement plates, to be followed by the payment to the Division of a fee as set forth in N.J.A.C. 13:20-34.5(a)3 for the set of special plates.

Subchapter 9, Uninsured Motorists, imposes an economic impact on owners and operators of uninsured motor vehicles who are required to

deposit monies with the Division to provide a source of recovery for certain classes of individuals injured by uninsured owners and operators. There is a corresponding beneficial economic impact on injured individuals who are otherwise uninsured and on the Unsatisfied Claim and Judgment Fund which expends funds for personal injury protection benefits to qualified individuals.

Subchapter 11 imposes fees for certain records.

Executive Order No. 27 Statement

23 U.S.C. §127 establishes the Federal overall gross maximum weight limitation of 80,000 pounds for vehicles using the system of interstate and defense highways. The Federal legislation sets forth certain exceptions:

... Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws. . . .

Section 127, therefore, authorizes exceptions to the maximum gross weight limitation for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws. N.J.S.A. 39:3-84(d) which establishes an overall gross maximum weight limitation of 80,000 pounds consistent with 23 U.S.C. §127 provides in part:

The Director of the Division of Motor Vehicles may promulgate rules and regulations, including the establishment of fees, for the issuance, at his discretion and if good cause appears, of a special written permit authorizing the applicant:

(1) To operate or move a vehicle or combination of vehicles or special mobile equipment, transporting one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitations set forth in this act. . . .

In order for the Director to exercise discretion to issue a special written permit under N.J.A.C. 13:18-1 authorizing an exception to the 80,000 pound maximum weight limitation, "good cause" and "one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitation" are required. N.J.A.C. 13:18-1, pertaining to permits for overdimensional and overweight vehicles, is therefore consistent with Federal law and does not impose requirements which exceed Federal standards.

An Executive Order No. 27 analysis is not required for N.J.A.C. 13:18-4, Motor Fuels Use Tax, N.J.A.C. 13:18-6, Insurance Verification, N.J.A.C. 13:18-9, Uninsured Motorists, or N.J.A.C. 13:18-11, Organization of the Division of Motor Vehicles, because the subject matters contained in those subchapters are authorized under State law (N.J.S.A. 54:39A-1 et seq., 17:33B-41, 39:3-4e, 39:6-25, 39:6-86.1, 47:1A-1 et seq. and 52:14B-3(1) and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The rules proposed for readoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

N.J.A.C. 13:18-1 requires owners or operators of overdimensional or overweight vehicles to obtain a permit for each one-way trip of such vehicle. An undetermined number of such owners or operators are small businesses as defined under the Regulatory Flexibility Act. Fees are charged per permit pursuant to N.J.A.C. 13:18-1.5. Minimum insurance, warning sign, flag and lamp standards must be met. Escort vehicles may be required depending upon the overall length and/or width of the vehicle or vehicle combination. While these requirements impose certain compliance costs on affected small businesses, as the requirements are related to public safety on New Jersey's roads, no requirement differentiation or exemption is provided based upon the owner's or operator's business size.

The Motor Fuels Use Tax Act (N.J.S.A. 54:39A-9) provides as follows: "Every user shall keep records, in such form as the director reasonably may prescribe, as will enable the user to report and enable the director to determine the total number of over-the-road miles traveled by his entire fleet of motor vehicles, the total number of over-the-road miles traveled in New Jersey by said entire fleet, the total number of gallons of motor fuel used by said entire fleet and the total number of gallons of motor fuel purchased in New Jersey for said entire fleet. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and availability for inspection by the director or any authorized assistant engaged in the administration of this act. Upon application in writing, stating the reasons therefor, the director

may in his discretion, consent to the destruction of any such records at any time within said period. The director or his authorized agents and representatives may, at any reasonable time, inspect the books and records of any user subject to the tax imposed by this act. The director shall provide by regulation for any such examination of books and records to be conducted at the office or offices of the user where such books and records are maintained."

N.J.A.C. 13:18-4.10, Records required, and 13:18-4.17, Preservation of records, implement N.J.S.A. 54:39A-9. The records required to be maintained by users of motor fuels pertain to overall mileage and fuel consumption and mileage, fuel consumption, and fuel purchases which may be attributable to operation in New Jersey. These administrative rules form the basis for accurate reporting and tax collection.

Approximately 55,000 entities are presently subject to the Act. Almost all of these entities qualify as small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Division is uncertain as to the initial capital cost and annual compliance cost to small businesses of maintaining the records required by the Act and these rules. However, the rules proposed for readoption should not require small businesses to engage additional professional services, since the records required to be maintained may be prepared by employees in the normal course of their employment. Therefore, the rules proposed for readoption do not impose significant burdens on small businesses in view of the overriding State interest in the administration of the "Motor Fuels Tax Act of 1963."

N.J.A.C. 13:18-6 affects insurers who qualify as "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Insurers are required to submit on a monthly basis information relating to the cancellation of insurance policies because of nonpayment of premium and information concerning issuance of new policies. Additionally, insurers are required to submit semiannually information relating to all current insurance policies issued by them. Approximately 139 insurance companies presently write automobile insurance policies in this State. The Division estimates that less than five of those companies qualify as "small businesses." The annual compliance costs to small businesses is limited to those costs incidental to making data programming changes that are necessary for the insurers to provide data in the format prescribed by the Director. These costs vary depending on the existing capability of the information systems maintained by insurance companies. The rules do not require small businesses to engage additional professional services.

Since one of the statutes which provides authority for the Division's rules, N.J.S.A. 39:3-4e, empowers the Division to promulgate regulations "requiring insurers to provide all information with respect to the issuance, renewal, cancellation, nonrenewal and termination of insurance as the director may deem necessary to assist the Division in enforcement of the provisions of this Title relating to insurance coverage for motor vehicles," and since neither that statute nor N.J.S.A. 17:33B-41 provides for a small business exemption, insurers qualifying as small businesses are not exempted from the reporting, compliance and other requirements imposed by the rules. The rules implement N.J.S.A. 17:33B-41 and enhance public compliance with this State's compulsory motor vehicle liability insurance laws by providing an insurance verification program which depends upon such information submitted by insurance companies on a monthly and semiannual basis as to all passenger motor vehicles for which motor vehicle liability insurance has been cancelled, motor vehicles for which new policies have been issued and motor vehicles for which policies are in effect. The Division would not be able to implement the statutory program if it is not apprised of this information by all insurers, since it would only have a partial list of uninsured passenger motor vehicles and would therefore be unable to determine the universe of passenger motor vehicles not covered by liability insurance. Failure to include all insurance companies would create problems of proof for the Division in enforcement proceedings and would inconvenience and potentially jeopardize the registration and driving privileges of motorists who comply with the compulsory motor vehicle liability insurance law by buying insurance from such nonreporting companies. Accordingly, since an exemption of insurers which qualify as small businesses from the rules would defeat the very purpose of the rule (that is, to enhance public compliance with this State's compulsory motor vehicle liability insurance laws and reduce the cost of auto insurance to the public), a small business exemption from the reporting, compliance and other requirements set forth in the rules is not consistent with the statutory mandate.

N.J.A.C. 13:18-9 sets forth the circumstances under which the Division may require an uninsured motor vehicle owner or operator to make a deposit with the Division to secure reimbursement for personal injury protection benefits paid by the Unsatisfied Claim and Judgment Fund or to satisfy in part a judgment arising out of an accident in which such person was involved. While such deposits may be required of a subject small business, the rule's purpose (the protection of injured parties and the protection of the financial integrity of the Unsatisfied Claim and Judgment Fund) does not allow for exemptions or lesser requirements for small businesses which are impacted by this rule only if they fail to comply with the compulsory motor vehicle liability insurance laws of this State.

The record fees imposed by N.J.A.C. 13:18-11 are reasonable and designed to offset Division costs incurred. Therefore, no lesser fees or exceptions are provided based on business size.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:18, as amended in the New Jersey Register.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:18-5 and 13:18-8.

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

13:18-1.7 Exceptions; insurance certificate requirement

(a) (No change.)

(b) In such cases the provisions of the **Compulsory Motor Vehicle Insurance Law (N.J.S.A. 39:6B-1 et seq.)** and the **Security-Responsibility Law (N.J.S.A. 39:6-23 et seq.)** will apply.

13:18-4.14 Interest, assessments and refund recovery

(a) Interest, **compounded annually at the end of each year**, at the rate of [one and one half percent] **three percentage points above the prime rate** per month or fraction thereof shall accrue on all moneys due, whether from assessment or refund recovery, from the date on which the taxes were originally due, or when the refund was paid to the user, to the date said moneys due are paid.

(b) (No change.)

13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to [section 50 of the FAIR Act] **N.J.S.A. 17:33B-41** and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by [section 50 of the FAIR Act] **N.J.S.A. 17:33B-41** and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of [a] **the fee [of \$5.00] for the set of replacement plates as set forth in N.J.A.C. 13:20-34.5(b).**

(b) If a registrant seeking the return of surrendered registration plates in accordance with (a) above desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at [a] **the fee [of \$5.00] as set forth in [(a) above] N.J.A.C. 13:20-34.5(b).** Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. Plates which contain the specific combination of letters and numbers requested, unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of [a] **the fee [of \$10.00] for the set of such plates as set forth in N.J.A.C. 13:20-34.5(a)3.**

13:18-11.2 Public information requests and submissions

(a) A member of the public may obtain information or make a submission or a request by writing to the Office of the Director, Division of Motor Vehicles, [25 South Montgomery Street, 7th] **225 E. State Street, 9th Floor**, Trenton, New Jersey 08666.

(b) A member of the public seeking general information may telephone the Division of Motor Vehicles [from anywhere in New Jersey] by calling [1-800-DMV-2222] **1-609-292-6500.**

[(c) A member of the public seeking general information may telephone the Division of Motor Vehicles from out of State by calling 1-609-588-2424.]

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

Fees

Proposed Amendments: N.J.A.C. 13:35-6.13, 8.17, 9.6 and 10.8

Authorized By: State Board of Medical Examiners, Kevin Earle, Executive Director.

Authority: N.J.S.A. 45:9-2 and 45:1-3.2.

Proposal Number: PRN 1995-114.

Submit comments by March 23, 1995 to:

Kevin Earle, Executive Director
State Board of Medical Examiners
140 East Front Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

In order to cover increased investigative, administrative and program costs, the Board of Medical Examiners is proposing to increase initial registration fees and biennial registration renewal fees in its fee schedule N.J.A.C. 13:35-6.13, 8.17, 9.6 and 10.8 for physicians, podiatrists, bio-analytical laboratory directorships, midwives, certified nurse midwives, hearing aid dispensers, acupuncturists and athletic trainers. In addition, examination and re-examination fees for physicians have been omitted as a result of the federation of State Medical Boards administering the examination.

Pursuant to N.J.S.A. 45:1-3.2, all professional and occupational licensing boards must fund their operating costs through the assessment of licensing and other fees. The statute further requires the fees to be set at a level that will raise sufficient funds to meet, but not exceed, the amount needed to cover costs. The proposed new fee schedule complies with these statutory requirements.

In the last renewal period there was a loss of approximately 3,000 projected renewal licensees. Due to this unanticipated loss, Board revenues have been reduced considerably from the original budget projections. At the same time, the Board has incurred additional costs for which there is not adequate funding at the present time. Prior to fiscal year 1995, the State of New Jersey subsidized a large part of the rent payments of the Board for its offices in Trenton. Due to tightening budgets this subsidy has been eliminated and the Board has incurred a 100 percent increase in rent costs over what it paid in fiscal year 1994. Likewise, prior to fiscal year 1995, fringe benefit costs such as health benefits, pension contributions and worker's compensation for the enforcement unit employees had been incorporated in the fringe costs for the entire Division and thereby supported by the State. As of fiscal year 1995, these charges have been segregated and appropriately charged against each Board. Fringe costs as calculated by the Department of Treasury are charged at 24.25 percent of base salaries.

Another cost the Board has incurred includes a projected Statewide salary increase for all State employees, including those employed by the professional boards, which could be up to seven percent each year for the next two years. The budget also includes an allocation for the hiring of two additional employees for the Focused Education Program projected to be implemented in 1995.

It is important to note that this fee increase is not being proposed in order to subsidize new services that will be provided by the Board. Instead, it is being proposed out of necessity, so that the same level of service that has been provided in past years can be maintained.

Social Impact

The proposed amendments will affect all initial registration applicants as well as all biennial renewal registration applicants for the following professions: physicians, podiatrists, bio-analytical laboratory directorships, lay midwives, certified nurse midwives, hearing aid dispensers, acupuncturists and athletic trainers.

The fee increases will enable the Board to continue to meet its operating expenses incurred in fulfilling its statutory obligations to evaluate applicants for licensure, investigate complaints, initiate appropriate disciplinary and enforcement actions and regulate the practice of medicine. The new fee schedule will protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed new fee schedule will have an economic impact on approximately 31,400 licensed individuals as well as applicants for licensure who will be required to pay increased licensing fees.

The proposed initial registration fee increase for physicians is from \$250.00 to \$340.00 for fees paid during the first year of a biennial renewal period, and from \$125.00 to \$170.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$250.00 to \$340.00. In addition, examination and re-examination fees for an M.D. or D.O. license have been deleted due to the Federation of State Medical Boards administering the examination.

For podiatrists, the proposed initial registration fee increase is from \$170.00 to \$230.00 for fees paid during the first year of a biennial renewal period, and from \$85.00 to \$115.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$170.00 to \$230.00.

For bio-analytical laboratory directorships, the proposed initial registration fee increase is from \$170.00 to \$230.00 for fees paid during the first year of a biennial renewal period, and from \$85.00 to \$115.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$170.00 to \$230.00. The proposed increase is exactly the same for plenary license and specialty license applicants.

For lay midwives, the proposed initial registration fee increase is from \$170.00 to \$230.00 for fees paid during the first year of a biennial renewal period, and from \$85.00 to \$115.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$170.00 to \$230.00.

For certified nurse midwives, the proposed initial registration fee increase is from \$170.00 to \$230.00 for fees paid during the first year of a biennial renewal period, and from \$85.00 to \$115.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$170.00 to \$230.00.

For hearing aid dispensers, the proposed initial registration fee increase is from \$110.00 to \$150.00 for fees paid during the first year of a biennial renewal period, and from \$55.00 to \$75.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$110.00 to \$150.00.

For acupuncturists, the proposed initial registration fee increase is from \$170.00 to \$230.00 for fees paid during the first year of a biennial renewal period, and from \$85.00 to \$115.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$170.00 to \$230.00.

For athletic trainers, the proposed initial registration fee increase is from \$60.00 to \$70.00 for fees paid during the first year of a biennial renewal period, and from \$30.00 to \$35.00 for fees paid during the second year of a biennial renewal period. The proposed increase in the biennial registration fee is from \$60.00 to \$70.00.

The proposed fee increases and new fees will generate sufficient revenues to enable the Board to continue to comply with N.J.S.A. 45:1-3.2, which requires all professional and occupational licensing Boards within the scope of subtitle 1 of chapter 45 to raise funds to cover board operating costs. In compliance with the statute, the sums to be raised are estimated not to exceed the amount required to fund the Board's operations. The proposed amendment will not have a direct economic impact on the public.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to a fee increase are governed by N.J.S.A. 45:1-3.2 and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendments will apply. The proposed amendments will apply to initial applicants for

PROPOSALS

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LAW AND PUBLIC SAFETY

licensure and to applicants for renewal of licensure in the following professions: physicians, podiatrists, bio-analytical laboratory directorships, midwives, certified nurse midwives, hearing aid dispensers, acupuncturists and athletic trainers. If, for the purposes of the Regulatory Flexibility Act, the above mentioned professionals, who total approximately 31,400 persons, are deemed to be "small businesses," the following analysis applies.

Compliance requirements consist of paying an increased initial registration fee and an increased renewal fee in a timely manner. The compliance costs are set out in the Economic Impact Statement. There are no capital costs associated with compliance.

There are no reporting or recordkeeping requirements, and no professional services are needed in order to comply. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the initial fees and renewal fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)

i. Initial application fee \$325.00
[Application for re-examination 175.00]

[ii. Examination—
Both Components 500.00
Component I 300.00
Component II 325.00]

[iii.]ii. Initial registration fee
(1) If paid during the first
year of a biennial
renewal period [250.00]
340.00

(2) If paid during the second
year of a biennial renewal
period [125.00]
170.00

Recodify existing iv.-vi. as **iii.-v.** (No change in text.)
[vii.] **vi.** Biennial registration [250.00]
340.00

[viii.] **vii.** (No change in text.)

2. Podiatry (license)

i.-ii. (No change.)
iii. Initial registration fee
(1) If paid during the first
year of a biennial renewal
period [170.00]
230.00

(2) If paid during the second
year of a biennial renewal
period [85.00]
115.00

iv. (No change.)
v. Biennial registration [170.00]
\$230.00

vi. (No change.)

3. Bio-analytical laboratory directorship, plenary license

i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first
year of a biennial renewal
period [170.00]
230.00

(2) If paid during the second
year of a biennial renewal
period [85.00]
115.00

v. Biennial registration [170.00]
\$230.00

4. Bio-analytical laboratory directorship, specialty license i.-iii. (No change.)

iv. Initial registration fee
(1) If paid during the first
year of a biennial renewal
period [170.00]
230.00

(2) If paid during the second
year of a biennial renewal
period [85.00]
115.00

v. Biennial registration [170.00]
\$230.00

5. Midwifery (license)

i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first
year of a biennial renewal
period [170.00]
230.00

(2) If paid during the second
year of a biennial renewal
period [85.00]
115.00

v. Biennial registration [170.00]
\$230.00

6. Certified Nurse Midwifery (registration)

i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first
year of a biennial renewal
period [170.00]
230.00

(2) If paid during the second
year of a biennial renewal
period [85.00]
115.00

v. Biennial registration, C.N.M. [170.00]
\$230.00

vi. (No change.)

7.-9. (No change.)

13:35-8.17 Fee schedule

(a) The fee schedule for the Hearing Aid Dispensers Examining Committee of the State Board of Medical Examiners, in the Division of Consumer Affairs of the Department of Law and Public Safety, shall be as follows:

1.-4. (No change.)
5. Initial Registration Fee
i. [During] **If paid during**
the first year of a biennial
renewal period: [110.00]
150.00

ii. [During] **If paid during**
the second year of a biennial
renewal period: [55.00]
75.00

6. Endorsement:
i. Review of credentials: \$30.00
[ii. Endorsement fee:
During the first year of a biennial
renewal period: 110.00
During the second year of a biennial
renewal period: 55.00]

7. Biennial registration renewal	[110.00]
	150.00
8.-12. (No change.)	
(b)-(c) (No change.)	
13:35-9.6 Fee schedule	
(a) The fee schedule for certification as an acupuncturist is as follows:	
1.-3. (No change.)	
4. Initial Registration Fee:	
i. [During] If paid during the first year of a biennial renewal period:	[170.00]
	230.00
ii. [During] If paid during the second year of a biennial renewal period:	[85.00]
	115.00
5. Biennial Registration	[170.00]
	230.00
6.-11. (No change.)	
13:35-10.8 Fees	
(a) The following fees shall be charged by the Board for athletic trainer registration:	
1.-2. (No change.)	
3. Initial Registration Fee	
i. If paid during the first year of a biennial renewal period:	[60.00]
	70.00
ii. If paid during the second year of a biennial renewal period:	[30.00]
	35.00
4. Biennial registration	[60.00]
	70.00
5.-6. (No change.)	

(a)

DIVISION OF STATE POLICE

Boating Safety Course

Proposed Readoption with Amendments: N.J.A.C. 13:61

Authorized By: Colonel Carl A. Williams, Superintendent,
Division of State Police.

Authority: N.J.S.A. 12:7-60.

Proposal Number: PRN 1995-106.

Submit written comments by March 23, 1995 to:

Captain William J. Gronikowski
Division of State Police
Marine Law Enforcement Bureau
River Road
PO Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

N.J.A.C. 13:61, Boat Safety Course, effective March 5, 1990, expires March 5, 1995.

N.J.S.A. 12:7-60 requires that: "The Superintendent of the State Police establish a list of approved boat safety courses offered by public or private persons or agencies, for profit or otherwise. Approved courses will provide formal instruction on power vessel handling and safety. The Superintendent may approve a boat safety course upon his own initiative or by application on a form to be created by the Superintendent." The rules herein proposed for readoption specify those factors and procedures for approval as a Boat Safety Course; the issuance of Boat Safety Certificates will be the responsibility of the State Police, Marine Law Enforcement Bureau. The Superintendent proposes to readopt the

existing rules and amend N.J.A.C. 13:61-1.10 to provide that the Marine Law Enforcement Bureau will issue a laminated certificate to persons who successfully complete the course.

Social Impact

The rules proposed for readoption have resulted in the approval of boating safety courses for students 16 years of age and younger taught by the United States Coast Guard Auxiliary, the U.S. Power Squadron, the Division of State Police Marine Law Enforcement Bureau, and various private instructors. The Marine Law Enforcement Bureau alone provided instruction to 9,854 students in 1994. These courses are generally taught in public schools at no cost to the student. Private instructors may impose a tuition charge. Approved courses must provide young boaters with a minimum of eight hours of instruction in the basics of boating, including navigation and operation, State and Federal rules and regulations, safety equipment, boat titling and registration laws, personal responsibility, alcohol and boating, and boat maintenance and storage. The Division maintains records of persons successfully completing approved courses and issues a certificate enabling the student to operate a power vessel in New Jersey waters. Continuation of these rules will ensure consistency in the content of boating safety courses for the benefit of the boating public. Continuation of the existing rules is also necessary to implement the legislative mandate that the Superintendent of State Police establish a list of approved courses. By statute, persons 16 years of age or younger may not operate a power vessel on the waters of the State without having completed an approved boating safety course and being in possession of a certificate issued by the Marine Law Enforcement Bureau. The social impact of the rules has been positive and will continue under the rules proposed for readoption.

Economic Impact

The Division does not anticipate any economic impact from readoption of the existing rules. The proposed amendment merely codifies the current practice of issuance of certificates for successful completion of the course by the Marine Law Enforcement Bureau. There are no fees for course approval by the Division or for issuance of the certificate. The Division does not regulate any charges that may be imposed on students by course providers. Most courses are offered free of charge, or for a minimal charge for materials, although private course providers may impose a tuition fee. Costs for the course taught by the Marine Law Enforcement Bureau are reimbursed through federal grants. Other course providers may incur costs for materials or facilities where courses are taught. The amount of these costs depends on the number of students and the location of instruction and may be passed on to students or absorbed by the provider.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification are not required because there are no federal standards or regulations on boating safety courses. Rulemaking requirements are dictated by N.J.S.A. 12:7-60.

Regulatory Flexibility Analysis

Small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that provide approved boating safety courses will be affected by the rules proposed for readoption with amendments. In order to comply with the rules, an applicant will have to submit a cover letter, written course outline, full course text containing the minimum requirements, and a list of reference materials. Recordkeeping requirements are imposed because approved course providers must submit names of students successfully completing the course so the Division can issue a certificate. No need for professional services is anticipated. These requirements must be uniformly applied to all providers in order to ensure consistency of instruction and control over issuance of certificates.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:61.

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

13:61-1.10 Administration

(a) Administrative files will be maintained by Marine Law Enforcement Bureau, Division of State Police and will include applications, copies of letters of Approval and Notices of Intent to Revoke/Revocation.

(b) The Division of State Police, Marine Law Enforcement Bureau will issue a laminated certificate to each person who attends and successfully completes an approved boat safety course.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Claims; Allowances for Contracted Apprentices

Proposed Amendments: N.J.A.C. 13:70-9.29 and 9.31

Authorized By: Frank Zanzuccki, Executive Director, New Jersey Racing Commission.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1995-117.

Submit written comments by March 23, 1995 to:

Frank Zanzuccki, Executive Director
New Jersey Racing Commission
140 East Front Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:70-9.29 will allow an apprentice jockey a 10 pound allowance until he or she has ridden five winners and a seven pound allowance until he or she has ridden an additional 35 winners. The proposed amendment would allow them to continue a five pound allowance if he or she has ridden 40 winners prior to the end of a period of one year from the date of riding his or her fifth winner; he or she shall have an allowance of five pounds until the end of that year.

The proposed technical amendment to N.J.A.C. 13:70-9.31 corrects a typographic error in citing to, and the form of referring to, N.J.A.C. 13:70-9.29.

Social Impact

The social impact of the proposed amendment to N.J.A.C. 13:70-9.29 is positive, in that it allows individuals to serve an apprenticeship as a jockey with a 10, seven, and five pound allowance. This encourages young riders to participate in New Jersey.

Economic Impact

The proposed amendment to N.J.A.C. 13:70-9.29 would be positive in that it would create an opportunity for young riders to compete with a weight allowance which would assist them in securing mounts at racetracks in New Jersey. Horses are assigned weights by the race secretary or the conditions of the race, and a weight allowance for a jockey may be deemed an advantage by owners and trainers that employ jockeys.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22 et seq., and Administrative Code, Title 13, Subtitle J, and the subject matter of the instant proposal is not addressed by any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments apply to individual jockeys.

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

13:70-9.29 Claims

(a) Any person who has never previously been licensed as a jockey in any country, and who has complied with the conditions set forth in N.J.A.C. 13:70-9.27, may claim in all overnight races except handicaps the following allowance:

[1. An apprentice jockey shall ride with a five pound weight allowance beginning with his or her first mount and for one full year from the date of his or her fifth winning mount.

2. If, after riding one full year from the date of his or her fifth winning mount, the apprentice jockey has failed to ride a total of

40 winners from the date of his or her first winning mount, he or she shall continue to ride with a five pound weight allowance for one more year from the date of his or her fifth winning mount or until he or she has ridden a total of 40 winners, whichever comes first.]

1. A 10 pound allowance until the apprentice has ridden five winners;

2. A seven pound allowance until apprentice has ridden an additional 35 winners; and

3. If an apprentice has ridden a total of 40 winners, prior to the end of a period of one year from the date of riding his or her fifth winner, he or she shall have an allowance of five pounds until the end of that year.

13:70-9.31 Allowances for contracted apprentices

In addition to the weight allowances specified in [Section 28 of this Subchapter] N.J.A.C. 13:70-9.29, a contracted apprentice may claim an allowance of three pounds for an additional year when riding horses owned or trained by the original contract employer, provided that his or her contract has not been permanently transferred, since his or her fifth winner. The holder of the contract at the time the apprentice rides his or her fifth winner shall be considered the original contract holder.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route N.J. 70

Cherry Hill Township, Camden County

Proposed New Rule: N.J.A.C. 16:31-1.37

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1

Proposal Number: PRN 1995-99.

Submit comments by March 23, 1995 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:31-1.37 concerning turning movements along Route N.J. 70 in Cherry Hill Township, Camden County, to effect "no left turn" and no "U" turn restrictions. This new rule has been codified in compliance with the Department's rulemaking format. The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

The new rule is being proposed at the request of the local government of the Township of Cherry Hill in a letter dated August 26, 1994, requesting turn prohibitions, and Resolution No. 94-11-6 adopted on November 14, 1994, requesting the no "U" turn and "no left turn" be established by regulation. As part of the Department's on-going review of current conditions, the traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of turning movement restrictions along Route N.J. 70 in Cherry Hill Township, Camden County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish left turn and "U" turn restrictions along Route N.J. 70 in Cherry Hill Township, Camden County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that effects the subject of this rulemaking.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows:

16:31-1.37 Route 70

(a) Turning movements on certain parts of State highway Route 70 described in this subsection are regulated as follows:

1. In Camden County:**i. In Cherry Hill Township:****(1) No left turn westbound at:**

(A) Route 70 and Wexford Drive (approximate milepost 6.6).

(2) No "U" turn eastbound and westbound at:

(A) Route 70 and Wexford Drive-Birchwood Park Drive south (approximate milepost 6.6).

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS AND OUTDOOR
ADVERTISING**

**Junkyards Adjacent to the Interstate and National
Highway Systems**

**Proposed Readoption with Amendments: N.J.A.C.
16:43**

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:5E-1 et seq.

Proposal Number: PRN 1995-108.

Submit comments by March 23, 1995 to:

Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
FAX (609) 530-5719

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:43, Junkyards Adjacent to the Interstate and Primary Highway Systems, will expire on May 10, 1995. These rules execute the purposes of the New Jersey Junkyard Control Act, N.J.S.A. 27:5E-1 et seq., which are to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public invest-

ment in public highways, and to foster the public policy of the State expressed by that Act, which is to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and national highway systems within the State; and to ensure New Jersey compliance with Section 136 of Title II of the Federal Highway Beautification Act of 1965, and the provisions of Title 23 of the Code of Federal Regulations, Part 751, Junkyard Control and Acquisition.

The rules were reviewed and analyzed by the Department's staff of Regions 1, 2, 3 and 4 and staff of the Bureau of Maintenance Engineering and Operations and the Office of Regulatory Affairs, and were found to be necessary, reasonable and proper for the purpose of which they were originally promulgated. The Department therefore proposes to readopt N.J.A.C. 16:43 with amendments.

Amendments are proposed throughout the chapter to reflect the recent name change by the Federal Highway Administration of the definition of Interstate System and Primary System to a National Highway System.

The subchapters are summarized as follows:

N.J.A.C. 16:43-1 outlines the general provisions of the rules.

N.J.A.C. 16:43-2 describes conditions and actions required concerning illegal junkyards.

N.J.A.C. 16:43-3 prescribes the requirements for non-conforming junkyards.

N.J.A.C. 16:43-4 outlines the procedure to be followed in the screening and fencing required by the Junkyard Control Act.

Social Impact

The proposed readoption with amendments will continue the standards required for the control, operation, establishment and maintenance of junkyards along the State's highway systems as mandated in the New Jersey Junkyard Control Act, the Federal Highway Beautification Act of 1965, and Title 23 of the Code of Federal Regulations, Part 751. Counties and municipalities may adopt more restrictive ordinances and conditions for the control of junkyards.

Readoption of this rule will continue to focus attention to the beautification of the State's roadways for the general benefit and welfare of the entire State.

Economic Impact

The proposed readoption with amendments has an economic impact of any person(s) desiring to establish a junkyard along the highway systems through the application process, permit fees and the acquisition of land. The Department will incur direct and indirect costs caused by the acquisition of lands as may be necessary to secure the relocation, removal, or disposal of junkyards, and the payment of costs of relocation, removal, or disposal thereof. Persons presently operating junkyards in compliance with these rules will benefit because there has been no increase of any required fees by the readoption. Counties and municipalities may be impacted since they may adopt ordinances. Any violations of any provision of this chapter will be grounds for fine, modifications, suspension or revocation of any license issued. There is no direct economic impact of the public.

Executive Order No. 27 Statement

The proposed readoption with amendments coincides with the standards required for the control, operation, establishment and maintenance of junkyards along the State's highway systems as mandated in the New Jersey Junkyard Control Act, the Federal Highway Beautification Act of 1965, and Title 23 of the Code of Federal Regulations, Part 751, and the rules are being promulgated in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty.

Regulatory Flexibility Analysis

The proposed readoption with amendments does not impose reporting or recordkeeping requirements. Compliance requirements are imposed by the way of the application and permit requirements, including fees, and operation, maintenance and screening costs. These requirements are imposed on anyone seeking to establish a junkyard in compliance with established standards. Some owners or operators may be defined as small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For any new owner, these requirements may increase their start-up capital costs; for established businesses the compliance costs will have no impact. As the rules effectuate a statutory

scheme and serve to promote the benefit and overall well-being of the general populace, no differentiation in requirements is provided for small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:43.

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

CHAPTER 43

JUNKYARDS ADJACENT TO THE INTERSTATE AND [PRIMARY] NATIONAL HIGHWAY SYSTEMS

16:43-1.1 Declaration of policy

The intent of this chapter is to effectuate the purposes of the New Jersey Junkyard Control Act, N.J.S.A. 27:5E-1 et seq., which are to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, and to foster the public policy of the State expressed by that Act, which is to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and [primary] **national** highway systems within the State; further to ensure New Jersey compliance with section 136 of Title II of the Federal Highway Beautification Act of 1965, and the provisions of Title 23 of the Code of Federal Regulations, Part 751, Junkyard Control and Acquisition.

16:43-1.2 Authority

(a) The Commissioner of Transportation is authorized pursuant to:

1. (No change.)
2. N.J.S.A. 27:5E-5, to screen junkyards lawfully in existence on the effective date of the Junkyard Control Act (July 24, 1970) which are located within 1,000 feet of, and are visible from, any interstate or [primary] **national** system highway, and which are located outside of zones and unzoned industrial areas, and to acquire such lands, or interests in lands, as may be necessary to provide adequate screening to such junkyards;
- 3.-6. (No change.)
7. N.J.S.A. 27:5E-10, to enter into agreements with the United States Secretary of Transportation relating to the control of junkyards in areas adjacent to the interstate and [primary] **national** highway systems, and to take action in the name of the State to comply with the terms of such agreements; and
8. (No change.)

16:43-1.3 Definitions

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

... "Nonconforming junkyard" means a junkyard which does not comply with N.J.S.A. 27:5E-4 and which was either:

1. (No change.)
2. Lawfully established after July 24, 1970, but later failing to comply with N.J.S.A. 27:5E-1 et seq. because of the construction, widening or relocation of [primary] **national** or interstate highways or other changed conditions not within the junkyard owner's control, including revisions in the applicable zoning ordinances.

... ["Primary system"] "**National system**" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the Commissioner of Transportation, and approved by the [Secondary] **United States Secretary** of Transportation, pursuant to the provisions of Title 23 of the United States Code.

16:43-2.1 Establishment, operation and maintenance of illegal junkyards

(a) No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the

right-of-way of any interstate or [primary] **national** highway, except the following:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the interstate and [primary] **national** highway systems, or otherwise removed from sight;
- 2.-4. (No change.)

16:43-4.1 Location, construction and maintenance of screening

(a) Screening and fencing required by the Junkyard Control Act shall be located, planted, constructed and maintained in the following manner:

- 1.-3. (No change.)
4. The junkyard entrance [or a primary] **on a national highway** system must be consistent with the objectives of effective control. Any gate which provides access to a [primary] **national** system highway shall provide effective control when closed. Such a gate shall be closed when the junkyard entrance is not in use. A junkyard entrance on a [primary] **national** system highway may also be made through a baffle of screening arranged so as to provide effective control. Any junkyard entrance not on a [primary] **national** system highway but visible from the [primary] **national** or interstate system shall be closed when not in use or shall be screened through a baffle.
- (b)-(c) (No change.)

16:43-4.3 Surveillance

The interstate and [primary] **national** highway systems will be surveyed periodically to update the junkyard inventory. Each junkyard on the inventory will be reviewed for compliance with the provisions of the Junkyard Control Act and this chapter.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Assessment and Reassessment

Claims for Refund; When Allowed

Proposed Amendments: N.J.A.C. 18:7-13.1 and 13.8

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and 54:50-1.

Proposal Number: PRN 1995-98.

Submit comments by March 23, 1995 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposal makes certain technical corrections to the Corporation Business Tax rules to clarify the effective date for implementation of the four-year statute of limitations on assessments and refund claims imposed by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended by Public Law 1992, c.175. Recent amendments to the Corporation Business Tax rules linked implementation of the new four-year statute of limitations with whether the tax return was filed on or after July 1, 1993, the effective date of P.L. 1992, c.175. (See 26 N.J.R. 761(a) and 1696(b).) Transition provisions within the Act, however, published at N.J.S.A. 54:48-7, made the new four-year statute of limitations effective for tax liabilities or refund claims accruing on or after July 1, 1993. The relevant criterion is therefore when the liability or claim accrued, not when the return was filed. The proposed amendments are intended to harmonize the regulatory language with the language of the statute.

N.J.A.C. 18:7-13.1(b) is amended to provide that the five year period in which the Director may assess additional tax applies for tax liabilities

accruing prior to July 1, 1993. The four year period in which the Director may assess additional tax applies to tax liabilities accruing on or after July 1, 1993. Under N.J.S.A. 54:48-7(b), any unexpired fifth year of an assessment period is in effect even though it may extend beyond July 1, 1993. For the reasons stated above, the phrase "returns filed" in N.J.A.C. 18:7-13.1(b)3 and (e) is replaced with the phrase "tax liabilities accruing." The word "or" in N.J.A.C. 18:7-13.1(e) is replaced with the word "and" for consistency and to follow the statute. N.J.A.C. 18:7-13.1(e) is also amended to clarify that, in the case of a change in taxable income by the Internal Revenue Service, the four year statute of limitations in which the Director may assess a deficiency runs from the date of the filing of the report of change or correction or an amended return.

N.J.A.C. 18:7-13.8(a) is similarly amended to indicate that for "claims accruing," rather than "returns filed," on or after July 1, 1993 the statute of limitations for refund claims is four years, as mandated by N.J.S.A. 54:48-7(c) and N.J.S.A. 54:49-14. A sentence is added to N.J.A.C. 18:7-13.8(a) to reflect the mandate of N.J.S.A. 54:48-7(c) that all claims barred by the two-year statute of limitations on July 1, 1993 shall continue to be barred. The words "Amended returns filed" in N.J.A.C. 18:7-13.8(b) and "returns filed" in N.J.A.C. 18:7-13.8(d) and (i) are both replaced with the words "claims accruing," and the words "For claims accruing" are added to the last sentence of N.J.A.C. 18:7-13.8(e), again following the language of N.J.S.A. 54:48-7(c). N.J.A.C. 18:7-13.8(d) is also amended to clarify that the four year limitation period runs from the date that the timely filed Form IRA-100 is filed with the Division. N.J.A.C. 18:7-13.8(g) is amended to incorporate the transition rule of N.J.S.A. 54:48-7(c) and to state that the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim within two years of the date of the payment of the deficiency assessment or final determination, or for claims accruing on or after July 1, 1993, within four years of the date of the payment of the deficiency assessment or final determination.

Social Impact

The proposed amendments are intended to have a positive impact by eliminating conflict between the Corporation Business Tax rules and N.J.S.A. 54:48-7, enacted by P.L. 1992, c.175. P.L. 1992, c.175 standardized the statute of limitations for assessments and claims for refund at four years. The Legislature, however, mandated clear transition rules on when the provisions of P.L. 1992, c.175 were to take effect. The amendments aim to accurately reflect the transition rules of P.L. 1992, c.175 and thereby enhance taxpayer understanding of how the provisions will be implemented.

Economic Impact

The proposed amendments should have minimal economic impact, since the effect of the amendments is to more accurately state transition rules already existing in the statute P.L. 1992, c.175. The statutes of limitations themselves are not changed. Both the period for assessment and the period for refund claims for taxes and claims accruing on or after July 1, 1993 will be four years, as mandated by P.L. 1992, c.175. The primary change resulting from the amendments is to clarify that the relevant criterion for when the four year statute of limitations would become applicable to taxpayers is not whether the return was filed on or after July 1, 1993, but whether the tax liability or refund claim accrued on or after July 1, 1993.

Executive Order No. 27 Statement

The proposed amendments do not contain any standards or requirements which exceed standards or requirements imposed by Federal law. The amendments only correct language in the rules to conform to New Jersey statutory language related to the effective date of the four-year statute of limitations on assessments and refund claims.

Regulatory Flexibility Analysis

The proposed amendments clarify the transition rule for the statute of limitations on assessments and refund claims of Corporation Business Tax imposed by P.L. 1992, c.175. The statute of limitations and the transition rules apply to all taxpayers subject to the Corporation Business Tax, N.J.S.A. 54:10A-1 et seq., including small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The amendments do not impose reporting or recordkeeping requirements or any annual compliance costs on small businesses. Small businesses may wish to retain the services of tax advisors charging at normal rates, to review the amendments to determine if it is relevant to their own tax situation. The amendments, however, are intended to accurately

reflect the statutory mandate. It is intended that by harmonizing the rules with the statute the costs for professional services to analyze the rules should be reduced.

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

18:7-13.1 Assessment and reassessment

(a) (No change.)

(b) For tax liabilities accruing prior to July 1, 1993, [The] the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. For [returns filed] tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect.

1.-2. (No change.)

3. Where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For [returns filed] tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

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

(e) At any time thereafter, within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For [returns filed] tax liabilities accruing on [or] and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date [that taxable income is finally changed by the Commissioner of Internal Revenue] of filing the report of change or correction or an amended return. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

18:7-13.8 Claims for refund; when allowed

(a) The two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For [returns filed] claims accruing on or after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:7-11.7(b)).

(b) The two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For [amended returns filed] claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) (No change.)

(d) Where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Division. For [returns filed] claims accruing on and after July 1, 1993, the limitation period is four years from the date that the timely filed Form IRA-100 is filed with the Division. Unless the IRA-100 or CBT-100-X is filed in timely fashion under N.J.A.C. 18:7-11.8(a), the refund claim will not be considered.

(e) Where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C.

18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT-100). [On] **For claims accruing on and after July 1, 1993**, the claim for refund must be filed within four years.

(f) (No change.)

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim within two years of the date of the payment of the deficiency assessment or final determination, **or for claims accruing on or after July 1, 1993, within four years of the date of the payment of the deficiency assessment or final determination.**

(h) (No change.)

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the director is made on Form CBT-100-X and is addressed to:

Audit Adjustment Branch
50 Barrack Street, CN 019
Trenton, NJ 08646-0019

The following examples apply to [returns filed] **claims accruing on or after July 1, 1993:**

Examples 1-4. (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Proposed Readoption: N.J.A.C. 19:41

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a-c, 70e, 89, 90, 91, 92, 93,
139 and 141.

Proposal Number: PRN 1995-101.

Submit written comments by March 23, 1995 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:41 is scheduled to expire on April 15, 1995. These rules, initially promulgated in 1978, enable the Casino Control Commission (Commission) to fulfill its statutory duty to ascertain the qualifications of applicants for licensure as a casino (N.J.S.A. 5:12-82, 83, 84, 85 and 86); casino service industry (N.J.S.A. 5:12-92); and casino key employee and casino employee (N.J.S.A. 5:12-89 and 90). Chapter 41 also implements the Commission's obligation to prescribe the methods and forms of application; methods, procedures and forms for delivery of information; and methods of identification of applicants (N.J.S.A. 5:12-70a, 70b and 70c). Finally, the rules set forth fees for licensure and registration, in accordance with N.J.S.A. 5:12-139 and 141.

Subchapter 11, Applications by Casino Licensees for Approval of agreements, and subchapter 12, Labor organizations registration, were adopted in 1978. See 10 N.J.R. 212(b), 10 N.J.R. 306(c); 10 N.J.R. 211(b); 10 N.J.R. 306(b). Subchapter 13, Casino license conservatorship, was adopted in 1979. See 11 N.J.R. 213(b), 11 N.J.R. 360(b). The chapter was readopted without amendment in 1983 (see 15 N.J.R. 532(b), 15 N.J.R. 931(b)) and again in 1988 with amendments to the fee schedule in subchapter 9. See 20 N.J.R. 763(a), 20 N.J.R. 1209(a). New rules were adopted in 1991 to establish procedures whereby the Commission may administratively suspend a license or registration, or dismiss an application, when a required fee or civil penalty remains unpaid. See 23 N.J.R. 3249(a), 24 N.J.R. 298(a). Subchapters 2 and 13, relating to casino hotel

facilities and casino license conservatorships, were recodified in 1992 to a new casino licensing chapter, N.J.A.C. 19:43. See 24 N.J.R. 3225(a), 24 N.J.R. 4563(a).

In 1993, chapter 41 was readopted without amendment (see 25 N.J.R. 916(b), 25 N.J.R. 1999(a)) and assigned an early expiration date of April 15, 1995, pursuant to a revised Title 19 readoption schedule. A new subchapter 5 was adopted in 1993 to codify the various disclosure forms filed by applicants for licensure and qualification. See 25 N.J.R. 2655(a), 25 N.J.R. 4120(a). 1994 adoptions set forth the scope of the employee licensing requirements (see 26 N.J.R. 779(a), 26 N.J.R. 1845(a)); codified application procedures for employee licensees and natural person qualifiers (see 26 N.J.R. 1321(a), 26 N.J.R. 2474(a)); set standards for applicant identification (see 25 N.J.R. 4736(a), 26 N.J.R. 254(a); and recodified subchapter 11, Presentation of the agreement, as N.J.A.C. 19:43-10, Casino Licensees; Vendor Requirements. See 26 N.J.R. 339(b), 26 N.J.R. 1847(b).

The rules in N.J.A.C. 19:41 are reasonable and proper for the purposes for which they were originally promulgated. These rules assure that the regulatory agencies have available to them all the information necessary to determine whether an applicant meets the qualifications set forth in the Casino Control Act. Since chapter 41 has been and will continue to be subject to ongoing review and revision as part of the Commission's comprehensive regulatory review, the chapter is proposed for readoption at this time without amendment.

Social Impact

The rules in N.J.A.C. 19:41 benefit the public, the casino industry and the regulatory agencies. If the rules were not readopted, it would be extremely difficult for the Commission and Division of Gaming Enforcement to assure that persons with unacceptable backgrounds do not gain entry to the casino industry. Such rules are thus essential to assure the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations, in accordance with the goals of the Act, N.J.S.A. 5:12-1(b)(6).

Economic Impact

Licensees, registrants and applicants expend time and money in order to comply with the requirements of N.J.A.C. 19:41. The application fees set forth in N.J.A.C. 19:41-9 implement the Legislature's intent that the Casino Control Commission and the Division of Gaming Enforcement should be financed exclusively through fees assessed upon licensees and applicants who benefit from the existence of the regulatory process. Readoption will continue to ensure that, to the extent possible, each applicant is assessed a fair share of the investigatory and processing costs attributable to that applicant.

Applicants also incur costs in compiling and submitting information and documentation to the regulatory agencies. However, without this information, the legislative directive prohibiting the participation of unfit persons and entities could not be satisfied.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification are not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

N.J.A.C. 19:41 imposes reporting requirements upon applicants and licensees, including certain casino service industry enterprises that may qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. But the information provided in accordance with chapter 41 is essential to the conduct of an adequate investigation of an applicant and thus must be provided without distinction as to size of the entity. The application fee structure in N.J.A.C. 19:41-9 reflects the Commission's intent to assess a fair share of the investigatory and processing costs attributable to an applicant. No lesser requirements or systems are, therefore, provided based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:41.

(a)

CASINO CONTROL COMMISSION**Gaming Equipment****Rules of the Games****Super Pan 9****Proposed Amendments: N.J.A.C. 19:41-1.5A;****19:45-1.11 and 1.12; 19:46-1.15, 1.16, 1.17, 1.18 and 1.19****Proposed New Rules: N.J.A.C. 19:46-1.12A and 19:47-13**

Authorized By: Casino Control Commission, Bradford S. Smith, Chairman.

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

Proposal Number: PRN 1995-109.

Submit written comments by March 23, 1995 to:

Barbara A. Mattie, Manager

Casino Control Commission

Arcade Building

Tennessee Avenue and the Boardwalk

Atlantic City, NJ 08401

The agency proposal follows:

Summary

These proposed new rules would permit a variation of the game of baccarat known as "super pan 9" to be played in Atlantic City casinos.

Super pan 9 is a game played with six decks of cards from which the 7, 8, 9 and 10 of each suit have been removed. The "point value" of the remaining cards is as follows: any card from 2 to 6 shall have a point value equal to its face value; any Jack, Queen or King shall have a point value of zero; and an ace shall have a point value of one.

Each player and the dealer are dealt three cards. After the initial three cards are dealt, each player and the dealer have the option to request one additional card. The object of the game is to have a "point count" higher than the dealer or bank. The point count of each hand is a single digit number from 0 to 9 inclusive and is determined by adding the point values of all the cards in the hand. If the total point value is a two-digit number, the left digit of such number is discarded and the right digit constitutes the point count of the hand.

The point count of each player's hand is then compared to the point count of the dealer's or bank's hand. The bank is a player who elects to act as the house during a particular round or play, that is, the bank collects all losing wagers and pays all winning wagers. A player wins if the point count of his or her hand is higher than the point count of the hand held by the dealer or bank. A player's wager is considered to be a tie ("push") if the point count of his or her hand is equal to the point count of the hand held by the dealer or bank. A player loses if the point count of the player's hand is lower than the point count of the hand held by the dealer or bank. Winning wagers in super pan 9 are paid 1 to 1. A four or five percent vigorish is collected by the casino licensee on winning hands.

The proposed amendments to N.J.A.C. 19:41-1.5A and 19:45-1.11 and 1.12 establish the casino supervision and experience requirements for the game of super pan 9.

Proposed new rule N.J.A.C. 19:46-1.12A contains the requirements governing the physical characteristics of a super pan 9 table and super pan 9 shaker. Proposed amendments to N.J.A.C. 19:46-1.15 specify the physical characteristics of super pan 9 dice and make various organizational changes to the existing rule. The amendments proposed to N.J.A.C. 19:46-1.16 reorganize various provisions of the rules governing dice inspection and distribution and add super pan 9 dice to the procedures. Please note that the Commission may choose to adopt the organizational changes being proposed to N.J.A.C. 19:46-1.15 and 1.16 regardless whether the proposed amendments concerning super pan 9 are eventually adopted.

Amendments are also being proposed to N.J.A.C. 19:46-1.17 to specify the physical characteristics of super pan 9 cards and to N.J.A.C. 19:46-1.18 to address the inspection and distribution requirements for the cards used in the game. New rules N.J.A.C. 19:47-13 contain the rules of play for the proposed game, including the provisions concerning player banking, co-banking and the selection of the bank.

Social Impact

The proposed new rules are not expected to have any social impact beyond that created by the authorization of a game which is compatible with the public interest. The rules do not reflect any social judgments made by the Commission. The implementation of this new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City casinos as a result of the introduction of super pan 9.

Economic Impact

The implementation of any game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs may be offset by increased casino revenues generated by the game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues which will be collected. But as noted above, any attempt to quantify the effects of the introduction of super pan 9 on casino revenue would be highly speculative at this time.

The proposed new rules will also require the Commission and the Division of Gaming Enforcement to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce any new game.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed new rules would affect casino licensees, none of which is a small business within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:41-1.5A Position endorsements

(a) (No change.)

(b) An employee licensee with a position endorsement in a particular core game may also perform the functions of that position in any variation game thereof without further endorsement of his or her license, provided that he or she completes any additional minimum training required by the Commission for the variation game. For purposes of this subchapter:

1. (No change.)

2. The following are "variation games":

i.-ii. (No change.)

iii. Pokette is a variation game of roulette; [and]

iv. Double down stud is a variation game of poker and pai gow poker; **and**v. **Super pan 9 is a variation game of baccarat/minibaccarat and pai gow poker.**

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and shall be responsible for the operation and conduct of the following games:

i.-ix. (No change.)

x. Pai gow poker; [and]

xi. Poker, except as otherwise authorized by (g) below; **and**xii. **Super pan 9.**

5.-10. (No change.)

(c)-(g) (No change.)

PROPOSALS**Interested Persons see Inside Front Cover****OTHER AGENCIES**

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six, pai gow, pai gow poker, **super pan 9** and poker table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog, pai gow, pai gow poker, big six, **super pan 9** or poker game.

6. Pit boss shall be the third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a craps game and the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a blackjack, roulette, minibaccarat, big six, sic bo, red dog, pai gow, pai gow poker, **super pan 9** or baccarat game.

7.-9. (No change.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, pai gow poker, big six, **super pan 9** and poker table;

3.-4. (No change.)

5. One floorperson shall supervise:

i. Not more than four blackjack, roulette, minibaccarat, sic bo, red dog, **super pan 9** or big six tables, or any combination thereof; or

ii.-iv. (No change.)

6. (No change.)

(d)-(j) (No change.)

19:46-1.12A Super pan 9 table; super pan 9 shaker; physical characteristics

(a) **Super pan 9 shall be played at a table having on one side places for the players and on the opposite side a place for the dealer.**

(b) Each super pan 9 layout shall be approved by the Commission and shall have imprinted thereon, at a minimum, the following:

1. The name or trade name of the casino licensee;

2. Seven separate designated betting areas for the players at the table, which areas shall be numbered one through seven;

3. An area designated for the placement of the cards of the dealer; and

4. If the casino licensee elects to defer the payment of vigorish pursuant to N.J.A.C. 19:47-13.7, seven boxes for the purpose of marking vigorish, which boxes shall be numbered one through seven to correspond to the player betting areas.

(c) Each super pan 9 table shall have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in a location approved by the Commission.

(d) Super pan 9 shall be played with a container, to be known as a "super pan 9 shaker," which shall be used to shake three dice before each round of play of super pan 9 is commenced in order to determine the starting position for the dealing of the cards. The super pan 9 shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1. The super pan 9 shaker shall be capable of housing three dice and shall be designed to prevent the dice from being seen while the dealer is shaking it; and

2. The super pan 9 shaker shall have the name or identifying logo of the casino licensee imprinted or impressed thereon.

19:46-1.15 Dice; physical characteristics

(a) Except as otherwise provided in (b) below, each die used in gaming shall:

1.-7. (No change.)

8. Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound which is equal in weight to the weight of the cellulose drilled out and which forms a permanent bond with the cellulose cube, and shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch; and

9. (No change.)

(b) Each die used in gaming at **super pan 9**, pai gow or pai gow poker shall comply with the requirements of (a) above except as follows:

1.-3. (No change.)

[(c) Each die used in gaming at pai gow poker shall comply with the requirements of (a) above except as follows:

1. Each die shall be formed in the shape of a perfect cube and of a size no smaller than .637 of an inch on each side nor any larger than .643 of an inch on each side;

2. Instead of the name of the casino, a casino licensee may, with the approval of the Commission, have an identifying mark or logo imprinted or impressed on each die; and

3. The spots on each die do not have to be equal in diameter.]

19:46-1.16 Dice; receipt, storage, inspections and removal from use

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

(e) All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. (No change.)

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. (No change.)

ii. The inspection of the dice at the pit stand shall be performed by:

(1) (No change.)

(2) For sic bo, a pit boss in the presence of a casino security officer; and

(3) For **super pan 9**, pai gow or pai gow poker, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss; and

(4) For pai gow poker, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss].

iii. (No change.)

iv. After completion of the inspection, the dice shall be distributed as follows:

(1) (No change.)

(2) For sic bo, the pit boss shall in the presence of the casino security officer who observed the inspection place three dice into the shaker and seal or lock the sic bo shaker. The pit boss shall then secure the sic bo shaker to the table in the presence of the casino security officer. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours; and

(3) For **super pan 9**, pai gow or pai gow poker, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor who observed the inspection, distribute such dice directly to the dealer at each **super pan 9**, pai gow or pai gow poker table. The dealer shall immediately place the dice in the **super pan 9**, pai gow or pai gow poker shaker; and

(4) For pai gow poker, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor, distribute such dice directly to the dealer at each pai gow poker table. The dealer shall immediately place the dice in the pai gow poker shaker].

v. (No change.)

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

OTHER AGENCIES

i. Inspection of dice in an approved primary storage area shall be performed by:

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

(3) For **super pan 9, pai gow or pai gow poker**, a casino supervisor, in the presence of a casino security officer[; and

(4) For pai gow poker, a casino supervisor, in the presence of a casino security officer].

ii. (No change.)

iii. After completion of the inspection, the person performing the inspection shall seal the dice as follows:

(1) (No change.)

(2) For sic bo, after each set of three dice are inspected, they shall be sealed or locked in a sic bo shaker. A seal that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall then be placed over the area that allows access to open the sic bo shaker[; and

(3) For **super pan 9, pai gow or pai gow poker**, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container[; and

(4) For pai gow poker, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A or container].

iv. At the beginning of each gaming day and at such other times as may be necessary, an assistant shift manager or casino supervisor t or container].

iv. At the beginning of each gaming day and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof and a casino security officer shall distribute the dice as follows:

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

(3) For **super pan 9, pai gow or pai gow poker**, the sealed envelope or container shall be distributed to a pit boss in each **super pan 9, pai gow or pai gow poker** pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the **super pan 9, pai gow or pai gow poker** table by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the **super pan 9, pai gow or pai gow poker** shaker.

[(4) For pai gow poker, the sealed envelope or container shall be distributed to a pit boss in each pai gow poker pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the pai gow poker table by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the pai gow poker shaker.]

v. When the envelope or container or the seal is damaged, broken or shows indication of tampering, the dice shall not be used for gaming activity unless the dice are reinspected as follows:

(1) (No change.)

(2) For **super pan 9, pai gow or pai gow poker**, in accordance with the procedures in (e)2 above.

[(3) For pai gow poker, in accordance with the procedures in (e)2 above.]

vi.-viii. (No change.)

(f) (No change.)

(g) At the end of each gaming day or at such other times as may be necessary, the casino supervisor identified in (g)1 below shall visually inspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. The inspection required by this subsection shall be performed by:

i. (No change.)

ii. For sic bo, a sic bo pit boss other than the one who originally inspected the dice; or

PROPOSALS

iii. For **super pan 9, pai gow or pai gow poker**, the floorperson assigned to the table[; and

iv. For pai gow poker, the floorperson assigned to the table].

2. Any dice showing evidence of tampering shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by:

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

(3) For **super pan 9, pai gow or pai gow poker**, the dealer and casino supervisor[; or

(4) For pai gow poker, the dealer and casino supervisor].

ii.-iii. (No change.)

3. (No change.)

(h)-(i) (No change.)

(j) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve.

1. If collected, dice shall be returned to the primary storage area; provided, however, that any dice which have not been inspected and sealed pursuant to the requirements in (e)3 (Alternative No. 3) above shall, prior to use for actual gaming, be inspected as follows:

i. (No change.)

ii. For **super pan 9, pai gow or pai gow poker**, in accordance with the requirements in (e)2 above[; or

iii. For pai gow poker, in accordance with the requirements in (e)2 above].

2. (No change.)

(k)-(l) (No change.)

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette, red dog, poker, **super pan 9**, and double down stud shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play [pai];

1. **Pai gow poker** shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck; and

2. **Super pan 9** may be packaged by the manufacturer in decks of 36 cards by eliminating the 7, 8, 9 and 10 of each suit.

(b)-(e) (No change.)

(f) The design to be placed on the backs of cards used by casino licensees shall contain the name or trade name of the casino licensee and shall be submitted to the Commission for approval prior to use of such cards in gaming activity. **The design or color on the backs of cards used by a casino licensee to play super pan 9 shall be different than the design or color of the cards used to play any other game in which the players are permitted to touch the cards.**

(g)-(j) (No change.)

19:46-1.18 Cards; receipt, storage, inspections, and removal from use

(a)-(f) (No change.)

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1.-2. (No change.)

3. Cards opened for use on a pai gow poker table and dealt from the dealer's hand shall be changed at least every four hours; [and]

4. Cards opened for use on a poker table shall be changed at least every four hours; and

5. **Cards opened for use on a super pan 9 table shall be changed at least every eight hours.**

(h)-(m) (No change.)

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. (No change.)

2. The casino licensee shall also inspect:
- i.-iii. (No change.)
 - iv. All cards used for pokette, which must be inspected by sorting the cards sequentially by suit; [and]
 - v. All cards used for poker; and
 - vi. All cards used for super pan 9.
- 3.-9. (No change.)
- (o)-(q) (No change.)

19:46-1.19 Dealing shoes; automated shuffling devices

- (a) (No change.)
- (b) Cards used to game at blackjack, pai gow poker, minibaccarat, red dog, **super pan 9** and double down stud shall be dealt from a manual or automated dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity. Notwithstanding the foregoing, cards used to game at pai gow poker, and double down stud may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A and 17.8, respectively.
- (c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat, red dog, **super pan 9** and double down stud in addition to a manual or automated dealing shoe, provided that the automated card shuffling device and the procedures for shuffling and dealing the cards through the use of the device are submitted to and approved by the Commission.
- (d)-(g) (No change.)

SUBCHAPTER 13. SUPER PAN 9

19:47-13.1 Definitions

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

"Bank" means the player who elects to have the other players and the dealer play against his or her hand and who accepts the responsibility to pay all winning wagers.

"Co-bank" means the player who elects to have the other players play against his or her hand and who shares responsibility with the dealer to pay 50 percent of all winning wagers.

"Marker" means an object approved by the Commission that is used to designate the bank or co-bank.

"Point count" means a single digit number from 0 to 9 inclusive determined by adding the point value of all the cards in a hand. If the total point value of the cards is a two-digit number, the left digit of such number shall be discarded and the right digit shall constitute the point count of the hand. For example, a hand composed of an ace, 5 and a 6 has a total point value of 12 but a point count of 2 since the digit "1" in the number 12 is discarded.

"Push" means a tie as defined in N.J.A.C. 19:47-13.8.

"Round of play" means one complete cycle of play during which all players then playing at the table have placed a wager, been dealt a hand and had the outcome of their wager settled pursuant to N.J.A.C. 19:47-13.8 and, if applicable, 19:47-13.9.

19:47-13.2 Cards; number of decks; point value of cards; dealing shoe

(a) Super pan 9 shall be played with at least six decks of cards with backs of the same color and design and two additional solid yellow or green cutting cards. The decks of cards used to play super pan 9 shall meet the requirements of N.J.A.C. 19:46-1.17 but shall have the 7, 8, 9 and 10 of each suit removed from the decks prior to the opening of the table for gaming.

(b) The point value of the cards used in super pan 9 shall be as follows:

1. Any card from 2 to 6 shall have its face value;
2. Any jack, queen or king shall have a value of zero; and
3. Any ace shall have a value of one.

(c) All cards to be used in super pan 9 shall be dealt from a dealing shoe which shall meet the requirements of N.J.A.C.

19:46-1.19 and which shall be located on the table to the left of the dealer.

19:47-13.3 Dice; number of dice; super pan 9 shaker

(a) Super pan 9 shall be played with three dice which shall be maintained at all times inside a super pan 9 shaker. The dice used to play super pan 9 shall meet the requirements of N.J.A.C. 19:46-1.15 and the shaker shall meet the requirements of N.J.A.C. 19:46-1.12A.

(b) The super pan 9 shaker and the dice contained herein shall be the responsibility of the dealer and shall never be left unattended while at the table.

(c) No dice that have been placed in a super pan 9 shaker for use in gaming shall remain on a table for more than 24 hours.

19:47-13.4 Opening of the table for gaming

(a) After receiving six or more decks of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify that inspection. If the decks of cards used by the casino licensee contain the 7, 8, 9 and 10 of each suit, the dealer and a casino supervisor shall ensure that these cards are removed from each deck, torn in half and discarded.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. Each deck of cards shall be spread out separately and according to suit.

(c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-13.5.

(d) All cards opened for use on a super pan 9 table shall be changed at least every eight hours. Procedures for compliance with this subsection shall be submitted to the Commission for approval.

19:47-13.5 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after each shoe of cards has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that they are randomly intermixed.

(b) After the cards have been shuffled, the dealer shall offer the stack of cards to be cut, with the backs facing away from the dealer, to the player determined pursuant to (c) below. If no player accepts the cut, the dealer shall cut the cards.

(c) The cut of the cards shall be offered to players in the following order:

1. The first player to the table, if the game is just beginning;
2. The player who accepts the bank or co-bank pursuant to N.J.A.C. 19:47-13.9; provided, however, that if the bank or co-bank refuses the cut, the cards shall be offered to each player moving counterclockwise around the table from the bank or co-bank until a player accepts the cut; or
3. The player at the farthest position to the right of the dealer, if there is no bank or co-banking during a round of play; provided, however, that if there are two or more consecutive rounds of play where there is no bank or co-bank, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.

(d) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted into the stack, the dealer shall take all the cards in front of the cutting card and the cutting card and move them to the back of the stack.

(e) The dealer shall then insert a second cutting card into the stack at least 14 cards from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play. Prior to commencement of play, the dealer shall remove the first card from the shoe and place it, and an additional amount of cards equal to the point value of the first card drawn, in the discard rack after each card has been shown to the players. For this purpose only, each face card shall have a point value of 10.

(f) Whenever there is no gaming activity at a super pan 9 table, the cards shall be removed from the dealing shoe and spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-13.4(c) shall be completed.

19:47-13.6 Wagers

(a) All wagers at super pan 9 shall be made by placing gaming chips or plaques, and if applicable, a match play coupon on the appropriate betting area of the super pan 9 layout except that a verbal wager accompanied by cash may be accepted provided it is confirmed by the dealer and casino supervisor at the table and such cash is expeditiously converted into gaming chips or plaques in accordance with the regulations governing the acceptance and conversion of such instruments.

(b) Only players who are seated at the super pan 9 table may place a wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.

(c) All wagers at super pan 9 shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-13.7. No wager at super pan 9 shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-13.7 Procedures for dealing the cards

(a) Once the dealer has completed shuffling the cards and the cards have been placed in the shoe, the dealer shall announce "No more bets" prior to shaking the super pan 9 shaker. The dealer shall then shake the super pan 9 shaker at least three times so as to cause a random mixture of the dice.

(b) The dealer shall then remove the lid covering the super pan 9 shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first card.

(c) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice. Examples are as follows:

1. If the dice total 9, the dealer would receive the first card; or
2. If the dice total 15, the sixth wagering position would receive the first card.

(d) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (c) above and, moving clockwise around the table, deal all positions with a wager and the dealer a card. The dealer shall then return to the starting position and deal two more rounds of cards in the same manner until each position with a wager and the dealer have three cards.

(e) After three cards have been dealt pursuant to (d) above, the dealer shall place the cover on the super pan 9 shaker and shake the shaker once. The super pan 9 shaker shall then be placed to the right of the dealer.

19:47-13.8 Procedures for completion of each round of play;

payment and collection of wagers; payout odds; vigorish

(a) Each player and the dealer shall attempt to achieve a point count of 9 or a point count as close to 9 as possible.

(b) After the initial three cards have been dealt, each player shall pick up his or her cards in order to make a decision on whether to stand or draw an extra card. Once a player has viewed his or her cards, the three cards shall be placed face down on the layout.

(c) Each player at the table shall be responsible for playing his or her own hand and no other person except the dealer may touch the cards of that player. Each player shall be required to keep the

cards in full view of the dealer at all times. Once each player has placed his or her initial three cards face down on the layout, the player shall not touch the cards again.

(d) After all the players have placed their cards face down on the table, the dealer shall ask each player, starting with the player farthest to the left of the dealer and continuing clockwise around the table, if he or she would like to draw one additional card. As each player indicates his or her decision, the dealer shall deal one additional card face up to each player who requests a card.

(e) After the decision of each player has been implemented and all additional cards have been dealt, the dealer shall turn over his or her three cards and determine if a fourth card shall be dealt to the hand of the dealer. Each casino licensee shall submit to the Commission in its Rules of the Games Submission the procedures that will govern when the dealer shall draw an additional card.

(f) Once the dealer has completed his or her hand, the dealer shall, starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table, expose the hand of each player, compare the point count of the dealer's hand to the point count of the player's hand, and announce if the wager of each player shall win, lose or be considered a tie ("push").

(g) Each losing wager shall be immediately collected by the dealer along with the cards of that player. A wager made by a player shall lose if the point count of the player's hand is lower than the point count of the dealer's hand.

(h) If the point count of a player's hand is equal to the point count of the dealer's hand, the hand of the player shall be a push. The dealer shall not collect or pay the wager, but shall immediately collect the cards of that player after all losing wagers and hands have been collected.

(i) After all losing wagers and pushes have been settled, all winning wagers shall be paid. All winning hands shall remain face up on the layout until all winning wagers are paid. The dealer shall pay winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager made by a player shall win if the point count of the player's hand is higher than the point count of the dealer's hand.

(j) A winning super pan 9 wager shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the amount of a five percent vigorish to 25 cents or the next highest multiple of 25 cents and the amount of a four percent vigorish to 20 cents or the next highest multiple of 20 cents.

1. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in the shoe.

i. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or a marker button containing the amount of the vigorish owed in a space on the layout imprinted with the number of the player owing such vigorish.

ii. If marker buttons are used for the purpose of marking vigorish, they shall be stored in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container when the table is opened for gaming activity.

2. After a winning wager has been paid and the vigorish either collected or marked on the layout, the dealer shall collect the cards from that player.

(k) Each casino licensee shall provide notice of any increase in the percentage of vigorish being charged at each super pan 9 table, in accordance with N.J.A.C. 19:47-8.3. The percentage of vigorish charged at a super pan 9 table shall apply to all players at that table.

(l) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that the cards can

be readily arranged to reconstruct each hand in the event of a question or dispute.

19:47-13.9 Player bank or co-bank; selection of bank or co-bank; procedures for dealing

(a) A casino licensee may, in its discretion, offer to all players at a super pan 9 table the opportunity to bank the game. In addition, the casino licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the casino licensee offers the bank this co-banking option, it shall make it available to all players at the table. If the casino licensee elects to offer either of these options, all the other provisions of this subchapter shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank or co-bank.

(b) A player may not be the bank or co-bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to shuffle the cards in accordance with the procedures set forth in N.J.A.C. 19:47-13.5.

(c) After the first round of play pursuant to (b) above, the casino licensee may give each player at the table the option to be the bank or co-bank or to pass the option to the next player.

1. The dealer shall, starting with the player farthest to the right of the dealer, offer the option to bank or co-bank to each player in a counterclockwise rotation around the table until a player accepts.

2. If the first player offered the option accepts, the player seated to the right of that player shall first be given the option to bank or co-bank on the next round of play.

3. The initial offer to be the bank or co-bank shall rotate counterclockwise around the table until it returns to the dealer.

4. The dealer shall place a marker designating the bank or co-bank in front of the player who accepts.

5. If no player wishes to be the bank or co-bank, the round of play shall proceed in accordance with the rules of play provided in this subchapter.

(d) Before a player may be permitted to bank or co-bank a round of play, the dealer shall determine that the player:

1. Placed a wager against the dealer during the last round of play in which there was no player banking or co-banking the game;

2. Did not bank or co-bank the previous round of play; and

3. Has sufficient gaming chips on the table to cover either all (if banking is in effect) or half (if co-banking is in effect) of the wagers placed by other players at the table for that round of play.

(e) If the casino licensee offers co-banking and the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers.

(f) If a player is the bank or co-bank, the player may only wager on one betting area.

(g) Once the dealer has determined that a player may be the bank or co-bank pursuant to (d) above, the dealer shall:

1. If banking is in effect, place a wager against the bank with gaming chips or plaques obtained from the table inventory container in an amount that is equal to the last wager made by the player who is now the bank against the dealer or in an amount, the calculation of which has been approved by the Commission;

i. Any amount wagered by the dealer shall be placed in front of the table inventory container;

ii. Notwithstanding (g)1 above, the bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play; or

2. If co-banking is in effect, not place a wager against the co-bank, but shall proceed to deal the game in accordance with (h) below.

(h) Once the dealer has announced "No more bets," the bank or co-bank shall shake the super pan 9 shaker. It shall be the responsibility of the dealer to ensure that the bank or co-bank shakes the super pan 9 shaker at least three times so as to cause a random mixture of the dice. Once the bank or co-bank has

completed shaking the super pan 9 shaker, the dealer shall remove the lid covering the shaker, total the dice and announce the total. The dealer shall always remove the lid from the super pan 9 shaker and if the bank or co-bank inadvertently removes the lid, the dealer shall require the shaker to be covered and reshaken by the bank or co-bank.

(i) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the position of the bank or co-bank considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

(j) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (i) above and, moving clockwise around the table, deal a card to those positions only, including the dealer, who have placed a wager. The dealer shall then return to the starting position and deal two more rounds of cards in the same manner until each position, including the dealer, who has placed a wager has three cards.

(k) Once each player and the dealer have received three cards, the dealer shall place the cover on the super pan 9 shaker and shake the shaker once. The shaker shall then be placed to the right of the dealer.

(l) Each player, the dealer, if applicable, and the bank or co-bank shall then determine whether to draw an additional card in accordance with the provisions of N.J.A.C. 19:47-13.8 except that, when co-banking is in effect, the dealer shall be responsible for determining whether to draw a fourth card for the co-bank and shall do so in the same manner submitted to the Commission pursuant to N.J.A.C. 19:47-13.8(e).

(m) If banking is in effect and the dealer has placed a wager against the bank pursuant to (g) above, the dealer shall expose the hands of the dealer and the bank to determine if the wager of the dealer shall win, lose or be considered a push against the bank.

1. If the dealer wins, the cards of the dealer shall be stacked face up to the right of the table inventory container and the amount wagered by the dealer shall be placed on top of the stack of cards.

2. If the dealer pushes, the amount wagered by the dealer shall be returned to the table inventory container.

3. If the dealer loses, the amount wagered by the dealer shall be moved to the center of the table.

(n) If banking is in effect, once the dealer has determined the outcome of the wager, if any, of the dealer against the bank, the dealer shall expose the hand of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the point count of the hand of each player to the point count of the bank's hand and shall announce if the wager of each player shall win, lose or be considered a push against the bank.

1. All losing wagers shall be immediately collected by the dealer and placed in the center of the table.

2. After all hands have been exposed, all winning wagers, including a winning wager by the dealer, shall be paid by the dealer with the gaming chips located in the center of the table.

i. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the bank, an amount equal to the remaining winning wagers and place that amount in the center of the layout.

ii. The remaining winning wagers shall be paid from the amount in the center of the layout.

3. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a four or five percent vigorish in accordance with N.J.A.C. 19:47-13.8.

4. Once the vigorish has been paid or marked up, the remaining amount shall be given to the bank.

(o) If co-banking is in effect, once the dealer has completed the hand of the co-bank pursuant to (1) above, the dealer shall expose the hand of each player starting with the player farthest to the right

of the dealer and proceeding counterclockwise around the table. The dealer shall compare the point count of each player's hand to the point count of the co-bank's hand and shall announce if the wager of each player shall win, lose or be considered a push against the co-bank.

1. All losing wagers shall be immediately collected by the dealer and placed in the center of the table.

2. After all hands have been exposed, all winning wagers shall be paid by the dealer with the gaming chips located in the center of the table.

i. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount that is equal to one-half of the remaining winning wagers and place that amount in the center of the layout.

ii. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout.

iii. The remaining winning wagers shall then be paid from the total amount in the center of the layout.

3. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container.

i. The dealer shall collect or mark up a four or five percent vigorish in accordance with N.J.A.C. 19:47-13.8 on the remaining amount.

ii. Once the vigorish has been paid or marked up, the remaining amount shall be given to the co-bank.

(p) Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.

(q) Each player who has a winning wager against the bank or co-bank shall, in accordance with N.J.A.C. 19:47-13.8, pay the dealer a five percent vigorish on the amount won.

19:47-13.10 Irregularities; invalid roll of the dice

(a) If the dealer uncovers the super pan 9 shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.

(b) If the dealer uncovers the super pan 9 shaker and a die or dice fall out of the shaker, the dealer shall call a "No roll" and reshake the dice.

(c) If the dealer incorrectly totals the dice and deals the first card to the wrong position, all hands shall be called dead, the cards placed in the discard rack and the dealer shall start a new round of play.

(d) If the dealer exposes any of the first three cards dealt to a player, the player has the option of voiding his or her hand. Without looking at the unexposed cards, the player shall make the decision either to play out the hand or to void his or her hand.

(e) If a card or cards in the hand of the dealer, bank or co-bank is exposed, all hands shall be void and the cards placed in the discard rack and the dealer shall start a new round of play.

(f) A card found turned face up in the shoe shall not be used in the game and shall be placed in the discard rack, along with an additional amount of cards, drawn face up, which agrees with the point value of the card found face up in the shoe in accordance with N.J.A.C. 19:47-13.5.

(g) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe.

(h) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void and the cards placed in the discard rack and the dealer shall start a new round of play.

(i) If the dealer does not draw an additional card when required to do so in accordance with its submission to the Commission pursuant to N.J.A.C. 19:47-13.8, an additional card shall be drawn by the dealer in accordance with this submission and the round of play completed.

(j) If there are insufficient cards remaining in the shoe to complete a round of play, that round shall be void and a new round shall commence after the entire set of cards is reshuffled and placed in the shoe.

(k) If any player or dealer is dealt a card with the value of 7, 8, 9 or 10, all hands shall be void and the dealer shall start a new round of play. The 7, 8, 9 or 10 value card shall be torn in half and discarded by the casino supervisor.

(l) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.

(m) Any automated card shuffling device shall be removed from a gaming table before any other method of shuffling may be utilized at the table.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Surveillance Employment Restrictions

Proposed Amendment: N.J.A.C. 19:45-1.10

Authorized By: Casino Control Commission, Bradford S. Smith, Chairman.

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

Proposal Number: PRN 1995-102.

Submit written comments by March 23, 1995 to:

E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment would permit the Commission to waive, under certain circumstances, the one-year restriction on employment applicable to employees of a surveillance department. N.J.A.C. 19:45-1.10(g) prohibits such employees, for a one-year period, from accepting employment as a casino or casino key employee in any other department of the casino licensee, or with any other casino licensee whose surveillance department is under the operational control of the person who controlled the surveillance department in which the person was previously employed.

The proposed amendment at N.J.A.C. 19:45-1.10(g) would permit the Commission to waive the one-year restriction if the employment is not in a department or area of operation which is monitored by the surveillance department, after considering whether that it will jeopardize or compromise casino surveillance or security systems, or enable the perpetration and concealment of errors, irregularities or illegal acts.

Social Impact

The proposed amendment would, under certain circumstances and subject to Commission approval, permit a surveillance department employee to accept certain other employment without waiting one year. This may enable casino licensees to promote capable individuals who are currently restricted from accepting such positions for one year. It may also expand the employment opportunities available to surveillance department employees.

Economic Impact

The proposed amendment to N.J.A.C. 19:45-1.10(g) may have a beneficial economic impact upon surveillance department employees, who may be able to accept promotional opportunities not previously available to them. Similarly, casino licensees may experience a benefit from being able to promote or transfer capable employees in circumstances where such promotions or transfers are currently prohibited.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendment will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.10 Closed circuit television system; surveillance department control; surveillance department restrictions

(a)-(f) (No change.)

(g) Surveillance department employees or agents of the licensee assigned to monitor the activities shall be independent of all other departments. In addition to any other restrictions contained in the Act and the rules promulgated thereunder, no present or former surveillance department employee shall accept employment as a casino key employee or casino employee with the same casino hotel or prospective casino hotel in which the surveillance department employee was previously employed or within any other casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee had been previously employed, unless one year has passed since the former surveillance department employee worked in the surveillance department. **Notwithstanding the foregoing, the Commission may, upon the filing of a written petition, waive this restriction and permit the employment of a present or former surveillance department employee in a particular position after consideration of the following factors:**

1. Whether the former surveillance department employee will be employed in a department or area of operation that the surveillance department does not monitor;

2. Whether the surveillance and security systems of the casino licensee will not be jeopardized or compromised by the employment of the former surveillance department employee in the particular position; and

3. Whether the former surveillance department employee's knowledge of the procedures of the surveillance department would not facilitate the commission by any person of irregularities or illegal acts or the concealment of any such actions or errors.

(h)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Patron Request for Suspension or Reinstatement of Credit Privileges

Proposed Amendment: N.J.A.C. 19:45-1.27A

Authorized By: Casino Control Commission, Bradford S. Smith, Chairman.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 101(j).

Proposal Number: PRN 1995-100.

Submit written comments by March 23, 1995 to:

E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Effective June 29, 1991, N.J.S.A. 5:12-101(j) was amended to permit a person to request the Commission to place his or her name on a list of persons to whom the extension of credit by casinos is prohibited. N.J.S.A. 5:12-101(j) also permits any such person to thereafter remove his or her name from the list.

To implement this statutory change, the Commission adopted N.J.A.C. 19:45-1.27A, effective April 6, 1992. This rule permits a person to voluntarily suspend his or her credit privileges at all casino licensees by submitting a written request to the Commission in person at its Atlantic City offices, or at the Commission's inspector's booth at any licensed casino.

The proposed amendment would permit, in addition, the filing of such a request by mail, provided that it contains an acknowledgement executed by a notary public or other person empowered by law to take oaths, attesting to the signature and identity of the individual making the request. A request to reinstate credit privileges would be permitted to be filed in a similar manner.

Social Impact

The proposed amendment would make it easier and more convenient for a person to voluntarily suspend his or her credit privileges, by permitting suspension requests to be filed by mail. As a result, more patrons may file such requests. This may have a beneficial impact upon such persons and their families to the extent that it may help combat any gambling problem the person may have.

Economic Impact

The proposed amendment would have a favorable economic impact upon the general public, since it would permit casino patrons to file requests for suspension of credit privileges by mail, which may entail less expense than filing the request in person at a casino or at the Commission.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendment will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. It would also affect individuals, but as noted above, would make it more convenient and less expensive to file requests for suspension of credit privileges by providing the option of filing such requests by mail if they have been properly acknowledged.

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

19:45-1.27A Patron request for suspension of credit privileges

(a) Any person may voluntarily suspend his or her credit privileges at all licensed casinos by submitting a written request to the Commission in accordance with this section.

1. Such request [shall] **may** be submitted in person at the offices of the Casino Control Commission, Employee License Information Unit, Arcade Building, 2nd Floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey, or at the Commission inspector's booth at any licensed casino. [2.] Any person requesting suspension of credit privileges **in person** shall present valid identification credentials containing the person's signature and either a photograph or a general description of that person.

2. Such request **may also be submitted by mail addressed to the Director of the Compliance Division, Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401. Any request for suspension of credit privileges which is submitted by mail shall be signed before a notary public or other person empowered by law to take oaths and shall contain a certificate of acknowledgement by such notary public or other person attesting to the identity of the person making the request.**

(b) A request for suspension of credit privileges shall be in a form prescribed by the Commission, which shall include the following:

1.-5. (No change.)

6. [The] **If the request for suspension of credit privileges is made in person:**

i. **The type of identification credentials examined containing the person's signature, and whether said credentials included a photograph or general description of the person; and**

[7. The] ii. **The signature of a Commission employee authorized to accept such request, indicating that the signature of the person requesting suspension of credit privileges appears to agree with that contained on his or her identification credentials and that any physical description or photograph of the person appears to agree with his or her actual appearance[.]; and**

7. If the request for suspension of credit privileges is made by mail, a certificate of acknowledgement executed by a notary public or other person empowered by law to take oaths attesting to the identity of the person who is making the request for suspension of credit privileges.

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

ESSENTIAL HEALTH SERVICES COMMISSION

Manual for Hospital Services

Charity Care Eligibility

Joint Proposed New Rules: N.J.A.C. 10:52-10

Authorized By: William Waldman, Commissioner, Department of Human Services and Essential Health Services Commission, Anne F. Weiss, Executive Director.

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, and c; 30:4D-12, P.L. 1992 c.160; N.J.S.A. 26:2H-5 and 13.

Agency Control Number: 95-P-5.

Proposal Number: PRN 1995-115.

Submit comments by March 23, 1995 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN 712, Mail Code #26

Trenton, New Jersey 08625-0712

A copy of the proposal is available at the 21 county welfare agencies (CWAs) and in the Medicaid District Offices.

The agency proposal follows:

Summary

The proposed new rules specify charity care eligibility criteria which will be audited by the Department of Health and reported to the Essential Health Services Commission to serve as the basis for Medicaid payment of the charity care allocation. These rules deal with charity care eligibility, but not the allocation of charity care subsidy amounts, which is covered elsewhere in this chapter. (See N.J.A.C. 10:52-5 through 9.)

Charity care was first used as a payment concept in 1979 when New Jersey's all payer rate setting system authorized payment for charity care and bad debt. The charity care payment process and parameters were standardized in 1986. Since 1993, charity care has been funded by the Essential Health Services Commission through the Health Care Subsidy Fund.

The Department of Health conducts an audit of charity care to ensure that hospitals are in compliance with the charity care rules in place of the time of service. This audit selects a sample of charity care files and reviews them against the various components of the charity care system, particularly income and asset eligibility. Hospitals which are out of compliance will have their charity care allocation reduced. This process is to be put in place until the Essential Health Services Commission implements a charity care claims processing system.

The changes reflected in these rules reflect considerable input from the hospital industry. The Essential Health Services Commission convened a charity care advisory committee which included 30 hospital industry representatives. Their recommendations are summarized in their report titled "Eligibility for Hospital Charity Care: Options for Change."

N.J.A.C. 10:52-10.1 specifies that the Department of Health will do periodic audits of charity care.

N.J.A.C. 10:52-10.2 describes the sampling methodology and timing for selecting the audit sample.

N.J.A.C. 10:52-10.3 indicates the valuation of charity care accounts in the absence of a charity care claims processing system.

N.J.A.C. 10:52-10.4 sets out the hospital's requirements for screening a patient for charity care. N.J.A.C. 10:52-10.4 also specifies the interaction of charity care eligibility and other third party payers, such as

Medicaid, Medicare, the Violent Crimes Compensation Board, and the Catastrophic Illness in Children Relief Fund.

N.J.A.C. 10:52-10.5 sets out the documentation that may be used to properly identify a patient. If a hospital is unable to obtain a standard form of identification, such as a driver's license, birth certificate or welfare card, the hospital may seek an alternative form of identification.

N.J.A.C. 10:52-10.6 describes the standards for determining that the patient is a New Jersey resident, with special provisions for the homeless and migrant workers.

N.J.A.C. 10:52-10.7 establishes the means for documentation of family size. The income eligibility criteria are also laid out in N.J.A.C. 10:52-10.7. Persons under 200 percent of the Federal poverty level may be eligible for full charity care while persons between 200 and 300 percent are eligible for partial charity care.

N.J.A.C. 10:52-10.8 specifies that applicants for charity care must provide proof of income to the hospital. This section identifies the items that will suffice as proof.

N.J.A.C. 10:52-10.9 delineates the assets eligibility criteria. This section includes a description of the documentation requirements, as well as a provision for applicants who are over the assets level to spend down to the eligibility levels.

N.J.A.C. 10:52-10.10 states that the limit on accounts with alternative documentation is no more than 10 percent of the total dollars sampled on audit. N.J.A.C. 10:52-10.11 allows a hospital to request additional information from an applicant and provides civil penalties for applicants providing false information.

N.J.A.C. 10:52-10.12 states the application and determination procedures to be followed, delineating time frames for the completion of an application and notification to the applicant.

N.J.A.C. 10:52-10.13 specifies that hospitals may not bill patients for amounts eligible for charity care.

N.J.A.C. 10:52-10.14 describes the charity care write-off amount to be used for implementing a listing or compliance adjustment. It states the compliance steps required and allows for a review of auditor judgment.

Social Impact

All 83 acute care hospitals in New Jersey are affected by these rules, as are approximately 600,000 uninsured residents of New Jersey who are income-eligible, as well as an unknown number of underinsured residents who may be income-eligible. These rules attempt to balance the need to encourage persons to take responsibility for obtaining charity care with protection for hospitals, particularly those in high poverty areas, from losses resulting from patients who cannot or do not document their eligibility. Patients are given more flexibility in the types of proof hospitals may accept in the application process, particularly special populations, such as the homeless, who have unique difficulties in supplying income and asset information. The rules are expected to increase the number of those who may be eligible, since the unique situations of the potentially eligible have been provided for to a greater extent than previously.

Hospitals will be advantaged if more eligible persons are documented. They will not have to waste billing and collection resources on persons who cannot make payments and may reallocate those resources to improve other collections.

Economic Impact

The primary economic impact will be on the additional New Jersey residents who are made eligible for charity care, either because of less stringent documentation requirements, or expanded eligibility criteria. Also significantly affected are acute care hospitals which will be able to document a higher level of charity care.

It is the Commission's expectation that the proposed criteria will allow hospitals to document more charity care patients.

All 83 acute care hospitals in New Jersey are affected by this rule. Approximately 600,000 uninsured New Jersey residents are income eligible for charity care, so would be affected by this rule if they need hospital services. Additional underinsured patients are also potentially eligible.

The cost to New Jersey taxpayers will be \$400,200,000 for 1995. \$400 million is the amount appropriated by the legislature for the charity care subsidy fund. It will cost about \$200,000 for the Department of Health to conduct the charity care audit of all hospitals.

The cost to hospitals of complying with the charity care rule must be offset against the costs of filing insurance claims, billing patients for any balances, and taking them through outside collection and legal

processes. Therefore, on average there should not be any additional marginal cost to comply with this rule. The benefit to hospitals is \$400 million in charity care funding, which outweighs their costs of complying, resulting in a positive benefit.

The penalties to hospitals for not complying with this rule are two-fold. This rule contains a \$2,500 per day fine for hospitals which do not submit their lists for audit on time. If a hospital does not comply with the charity care eligibility and documentation criteria, then that hospital will be penalized by a reduction in their dollar amount of documented charity care which is the basis for future subsidy distributions.

The reaction to these rules, on the part of hospitals and patients, will be mostly positive because the rule increases hospital's flexibility to document patients who are eligible for charity care. Increased flexibility and higher standards for the assets limits will allow more patients to qualify. There are a few areas of the rules which may involve a negative reaction from hospitals. For example, the rules limit the percent of dollars a hospital may document by certain provisions which expand the options for proving patients' eligibility.

Executive Order No. 27 Statement

Federal law provides for disproportionate share (DSH) payments to hospitals which serve a disproportionate number of patients with low incomes who do not have insurance. (See 42 U.S.C. 1396r-4.)

The Federal requirements apply to the State, and the rules proposed herein apply to the hospitals and to the patients. There are no Federal standards regarding eligibility; nor are there Federal standards regarding the requirements on the hospitals which are contained in these rules, which include documentation, screening, notification and collection requirements.

The rules do incorporate by reference the Federal Poverty Guideline, which is not a standard, but is a statistical tool available for the use of states in determining financial eligibility for programs, such as the Charity Care program.

Since there are no Federal standards which correspond to the rules contained in this proposal, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Analysis

A regulatory flexibility analysis might not be necessary because most hospital providers are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:16 et seq., since hospitals generally employ more than 100 persons full time. However, in the event that a hospital might qualify under the terms of the Act, this analysis is included. Hospitals are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of inpatient hospital services, and any additional information as may be required by regulation. The requirement is part of the State Medicaid Statute, N.J.S.A. 30:4D-12. With respect to reimbursement, hospitals will be required to maintain sufficient records, such as cost studies, to enable the Division to establish rates under these rules. The reporting provisions will be similar to the regulatory requirements that existed under N.J.A.C. 8:41B. The proposed new rules do not create any additional recordkeeping or other compliance requirement or reporting requirements. There should be no need to hire any additional professional staff other than those persons already involved in preparing cost reports and related reimbursement data. There are no capital costs associated with this rulemaking. The proposal does not include a differential for small businesses, first, because no hospital is or is expected to be a small business, and second, because these regulations require consistent application in order to ensure that public funds are appropriately spent.

Full text of the proposed new rules follows:

SUBCHAPTER 10. CHARITY CARE

10:52-10.1 Charity care audit functions

(a) The Department of Health shall conduct an audit of acute care hospitals' charity care reported as written-off each calendar year. The Department of Health shall audit charity care at least once, but no more than six times each calendar year.

(b) The Department of Health shall make a monthly report to the Essential Health Services Commission on charity care. This report shall include any adjustments made pursuant to N.J.A.C. 10:52-10.14 or approvals made pursuant to N.J.A.C. 10:52-10.8(c) and (d).

10:52-10.2 Sampling methodology

(a) The Department of Health shall audit charity care claims based on a sample which will be developed in the following way:

1. Hospitals shall maintain their charity care list in a way that will allow the Department of Health to select unduplicated accounts for unit dollar sampling on a quarterly basis. The unit dollar sampling method used to select the accounts for audit is explained in the "Handbook of Sampling for Audit and Accounting" (3d edition), by Herbert Arkin. The list shall include patient name, account number, write-off date, and write-off amount. Hospitals shall rank all charity care accounts from the smallest to the largest, based on the rate that Medicaid would have paid for each account, and run a cumulative dollar balance on the list.

2. Once the selection of sample dollars has been completed and the associated patient accounts have been identified, hospitals will be required to retrieve the patient account files according to the following schedule:

Number of files to be retrieved	Time to retrieve
0-500 files	One week
501-1100 files	Two weeks
1101-1800 files	Three weeks
1801 files and above	Four weeks

(b) The Department of Health shall require hospitals to make a small number of additional charity care accounts available upon audit.

(c) The hospital shall provide the audit list to the Department of Health no later than 30 days from the request date. If the hospital does not submit its audit list to the Department by the 30 day deadline, the Department shall assess a penalty of \$2,500 per day for each day after the deadline.

10:52-10.3 Charity care write off amount

(a) The Department of Health shall value charity care claims at the Medicaid rate by multiplying the hospital's actual charity care service charges by the hospital-specific ratio of Medicaid payments to hospital charges. For write-off and billing purposes, the hospital shall use the following procedures:

1. Charity Care Write Off Amount equals Charity Care Eligibility Percentage, as determined by N.J.A.C. 10:52-10.7(b)-(c), multiplied by the Medicaid payment rate.

2. In the event that there is a partial payment from a third party, the charity care write-off amount is determined as follows: Charity Care Write Off Amount equals Medicaid payment rate minus third party payment multiplied by Charity Care Eligibility Percentage. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules, at 42 C.F.R. 447.296.

3. If the third party payment is greater than the Medicaid payment rate, the charity care write-off amount shall be listed as zero.

(b) Applicants eligible for charity care at 100 percent shall not be billed. Any difference between hospital charges and the Medicaid rate shall be recorded as a contractual allowance.

(c) Applicants eligible for charity care at less than 100 percent shall be billed as follows:

1. Applicant Responsibility equals 100 percent minus Charity Care Eligibility Percentage multiplied by Hospital Charges minus any third party payment.

2. Contractual allowance equals Hospital Charges minus any third party payment minus Charity Care Write Off plus Applicant Responsibility.

(d) The Essential Health Services Commission will calculate the cost of charity care services at the rate that would have been paid by the New Jersey Medicaid program.

10:52-10.4 Charity care screening and documentation requirements

(a) The hospital shall provide all patients with an individual written notice of the availability of charity care and Medicaid, in a form provided by the Essential Health Services Commission, at the time of service, but no later than the issuance of the first billing statement to the patient.

(b) The hospital shall correctly assess and document the applicant's eligibility for charity care, based upon the criteria set forth in this section through N.J.A.C. 10:52-10.9. The applicant's financial file for audit shall contain the completed charity care application in a format approved by the Essential Health Services Commission, as well as the supporting documentation which led to the determination of eligibility. For purposes of the audit, the hospital shall include in or with the file all other information necessary to demonstrate compliance with any of the audit steps.

(c) The hospital shall ask the applicant if he or she has any third party health insurance, including, but not limited to, coverage through a parent or spouse or coverage for the services under an automobile insurance or workers compensation policy. If the applicant claims to have insurance, the hospital shall document the name of the insurer and the insured, and all other information pertinent to the insurance coverage. The hospital shall also document that the insurance coverage was verified, or the reason why the coverage could not be verified. Verification of insurance shall include the hospital contacting the identified third party insurer. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(d) If the applicant is uninsured, or the applicant's health insurance is unlikely to pay the bill in full (based on hospital staff's previous experience with the insurer), and the applicant has not paid at the time of service any amounts likely to be remaining, the hospital shall make an initial determination for eligibility for any medical assistance programs available. The hospital shall refer the applicant to the appropriate medical assistance program and shall advise the medical assistance office of the applicant's possible eligibility. The applicant's financial file for audit shall indicate either that the applicant declined to be screened for medical assistance; that the applicant was screened but was determined ineligible; or that the applicant was screened and referred to the medical assistance program for possible eligibility. If the hospital does not screen the applicant for medical assistance, the record shall indicate the reason(s) why the applicant was not screened and the efforts the hospital made to obtain the screening. If an applicant affirmatively declines to be screened or is referred to a medical assistance program and does not return with an appropriate determination, the hospital will use the following procedures:

1. If the applicant affirmatively declines to be screened, or does not complete the medical assistance application process within three months after the date of service, or files an application after the application deadline, but is otherwise documented as eligible for charity care, the hospital:

- i. May bill the applicant, consistent with the manner applied to other patients;
- ii. Shall report the Medicaid value amount as charity care; and
- iii. Shall report any amounts collected from the applicant or any third party as a charity care recovery.

2. If the hospital has not received a response to the medical assistance application from the county welfare or other medical assistance office within seven months of receipt of a complete application, the hospital shall approve the applicant's charity care application, if the applicant meets all other charity care criteria. Should medical assistance be approved following the hospital's charity care approval, the hospital shall report the amounts collected from the medical assistance program as a charity care recovery and issue a redetermination that states that because the applicant is eligible for medical assistance, he or she is no longer eligible for charity care.

3. If the hospital does not inform the applicant of medical assistance by the individual written notice required in (a) above or does not refer an applicant who could reasonably be considered eligible for a medical assistance program within three months of the date of service, the hospital shall record the applicant's bill as a courtesy adjustment and shall not bill or otherwise attempt to collect from the applicant or the Charity Care Program.

(e) Hospitals shall make arrangements for reimbursement for services from private sources, and Federal, state and local government third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay

all or part of a person's bill, prior to attributing the services to charity care except in the situations described in (h) and (i) below. The hospital shall, as part of this obligation, pursue reimbursement for the uncollected copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare). Hospitals shall report any amounts collected from any third party as a charity care recovery. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(f) An applicant who is responsible for complying with his or her insurer's pre-certification requirements (the specific steps with which the insured must comply in order to have the services reimbursed) shall not be determined to be eligible for charity care, if the bill was unpaid because he or she failed to comply with these requirements. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(g) An applicant who is determined to be eligible for, and is accepted into, the HealthStart Program shall not be deemed eligible for charity care for services which are covered under this program. Beginning July 1, 1995, charity care availability shall be subject to Federal disproportionate share rules.

(h) Applicants who are eligible for reimbursement under the Violent Crimes Compensation Program shall be screened for eligibility for charity care before referral to the Violent Crimes Compensation Program (see N.J.A.C. 13:75). If the applicant is not eligible for 100 percent coverage under charity care, the charges which are not eligible for coverage under charity care shall be referred to the Violent Crimes Compensation Program. The hospital shall request the applicant to submit a copy of his or her charity care determination form to the Violent Crimes Compensation Board.

(i) Applicants who are eligible for reimbursement under the Catastrophic Illness in Children Relief Fund shall be screened for eligibility for charity care, before referral to this Fund (see N.J.A.C. 8:18). If the applicant is not eligible for 100 percent coverage under charity care, the applicant shall be referred to the Catastrophic Illness in Children Relief Fund for the uncovered portion of the claims.

(j) Hospitals with a Federal Hill-Burton obligation at the time of the application may include applicants written-off to the Hill-Burton Program as eligible for charity care, if the applicant meets all of the eligibility standards and documentation requirements set forth in this section through N.J.A.C. 10:52-10.10.

(k) The Charity Care Program shall be the payer of last resort, except for the payers identified in (h) and (i) above.

10:52-10.5 Identification

(a) Applicants for charity care shall provide the hospital with the following proper identification: Paragraph 3 below represents an alternative measure for documenting identification as described in N.J.A.C. 10:52-10.10.

1. The applicant shall provide the hospital with one of the following identification documents: driver's license, social security card, alien registry card, birth certificate, passport, visa, death certificate, employee identification, or an attestation that the person is homeless and does not possess any of the above mentioned identification documents. If the documents listed above are not available to the applicant, the hospital staff shall document why the applicant was unable to comply, and shall ask for one of the identification documents listed in (a)2 below. If the applicant is unable to comply for medical reasons, such as, if the applicant is deceased, or non-communicative until discharge for medical reasons, and a person to identify the patient cannot be found, the requirement for identification shall be waived.

2. The applicant shall provide the hospital with one of the following documents containing his or her name and address: a voter registration card, a union membership card, an insurance or welfare plan identification card, a student identification card, a baptismal certification, a utility bill, a Federal income tax form, a state income tax form, a paycheck stub or an unemployment benefits statement. If the documents listed above are not available to the applicant, the

hospital staff shall document why the applicant was unable to comply and shall ask for proof of identification as described in (a)3 below.

3. The applicant shall provide proof of identification in one of the following ways: a piece of mail addressed and delivered to the applicant; a signed attestation (which includes the party's name, address and telephone number) from a third party attesting to the applicant's identity; or a signed statement attesting to his or her own identity.

(b) The hospital shall obtain a photocopy of the applicant's identification or attestation and shall produce the copy on audit.

(c) The hospital shall attempt to collect the following information regarding the applicant and, if applicable, the responsible party: name; mailing address; residence telephone number; date of birth; social security number; place and type of employment; and employment address and telephone number, as applicable.

10:52-10.6 New Jersey residency

(a) Applicants for charity care shall provide the hospital with proof of New Jersey residency. An applicant shall provide proof that he or she has been residing in New Jersey for at least three months prior to the date of service, and that he or she has the intent to remain in the State. N.J.A.C. 10:52-10.6(a)3 below represents an alternative measure for documenting proof of residency as described in N.J.A.C. 10:52-10.10.

1. The applicant shall provide the hospital with any of the identification documents listed in N.J.A.C. 10:52-10.5(a)1 which contains the applicant's current residence address and a date from which the hospital can reasonably infer that the applicant has resided in New Jersey for at least three months. The hospital may accept an attestation from the applicant that he or she is homeless. If the applicant is unable to provide one of the documents listed above, the hospital staff shall document why the applicant was unable to comply, and shall ask for proof of residency as described in (a)2 below.

2. The applicant shall provide the hospital with any of the identification listed in N.J.A.C. 10:52-10.5(a)2 which contains the applicant's current residence address and a date from which the hospital can reasonably infer that the applicant has resided in New Jersey for at least three months. If the applicant is unable to provide one of these documents, the hospital staff shall document why the applicant was unable to comply and ask for proof of residency as described in (a)3 below.

3. The applicant shall supply a copy of any undated identification listed in (a)1 and 2 above, or any mail received showing the applicant's name and current residence address, and an attestation that the applicant has resided in New Jersey for at least three months; or a signed attestation stating his or her New Jersey address for at least the three months prior to the date of service.

(b) Applicants who are migrant workers residing in New Jersey for the one month period prior to receiving services shall be deemed New Jersey residents.

(c) Non-New Jersey residents requiring immediate medical attention for an emergency medical condition may apply for charity care. Emergency medical condition shall be restrictively defined as a serious medical situation requiring immediate treatment, in which delay would cause serious risk to life or health. Services available to non-New Jersey residents shall include only those not reasonably available at an alternative non-New Jersey site at the time services are requested.

10:52-10.7 Income eligibility criteria and documentation

(a) The hospital shall determine the applicant's family size in accordance with this section. Family size for an adult applicant includes the applicant, spouse, any minor children whom he or she supports, and adults for whom the applicant is legally responsible. The family size for a minor applicant includes both parents, the spouse of a parent, minor siblings and any adults in the family for whom the applicant's parent(s) are legally responsible. If an applicant documents that he or she has been abandoned by a spouse or parent, that spouse or parent shall not be included as a family member. A pregnant female counts as two family members.

(b) The provisions of 42 U.S.C. 9902(2), the poverty guidelines revised annually by the United States Department of Health and

Human Services (HHS), are hereby incorporated by reference. (For further information on the poverty guidelines, contact the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, Telephone (202) 690-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

1. A person whose individual or, if applicable, family income, as determined by (e) below, is less than or equal to 200 percent of the HHS Poverty Guidelines shall be eligible for charity care for necessary health services without cost.

2. A person whose individual or, if applicable, family, income as determined by (e) below, is greater than 200 percent of the HHS Poverty Guidelines but not more than 300 percent of these guidelines is eligible for charity care at a reduced rate as described in (c) below.

(c) A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services as described in the table below. The reduced percentage can be applied to the total bill or, until July 1, 1995, to any remainder after third party payment. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

Income as a percentage of HHS Poverty Guidelines	Percentage of Charges Paid by Applicant
>200 to 225.....	20
>225 to 250.....	40
>250 to 275.....	60
>275 to 300.....	80

(d) If qualified medical expenses, as defined for the purposes of Federal income tax deductibility, for applicants eligible for reduced charge charity care exceeds 30 percent of the applicant's or family's, if applicable, annual gross income as calculated by (e) below, such excess will be eligible for 100 percent coverage under charity care. The 30 percent threshold must be met once per family in a 12 month period.

(e) An applicant's income, for the purpose of determining eligibility for charity care or reduced charge charity care, shall be determined as follows:

1. The applicant may provide proof of the actual gross income for the 12 months immediately preceding the services;

2. The applicant may provide proof of actual gross income for the three months immediately preceding services. The hospital shall multiply this amount by four to determine the gross annual income; or

3. The applicant may provide proof of actual gross income for the month immediately preceding service. The hospital shall multiply this amount by 12 to determine the gross annual income.

4. If the applicant provides documentation for more than one salary period specified in paragraphs (e)1 through 3 above, the hospital shall use the period of time during which the salary was the lowest.

5. If the applicant is a welfare recipient and has not documented income as described in (e)1 through 3 above, the hospital shall document income status by obtaining a photocopy of the applicant's welfare identification, and documenting that the staff of the hospital obtained verification of the applicant's current benefit amount from the appropriate local welfare office.

6. An applicant shall supply a signed attestation showing his or her unreported income in order for that income to be considered in the eligibility determination, as described in (b) above.

10:52-10.8 Proof of income

(a) Applicants for charity care shall provide the hospital with proof of income as listed below. N.J.A.C. 10:52-10.8(a)3 below shall be considered alternative documentation, as described in N.J.A.C. 10:52-10.10 above.

1. An applicant shall provide the hospital with proof of income, which includes the following items: Federal or State income tax return; pay check stubs; W-2 forms; a letter from an employer on company letterhead stating the applicant's income; or a statement

of the gross benefit amount from any governmental agency providing benefit to the applicant. If an applicant has been employed for at least one month, he or she may document his or her income by providing one paycheck stub immediately prior to the date of service if the paycheck stub indicates a year-to-date income, and if the applicant documents the length of time he or she has been employed by the employer.

i. If an applicant is a recipient of Social Security benefits, he or she may document this income by either providing the annual benefits statement from the Social Security Administration, or copies of bank statements from three months prior which indicate direct deposit of the social security check, or a copy of one social security check.

ii. An applicant with no income or benefits of any type may present the hospital with a signed attestation to this effect. If the applicant is homeless, the hospital may accept a signed attestation which states that the applicant is homeless and receives no support, income or benefits.

iii. If the applicant is unable to provide one of the documents listed above, the hospital staff shall document reasons for the applicant's inability to comply and request the documentation listed in (a)2 below.

2. An applicant may document his or her income by providing one paycheck stub immediately prior to the date of service. If the applicant is unable to provide this documentation, the hospital staff must document reasons for the applicant's inability to comply and request the documentation listed in (a)3 below.

3. An applicant may document his or her income by providing an attestation which states the income received in one of the time periods described in N.J.A.C. 10:52-10.7(e)1 through 3.

(b) Family income that must be considered for the eligibility determination includes the income of all members for whom the applicant is legally responsible including, but not limited to, a spouse and any minor children for an adult. For a minor applicant, the income of the family, as determined by N.J.A.C. 10:52-10.7(a), will be considered. In situations where a minor applicant's parents are divorced, and the custodial parent(s) are remarried, the nonparental spouse's income shall be considered. In situations where both divorced parents have responsibility for the minor applicant's medical care, each parent shall complete a charity care application. For a minor applicant, the income of the family shall be considered, except for earned income of the minor child and siblings. In cases where an adult applicant has been abandoned by a spouse, or a minor applicant has been abandoned by a parent, the applicant may document that a spouse's or parent's income is not available by the following steps in (c) below.

(c) If a minor applicant's parents are divorced, and one of the parents is uncooperative, as defined in (c)1 through 3 below, with the application process, the requirement for that parent's income may be waived by the hospital, after the case is reviewed by the Department of Health, based on the following:

1. A parent or spouse may be deemed uncooperative if the applicant documents at least one unsuccessful attempt to obtain the necessary information from the parent or spouse; and

2. The parent or spouse does not respond to a letter from the hospital indicating the possibility of collection or legal action if he or she does not provide the necessary information for the application; and

3. The parent or spouse does not respond to the hospital in-house collection process.

(d) If an applicant is separated, but not legally divorced, from his or her spouse, the applicant may document that he or she has no financial ties with the estranged spouse in accordance with (d)1 through 4 below, and the hospital may waive the requirement for the estranged spouse's income, after the case is reviewed by the Department of Health, if documentation has been provided in accordance with the following:

1. A separated spouse may be deemed to have no financial ties to the applicant if the applicant provides proof to the hospital that

he or she is not living with the estranged spouse, and does not own any property or share a lease to a rental property with the estranged spouse; and

2. The applicant provides a copy of his or her most recent tax return indicating that the applicant filed taxes separately. If estrangement occurred after filing jointly, the hospital may hold the application until the applicant files the next tax return separately. If an applicant does not file tax returns, he or she must sign an attestation to this effect explaining his or her reasons; and

3. The applicant provides copies of all his or her financial accounts showing the applicant with sole ownership of his or her assets; and

4. The applicant provides an affidavit stating that he or she is separated from and has no financial ties to the estranged spouse.

(e) The hospital may request that the applicant document his or her living expenses.

(f) The hospital may accept a charity care determination from another New Jersey hospital as proof of income, provided that the effective date of the charity care determination is not more than one year earlier than the date of service at the second hospital and that the second hospital verifies the determination with the hospital that issued the determination. The determination by the second hospital is valid for one year from the effective date of the first hospital's determination.

10:52-10.9 Assets eligibility criteria

(a) An applicant shall provide proof that:

1. His or her individual assets as of the date of service do not exceed \$7,500; and

2. His or her family's assets, if applicable, do not exceed \$15,000 as of the date of service.

(b) Family members whose assets must be considered are all legally responsible individuals as defined in N.J.A.C. 10:52-10.7(a).

(c) Assets, as used in this section, are items which are, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper, corporate stocks and bonds, Individual Retirement Accounts (IRAs), trust funds, and equity in real estate other than the applicant's or family's, if applicable, primary residence. A primary residence, for purposes of charity care, is defined as a structure within which the applicant currently lives. If an applicant jointly owns assets with another person(s), for whom the applicant is not legally responsible, the value of these assets shall be prorated equally among all the owners.

(d) The applicant shall document the value of all applicable assets as described in (d)1 through 3 below. N.J.A.C. 10:52-10.9(d)3 below represents alternative documentation as described in N.J.A.C. 10:52-10.10.

1. The applicant shall present the hospital with a statement from a bank or other applicable financial institution showing the value of the asset(s) as of the date of service. If an applicant has no assets, he or she may sign an attestation to that effect, and this fulfills the requirement for proof of assets. If the applicant is unable to obtain such documentation, the hospital staff shall document, in writing, the reason why the proof could not be provided, and request proof of assets as described in (d)2 below.

2. In the case of a checking or savings account, the applicant shall provide a statement of the average daily balance of the account(s) for the month in which he or she receives services. The applicant shall provide the hospital with a statement from the bank or other applicable financial institution showing the value of the asset(s) within three months of the date of service. If the applicant is unable to obtain such documentation, the hospital staff shall document, in writing, the reason why the proof could not be provided, and request proof of assets as described in (d)3 below.

3. The applicant shall present the hospital with a signed statement attesting to the type and value of the assets.

(e) The assets of an applicant for charity care shall be counted only after the applicant has had an opportunity to apply any amount of assets in excess of the limits in (a) above toward qualified medical expenses. Qualified medical expenses are those amounts deductible for the purpose of calculation of Federal income tax liability.

10:52-10.10 Limit on accounts with alternative documentation

The total of all sample dollars in which identification, New Jersey residency, income, and assets documented by the alternative procedures described in N.J.A.C. 10:52-10.5(a)3, 10.6(a)3, 10.8(a)3 or 10.9(d)3 shall be limited to no more than 10 percent of the total dollars sampled on audit. Sample dollars that exceed 10 percent on the expanded sample shall be considered failed sample dollars for the purpose of calculating an audit adjustment.

10:52-10.11 Additional information to be supplied to facility by applicant

(a) A hospital shall, as a condition of finding any applicant eligible for charity care or reduced charge charity care, require the applicant to furnish any information that is reasonably necessary to substantiate the applicant's income and assets and that is within the applicant's ability to supply.

(b) An applicant who willfully presents false information will be liable for all hospital charges and subject to civil penalties pursuant to N.J.S.A. 26:2H-18.63.

10:52-10.12 Application and determination

(a) The Essential Health Services Commission shall provide acute care hospitals with a standardized application and determination form. This application and determination form shall be used by all acute care hospitals for the Charity Care Program. The application form shall advise patients of the penalties for providing false information on a charity care application.

(b) An applicant or responsible party may request a hospital to make a determination for charity care or reduced charge charity care at any time up to one year from the date of service. A hospital may, at its discretion, accept applications after one year from the date of service. The hospital shall make the charity care determination and notify the applicant in writing, as soon as possible, but no later than 10 working days from the day the applicant submits a completed application. If the application does not include sufficient documentation to make the determination, the hospital shall notify the applicant, in writing, as soon as possible, but no later than 10 working days from the day the applicant submits an incomplete application. The applicant shall be permitted to supply additional documentation at any time up to one year after the date of service.

(c) A determination that an applicant is eligible shall indicate:

1. The date on which the eligibility determination was made;
2. The date on which hospital services were requested;
3. The date on which the services were or will be provided to the applicant;
4. That the facility will provide charity care services at no charge or at a specified charge which is less than the allowable charge for the services;
5. The applicant's family size, income and eligibility computation;
6. The length of time that the hospital will provide charity care based on this determination. A hospital shall not provide charity care on the basis of a determination of eligibility that is more than one year old; and

7. The name and telephone number of a person a hospital can contact to verify eligibility pursuant to N.J.A.C. 10:52-10.8(b).

(d) The hospital shall provide each applicant who requests charity care and is denied it, in whole or part, with a written and dated statement of the reasons for the denial, including information required in (c) above. In addition, this notice shall state that the applicant may reapply if the applicant believes his or her financial circumstances have changed so as to make him or her eligible for charity care for future services. Where a denial is based on a presumption that the applicant is eligible for, but not enrolled in, Medicaid, the information upon which the denial is based must be documented.

10:52-10.13 Collection procedures and prohibited action

Persons determined to be eligible for charity care shall not receive a bill for services or be subject to collection procedures. Persons determined to be eligible for reduced charge charity care shall not be billed or subject to collection procedures for the portion of the bill that is reduced charge charity care.

10:52-10.14 Adjustment methodology

(a) For a listing adjustment, the charity care write off amount for each account should agree with the reimbursement rate that would have been paid to the hospital by the Medicaid program. To the extent that charity care write off amounts are overstated, the hospital's listing total will be reduced by the amount of the overstatement.

(b) For a compliance adjustment, each file reviewed must pass the compliance steps in N.J.A.C. 10:52-10.4 through 10.10. Failure in any one step fails the file and associated sample dollars. A failure rate (failed dollars divided by the total dollars sampled) that meets or exceeds 10 percent shall require an adjustment to the hospital's charity care listing total, based on unit dollar sampling.

(c) The hospital's charity care total adjusted for (a) and (b) above will constitute the hospital's audited charity care amount.

(d) A hospital which disagrees with the audit findings may request a review of auditor judgment with representatives from the Department of Health within 15 days of the date that the Department of Health staff or the Department of Health's audit subcontractor finishes their review of the hospital's charity care files and provides the hospital with a copy of the audit results.

(e) A hospital which disagrees with the audit findings may request an administrative hearing, which shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)**DIVISION OF YOUTH AND FAMILY SERVICES****Manual of Requirements for Adoption Agencies**

Proposed Amendments: N.J.A.C. 10:121A-1.5, 1.6, 1.7, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8 and 5.9

Proposed New Rule: N.J.A.C. 10:121A-1.5

Proposed Repeal: N.J.A.C. 10:121A-1.8

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

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4C-4(b).

Proposal Number: PRN 1995-116.

Submit comments in writing by March 23, 1995 to:

Richard Crane, Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 9:3-37 et seq., 30:A-1 et seq. and 30:4C-4(b), the Department of Human Services is authorized to certify all private and public adoption agencies, both within New Jersey and outside the State, that are involved in the placement of children for adoption in New Jersey. As a result of recent amendments to the State Adoption Law (N.J.S.A. 9:3-37 et seq.); rules that were promulgated pursuant to the Social Workers' Licensing Act of 1991; and Division/community-initiated changes, the Division of Youth and Family Services proposes the following amendments to the Manual of Requirements for Adoption Agencies (N.J.A.C. 10:121A), the State rules governing the certification of adoption agencies.

The proposed amendments were developed with extensive input from the community, including representatives from adoption agencies, the legal profession and the Inter-Agency Adoption Council, the professional organization that represents the adoption agency directors in New Jersey. However, most of the proposed changes to the Manual are the direct result of the recent amendments to the State Adoption Law. The final draft of the proposed amendments was distributed to the adoption agencies regulated by the Division and the Inter-Agency Adoption Council for review and comment.

Two key amendments to the State Adoption Law require for the first time that Criminal History Record Information (CHRI) fingerprint background checks and Child Abuse Registry Information (CARI) back-

ground checks be conducted on adoptive applicants and all persons residing in the prospective adoptive applicants' homes who are 18 years of age and older. Accordingly, requirements for CHRI fingerprint background checks and CARL background checks are being proposed as part of the rules for the adoptive applicant's home study (which will be discussed later in this Summary).

Other amendments to the State Adoption Law and corresponding amendments to this chapter permit an intermediary to act for or between a birth parent and any prospective adoptive parent or on behalf of either in connection with a placement for adoption. The intermediary is prohibited from receiving money or other valuable consideration in connection with the adoption. The proposed amendments also clarify the different types of adoptions, specify additional reporting requirements and clarify services to birth parents, home study services and post-placement service requirements.

The proposed amendments at N.J.A.C. 10:121A-1.5 define and clarify the term "adoption" and further specify and define the types of adoptions that are subject to the provisions of this chapter, including an "agency adoption," a "foreign adoption," an "identified adoption," an "independent adoption," a "stepparent adoption" and a "relative adoption." The proposed amendments at N.J.A.C. 10:121A-1.6 remove the types of adoptions from the definitions section; add definitions of "central registry," "conditional surrender," "intermediary" and "should"; and clarify the definitions of "parent" and "surrender." At the recodified N.J.A.C. 10:121A-1.8(a), changes have been made clarifying the criteria for adoption agencies to be eligible to secure a certificate of approval. The proposed amendments at N.J.A.C. 10:121A-1.8(b) indicate that unpaid intermediaries are not subject to certification requirements, pursuant to the amendments to the State Adoption Law. The proposed amendments delete the existing N.J.A.C. 10:121A-1.8 concerning inter-country adoptions. Requirements for these adoptions, now referred to as "foreign adoptions," are addressed in proposed amendments at N.J.A.C. 10:121A-1.5(b)2 and 5.6(r) and (s), rather than in a separate section.

The proposed amendments at N.J.A.C. 10:121A-3.3 specify that an intermediary may work with a New Jersey approved agency as long as the intermediary does not receive money or other valuable consideration in connection with the placement of a child for adoption, pursuant to the State Adoption Law. The proposed amendments at N.J.A.C. 10:121A-3.5 require the adoption agency to notify the appropriate county prosecutor within three working days of an adoption activity that involves an intermediary and appears to violate the State Adoption Law, and to notify the Bureau of Licensing in writing within five working days of the agency's notification to the county prosecutor.

The proposed amendments at N.J.A.C. 10:121A-3.6(a)4 require the agency to maintain the confidentiality of all information for all persons residing in the adoptive parents' home, except under specified conditions, and prohibit the agency from verifying or giving to the adoptive parents the names of the birth parents without the written permission of the birth parents. The proposed amendments at N.J.A.C. 10:121A-3.6(c) require adoption agencies to report statistical adoption information to the Bureau of Licensing on a monthly basis. The proposed amendments at N.J.A.C. 10:121A-3.6(d) require certified agencies that work with intermediaries to make efforts to obtain background information for birth family and child records. The proposed amendments at N.J.A.C. 10:121A-3.6(d)12 through 15 require the case record to include a specific plan for transportation of the child to the adoptive home; all records or documentation pertaining to contacts between the agency and the birth parent, birth family or their legal representative; a signed agreement by the applicants to notify the agency at the time the family is matched with a birth mother for possible placement of her child or when a child is received in the home for adoption through a source other than a certified agency, so that the supervision of the child can begin, and such supervision may be transferred to another certified agency provided both agencies agree to the transfer; and a signed agreement by the applicants to provide the agency with an itemized statement of all costs paid and unpaid and copies of receipts for all costs paid by the applicants in connection with the adoption, including any adoption-related costs paid prior to agency involvement. The proposed amendments at N.J.A.C. 10:121A-3.6(e) delete all references to foreign adoption records because foreign adoption records are now treated in the same manner as all other adoption records. The proposed amendments at N.J.A.C. 10:121A-3.6(e)6 require that all records or documentation pertaining to contacts between the agency and the adoptive parent(s) or their legal representatives be maintained by the agency.

The proposed amendments at N.J.A.C. 10:121A-4.2(c) eliminate the staff titles of social worker, medical social worker, and social work technician, pursuant to provisions of the Social Workers' Licensing Act of 1991, P.L. 1991, c.134 and N.J.A.C. 13:44G-1 through 5, 7 and 8, the State Board of Social Work Examiners Rules. The proposed amendment at N.J.A.C. 10:121A-4.2(e) deletes a reference to new out-of-State agencies, as all out-of-State agencies must ensure that social work staff and social work supervisors are certified or licensed pursuant to that State's laws or requirements. The proposed amendments at N.J.A.C. 10:121A-4.2(f) indicate that licensing and certification requirements for staff who function as social workers or social work supervisors apply to all existing in-State agencies.

The proposed amendments at N.J.A.C. 10:121A-4.2(g) and (h) delete the provisions that permitted in-State agencies to retain existing staff members who function as social workers or social work supervisors but do not meet licensing or certification requirements. Under the Social Workers Licensing Act of 1991, such staff members are no longer permitted to perform these duties without being licensed or certified.

The proposed amendments at N.J.A.C. 10:121A-4.4(b) and (c) delete obsolete education and experience requirements for social work supervisors and social workers, and specify the revised qualifications for these positions, pursuant to N.J.A.C. 13:44G-4.1, 4.2 and 4.3, the State Board of Social Worker Examiners Rules.

The proposed amendments at N.J.A.C. 10:121A-5.3(d) delete the requirement that prohibited an agency from withholding finalization of a placement solely for non-payment of fees; clarify the rule regarding refunds to clients upon written request; and require the agency to maintain on file written requests for such refunds and copies of the checks mailed to clients who receive refunds.

The proposed amendments at N.J.A.C. 10:121A-5.4(a) delete the requirement for determining that the birth parents or legal guardian are not surrendering a child under duress, since such situations are governed by the rules for the surrender of a child specified at N.J.A.C. 10:121A-5.4(d). The existing rules at N.J.A.C. 10:121A-5.4(a)1, 2 and 2i concerning services to birth parents are recodified as N.J.A.C. 10:121A-5.4(b)1 to 3. The proposed amendments at N.J.A.C. 10:121A-5.4(a) also require the agency to document in the case record all telephone and in-person contacts with the birth parents, birth family or their legal representative that directly pertain to the adoption.

The proposed amendments at N.J.A.C. 10:121A-5.4(b)1 and 2 specify requirements that prohibit an agency from requiring the prospective birth parent(s) to sign a statement committing them to any definite plan for the unborn child and prohibit an agency from requiring the birth parent(s) to surrender a child for adoption in order to receive medical services, maternity or residential care, or any other agency service. The proposed amendment at N.J.A.C. 10:121A-5.4(b)3 specifies that an agency must ensure that residential facility care, foster home care and/or maternity services that it provides for clients meets applicable state licensing, certification or approval requirements.

The proposed amendments at N.J.A.C. 10:121A-5.4(b)4 expand the existing requirements that allow a birth father to sign a surrender, to deny paternity and to exercise other parental rights. Agencies are not permitted to discourage the birth mother from identifying the father (N.J.A.C. 10:121A-5.4(b)5); are required to provide at least 20 days written notice to a guardian of a child to be adopted who has not been surrendered and to any other person who has provided care and supervision of the child in their home for six months or half the life of the child, whichever is less, that the child is being adopted and provide the guardian or other person who cared for the child with an opportunity to object to the adoption within 20 days (N.J.A.C. 10:121A-5.4(b)6); and are required to document their compliance in the case record (N.J.A.C. 10:121A-5.4(b)7).

The proposed amendment at N.J.A.C. 10:121A-5.4(c)1 requires counseling sessions conducted for birth parents to be conducted in a private and professional setting or at the birth parent's home. The proposed amendment at N.J.A.C. 10:121A-5.4(c)1viii requires the agency to document that the birth parents were requested to provide an itemized statement of all costs paid by the prospective adoptive parents prior to agency involvement in the adoption or an affidavit that no money was expended.

The proposed amendments at N.J.A.C. 10:121A-5.4(d)2 require that if an agency accepts a conditional surrender, the surrendering parent is given the opportunity to specify the adoptive parent(s); specify requirements that apply if an agency accepts a conditional surrender and determines that the adoptive parent(s) specified by the surrendering

parent cannot be approved (N.J.A.C. 10:121A-5.4(d)3); and require that a surrender executed in another state or foreign country be considered valid in this State if taken 72 hours after the birth of the child (N.J.A.C. 10:121A-5.4(d)5).

The proposed amendment at N.J.A.C. 10:121A-5.4(g) deletes the requirements for an identified adoption, since identified adoptions are treated in the same manner and afforded the same protections and requirements as all other types of adoptions. The proposed amendments delete the provisions at N.J.A.C. 10:121A-5.4(h) through (k) concerning payments on behalf of a birth mother. Such payments are governed by the proposed amendments to N.J.A.C. 10:121A-5.4(l), recodified as N.J.A.C. 10:121A-5.4(g).

The proposed amendments at N.J.A.C. 10:121A-5.6(a) require the agency to document telephone and in-person contacts with the adoptive applicants or their legal representative that directly pertain to the adoption, and the provision for helping applicants decide if adoption is the best plan for them has been relocated to N.J.A.C. 10:121A-5.6(b)1. The existing requirements at N.J.A.C. 10:121A-5.6(b)1 and 2 have been clarified and expanded as new paragraphs (b)2, 3 and 4. The proposed amendments at N.J.A.C. 10:121A-5.6(d) delete the existing requirements that specify agencies working with applicants who have a history of abuse, neglect or criminal conviction shall give careful consideration to whether their past conduct would pose a threat to the safety and/or security of the child since these provisions are captured later in this section under applicant assessment criteria.

The proposed amendments at N.J.A.C. 10:121A-5.6(f)13 delete disclosure requirements since these requirements are already specified at N.J.A.C. 10:121A-5.6(d) above.

The proposed amendments at N.J.A.C. 10:121A-5.6(f)13 and 14 require the agency to include a statement of the agency's assessment of the CHRI fingerprint background checks and CARI background checks as part of the home study services.

The proposed amendments at N.J.A.C. 10:121A-5.6(g) establish the agency requirements and procedures for obtaining CHRI fingerprint background checks for each adoptive applicant and all persons residing in the prospective adoptive applicant's home who are 18 years of age and older. The agency is required to use the results of the State and Federal CHRI checks as part of the home study for assessing the suitability of the adoptive applicant(s). The proposed amendments at N.J.A.C. 10:121A-5.6(g)9 specify criteria for assessing the suitability of the adoptive applicant(s) when a CHRI reveals a criminal record.

The proposed amendments at N.J.A.C. 10:121A-5.6(h) specify that CHRI checks are valid for 36 months from the date they are received by the agency. If a placement is not made within 36 months, the agency must obtain updated New Jersey State Police name, address and social security number checks on the applicants and other adults living in the applicants' home.

The proposed amendments at N.J.A.C. 10:121A-5.6(i) establish the requirements and procedures for CARI background checks for each adoptive applicant and all persons residing in the adoptive applicant's home who are 18 years of age and older. The adoption agency is required to share the results of a CARI background check that reveals a substantiated incident(s) of child abuse and/or neglect with the specific individual on whom the CARI background check was conducted. However, if that individual is not the adoptive applicant, the agency can only inform the applicant of the individual's identity. No other information concerning the substantiated incident(s) of child abuse and/or neglect may be disclosed to the applicant in order not to violate the confidentiality provisions of State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.10a).

The proposed amendments at N.J.A.C. 10:121A-5.6(j) set specific criteria that the adoption agency must follow for assessing the suitability of the adoptive applicants when the CARI background check reveals that the adoptive applicant(s) or adult(s) residing in the home has a record of substantiated incident(s) of child abuse and/or neglect.

The proposed amendments at N.J.A.C. 10:121A-5.6(j) specify that the CARI background checks are valid for 18 months from the date the results are received by the agency. If a child is not placed in the applicants' home within 18 months, an additional CARI check is required for each applicant and other adult residing in the applicant's home prior to placement of the child in the applicant's home.

The proposed amendments at N.J.A.C. 10:121A-5.6(k) specify that the results of a home study are not permitted to be shared until the home study is completed, and also specify when a home study is considered

complete. The proposed amendments at N.J.A.C. 10:121A-5.6(l) specify that a child is not permitted to be placed for adoption without a completed home study.

The proposed amendments at N.J.A.C. 10:121A-5.6(n) change the term "intercountry adoption" to "foreign adoption," to be consistent with the revised terminology. The proposed amendments at N.J.A.C. 10:121A-5.6(o) specify that for applicants who have been studied, approved and placed on a waiting list for longer than 18 months since the home study was approved, the agency is required to update the home study within 18 months of the child being placed into the home. The updated home study is required to include a visit to the applicant's residence and updated financial information. The proposed amendments at N.J.A.C. 10:121A-5.6(p) specify the updated home study requirements for applicants who are being considered for adoption of one or more additional children. The proposed amendment at N.J.A.C. 10:121A-5.6(q) specifies that, for a stepparent adoption, a CHRI is not required for adult household members related to the birth parent. The proposed amendment at N.J.A.C. 10:121A-5.6(r) specifies that CHRI and CARI background checks already conducted on an adoptive parent(s) for a foreign adoption that is recognized by the United States government shall be valid for such adoptive parent(s) when seeking a readoption in New Jersey. The proposed amendments at N.J.A.C. 10:121A-5.6(s) specify that a New Jersey State Police fingerprint background check shall be obtained for an adoptive parent(s) seeking adoption in New Jersey for a child whose adoption in a foreign country is not recognized by the United States government. In addition, a home study shall be conducted, but a Federal fingerprint background check shall not be required. These amendments are included to avoid duplication of existing background check requirements in the United States Federal Immigration and Naturalization Service (I.N.S.) Act (P.L. 95-417).

The proposed amendments at N.J.A.C. 10:121A-5.8(a) delete the obsolete reference to non-foster parent agency placements. The proposed amendment at N.J.A.C. 10:121A-5.8(a)1 requires that a home visit made within 14 days of the adoptive placement must occur after the first day of placement. The proposed amendments at N.J.A.C. 10:121A-5.8(c) delete all references to an Adoption Complaint Investigation because this is not considered a type of adoption but rather a process that leads to an independent adoption, which is treated in the same manner and afforded the same protections and must meet the same requirements as all other adoptions.

The proposed amendments at the recodified N.J.A.C. 10:121A-5.8(i)lviii clarify the fees and costs paid by the adoptive parents that are associated with an adoption. The proposed amendments at the recodified N.J.A.C. 10:121A-5.8(i)lviii(1) expand and clarify the rule regarding payments or reimbursements a parent may receive in connection with the adoption. The proposed amendment at N.J.A.C. 10:121A-5.9(c) deletes the word "may" and replaces it with "should," to indicate that counseling by the agency is recommended in specified situations.

Social Impact

The Division anticipates that the proposed amendments will have a positive social impact on adoption agencies and the constituencies they serve. These amendments update, strengthen, clarify, and improve the current rules to reflect the contemporary needs of adoption agencies, birth parents, adoptive parents and adoptive children.

For the first time, there are requirements for CHRI background checks for adoptive applicants and other adults residing in the prospective adoptive applicants' home, which will ensure that children are not adopted by persons with criminal records that might endanger the children. The Division has already implemented CHRI procedures, as now required by State law, in order to avoid delaying adoptions that are in progress while these amendments are being proposed. The proposed amendments requiring CARI background checks will also have a positive social impact by ensuring that children are not adopted by persons who have a history of substantiated incidents of child abuse and/or neglect that might place the children at risk of harm. These amendments are designed to protect children and to give the birth parent(s) and adoption agencies additional safeguards to ensure that the adoptive applicants have no background that might be harmful to the child. These amendments assist adoption agencies by providing additional criteria for measuring the suitability of the adoptive applicants.

The various types of adoptions have been clearly defined, so that agencies involved in all types of adoptions must provide the same

protections for all clients and meet the same requirements for safeguarding the health, safety and well-being of the children being adopted. The proposed amendments strengthen and clarify many of the requirements that adoption agencies must meet for the services that they provide to children, birth parents, and adoptive parents during the adoption process.

The proposed amendments clarify the role of an intermediary in connection with a placement for adoption, so that persons acting as intermediaries can more readily comply with recent amendments to the State Adoption Law (N.J.S.A. 9:3-37 et seq.).

Economic Impact

The majority of the proposed amendments establish new requirements as a direct result of recent amendments to the State Adoption Law (N.J.S.A. 9:3-37 et seq.). The proposed amendments may result in some positive and negative economic impact to adoptive applicants and the 74 adoption agencies that are regulated by the Division. While compliance with the amendments will result in certain administrative and operational costs, it is not anticipated that such costs place any unreasonable burden on the regulated agencies.

The proposed amendments at N.J.A.C. 10:121A-1.6 permit an intermediary to act for or between a birth parent and any prospective adoptive parent or on behalf of either in connection with a placement for adoption. However, these amendments should result in no economic impact for both the adoptive parents and the birth parents, since the intermediary is prohibited by State Adoption Law from receiving money or other valuable consideration in connection with the adoption.

The proposed amendments requiring social work staff and social work supervisors to be licensed or certified pursuant to the Social Worker's Licensing Act of 1991 and the State Board of Social Work Examiners Rules may result in increased costs to agencies that do not presently have licensed/certified social work staff and/or social work supervisors. Agencies may have to hire licensed/certified social work staff, or arrange for present social work staff who are in need of a license or certificate to receive additional training or education in order to complete the licensing/certification requirements. However, these rules must be met in order to comply with recent State law governing social work licensure.

A positive economic impact on agencies is expected from the proposed amendments deleting the provision that an agency cannot withhold finalization of a placement or adoption solely for non-payment of fees. The elimination of this requirement allows agencies to withhold the placement or adoption of a child until the payment agreement is fulfilled by the adoptive applicant(s). This will result in a decrease in the rate of delinquent payments to agencies.

The proposed amendments requiring CHRIs will have some negative economic impact on adoptive applicants and other adults in their homes, who must pay a CHRI processing fee that is now \$63.00 per person. The proposed amendments for documenting the CHRI background checks may result in increased costs to the adoption agencies; however, these costs may be passed directly on to the adoptive applicants. These costs are significantly outweighed by the anticipated benefits of the CHRIs, such as: helping to prevent failed adoptions; enabling agencies to screen out potentially unqualified applicants early during the home study process, avoiding protracted applications for these individuals; and helping to ensure the health and safety of the children being considered for adoption.

The proposed amendments requiring CARI background checks will have no economic impact on adoptive applicants or adoption agencies, as the Division of Youth and Family Services does not propose at this time to charge a fee for the CARI background checks. The proposed amendments will have some economic impact on the Division for staff and equipment expenditures associated with processing CARI background checks.

The proposed amendments to the financial reporting and recordkeeping requirements should have a positive economic impact on both the adoptive parent(s) and the birth parent(s). The proposed amendments clarify the fees and costs that may be paid by adoptive parent(s) in connection with the adoption, as well as payments or reimbursements a birth parent may receive in connection with the adoption. A copy of the agency's fee policy must be given to each birth mother and prospective adoptive parent(s) at the time of their initial inquiry or application, so they are made aware of the agency's policy regarding fees and costs prior to the commencement of the adoption process.

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The proposed amendments do not exceed analogous Federal requirements, since there are no existing statutes or requirements pertaining

to adoption agencies imposed by Federal law within the scope of this proposal.

Regulatory Flexibility Analysis

The 38 in-State adoption agencies regulated by the Division are all considered small businesses as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. It is not, therefore, appropriate or necessary to establish differential rules that would apply to larger or smaller businesses. Therefore, compliance with the proposed amendments to the existing rules is required, without variation, in order to ensure that the requirements contained within the chapter are consistently met.

The existing rules and proposed amendments do not place any unnecessary or overly stringent requirements on the agencies. The proposed amendments, for the most part, are required as a result of recent amendments to the State Adoption Law (N.J.S.A. 9:3-37 et seq.). As mentioned previously, the Division received extensive input from adoption agencies and the Inter-Agency Adoption Council in the development of these rules and much attention was given by all concerned to minimize costs.

The proposed amendments requiring CHRI background checks provide alternative methods for obtaining the fingerprints, including using the local police, another approved agency or the agency's own trained staff. The Division, in cooperation with the Department of Human Services Central Fingerprint Unit, has provided a series of regionalized training sessions, free of charge, to instruct adoption agency staff in obtaining fingerprints. Over 100 agency personnel have been trained to date. We anticipate that the fingerprint training will continue to be available. No outside professional services are needed, except that an agency may choose to use the local police to obtain fingerprints.

Unlike the CHRI background checks, the CARI background checks have no known administrative processing costs to the adoption agency. Recordkeeping tasks for agencies will be minimal for both CARI and CHRI background checks. A statement of the agency's assessment of the results of the CHRI and CARI background checks must be maintained by agencies in the applicant's case record.

The proposed amendments require more frequent reporting of statistical adoption information to the Division. Such reports will be submitted monthly using a brief reporting form supplied by the Division, which should not involve any increased costs to the agency, and will assist the Division significantly in tracking adoption information.

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

10:121A-1.5 [Definitions] Definition and types of adoptions

(a) "Adoption" means the legal transfer of all parental rights and responsibilities from the birth and/or legal parent(s) to another person who desires to assume those rights and responsibilities.

(b) Adoptions that are subject to the provisions of this manual are classified as follows:

1. "Agency adoption" is an adoption where the birth parent(s) and the adoptive parent(s) come to an agency independent of each other and there is no prior relationship for the purpose of adoption;

2. "Foreign adoption" is the adoption of a child who resides in a country other than the United States of America. An agency shall comply with the requirements of the Federal Immigration and Naturalization Act (P.L. 95-4(17)), and any successor or amending legislation regarding the classification of an alien orphan child as an immediate relative for purposes of an immigration visa;

3. "Identified adoption" is an adoption where the agency becomes involved in providing services to a birth parent(s) or legal parent(s) and/or a prospective adoptive parent(s) who is considering a plan to place the child for adoption in the prospective adoptive parent's home;

4. "Independent adoption" is an adoption where the child is received in the adoptive home from a source other than an agency. Subsequent to the placement, the court orders an agency to conduct an Adoption Complaint Investigation (ACI) in order to investigate the circumstances of the placement and to assess the adoptive home;

5. "Stepparent adoption" is an adoption of a child from a former marriage by the birth parent's current husband or wife; and

6. "Relative adoption" is an adoption of a child by a person(s) who is related by blood or marriage.

10:121A-[1.5]1.6 Definitions

The following words and terms, when used in this chapter, shall have the [indicated] following meanings:

...
"Central registry" means the central registry of the Division of Youth and Family Services in the New Jersey Department of Human Services established pursuant to the Child Abuse and Neglect Law (see N.J.S.A. 9:6-8.11), which summarizes the results of the Division's investigations of substantiated incidents of child abuse and neglect.

...
"Conditional surrender" means a voluntary relinquishment of all parental rights by a birth parent, adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise for purposes of allowing a child to be adopted by a person(s) specified by the surrendering parent.

...
"Identified adoption" means an adoption where the agency becomes involved in offering services to an expectant birth or legal parent(s) and/or a prospective adoptive parent(s) who are considering a plan whereby the child will be placed for adoption in the prospective adoptive parent's home.

"Independent adoption" means an adoption where the child is received in the adoptive home from a source other than a Bureau-certified agency. Subsequent to the placement, the court orders a State-certified adoption agency to conduct an Adoption Complaint Investigation (ACI) in order to investigate circumstances of the placement and to assess the adoptive home.]

"Intermediary" means any person, firm, partnership, corporation, association or agency, whether located in New Jersey or not, who acts for or between any parent and any prospective adoptive parent or acts on behalf of either in connection with a placement for adoption of the parent's child. An intermediary shall not receive money or other valuable consideration in connection with the placement of a child for adoption, pursuant to the State Adoption Law (N.J.S.A. 9:3-37).

...
"Parent" means an expectant mother or a birth parent or birth parents, including the [natural] biological father of a child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given, or a parent or parents by adoption.

...
"Should" denotes a recommendation reflecting goals towards which an adoption agency is encouraged to work.

...
"Surrender" means a voluntary relinquishment of all parental rights[, generally for purposes of allowing a child to be adopted] by a birth parent, [prior] adoptive parent, or other person or agency authorized to exercise [such] these rights by law, court order or otherwise, for purposes of allowing a child to be adopted.

...
 Recodify existing 10:121A-1.6 as 1.7. (No change in text.)

10:121A-[1.7]1.8 Eligibility for a certificate of approval

(a) Any public agency or private non-profit firm, partnership, corporation, association, or agency located within or outside the State of New Jersey that provides adoption services to families in New Jersey or to children from New Jersey, whether as part or all of its function, shall secure and maintain a certificate of approval. Adoption services shall include any one or combination of the following:

1. Pre-placement services for children;
- 2.-3. (No change.)
4. Post-placement services; and/or
5. Post-adoption services[.];
- [6. Adoptive parent recruitment; and/or
7. Information services, unless these services are provided by social service agencies and educational institutions as part of general information on adoption as a family planning option.]

(b) The following are not subject to certification requirements under the law:

1. Foster care programs, unless operated as a support to, or as an integral part of the agency's adoption program, as specified in N.J.A.C. 10:121A-[1.5]1.6;

2. (No change.)

3. Lawyers, law offices or legal services offices that provide only legal services as permitted under the law and court rules; [and]

4. Agencies, organizations or independent professionals that do not place children for adoption, but provide social work services, mental health, family services or similar services, to the general public, including adoptive families who may choose to use their services[.]; and

5. Unpaid intermediaries, as specified in N.J.A.C. 10:121A-1.6.

[10:121A-1.8 Inter-country adoption

(a) An agency providing services with reference to inter-country adoption shall comply with requirements of the Federal Immigration and Naturalization Act (P.L. 95-417) and any successor or amending legislation regarding the classification of an alien orphan child as an immediate relative for purposes of an immigration visa.

(b) The Bureau shall maintain a list of certified private adoption agencies that conduct home studies for the adoption of children from foreign countries, and shall make such a list available to interested persons upon request.

(c) Agencies performing inter-country adoptions shall comply with the recordkeeping requirements of the Manual of Requirements for Adoption Agencies, as specified in N.J.A.C. 10:121A-3.6(e).]

10:121A-3.3 Legal responsibilities

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

(d) A New Jersey-certified agency may work with an intermediary only if the agency verifies that the intermediary does not receive money or other valuable consideration in connection with the placement of a child for adoption, pursuant to the State Adoption Law (N.J.S.A. 9:3-37).

10:121A-3.5 Reporting requirements

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

(e) The agency shall notify the appropriate county prosecutor within three working days of any adoption activity that involves an intermediary that allegedly violates N.J.S.A. 9:3-37 et seq., the State Adoption Law.

(f) The agency shall notify the Bureau in writing of any adoption activity specified in (e) above within five working days of the agency's notification to the county prosecutor.

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

10:121A-3.6 Agency records

(a) The agency shall ensure that the following general requirements are met:

1.-3. (No change.)

4. The agency shall maintain the confidentiality of all information in all client case records, including those of the child, birth parents, foster parents, adoptive parents, [and] adult adoptees, and all other persons residing in the adoptive parents' home, except by court order, or as specified in this chapter, or by written consent of the specific party.

i.-iv. (No change.)

v. The agency shall not verify or give to the adoptive parents the names of the birth parents without the written permission of the birth parents, even though the adoptive parents may have learned of the identity of the birth parents before or [while] after the plan for adoption was made.

(b) (No change.)

(c) The agency shall establish and maintain statistical information on adoption services and shall submit this statistical information to the Bureau on standardized forms provided by the Bureau [within 45 calendar days following receipt of the request for such information], for each month by the tenth business day of the following month.

(d) An agency shall maintain case records for each child served and for his or her birth family for 99 years. Certified agencies that

work with referring agencies or intermediaries shall make efforts to obtain background information for birth family and child records. These records shall include:

1.-9. (No change.)

10. Summary of how any child placed for adoption has been prepared for the adoption, including, for children 10 years of age or older, a full description of the child's involvement in the process of adoption planning, and preference regarding characteristics of the adoptive family or documentation of the reason(s) for not consulting the child; [and]

11. Record of the birth family's contact with the agency after adoptive placement, including updated addresses and telephone numbers[.];

12. The specific plan for transporting the child to the adoptive home, if appropriate;

13. All records or documentation pertaining to contacts between the agency and the birth parent, birth family or their legal representative, as specified in N.J.A.C. 10:121A-5.4(a);

14. A signed agreement by the applicant(s) to notify the agency at the time the family is matched with a birth mother for possible placement of her child or when a child is received in the home for adoption through a source other than a certified agency, so that the supervision of the child can begin. This supervision should be done by the same agency that conducted the home study. However, at the request of the adoptive applicant(s), the case may be transferred to another certified agency, provided both agencies agree to the transfer; and

15. A signed agreement by the applicant(s) to provide the agency with an itemized statement of all costs paid and unpaid, and copies of receipts for all costs paid by the applicant(s) in connection with the adoption, including any adoption-related expenses paid prior to agency involvement.

[(e) Foreign adoption records for birth family and child shall include:

1. A list of illnesses and diseases endemic to the child's country of origin and specific infectious diseases to which the child may have been exposed;

2. A description of the child's living arrangements prior to placement, and a record of the child's adjustment to such arrangements; and

3. The specific plan for transportation of the child to the adoptive home.]

[(f)](e) The agency shall maintain records of home studies of adoptive applicants, who have had a child placed for adoption, for 99 years. These records shall include:

1.-5. (No change.)

6. All records or documentation pertaining to contacts between the agency and the adoptive parent(s) or their legal representative, as specified in N.J.A.C. 10:121A-5.6(a);

Recodify existing 6. and 7. as 7. and 8. (No change in text.)

Recodify existing (g)-(j) as (f)-(i) (No change in text.)

10:121A-4.2 Personnel policies

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

(c) The agency shall ensure that any staff member or consultant that utilizes the title or designation of [social worker,] licensed clinical social worker, licensed social worker, certified social worker[, medical social worker, social work technician or any other title or designation which includes the words social worker or social work,] or any abbreviations such as [SW,] LCSW, LSW, or CSW [or SWT], is certified or licensed pursuant to N.J.S.A. 45:15BB-1 et seq., the Social Workers Licensing Act of 1991.

(d) (No change.)

(e) All [new] out-of-State agencies shall ensure that [social]:

1. Social work staff and social work supervisors are certified or licensed pursuant to that state's laws or requirements, if applicable[.]; and

2. Social work staff and social work supervisors who provide social work services in New Jersey are certified or licensed pursuant to (c) above.

(f) [An] All existing in-State [agency] agencies shall ensure that staff members who function as social workers or social work

supervisors and can meet the educational and experiential requirements to be licensed or certified, but are not currently licensed or certified, obtain the appropriate license or certificate within the time frames prescribed by N.J.S.A. 45:15BB-1 et seq.

[(g) An in-State agency may require existing staff members who function as social workers or social work supervisors and who do not currently meet the educational and experiential requirements to be licensed or certified pursuant to (c) above, to obtain the appropriate certificate or license as a condition of continued employment; or it may retain such staff members in the same capacity so long as these staff members are not utilizing titles specified in (c) above.

(h) Existing in-State agencies shall ensure that all new staff members that are hired for the positions of social worker and social work supervisor are licensed or certified pursuant to (c) above.]

10:121A-4.4 Staff qualifications and duties

(a) (No change.)

(b) The social work supervisor shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below.

1. A social work supervisor shall:

[i. Have a bachelor's degree from an accredited college or university and four years of professional experience in services to children and families, two years of which shall be in adoption services; or

ii. Have a master's degree in social work or other human services field from an accredited college or university and a minimum of two years of professional experience in services to children and families, one year of which shall be in adoption services; or]

i. Meet the requirements for a licensed clinical social worker or a licensed social worker as specified in N.J.A.C. 13:44G-4.1 and 4.2 and have a minimum of two years of professional experience in services to children and families, one year of which shall be in adoption services; or

ii. Meet the requirements for a certified social worker as specified in N.J.A.C. 13:44G-4.3, and have a minimum of four years of professional experience in services to children and families, two years of which shall be in adoption services. Under this provision, the social work supervisor shall not supervise licensed clinical social workers or licensed social workers; or

iii. (No change.)

2. (No change.)

(c) A social worker shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below. The agency may choose to utilize part-time staff members in lieu of one full-time staff member, provided that these staff have the qualifications and responsibilities as specified in (c)1 and 2 below.

1. A social worker shall:

[i. Have a bachelor's degree from an accredited college or university and one year of professional experience in the human services field; or

ii. Have a master's degree in social work or in a related human services field from an accredited college or university; or]

i. Meet the requirements for a licensed clinical social worker, a licensed social worker or a certified social worker as specified in N.J.A.C. 13:44G-4.1, 4.2 and 4.3 and have one year of professional experience in the human services field; or

[iii.]ii. For public agencies, meet the New Jersey State Department of Personnel requirements for the title.

2. (No change.)

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

10:121A-5.3 Fees and fiscal practices

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

(d) The agency shall prepare and maintain on file a written description of its policies and procedures for the setting, collecting, waiver, non-payment and refunding of fees, along with guidelines for exceptions to these policies and procedures.

[1. No agency shall withhold finalization of a placement or adoption solely for non-payment of fees.]

[2.]1. The agency shall make refunds to [an eligible] a client who is eligible for a refund no more than 30 calendar days after receipt of [a] the client's written request for such refunds [from an agency client].

2. The agency shall maintain on file written requests for such refunds and copies of the refund checks mailed to the clients.

10:121A-5.4 Services to birth parents

[(a) An agency shall accept the surrender of a child only after determining that the birth parents or legal guardian are not acting under duress.

1. The agency shall not require the prospective birth parents to sign a statement committing them to any definite plan for the unborn child in order to obtain services.

2. The agency shall not require the birth parent to surrender a child for adoption in order to receive medical services, maternity or residential care, or any other agency service.

i. An adoption agency that directly provides residential facility care, foster home care and/or maternity services to clients shall ensure that such facilities and/or homes meet applicable state licensing, certification or approval requirements.]

(a) The agency shall document in the case record all telephone and in-person contacts with the birth parents, birth family members or their legal representative that directly pertain to the adoption. All entries shall be signed by the individual making the entry and include the date of the entry.

(b) The agency shall: [give the father the opportunity to sign a surrender, a denial of paternity or otherwise exercise parental rights to the child pursuant to N.J.S.A. 9:3-45. The agency shall not discourage the birth mother from identifying the father.]

1. Be prohibited from requiring the prospective birth parent(s) to sign a statement committing them to any definite plan for the unborn child in order to obtain services;

2. Be prohibited from requiring the birth parent(s) to surrender a child for adoption in order to receive medical services, maternity or residential care, or any other agency service;

3. Ensure that residential facility care, foster home care and/or maternity services that it provides to clients meets applicable state licensing, certification or approval requirements;

4. Provide the birth father with the opportunity to sign a surrender, a denial of paternity or otherwise exercise parental rights to the child pursuant to N.J.S.A. 9:3-45;

5. Not discourage the birth mother from identifying the father;

6. At least 20 calendar days before the child's adoption, provide written notification of the impending adoption to:

i. The guardian of a child to be adopted, who has not executed a surrender pursuant to N.J.S.A. 9:3-41;

ii. Any other person who has provided care and supervision in his or her home for the child for a period of six months or half of the life of the child, whichever is less, in the two years prior to the date the complaint was filed in the court by the prospective adoptive parent(s); and

iii. Inform those persons specified in (b)6i and ii above that they have the opportunity to object to the adoption within 20 days after notice of the adoption is given in accordance with the Rules of Court; and

7. Provide documentation of the agency's compliance with (b)4 to 6 above in the case record.

(c) Before taking a surrender, the agency shall document that the birth parents were:

1. Provided at least three face-to-face counseling sessions **conducted in a private and professional setting as specified in N.J.A.C. 10:121A-3.7(a) or at the birth parents' home**, by qualified social work staff on separate days and that the birth parents were:

i.-v. (No change.)

vi. Advised that they may sign a written agreement at any time indicating their willingness to be contacted and/or to provide information if requested by the adoptee or adoptive family; [and]

vii. Asked to update and submit to the agency their address(es) and/or any significant medical information required on the Medical Information Form, so that the medical information could be shared with the adoptive family and/or the adult adoptee[.]; and

viii. Requested to provide an itemized statement for all adoption-related costs, if any, paid by the prospective adoptive parents prior to agency involvement in the adoption or an affidavit that no money was expended; and

2. Requested to sign a statement that indicates [that the] **either:**
i. The agency explained the information in (c)1 above to them; or

[3. Requested to sign a statement when they]

ii. They refuse to participate in the counseling sessions.

(d) The agency shall ensure that the birth parents understand the terms of the surrender and realize that the agency will assume custody and will have the right to consent to adoption of the child, pursuant to N.J.S.A. 9:3-41 and [N.J.S.A. 30:4c-23] **N.J.S.A. 30:4C-23.**

1. (No change.)

2. The agency shall ensure that the surrendering parent(s) is given the opportunity to state any preferences that he and/or she may have affecting the selection of adoptive parent(s), **including specifying the adoptive parent(s) in a conditional surrender.**

3. [The] **If the agency accepts a conditional surrender, the agency shall not permit any [such] preferences stated by the surrendering parent(s) to interfere with the agency's authority and responsibility to act in the best interests of the child in selecting adoptive parents [or with] and the agency's obligation not to discriminate in the selection of adoptive parents, as specified in N.J.A.C. 10:121A-1.6(b)]1.7(b). If the agency determines that the adoptive parent(s) specified by the surrendering parent(s) can not be approved, the agency shall either:**

i. Return the child to the surrendering parent(s);

ii. Discuss with the surrendering parent(s) an alternate choice of adoptive parent(s) and if they reach an agreement, place the child with the alternate adoptive parent(s); or

iii. If the agency can not meet the provisions specified in (d)3i or ii above, initiate appropriate action through the court to determine the legal status of the child.

4. (No change.)

5. A valid surrender executed in another state or foreign country by a resident of that state or country shall be deemed a valid surrender in this State if taken more than 72 hours after the birth of the child.

Recodify existing 5. and 6. as 6. and 7. (No change in text.)

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

[(g) An agency that becomes involved in handling an identified adoption shall ensure that:

1. The birth parents have been offered counseling and alternatives to adoption, as specified in (c) and (d) above;

2. The prospective adoptive parents have met the agency's requirements for other adoptive parents through the home study process, as specified in N.J.A.C. 10:121A-5.6;

3. Neither the birth parents nor the prospective adoptive parents are bound to a proposed placement until after the completion of (g)1 and 2 above;

4. Both the birth parents and the adoptive parents have signed an agreement with the agency specifying the terms and conditions of the proposed placement and the rights and responsibilities of each party; and

5. The child and adoptive parents have received placement services, as specified in N.J.A.C. 10:121A-5.7, and post-placement services, as specified in N.J.A.C. 10:121A-5.8.

(h) An agency that provides services or payments on behalf of a birth mother who is considering adoption services for her born or unborn child(ren) to assist her in meeting the expenses associated with the birth or illness of the child shall comply with all the appropriate provisions of N.J.S.A. 9:3-37 et seq., the State Adoption Law.

(i) An agency that provides services or payments for medical or hospital care shall ensure that the birth mother receives such medical or hospital care from:

1. The agency's own staff of licensed medical or health care professionals;

2. A state-approved or state-licensed hospital, health care facility or medical clinic; or

3. A private physician licensed to practice in the state where his or her practice is located.

(j) An agency shall not make any cash payments for medical or hospital care unless all public and private medical insurance benefits to which the birth mother is entitled have been exhausted for such care, except that:

1. An agency may make cash payments for medical or hospital care when all public and private medical insurance benefits to which the birth mother is entitled have not been exhausted, if:

i. There are compelling reasons why the birth mother cannot utilize such medical insurance benefits and the agency can adequately document these reasons in the case record; and

ii. The birth mother signs a statement attesting to these reasons.

2. When the birth mother chooses not to utilize all public and private medical insurance benefits to which she is entitled and the agency determines to make cash payments for that birth mother, the agency shall notify the Bureau in writing within 15 calendar days explaining the reason(s) why they are making cash payments for her medical care.

(k) An agency may provide payment to a medical facility, hospital, physician or birth mother for medical bills previously incurred by the birth mother prior to her involvement with the agency for medical services that were associated with her pregnancy or birth of her child. An agency shall provide payment in these instances only when the birth mother provides written documentation that these medical services were provided.]

[(1)](g) An agency that arranges for, provides directly, finances or subsidizes the costs of [medical] adoption expenses, as specified in [(i) through (k) above] N.J.A.C. 10:121A-5.8(i)1viii, of a birth mother shall comply with all of the following:

1. The agency shall maintain [in a] on file a written policy that governs payments [for medical or hospital care] made on behalf of birth mothers.

i.-ii. (No change.)

2. Unless the birth mother terminates her relationship with the agency, the agency shall notify the birth mother in writing at least 30 calendar days prior to the date of its last services or payments for [medical or hospital care] adoption-related services, that services and/or payments will be terminated by the 30th calendar day following the birth of the child [or after the 30th calendar day following the signed release for termination of parental rights for whom adoption services were sought. The agency shall also notify the birth mother in writing within 30 days when the agency documents that the need for such services or payments no longer exists].

3. (No change.)

10:121A-5.6 Home study services

(a) [Throughout the home study, the agency shall provide social work services to help applicants decide if adoption is the best plan for them.] **The agency shall document in the case record all telephone and in-person contacts with the adoptive applicant(s) or their legal representative that directly pertain to the adoption. All entries shall be signed by the individual making the entry and include the date of the entry.**

(b) The agency shall: [establish and maintain on file written criteria by which adoptive applicants are eligible to apply to the agency to adopt a child.

1. The agency shall ensure that the criteria apply equally to all applicants.

2. The agency shall make the criteria available to the Bureau, to all prospective adoptive applicants and, upon request, to any person.]

1. Provide social work services throughout the home study to help applicants decide if adoption is the best plan for them;

2. Establish and maintain on file written criteria by which adoptive applicants are eligible to apply to adopt a child;

3. Ensure that the criteria specified in (b)2 above apply equally to all applicants; and

4. Make the criteria specified in (b)2 above available to the Bureau, to all prospective adoptive applicants and, upon request, to any person.

(c) (No change.)

(d) The agency shall also ask applicants to [report] **disclose** any history of child abuse or neglect or any criminal record, excluding minor traffic violations. [Agencies working with applicants who have a history of abuse, neglect or criminal conviction shall give careful consideration to whether their past conduct would pose a threat to the safety and/or security of a child placed for adoption, pursuant to N.J.S.A. 2A:16A et seq.]

(e) (No change.)

(f) The agency shall obtain information on the applicants. Such information shall include but not be limited to:

1.-11. (No change.)

12. Verifications of present or previous marriage(s) and [divorces] **divorce(s)** of each adoptive [applicant] **applicant**, including deaths of former spouses when there was no divorce;

13. [Disclosure of any history of child abuse or neglect or of any criminal conviction, excluding minor traffic offenses;] **A statement of the agency's assessment of the results of State and Federal Criminal History Record Information (CHRI) fingerprint background checks, as specified in (g) below;**

14. **A statement of the agency's assessment of the results of Division of Youth and Family Services Child Abuse Registry Information (CARI) background checks, as specified in (i) below;**

Recodify existing 14.-18. as 15.-19. (No change in text.)

(g) **The agency shall obtain Criminal History Record Information (CHRI) fingerprint background checks on each adoptive applicant and all persons residing in the adoptive applicant's home who are 18 years of age and older except as specified in (q) below. For the purposes of processing requests for CHRIs, the agency shall ensure that:**

1. The identity of each adoptive applicant and each adult who resides in the adoptive applicant's home is verified through at least two of the following documents:

i. A valid driver's license;

ii. Social Security card (Pursuant to the Federal Privacy Act of 1974 (P.L. 93-579), the Division will advise each individual that the disclosure of his or her Social Security number is voluntary, and that the Social Security number will only be used for the purpose of conducting CHRI and CARI background checks);

iii. Birth certificate; and/or

iv. Valid passport;

2. All fingerprints are taken using only the fingerprint cards supplied by the Department of Human Services;

3. Fingerprints of the adoptive applicant(s) and all persons residing in the adoptive applicant's home who are 18 years of age and older are taken:

i. At the adoption agency by trained agency staff or by a trained person who is hired or volunteers to take fingerprints on behalf of the agency;

ii. At the local police station; or

iii. By trained staff of another adoption agency, as part of a cooperative effort;

4. A list is maintained of all adoptive applicants and adults who reside in the applicant's home who are fingerprinted;

5. The completed fingerprint cards with required payments and administrative fees are submitted to the Department of Human Services, Central Fingerprint Unit, CN 700, Trenton, New Jersey 08625;

6. All correspondence between the agency and the Department of Human Services Central Fingerprint Unit involving fingerprint cards or the results of the CHRI are marked "Confidential";

7. A record of the results of the CHRI and the date the results are received by the agency is maintained in the applicant's case record;

8. When the results of a CHRI reveal a criminal conviction, the agency:

i. Discloses the results of the CHRI only to the specific individual on whom the CHRI was conducted; and

ii. Discloses to the adoptive applicant(s) the name of the adult residing in the applicant's home who has a criminal conviction, but

does not disclose to the adoptive applicant(s) any other information about the conviction; and

9. As part of the home study, the agency utilizes the following criteria for assessing the suitability of the adoptive applicant(s) when the CHRI reveals a record of criminal conviction(s). The agency shall:

- i. Examine the nature and seriousness of the crime and the date it occurred. Special attention shall be given to crimes of violence, crimes that involve the use or threat of a weapon, rape/sexual assault, crimes that result in the loss of life and crimes against children;
- ii. Discuss the circumstances of the crime with the convicted individual, in a confidential manner as specified in (g)8 above;
- iii. Assess whether the age of the convicted individual at the time the crime was committed is a relevant factor;
- iv. Take into consideration whether the crime was an isolated or repeated incident;
- v. Assess whether there were social conditions/extenuating factors involved that may have contributed to the crime or mitigated the convicted individual's culpability; and
- vi. Determine whether the convicted individual completed a rehabilitation program, including a prison sentence, stays in a half-way house, treatment received in a drug treatment facility, treatment received in a psychiatric hospital or counseling received in the community. If such evidence exists, the agency shall assess whether the convicted individual has been rehabilitated and shall consider such rehabilitation in making a determination.

(h) The CHRI background checks specified in (g) above shall be valid for 36 months from the date the results are received by the agency.

1. If a child is not placed in the adoptive applicant's home within 36 months, the agency shall obtain a New Jersey State Police name, address and Social Security number check for each applicant and all persons residing in the applicant's home who are 18 years of age and older. The results of the New Jersey State Police name, address and Social Security number check shall be valid for 36 months from the date they are received by the agency.

2. The agency shall submit the New Jersey State Police name check form with required payments and administrative fees to the Department of Human Services, Central Fingerprint Unit, CN 700, Trenton, New Jersey 08625.

3. The agency shall maintain the results of the New Jersey State Police name check in the adoptive applicant's file.

(i) The agency shall obtain Child Abuse Registry Information (CARI) background checks from the Division of Youth and Family Services on each adoptive applicant and all persons residing in the adoptive applicant's home who are 18 years of age and older. The agency shall ensure that:

1. The completed CARI background check forms supplied by the Division and signed by the adoptive applicant(s) and other adult(s) residing in the adoptive applicant's home are submitted to the Division of Youth and Family Services, Bureau of Licensing, CN 717, Trenton, New Jersey 08625-0717;

2. All correspondence between the agency and the Division of Youth and Family Services, Bureau of Licensing involving CARI background check forms and related information are marked "confidential";

3. When the results of a CARI background check reveal a substantiated incident(s) of child abuse and/or neglect, the agency:

- i. Discloses the results of the CARI background check only to the individual identified by the Division as the perpetrator of the child abuse and/or neglect incident(s); and
- ii. Discloses to the adoptive applicant(s) the name of the perpetrator, if other than the applicant(s), but does not disclose to the applicant(s) any other information concerning the incident;

4. As part of the home study, the agency utilizes the following criteria for assessing the suitability of the adoptive applicant(s) when the CARI background check reveals that the adoptive applicant(s) or adult(s) residing in the home has a record of a substan-

tiated incident(s) of child abuse and/or neglect. Utilizing the results of the CARI background checks and through contacts with the adoptive applicant(s), the agency shall:

- i. Examine the nature and seriousness of the abuse and/or neglect incident(s) and the date(s) it occurred, with particular concern for incidents of sexual abuse and abuse or neglect that resulted in the death or serious injury of a child;
- ii. Discuss the circumstances of the abuse and/or neglect incident(s) with the adoptive applicant(s) or adult(s) residing in the home in a confidential manner as specified in (i)3 above;
- iii. Assess whether the age of the perpetrator at the time the abuse and/or neglect incident(s) occurred is a relevant factor;
- iv. Take into consideration whether the incident(s) of abuse and/or neglect was an isolated or a repeated incident;
- v. Assess whether there were circumstances or extenuating factors involved that may have contributed to the incident(s) of abuse and/or neglect or mitigated the perpetrator's culpability; and
- vi. Determine if the perpetrator has completed a rehabilitation program or counseling program. If such evidence exists, the agency shall make an assessment whether the perpetrator has been rehabilitated and shall consider such rehabilitation in making a determination; and

5. The agency maintains the results of the CARI background checks in the adoptive applicant's file.

(j) The CARI background checks specified in (i) above shall be valid for 18 months from the date the results are received by the agency.

1. If a child is not placed in the adoptive applicant's home within 18 months, the agency shall obtain an additional CARI background check as specified in (i)2 above, for each applicant and all persons residing in the applicants' home who are 18 years of age and older, prior to placement of a child in the adoptive applicant's home.

2. The agency shall maintain the results of the additional CARI background checks in the adoptive applicant's file.

(k) The home study shall not be shared with any person, parent, adoptive applicant or agency until it has been completed. The home study shall be considered complete when it contains all information specified in (g) through (j) above.

(l) The agency shall not place a child in the adoptive applicant's home for the purpose of adoption without a completed home study. Recodify existing (g) as (m). (No change in text.)

[(h)](n) Upon receipt of a written request from adoptive applicants who have undergone a home study for [an intercountry] a foreign adoption, the agency shall forward to the applicants the home study within 30 calendar days of the request.

[(i)](o) For applicants who have been studied, approved and placed on a waiting list for longer than 18 months from the time their home study was approved, the agency shall [update] ensure that the home study [before a child] is current within 18 months of the child's being placed into the home. The updated home study shall include:

1. One or more interviews with all members of the applicants' household; [and]
2. Medical reports within the past year for all members of the applicants' household[.];

3. A visit to the residence of the applicant(s); and

4. Updated financial information, as specified in (f)21 above.

[(j)](p) For applicants who are being considered for adoption of one or more additional children, the agency shall:

1. Update the home study as specified in [(i)1 and 2] (o) above; and
2. (No change.)

(q) For a stepparent adoption, a CHRI shall not be required for household members 18 years of age and older who are related to the birth parent.

(r) The Criminal History Record Information (CHRI) fingerprint background check and the Child Abuse Registry Information (CARI) background check conducted on an adoptive parent(s) whose child's adoption in a foreign country is recognized by the United States government shall be valid for such adoptive parent(s) when seeking a readoption in New Jersey.

(s) A New Jersey State Police fingerprint background check, as specified in N.J.A.C. 10:121A-5.6(g), shall be obtained by the agency for an adoptive parent(s) seeking adoption in New Jersey for a child whose adoption in a foreign country is not recognized by the United States government. The agency shall also meet the following requirements:

1. A home study shall be conducted, except that a Federal fingerprint background check shall not be required; and
2. The agency shall maintain the results of the New Jersey State Police fingerprint background check in the file of the adoptive parent(s).

10:121A-5.8 Post-placement services

(a) [For non-foster parent agency placements, the] The agency shall:

1. Visit the home within 14 calendar days of the adoptive placement **after the first day of placement**, and document in the child's record that:

- i.-ii. (No change.)
- iii. School age children have an educational plan, pursuant to [N.J.S.A. 30:4c-26(c)] **N.J.S.A. 30:4C-26(c)** and N.J.S.A. 18A:7B-12(a); and
- iv. (No change.)
- 2.-3. (No change.)
- (b) (No change.)

[(c) In providing services as part of an Adoption Complaint Investigation:

1. The agency shall schedule a home visit no later than two weeks after receiving written notification from the court.
 - i. If the agency is unsuccessful in contacting the adoptive family in order to schedule a home visit within 14 days of receipt of the court's notification, the agency shall implement the following actions to schedule the home visit during the next 14-day period:
 - (1) Repeated telephone calls to the family's home and to the adult family members' place(s) of employment; and
 - (2) Transmittal of a certified letter to the family's home or to the adult family members' place(s) of employment.
 - ii. If the agency is unsuccessful in contacting the family during the second 14-day period, the agency shall send a letter or other written transmittal to the court that had directed the home study, explaining the agency's repeated attempts to contact the family to schedule the home visit and asking the court for direction on how to proceed.
 - iii. The agency shall document and maintain on file in the child's record each attempt that it made to contact the family, as specified in i and ii above.
2. The agency shall conduct a home visit no later than 14 days after scheduling it with the adoptive parents; if the visit cannot take place within 14 days of being scheduled, the agency shall document the reason for not meeting this time frame.
3. The agency shall include in the court-requested preliminary report documentation of the agency's efforts in contacting the adop-

tive parents and birth parents in order to assure a complete understanding regarding the circumstances of the placement of the child in the adoptive parent's home.

4. The agency's responsibility for the preliminary hearing is completed when the court receives the written report from such agency. The agency may elect to provide additional services to the adoptive family, if specified in the report.

5. The agency shall provide the adoptive parents with a copy of any report that contains material or recommendations adverse to the adoption.

6. After the agency is appointed by the court to oversee the welfare of the child prior to the final hearing to recommend whether or not the adoption should be finalized, the agency shall:

- i. Schedule and conduct a home visit as specified in (c)1 and 2 above; and
- ii. Submit its final written report to the court.

7. The agency shall conduct bi-monthly visits thereafter until the adoption is finalized.

8. As an exception to (c)7 above, the agency may discontinue these bi-monthly visits after the final report has been submitted to the court, when:

- i. The adoption is delayed due to a custody dispute; or
- ii. The court has a backlog of cases resulting in a delay in the adoption being finalized.]

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

[(j)](i) The agency shall cooperate with the adoptive parents and/or the attorney, if any, retained by the adoptive parents to finalize the adoption.

1. The agency shall provide all information and documents needed to finalize the adoption pursuant to State Adoption Law (N.J.S.A. 9:3-37 et seq.) and shall file a written report to the court at least five calendar days before the hearing. This information shall include:

- i.-vii. (No change.)
- viii. An itemized statement of [any and] all fees and costs paid by the adoptive parents [to an approved agency] in connection with the adoption. Such costs shall include [but not be limited to] expenses related to any of the following:

(1) [Birth of the child, including pre- and post-natal medical, hospital or foster care received by the mother or child] **Payment, provision or reimbursement to a parent for medical expenses, reasonable living expenses, shelter, and religious, psychological, vocational, or similar counseling services;**

(2)-(6) (No change.)

2.-4. (No change.)

10:121A-5.9 Post-adoption services

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

(c) An agency [may] **should** counsel members of the birth family, adoptive family, or minor and adult adoptees in the following situations:

- 1.-2. (No change.)

RULE ADOPTIONS

HEALTH

(a)

ENVIRONMENTAL HEALTH SERVICES

Assessment and Remediation of Lead Contamination Standards for Certification of Lead Abatement Workers, Supervisors, Inspectors, and Project Designers

Adopted New Rules: N.J.A.C. 8:62

Proposed: September 6, 1994 at 26 N.J.R. 3575(a).

Adopted: January 24, 1995 by Len Fishman, Commissioner, Department of Health.

Filed: January 25, 1995 as R.1995 d.92, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L.1993, Chapter 288 and 15 U.S.C. 2601 et seq.

Effective Date: February 21, 1995.

Expiration Date: February 21, 2000.

Summary of Public Comments and Agency Responses:

The Department received written comments from the following organizations: New Jersey Citizen Action, Union County Legal Services, White Lung Association of New Jersey, The ARC of New Jersey, Jersey City Childhood Lead Poisoning Program, Camden County Lead Poisoning Program, Affordable Housing Network Of New Jersey, New Jersey Anti-Lead Poisoning Coalition, New Jersey Primary Care Association, Association for the Children of New Jersey, Irvington Department of Health, Monmouth County Health Department, New Jersey Environmental Federation, Orange Health Department, Ocean County Board of Health, New Jersey Builder's Association, American Industrial Hygiene Association-New Jersey Section, and New Jersey Department of Community Affairs.

COMMENT: One commenter questioned whether there should be a validity section added to subchapter 1 in the event that any part of the rule is found to be invalid.

RESPONSE: It is the Department's policy not to include a severability statement where it is not necessary.

COMMENT: The proposed rules at N.J.A.C. 8:62-2.1 define the terms used throughout the chapter. The New Jersey Department of Community Affairs recommended that the definition for "abatement" not cross reference the Uniform Construction Code but instead should be changed to read "... in accordance with regulations adopted by the New Jersey Department of Community Affairs".

RESPONSE: The Department agrees and has revised the definition of "abatement."

COMMENT: Two commenters felt that the definition of "housing" was limited in scope and excluded dwellings in multi-unit buildings and dwellings in one unit buildings.

RESPONSE: The Department's goal is to be consistent with the United States Environmental Protection Agency (USEPA) proposed rule under 40 C.F.R. Part 745, "Lead: Requirements for Lead-based Paint Activities." The definition for "housing" is from the proposed rule and, furthermore, the Department feels that multi-unit buildings and dwellings are covered under the present definition.

COMMENT: One commenter felt that the definition of industrial hygienist is too vague and should be modified to reflect the American Board of Industrial Hygiene's definition. Furthermore, the commenter suggested that the definitions for professional experience and industrial hygiene be added to the proposed rule, within the definition of industrial hygienist.

RESPONSE: The Department has changed the definition of industrial hygienist to include the Board's suggested definition, which is a more detailed representation of the requirements of the Board for certification as an industrial hygienist. The Department does not agree that professional experience and industrial hygiene should be defined in the rules, since such a degree of specificity is not appropriate.

COMMENT: Several commenters felt that each discipline in the proposed rules at N.J.A.C. 8:62-2.1 should be defined to include what activities that particular discipline is allowed to perform.

RESPONSE: The Department agrees and has revised each discipline definition to conclude with a statement of the activities involved.

COMMENT: N.J.A.C. 8:62-2.1 defines "lead-based paint" as paint that contains lead in excess of 1.0mg/cm². One commenter stated that lead-based paint is currently defined in N.J.A.C. 8:51-4.1, Childhood Lead Poisoning, State Sanitary Code, Chapter XIII, as one milligram or higher per square centimeter and recommended that the proposed requirement reflect the text of N.J.A.C. 8:51-4.1.

RESPONSE: Lead-based paint is defined in P.L.1993, c.288 as paint or other surface coating material that contains lead in excess of 1.0mg/cm² and, therefore, must be incorporated into the rule.

COMMENT: In the definition of lead-based paint, one commenter suggested that if the Department wishes to use any future Federal standard as a minimum, the definition should be changed by adding "... such level as may be set under ..." in front of the reference to Title X.

RESPONSE: The Department agrees and has revised that definition.

COMMENT: N.J.A.C. 8:62-3.2(c) requires each applicant to complete the requisite training course. One commenter felt that sanitarians, health officers and certified industrial hygienists should be exempt from the proposed training requirements due to the fact that in order to obtain these certifications, the individual must have already demonstrated the knowledge and skills needed to perform the duties of an inspector/risk assessor.

RESPONSE: The Department does not agree, and further believes sanitarians, health officers, and certified industrial hygienists come from a variety of educational backgrounds and work experiences. The Department's experience has been that a variety of inspection protocols are utilized from county to county throughout New Jersey. The Department's goal is to standardize the training so that all inspections and risk assessments cover the same principles and result in complete identification of lead paint hazards and recommended abatement options. Furthermore, the Department is seeking Federal funding to support the training of local health officials.

COMMENT: N.J.A.C. 8:62-3.2(d) details what education and experience requirements an applicant for inspector/risk assessor needs to meet. One commenter requested that the construction trades be added as a source of recognized experience.

RESPONSE: N.J.A.C. 8:62-3.2(d)1 does include construction-related health and safety inspection as a prerequisite for experience.

COMMENT: The proposed rules at N.J.A.C. 8:62-3.2(d) through (f) detail education and experience requirements for inspector/risk assessor and both supervisor disciplines. One commenter questioned why education and experience prerequisites are only required for the aforementioned disciplines and not for workers or planners/project designers.

RESPONSE: The Department is remaining consistent with the proposed USEPA State Model Plan under 40 C.F.R. Part 745 which does not require education and experience prerequisites for those disciplines. Should the EPA proposed regulation change, this rule will be amended to reflect that change.

COMMENT: N.J.A.C. 8:62-3.2(d)1i provides for an individual with a bachelor's degree and one additional year of experience to qualify for a inspector/risk assessor permit. One commenter felt that the degree requirements should be in the sciences. Furthermore, the commenter felt that the provision for a high school graduate with additional experience should be deleted from the proposed rule because one training course would be insufficient to properly prepare a high school graduate for conducting inspections, recognizing potential risks, and providing a proper health risk assessment.

RESPONSE: While the Department may agree with the commenter's concern, it has elected to remain consistent with the proposed USEPA State Model Plan under 40 C.F.R. Part 745. Should the proposed EPA regulation change, the Department will amend this rule to reflect that change.

COMMENT: The proposed rules at N.J.A.C. 8:62-3.2(d)1i and ii detail the varying education and experience requirements for inspector/risk assessor based on the type of college degree the individual has obtained. One commenter questioned why someone with a Bachelors of Science degree who is a certified industrial hygienist, engineer, or is registered

as an architect is exempt from the field experience prerequisite. Furthermore, the commenter felt that irrespective of formal education, all applicants should be required to have the same number of years of experience.

RESPONSE: No applicant is exempt from the required field experience. N.J.A.C. 8:62-3.2(d)1 clearly states that all applicants shall have a minimum of one year of experience in a related field. In regard to the number of years of experience required dependent upon whether an individual has a Bachelors degree, the Department is remaining consistent with the proposed USEPA State Model Plan under 40 C.F.R., Part 745 which suggests that a Bachelors degree requires a certain amount of field and laboratory experience during the course of study. This justifies the reduction in experiential prerequisites for those individuals.

COMMENT: N.J.A.C. 8:62-3.2(e)1 requires all applicants for supervisor of housing and public buildings to have one year of experience as a lead abatement worker. One commenter questioned whether this requirement can be immediately satisfied.

RESPONSE: The experience requirement does not have a prerequisite for certification. Thus, an individual can obtain a supervisor permit for housing and public buildings with previous work experience.

COMMENT: Several commenters have expressed concern that the experiential requirements for lead abatement supervisor for commercial buildings and superstructures outlined in N.J.A.C. 8:62-3.2(f) are too restrictive in only allowing for an individual with experience in industrial painting. They further suggest that the experience qualifications be expanded to include other types of construction experience, such as commercial painting, welding, and torch cutting.

RESPONSE: The Department agrees that commercial painting should be included as a requirement for this discipline and has made the necessary change. However, the Department does not agree that an individual who has experience in welding or torch cutting would have the necessary skills to perform the duties of a supervisor as outlined in the proposed USEPA State Model Plan under 40 C.F.R. Part 745.

COMMENT: N.J.A.C. 8:62-3.2(g) requires that the applicant successfully complete a skills assessment of the hands-on training and successfully complete a written examination devised and administered under the approval of the Department. Several commenters expressed concerns that this testing should be conducted by an independent third party and not the training provider.

RESPONSE: The Department will follow the proposed USEPA Model State Plan under 40 C.F.R., Part 745 which requires an examination to be given at the end of each training course. Individuals seeking certification as a worker or planner/project designer would not be required to take a third party examination. Individuals seeking certification as a supervisor or inspector/risk assessor would be required to take an examination administered by a third party in addition to the training course examination. A neutral or third party would administer the examination in such a way to ensure that the validity and security of the examination are maintained. The third party examination for supervisor and inspector/risk assessor will be developed and administered by an independent examination company under contract with the Department. If the proposed USEPA State Model Plan is extended to include third party examinations for the remaining disciplines, the Department will comply with that requirement.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.3(e) delineates the permit application fees for all of the disciplines. Several commenters stated that lead environmental investigations are mandated under the Minimum Standards of Performance for Local Health Departments and that the fees are overly burdensome. Furthermore, the fees should be waived for those employees of local health departments working in their official capacities. One commenter further stated that should the Department waive the required fee, the rule should ensure that these individuals do not use the permit to perform inspections outside the purview of their duties mandated by the aforementioned standard.

RESPONSE: The Department is considering fee exemptions for the permit to work, for certain employees of local health departments. These exemptions will be addressed in a future rulemaking.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.5 outlines the requirements for persons who are applying for a grandfather permit. Several commenters expressed concerns over the lack of specificity with which the Department will recognize previous training courses. They further state that all applicants should be required to successfully complete a hands-on skills assessment.

RESPONSE: The Department will review all individuals applying for a permit under the provisions of the grandfathering clause on a case-by-case basis. Because there are a number of lead training courses currently being offered that either use the HUD User's Course or a variation, the Department does not believe it is appropriate or prudent to blanket grandfather all courses. The Department will evaluate each course taking into consideration the length of the course, course content, hands-on training and course materials used, as well as the validity of the examination administered. The Department is only grandfathering previous training. All education and experience requirements for permits would need to be met.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.6 identifies what information will be contained on the permit. One commenter suggested that the permit holder's address and social security number be on the permit.

RESPONSE: The mandatory collection of social security numbers is limited under the Social Security Act and the Privacy Act of 1974 and is not applicable in these rules. Therefore, to require that the permit contain a social security number would be inappropriate. The individual's address will be recorded on the application and maintained in the Department's records.

COMMENT: N.J.A.C. 8:62-3.7 details the provisions for the identification of a permit holder. One commenter suggested that residents and owners be provided with the authority under this rule to inspect an individual's permit.

RESPONSE: A building owner, as the contractor of the permit holder, already has the inherent right to perform such an inspection, and therefore, it is not necessary to address in the rule. The provisions allowing a resident to inspect a permit will be addressed in the Federal rules at 40 CFR 745, which is incorporated in these rules.

COMMENT: One commenter questioned why a permit could only be replaced twice during a two year term as required under N.J.A.C. 8:62-3.7(e)1.

RESPONSE: The Department has determined that to ensure the integrity and security of the permit, it was reasonable to limit the replacement of a permit.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.8(a)5 provides for the denial of an application for submitting false information. One commenter felt that this violation should also be grounds for suspension or revocation of a permit and should be added to N.J.A.C. 8:62-3.8(b).

RESPONSE: The Department feels that this comment is addressed in N.J.A.C. 8:62-3.8(b)1, which provides for suspension or revocation if a permit is obtained through fraudulent means.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.8 prescribes the conditions for the denial of an application or the suspension or revocation of a permit. Several commenters suggested that the Department expand this section to include engaging in hazardous abatement activities with occupants present.

RESPONSE: The Department agrees and has changed N.J.A.C. 8:62-3.8(b)5 to reflect this comment. The Department considers occupants to have been included in the proposed term "others" and that this specification is appropriate on adoption, for clarity.

COMMENT: One commenter recommended that the proposed regulation should clearly state that no one is allowed to conduct lead-related activities without the proper permit. Furthermore, N.J.A.C. 8:62-3.8(b), which outlines the provisions for the revocation or suspension of a permit, should address contractors employing unpermitted individuals.

RESPONSE: The proposed rule at N.J.A.C. 8:62-5.2 outlines who shall comply with the provisions of this chapter. However, it is not within the scope of these rules to provide for penalties against contractors who employ unpermitted workers. That issue will be addressed in rules proposed by the Department of Community Affairs for the licensing of contractors.

COMMENT: The proposed rule at N.J.A.C. 8:62-3.9(b) states that the Commissioner "may" renew a permit if the applicant meets the provisions of this section. One commenter stated that if the applicant meets the requirements of the renewal application the Commissioner must issue a permit. The commenter wants "may" changed to "shall."

RESPONSE: The Department agrees and has revised that section.

COMMENT: One commenter recommended that the Department include a project monitor discipline in the certification and permit requirements. The commenter feels that building owners will likely hire an independent project monitor to ensure quality assurance while lead abatements are being performed.

RESPONSE: The Department remains consistent with the proposed USEPA State Model Plan under 40 C.F.R., Part 745 which at this time does not require this discipline. Should the USEPA require a project monitor discipline, the Department will amend the rule.

COMMENT: N.J.A.C. 8:62-4.2(a)3 sets forth the number of training hours required for the inspector/risk assessor course. One commenter felt that the proposed rule for inspector/risk assessor required the completion of 80 hours of training.

RESPONSE: The proposed USEPA Model State Plan under 40 C.F.R., Part 745 addresses two distinct disciplines. An Inspector Technician requires 24 hours of training, of which eight shall be dedicated to hands-on training. The Inspector/Risk Assessor requires a minimum of 40 hours of training which includes the 24 hours of inspector technician training and an additional 16 hours of risk assessor training with a total of eight hours devoted to hands-on training. The Department recognizes that the Inspector/Risk Assessor requires a minimum 40 hours of training, of which eight shall be devoted to the conduct of hands-on training.

COMMENT: The proposed rule at N.J.A.C. 8:62-4.2(a)6 requires that the supervisor training course for commercial buildings and superstructures be presented over a minimum of 32 hours of which 10 hours shall be devoted to hands-on training. One commenter suggested that because of the complexity of the work involved and the need for specialized skills, the training should be increased to 40 hours.

RESPONSE: The Department has elected to remain consistent with the proposed USEPA State Model Plan under 40 C.F.R., Part 745, which requires a minimum of 32 hours of training for this discipline. Furthermore, there are experience prerequisites which an individual needs to satisfy to be eligible for a permit.

COMMENT: N.J.A.C. 8:62-4.3 outlines the application process for prospective training agencies. One commenter felt that the Department should require the entire course curriculum to be submitted with the application.

RESPONSE: N.J.A.C. 8:62-4.3(a)5 and 7 and 4.4(c) address this issue.

COMMENT: The proposed rule at N.J.A.C. 8:62-4.3(a)8 requires that the applicant for training course certification submit documentation that three or more instructors are employed or have been contracted for employment. One commenter questioned whether the course could be offered with one or two instructors.

RESPONSE: N.J.A.C. 8:62-4.3(a)16 requires an instructor-to-student ratio for hands-on training to be no greater than 10 students to one instructor. N.J.A.C. 8:62-4.4(e) limits certified training agencies to a maximum class size of 25 students for initial training courses. Therefore, a class of 25 students would require at least three instructors to conduct the hands-on training.

COMMENT: N.J.A.C. 8:62-4.3(d) requires the training course applicant to notify the Department immediately in writing of any changes in the application information either prior to or after the issuance of certification. One commenter suggested that the term "immediately" should be defined in terms of time.

RESPONSE: The Department agrees and has revised that subsection to specify "within seven calendar days" rather than "immediately."

COMMENT: N.J.A.C. 8:62-4.3(g) states that if a certification is denied the applicant must wait for one year before reapplying. One commenter questioned whether the noted deficiencies could be corrected and allow for the application to be resubmitted.

RESPONSE: The Department agrees and has revised that subsection, both to delete the reapplication ban and to provide for discretionary Department assistance to an applicant to correct application deficiencies.

COMMENT: The proposed rule at N.J.A.C. 8:62-4.4 outlines training agency operating requirements. One commenter felt that the quality control plan needed to be more specific.

RESPONSE: The Department disagrees and feels that it is adequately addressed in adopted N.J.A.C. 8:62-4.4(s), which establishes the minimums for such plans.

COMMENT: N.J.A.C. 8:62-4.4(h) requires training agencies to ensure that all students meet minimal literacy requirements for the course language in which the student is enrolled. One commenter questioned how the training agencies are going to meet this requirement.

RESPONSE: This requirement has been deleted, because the Department believes this will be determined through the administration of the course examination.

COMMENT: N.J.A.C. 8:62-4.4(h) and (i), respectively, require the student to self-certify that he or she has met the education and experience requirements and requires the training agency to ensure that all trainees for refresher and initial courses have met the requirements

for obtaining a permit. One commenter felt that it was the Department's responsibility as the approving authority to verify whether an individual meets the requirements for obtaining a permit. Furthermore, the commenter was concerned that the Department was proposing to allow for the training agencies to issue the permits and felt that it was the Department's responsibility to issue all permits.

RESPONSE: The Department envisions a three-tiered process with the trainee self-certifying to the training agency and to the examination administering body that he or she has met the education and experience requirements outlined at N.J.A.C. 8:62-3.2(d) through (f). The training agencies issue a course completion certificate, not a permit. The Department assumes ultimate responsibility for ensuring that an individual meets the requirements of this chapter and will be responsible for the issuance of the permit.

COMMENT: N.J.A.C. 8:62-4.5 details the criteria for training managers and course instructors. One commenter felt the requirement for a training manager to have a bachelors degree in industrial hygiene or safety or health was confusing and needed to be clarified. The commenter also wanted the term "qualified health professional" defined.

RESPONSE: The Department will accept health-related degrees, such as health education, nursing and epidemiology, for instructors who will teach the general topics of the course. The Department agrees that the term "qualified health professional" should be defined and has revised N.J.A.C. 8:62-2.1 to define the term as "an individual who currently possesses a professional registration, license or certification in a health field or science."

COMMENT: N.J.A.C. 8:62-4.5(b)4 requires that translators who participate in the training course shall have previously taken the appropriate lead abatement worker course and the requisite examination. One commenter questioned why this requirement was necessary, when it's the translator's language skills and vocabulary which are important.

RESPONSE: The Department agrees and has deleted that requirement.

COMMENT: N.J.A.C. 8:62-4.5(b)4 requires instructors to participate in continuing education programs twice a year. One commenter felt that this was too vague and should specify some minimum standard.

RESPONSE: The Department believes the rule is appropriate as it is written and feels that the quality of training, rather than the number of hours, is more important.

COMMENT: The proposed rules at N.J.A.C. 8:62-4.6 and 4.7 detail course curricula for the worker and supervisor training courses. Several commenters stated that greater emphasis should be placed on occupant protection during abatement, including protection of building contents, and that it should be an explicit topic in the required training.

RESPONSE: Resident and occupant protection will be covered under N.J.A.C. 8:62-4.6(a)4 "Hazard recognition and control", N.J.A.C. 8:62-4.6(a)4vi "Engineering and work practices", N.J.A.C. 8:62-4.6(a)6 "Lead-based paint abatement and hazard reduction methods", and N.J.A.C. 8:62-4.6(a)7 "Interior dust abatement methods and clean-up or lead hazard reduction."

COMMENT: N.J.A.C. 8:62-4.6(d)3 requires that the health effects of lead be covered in the training course. One commenter suggested the topic should emphasize the health effects on children under the age of six. Furthermore, the commenter recommended that emphasis should be placed on the health risks to occupants during abatement.

RESPONSE: The Department agrees with emphasizing the health effects on young children and has revised that section. However, the health risks to occupants is handled throughout the training course.

COMMENT: N.J.A.C. 8:62-4.7 lists the topics to be presented in the supervisor for housing and public buildings training course. One commenter suggested that the topics of insurance and bonding and cost estimation are business topics and are unrelated to an individual's competency to supervise a lead abatement project. The commenter further recommends that the topics listed in N.J.A.C. 8:62-4.9 also be listed under the supervisor for housing and public buildings course.

RESPONSE: The Department is remaining consistent with the proposed USEPA State Model Plan under 40 C.F.R., Part 745.

COMMENT: N.J.A.C. 8:62-4.12 sets forth the criteria for refresher training. One commenter felt that hands-on training in respiratory protection should be included in the training course.

RESPONSE: The proposed USEPA State Model Plan under 40 C.F.R., Part 745 does not require any hands-on training in the refresher courses for the various disciplines. It is the intent of the Department to remain consistent with the proposed Model.

COMMENT: The refresher training course outlined at N.J.A.C. 8:62-4.12(b)5 requires the issuance of a closed book, written examination. One commenter questioned whether this was necessary for all disciplines.

RESPONSE: Issuance of a closed book, written examination is required under the proposed USEPA State Model Plan under 40 C.F.R., Part 745 and the Department will remain consistent with that Plan.

COMMENT: N.J.A.C. 8:62-4.13(b) stipulates that all applicants for training certification shall be of good moral character. One commenter expressed concerns regarding how that will be measured.

RESPONSE: The Department agrees and has deleted that stipulation.

COMMENT: N.J.A.C. 8:62-5 is the subchapter on compliance and enforcement and sets forth the rules for governing the enforcement and compliance of this chapter. One commenter suggested that an explicit prohibition against abatement work being performed by workers without State permits and the penalties for such occurrences be specifically outlined in this subchapter.

RESPONSE: The Department believes this is addressed in N.J.A.C. 8:62-3.8(b)2, 5.2 and 5.4.

COMMENT: The proposed rule at N.J.A.C. 8:62-5.3 gives the Department authority to issue a cease and desist order where an applicant or certificant is causing an imminent threat to the public health, safety or welfare. One commenter suggested that if there is an imminent hazard on the job site, that the order would be issued by the New Jersey Department of Community Affairs.

RESPONSE: The Department does not agree. Section 6 of P.L. 1993, c.288 clearly gives the Commissioner of Health the authority to issue such an order.

Summary of Agency-Initiated Changes:

Throughout the rules, typographical, grammatical, and syntactical errors have been corrected.

At N.J.A.C. 8:62-2.1, the definition of "housing" has been revised by deleting the phrase, "built prior to 1978" to reflect the requirements of 40 CFR 745, incorporated in the rules by reference. In this same section, the definition for "shall" was revised by replacing the word "what" with "that".

At N.J.A.C. 8:62-3.1, the scope was revised to state "... inspect/risk assessor, or lead abatement planner/project designer permit for housing and public buildings or to each individual..." for clarity.

At N.J.A.C. 8:62-3.3(f) and 3.7(e)2i, references to "social security number" have been deleted and replaced with "unique identification number assigned by the Department," on the advice of the Attorney General, to conform to 42 U.S.C. section 405 (See Attorney General Opinion on Collection and Use of Social Security Numbers, 93-0011.)

At N.J.A.C. 8:62-3.2(h), the requirement that initial applicants apply within one year of completion of their training course has been clarified to require submission of a completed application.

At N.J.A.C. 8:62-3.4(a) and (c), 3.9(b)2 and (c), 4.3(g), 4.4(g), 4.14(a) and 5.5(c) and (e), the references to specific numbers of days have been certified as meaning calendar days.

At N.J.A.C. 8:62-4.4(n)1, the word "demonstrates" has been corrected to read "demonstrate."

At N.J.A.C. 8:62-4.8(a)1, the phrase "(b) through (d) has been corrected to read "(a)1 through 3."

N.J.A.C. 8:62-5.5(b) has been clarified to reference a violator's ability to request a formal hearing if he or she does not agree with the findings and conclusions of the Commissioner's designee. A reference to the statutory provision permitting penalty settlement, N.J.S.A. 26:2Q-8, has been added to N.J.A.C. 8:62-5.5(d).

At N.J.A.C. 8:62-3.8(a) and (b) and 4.15(a) and (b), clarification concerning the suspension or revocation of permits, training agency certifications and instructor approvals has been provided by the replacement of "may" suspend or revoke with "shall" suspend or revoke. The Department's intention in this regard could be deduced from the absence of discretionary standards in the proposal. Also, under the proposed text, the Department could have imposed the sanctions in each case.

Executive Order No. 27 Analysis

The new rules, as adopted here at N.J.A.C. 8:62, do not exceed any current Federal standards or guidelines. The United States Environmental Protection Agency recently proposed a rule under 40 C.F.R. Part 745, Lead: Requirements for Lead-based Paint Activities. The new rules adopted here are consistent with the proposed Federal rule, with one exception.

N.J.A.C. 8:62 mandates that recertification of all disciplines for lead based paint activities is required every two years. The proposed Federal

guidelines suggest recertification every three years. The two year recertification adopted in N.J.A.C. 8:62 has been set pursuant to N.J.S.A. 26:2Q-1 et seq. It will create some additional expense for those seeking recertification, but is mandated in the State statute and therefore cannot be changed to mirror the proposed Federal guidelines.

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

CHAPTER 62 STANDARDS FOR LEAD CERTIFICATION

SUBCHAPTER 1. GENERAL PROVISIONS

8:62-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 8:62, Standards for Lead Certification.

8:62-1.2 Purpose

(a) The purpose of this chapter is to provide reasonable standards and procedures for:

1. Permitting of lead abatement workers for housing and public buildings;
2. Permitting of lead abatement supervisors for housing and public buildings;
3. Permitting of lead inspector/risk assessors;
4. Permitting of lead abatement planner/project designers;
5. Permitting of lead abatement workers for commercial buildings and superstructures;
6. Permitting of lead abatement supervisors for commercial buildings and superstructures; and
7. Certification of training agencies and courses for the above job classifications.

8:62-1.3 Scope

(a) This chapter shall apply to:

1. Examination and issuance of permits to lead abatement workers for housing and public buildings;
2. Examination and issuance of permits to lead abatement supervisors for housing and public buildings;
3. Examination and issuance of permits to lead inspector/risk assessors;
4. Examination and issuance of permits to lead abatement planner/project designers;
5. Examination and issuance of permits to lead abatement workers for commercial buildings and superstructures;
6. Examination and issuance of permits to lead abatement supervisors for commercial buildings and superstructures; and
7. Certification of training agencies and courses for the above job classifications.

SUBCHAPTER 2. DEFINITIONS

8:62-2.1 Definitions

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

"Abatement" means any set of measures designed to permanently eliminate or mitigate lead-based paint hazards in accordance with ***[standards established by the Uniform Construction Code, N.J.A.C. 5:23]*** ***rules adopted by the New Jersey Department of Community Affairs*** and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, clean-up, disposal and post-abatement clearance testing activities associated with such measures.

"Applicant" means a person applying for certification as a lead abatement worker, a lead abatement supervisor, a lead inspector/risk assessor, a lead abatement planner/project designer, or an agency seeking certification to conduct lead training.

"Approved" means acceptable to the Commissioner of Health, in accordance with the requirements of this chapter.

"Certificant" means any training agency certified by the Department pursuant to N.J.A.C. 8:62-4.

"Commercial building" means any building used primarily for commercial or industrial activity, which is generally not open to the public, or occupied or visited by children, including but not limited to, warehouses, factories, storage facilities, aircraft hangers, garages, and wholesale distribution facilities.

"Commissioner" means the Commissioner of the Department of Health or his or her designee.

"Department" means the New Jersey Department of Health.

"Discipline" means the classification of a specific lead-based paint activity. For example, lead abatement worker for housing and public buildings is a discipline.

"Hands-on assessment" means an evaluation which tests a trainees' ability to satisfactorily perform specified work practices and procedures.

"Housing" means a single family dwelling, including attached structures such as porches and stoops, or a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, *[built prior to 1978,]* which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Industrial hygienist" means a person certified by the American Board of Industrial Hygiene, *[4600 West Saginaw, Suite 101, Lansing, MI 48917-2737 or an industrial hygienist in training, or an individual with equivalent education and experience]* ***or a person with at least a bachelor's degree in industrial hygiene or other cogent science with five years of professional experience in industrial hygiene*.**

"Interactive/participatory teaching methods" means instruction which consists of active participation of the trainees, such as, brainstorming, hands-on training, demonstration and practice, small group problem solving, discussions, risk mapping, field visits, walk-throughs, problem posing, group work assignments, question-and-answer periods, and role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

"Instructor" means an individual who has the primary responsibility for organizing and delivering a particular course topic(s).

"Lead abatement planner/project designer" means any person who has completed a lead abatement planner/project designer training course approved by the Department and who has successfully passed the skills assessment for hands-on training and a written examination approved by the Department and who possesses a valid permit *[for such work]* issued by the Department ***to plan and design abatement projects*.**

"Lead abatement supervisor for commercial buildings and superstructures" means any person who has completed a lead abatement supervisor for commercial buildings and superstructures training course approved by the Department and who has successfully passed a skills assessment for hands-on training and a written examination approved by the Department and who possesses a valid permit *[for such work]* issued by the Department ***to supervise lead-based paint activities and to identify the presence of lead-based paint or other lead-based surface coatings on commercial buildings and superstructures. The supervisor is also responsible for the planning and oversight of lead-based paint activities associated with commercial buildings and superstructures*.**

"Lead abatement supervisor for housing and public buildings" means any person who has completed a lead abatement supervisor for housing and public buildings training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination approved by the Department and who possesses a valid permit *[for such work]* issued by the Department ***to supervise and conduct abatements in housing and public buildings*.**

"Lead abatement worker for commercial buildings and superstructures" means any person who has completed a lead abatement worker for commercial buildings and superstructures training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination ap-

proved by the Department and who possesses a valid permit *[for such work]* issued by the Department ***to perform abatement activities on commercial buildings and superstructures*.**

"Lead abatement worker for housing and public buildings" means any person who has completed a lead abatement worker for housing and public buildings training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination approved by the Department and who possesses a valid permit *[for such work]* issued by the Department ***to perform abatement activities in housing and public buildings*.**

"Lead inspector/risk assessor" means any person who has completed a lead inspector/risk assessor training course approved by the Department and who has successfully passed a skills assessment and a written examination approved by the Department and who possesses a valid inspector/risk assessor permit from the Department ***to perform inspections and conduct risk assessments*.**

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 mg/cm² or 0.5 percent by weight or *[by]* ***such level as may be set under* P.L. 102-550, Title X, the "Residential Lead-Based Paint Hazard Reduction Act of 1992", whichever is more stringent.**

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-containing paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Commissioner in these rules or by P.L. 102-550, Title X, the "Residential Lead-Based Paint Hazard Reduction Act of 1992", whichever is more stringent.

"Local health department" means the board of health of any region or municipality or the boards, body, or officers in such region or municipality lawfully exercising any of the powers of a local board of health under the laws governing such region or municipality.

"May" means that the action referred to is discretionary.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.D.C.A." means the New Jersey Department of Community Affairs.

"N.J.D.E.P." means the New Jersey Department of Environmental Protection.

"N.J.D.O.L." means the New Jersey Department of Labor.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Public building" means any building or structure or part thereof, except housing, constructed prior to 1978 which is generally open to the public or occupied or visited by children, including but not limited to, museums, airports, hospitals, stores, public and private schools, daycare centers, and government facilities.

"Qualified health professional" means an individual who currently possesses a professional registration, license or certification in a health field or science.

"Shall" means *[what]* ***that*** the action referred to is mandatory.

"Superstructure" means a large steel or other industrial structure, such as a bridge or water tower, which may contain lead-based paint.

"Trainee" means any person who is enrolled in a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, or lead abatement planner/project designer course approved by the Department.

"Training curriculum" means a list of knowledge and skills that need to be taught in a certified training program for a particular discipline.

"Training hours" means the number of training hours devoted to discussion, learning activities, small group/work/activities, demonstrations, evaluations, and/or hands-on experience exclusive of lunch and break times.

"Training manager" means the individual responsible for administering the training courses and monitoring the performance of the instructors.

"Train-the-trainer course" means a 40 hour or longer course of study which provides instruction in the planning and teaching of adult education courses.

"U.S.E.P.A." means the United States Environmental Protection Agency.

SUBCHAPTER 3. REQUIREMENTS AND PROCEDURES FOR OBTAINING A LEAD PERMIT FOR LEAD ABATEMENT WORKER, LEAD ABATEMENT SUPERVISOR, LEAD INSPECTOR/RISK ASSESSOR, AND LEAD ABATEMENT PLANNER/PROJECT DESIGNER

8:62-3.1 Scope of the subchapter

This subchapter shall apply to each individual applying for or renewing a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, *[and]* ***or*** lead abatement planner/project designer permit for housing and public buildings *[and]* ***or*** to each individual applying for a lead abatement worker and lead abatement supervisor permit for commercial buildings and superstructures.

8:62-3.2 Requirements for obtaining a permit for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer

(a) Only permit *[applications]* ***applicants*** meeting the requirements of this section may be approved by the Department.

(b) All permit applicants must be at least 18 years of age.

(c) All permit applicants shall successfully complete the requisite training course for that permit, which shall have been certified pursuant to N.J.A.C. 8:62-4. Each applicant required by this subchapter to complete lead training shall register at a training agency which has been certified by the Department pursuant to N.J.A.C. 8:62-4 to offer such training. A list of certified training providers is available from the Department.

(d) All applicants for lead inspector/risk assessor shall meet, at a minimum, the following education and experience requirements:

1. One year experience in a related field, (for example, asbestos, lead, environmental remediation work, construction-related health and safety inspection), and one of the following:

i. Bachelor's degree and one additional year of experience in a related field; or

ii. Certification as a sanitary inspector-grade 1, health officer, an industrial hygienist, an engineer, a registered architect, or an environmentally-related scientific field such as a environmental scientist; or

iii. A high school diploma, (or equivalent), and at least two additional years of experience in a related field.

(e) All applicants for supervisor for housing and public buildings shall meet, at a minimum, the following education and experience requirements:

1. A minimum of one year of experience as a lead abatement worker; and

2. A minimum of two years of experience in a related field or the construction trades.

(f) All applicants for supervisor for commercial buildings and superstructures shall meet, at a minimum, the following education and experience requirements:

1. A minimum of two years of experience in ***commercial or*** industrial painting; and

2. A minimum of 90 days of experience in field supervision or management in hazardous paint removal within the previous 24 months; and

3. Work experience demonstrating knowledge of relevant safety practices, waste handling procedures, and of environmental monitoring.

(g) All permit applicants shall successfully complete a skills assessment of the hands-on training and pass a written examination devised and administered under the approval of the Department.

1. Proof of passing the written examination shall be submitted to the Department with the permit application.

(h) Initial applicants must *[apply]* ***submit a completed application*** within one year of the completion date of their training

course. Any permit applications pending in excess of one year shall be rejected.

(i) Permit applicants shall submit all applications, transcripts, diplomas, professional certifications, affidavits, and fees pursuant to N.J.A.C. 8:62-3.3.

8:62-3.3 Procedures for completing permit application for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer

(a) The application for a permit shall be made on forms provided by the Department.

(b) The application for a permit shall be typewritten or neatly and legibly printed in ink.

(c) Each application shall be carefully and fully completed. Any incomplete application shall be rejected. Any fraud or misrepresentation on an application shall be grounds for automatic rejection and/or civil administrative penalties pursuant to N.J.A.C. 8:62-5.4.

(d) An applicant for a permit pursuant to this subchapter shall meet all the requirements specified in this subchapter.

(e) The initial and biennial renewal permit application fee are as follows:

1. Worker	\$80.00
Supervisor	\$150.00
Inspector/risk assessor	\$150.00
Planner/Project designer	\$200.00
Worker-commercial buildings and superstructures	\$80.00
Supervisor-commercial buildings and superstructures	\$150.00

2. The application fee shall be paid by certified check or money order made payable to the New Jersey Department of Health.

3. The application fee shall be non-refundable and shall be paid at the time the application is submitted.

4. No liability shall be assumed by the Department for the loss or delay in the transmission of the application fee.

(f) Each applicant shall submit a recent, passport-size, color photograph of the applicant against a white backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face on the photograph. The applicants name and *[social security number]* ***unique identification number assigned by the Department*** shall be clearly printed on the back of the photograph.

(g) All permit applications shall be accompanied by sufficient documentation to demonstrate compliance by the applicant with the education and experience or professional certification requirements set forth at N.J.A.C. 8:62-3.2 (d) through (f). Acceptable documentation includes the following:

1. High school diploma or its equivalent;

2. College degree;

3. Resumes, letters of reference, proof of certification in another state, documentation of work experience, and copies of inspection reports;

4. Certificates from training courses or professional development courses; and

5. A signed, notarized statement by the applicant that the individual meets the applicable qualification.

(h) Applicants shall notify the Department of any change in address while the application is pending or after permit issuance. Any such notification shall be in writing and must reference the application number assigned by the Department.

8:62-3.4 Procedures for completing a reciprocal permit application for lead abatement worker, lead abatement supervisor, lead inspector risk assessor, and lead abatement planner/project designer

(a) All applicants for a reciprocal permit shall submit a complete application and application fee pursuant to N.J.A.C. 8:62-3.3.

(b) All applications made pursuant to this section shall include documentation of a current valid lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, or lead abatement planner/project designer permit, certification, or license from

another state which has received U.S.E.P.A. authorization to administer and enforce a state certification and training program under Title IV of the Toxic Substances Control Act.

8:62-3.5 Grandfathering of lead abatement workers, lead abatement supervisors, lead inspector/risk assessors and lead abatement planner/project designers

(a) All applicants for a grandfather permit shall submit a complete application and application fee pursuant to N.J.A.C. 8:62-3.3.

(b) An applicant who has received training from a training agency recognized by the Department is eligible for a permit, provided the following requirements are met:

1. Submission of documentation that the applicant has successfully completed a training course recognized by the Department;

2. Submission of documentation that the applicant meets the educational and experience requirements set forth at N.J.A.C. 8:62-3.2 (d) through (f);

3. Successful completion, within six months of the submission of the application of, a refresher training course certified by the Department; and

4. Successful completion of an examination devised and administered under the approval of the Department.

(c) Applicants eligible for a permit pursuant to this section shall have until six months after the effective date of this rule to apply for certification. Any applicant wishing to obtain a permit after the specified date, shall meet the requirements set forth at N.J.A.C. 8:62-3.2.

8:62-3.6 Issuance of permit

(a) A permit *[will]* ***shall*** be issued by the Commissioner to an applicant who has demonstrated compliance with all of the mandatory requirements of this subchapter.

(b) Each permit for a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor and lead abatement planner/project designer shall be issued in writing, bear the Commissioner's signature, and shall contain:

1. The date of issuance;
2. The date of expiration;
3. The name of the permit holder;
4. The permit number; and
5. A photograph of the permit holder.

(c) The permit shall be valid, unless suspended or revoked pursuant to N.J.A.C. 8:62-3.8, for a period of two years from its date of issuance.

8:62-3.7 Identification of permit holder

(a) Each worker, supervisor, inspector/risk assessor or planner/project designer performing lead abatement or inspection activities shall have his or her permit available at the job site and readily available for inspection by representatives of the Department, N.J.D.C.A., N.J.D.O.L., N.J.D.E.P., and the local health department.

(b) Any permit which has been tampered with, altered, or defaced shall be void.

(c) Photostats, photographs or reproductions of a permit shall be invalid.

(d) Any permit holder who loses his or her permit or has it stolen shall immediately notify the Department in writing.

(e) A mutilated, lost, or stolen permit may be replaced after a review of the circumstances by the Commissioner. Replacement cost for the permit shall be \$25.00.

1. A permit *[may]* ***shall*** only be replaced twice during the two-year term.

2. Applicants for replacement permits shall submit a notarized statement requesting the replacement which shall include:

i. The applicant's name, address, *[social security number,]* ***unique identification number assigned by the Department*** and permit number; and

ii. A statement concerning the circumstances surrounding the mutilation or loss of the permit and the date ***upon*** which it took place.

3. Permit replacement applications shall include two forms of identification.

4. Replacement applications for mutilated permits shall be accompanied by the worn permit.

8:62-3.8 Suspension or revocation of permit

(a) *[Any]* ***An*** applicant or trainee *[may]* ***shall*** have his or her application denied and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:

1. Submitting false information on an application for an examination;

2. Submitting false information to gain entrance to an examination or training course;

3. Using fraudulent means during the taking of an examination;

4. Falsifying training records;

5. Submitting false information on an application for a permit;

6. Any violation of this chapter; or

7. Any good cause within the meaning and the purpose of the law.

(b) Any individual *[may]* ***shall*** have his or her permit suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:

1. Obtaining a permit through fraudulent means;

2. Performing work without a valid permit;

3. Incompetence;

4. Negligence;

5. Engaging in unsafe work practices pursuant to the Uniform Construction Code, N.J.A.C. 5:23, or acting in a manner which poses a health risk to ***occupants and*** others;

6. Falsifying reports;

7. Knowingly loaning, abandoning or allowing a permit to pass from his or her possession;

8. Tampering with, altering, or intentionally defacing a permit;

9. Any violation of this chapter; or

10. Any good cause within the meaning and the purpose of the law.

(c) Any individual whose permit has been revoked shall be ineligible to apply for a permit for three years from the date of revocation.

8:62-3.9 Renewal of permit for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor and lead abatement planner/project designer

(a) An application for renewal of a permit shall be submitted during the 90 ***calendar*** day period prior to or the 90 ***calendar*** day period after the expiration date. When the application for renewal is submitted prior to its expiration date, the permit may continue in effect until the Commissioner renders a decision. The applicant shall be notified in writing by the Department whether a valid extension has been granted. This validation together with the expired permit shall be carried upon the permit holder and be readily available for inspection by representatives of the Department, N.J.D.C.A., N.J.D.O.L., N.J.D.E.P., and the local health department. If an individual applies after the expiration date, the applicant shall not perform any of the services for which that permit is required until such time as the permit is renewed.

(b) The Commissioner *[may]* ***shall*** renew a permit if the renewal applicant has:

1. Verified his or her identity;

2. Completed an application as set forth at N.J.A.C. 8:62-3.3 within 90 ***calendar*** days prior to or after the expiration date;

3. Provided evidence of refresher training pursuant to N.J.A.C. 8:62-4.2(d) and 4.12;

4. Satisfied all outstanding penalties imposed pursuant to this chapter; and

5. Enclosed the renewal fee required by N.J.A.C. 8:62-3.3(e).

(c) The Commissioner shall treat an application for renewal of a permit which has expired for more than 90 ***calendar*** days as an original application.

SUBCHAPTER 4. CERTIFICATION OF TRAINING COURSES

8:62-4.1 Scope of the subchapter

This subchapter shall apply to the procedures and qualifications required to obtain, maintain, or renew certification from the Commissioner to conduct training. At a minimum, training courses shall meet the requirements set forth in this subchapter or P.L. 102-550, Title X of the "Residential Lead-Based Paint Hazard Reduction Act of 1992", 15 U.S.C. 2601 et seq., whichever is more stringent.

8:62-4.2 Types of courses

(a) Initial training courses shall meet the following requirements:

1. The lead abatement worker for housing and public buildings training course shall include a minimum of 32 hours of training of which a minimum of 10 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.6;

2. The lead abatement supervisor for housing and public buildings training course shall include a minimum of 40 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.7;

3. The lead inspector/risk assessor training course shall include a minimum of 40 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.8;

4. The lead planner/project designer course shall include a minimum of 56 hours of training of which a minimum of 12 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.9;

5. The lead abatement worker for commercial buildings and superstructures training course shall include a minimum of 32 hours of training of which a minimum of 10 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.10; and

6. The lead abatement supervisor for commercial buildings and superstructures training course shall include a minimum of 32 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.11.

(b) The hour requirements listed in (a)1 through 6 above shall be exclusive of lunch and break times.

(c) Demonstrations not involving individual participation shall not be considered as hands-on training.

(d) Biennial refresher training, exclusive of lunch and break times, shall meet the minimum requirements in (d)1 through 4 below. The topics required to be presented during refresher training are set forth at N.J.A.C. 8:62-4.12.

1. Seven hours for the worker courses;

2. Seven hours for the supervisor courses;

3. Seven hours for the inspector/risk assessor course; and

4. Seven hours for the planner/project designer course.

(e) Initial and refresher training for all lead courses shall be specific to a single discipline and shall not be combined with training for other disciplines.

8:62-4.3 Application for certification of training courses

(a) An applicant for certification of training courses shall submit an application and a proposal on forms provided by the Department specifying the following:

1. The name, address and telephone number of the agency, institution, or private firm which plans to conduct the course;

2. Name of the discipline(s) for which ***[they are]* *the applicant is*** applying for certification;

3. A signed statement by the training manager that clearly details how the course meets the minimum requirements outlined in N.J.A.C. 8:62-4.2;

4. A description of course location and course fees;

5. Detailed outlines of course curricula as set forth at N.J.A.C. 8:62-4.6 through 12, the time allotted for each topic, and a list of the instructors for each topic area;

6. A description of the interactive/participatory teaching methods as defined at N.J.A.C. 8:62-2 which shall be employed to present each topic. Lecture shall not be considered an interactive/participatory teaching method;

7. Copies of written materials to be distributed as a part of the training courses;

8. Evidence demonstrating that the applicant has employed a training manager and has employed or contracted to employ a minimum of three instructors, either on a full-time or part-time basis to satisfy the requirements as set forth at N.J.A.C. 8:62-4.5. Resumes, transcripts, diplomas, and professional certifications describing specialized training and education and/or prior experience shall be submitted and documentation of compliance with the instructor criteria;

9. A list of the types, brand names, and quantities of respirators to be used to demonstrate a fit test;

10. A description of the type and quantity of protective clothing to be used during hands-on training and demonstration;

11. A description and the quantities of the materials to be used for hands-on training including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, other construction equipment, air filtration units, water spray devices, decontamination facilities, simulated lead material, and where appropriate, Material Safety Data Sheets;

12. A detailed description of the site of the training course including the address where hands-on practice exercises will be conducted;

13. A detailed description of the procedures for conducting the assessment of the hands-on skills;

14. Any restrictions on attendance, such as English-only or other language to be used.

15. For any non-English training course, all course materials, examinations and related course literature shall be translated into that language and a written certification that the translation is accurate and valid;

16. Instructor-to-student ratio for hands-on training shall be no greater than 10 students to one instructor;

17. A copy of the written examinations to be administered to the trainees by the training agency;

18. Evidence that a no-smoking policy ***[will]* *shall*** be established, maintained, and enforced during all aspects of the training; and

19. Evidence of a quality control plan pursuant to N.J.A.C. 8:62-4.4(t).

(b) All materials submitted as part of the application shall be typewritten or machine printed.

(c) The applicant shall successfully pass a pre-commencement inspection of the training facility(ies) conducted by representatives of the Department.

(d) The applicant shall ***[immediately]**, within seven calendar days,*** notify the Department in writing of any change(s) in the application information occurring either prior to or after the issuance of certification.

(e) A non-refundable application fee for biennial certification in the amount of \$500.00 per discipline shall be forwarded with the application. The application fee shall be paid by certified check or money order ***[and]**,*** made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss in the transmission of the application fee.

(f) Certification of refresher training courses is expressly conditioned upon maintaining a certification in good standing in that discipline for which the applicant is applying.

(g) The Department may have 180 ***calendar*** days for initial course certification and 45 ***calendar*** days for refresher course certification, to approve or disapprove the application from its receipt date. ***Prior to disapproval, the Department may, at its discretion, work with the applicant to correct any deficiencies in the application.*** In the case of approval, a biennial certification shall be granted to the applicant. In the case of disapproval, a letter describing the reason for disapproval shall be forwarded to the

applicant. If certification is denied, the applicant *[shall wait for a period of one year from the date of application before reapplying]* ***may reapply at any time***.

8:62-4.4 Training agency operating requirements

(a) Certified training agencies shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(b) Certified training agencies shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials, and instructors to ensure that adequate training meeting the requirements of this subchapter can be conducted.

(c) Certified training agencies shall use any training materials, examinations, forms, questionnaires, surveys, informational or audiovisual aids which may be required by the Department.

(d) Certified training agencies shall ensure that the training manager represents them at any meeting sponsored by the Department for the purpose of maintaining uniform and high quality training courses among certificants.

(e) Certified training agencies shall limit the class size to 25 students for the initial training courses.

(f) Certified training agencies shall limit class size to 30 students for refresher training courses.

(g) All certified training agencies shall notify the Department at least two weeks in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department. If any course information changes, the training agency shall notify the Department as soon as that agency becomes aware of such changes.

*[(h)]** Certified training agencies shall ensure that all students meet minimal literacy requirements for the course language in which the student is enrolled.]*

*[(i)]***(h)* Certified training agencies shall require trainees to self-certify that *[he or she meets]* ***they meet*** the education and experience requirements outlined at N.J.A.C. 8:62-3.2(d) through (f) prior to enrollment in a training course.

*[(j)]***(i)* Certified training agencies shall ensure that all initial and refresher trainees have met the requirements for obtaining a New Jersey permit as outlined at N.J.A.C. 8:62-3.2. Certificates of completion shall be issued only to those individuals who have met these requirements and have successfully completed the initial training or one day refresher course and have passed an examination approved by the Department.

*[(k)]***(j)* Certified training agencies shall submit instructor documentation meeting the requirements of N.J.A.C. 8:62-4.5 to the Department for approval prior to allowing that instructor to conduct any training course.

*[(l)]***(k)* Certified training agencies shall issue a certificate of completion to trainees upon their successful completion of *[a]* ***an*** initial or a refresher training course. The certificate shall bear the signature of the training manager and shall specify the following:

1. A unique certificate number;
2. Full name of the trainee;
3. Discipline;
4. Expiration date of the certificate;
5. Course completion date;
6. Name, address, and telephone number of training agency; and
7. Language in which the training course was given.

*[(m)]***(l)* Certified training agencies shall permit entry to all training courses by representatives of the Department for the purposes of course evaluation and determination of compliance with this subchapter.

*[(n)]***(m)* Certified training agencies shall limit individual classes to one language.

*[(o)]***(n)* Certified training agencies shall maintain the following records:

1. All documents specified in N.J.A.C. 8:62-4.5 that demonstrate*[s]* the qualifications of the training manager and the course instructors, respectively;
2. Student training records;

3. Daily class attendance records bearing the signature of the course instructor;

4. Copies of examinations administered by the training agency; and

5. Copies of the hands-on skills assessment administered by the training agency.

6. Copies of instructor performance review records.

*[(p)]***(o)* The training agency shall permit representatives of the Department to inspect and evaluate these records. Upon request by the Department, training agencies shall provide copies of all training records for the purpose of inspection, evaluation and compliance.

*[(q)]***(p)* Certified training agencies shall maintain training records for a minimum of five years. The Department shall be notified and be given the opportunity to take possession of all training records should an agency cease to conduct training.

*[(r)]***(q)* Certified training agencies shall*[, in writing,]* notify the Department ***in writing,*** in advance of any changes in information submitted on its agency and course applications. Any course modifications made subsequent*[ly]* to certification shall require 10 ***calendar*** days prior notification and shall be subject to Department approval.

*[(s)]***(r)* Notwithstanding *[(q)]***(q)* above, the certified training agency shall notify the Department in writing at least four weeks in advance of any changes in *[their]* ***its*** hands-on training site. Any changes in location and/or renovations to the site shall require a reinspection of the facility before training can be conducted at that site.

*[(t)]***(s)* Certified training agencies shall maintain a quality control plan which shall include, at a minimum, the following:

1. Procedures for periodic revision of training materials to reflect innovations in the field;
2. Procedures for annual review of instructor competency;
3. Procedures for administering the course examination to ensure the validity and integrity of the examination;
4. Procedures for administering the hands-on skills assessment; and
5. Procedures for ensuring the adequacy of facilities and equipment.

*[(u)]***(t)* Certified training agencies shall cooperate fully with the Department in all matters relating to the conduct of certified training courses, the administration of examinations and hands-on skill assessments, and the permitting of individuals pursuant to this chapter.

8:62-4.5 Criteria for training manager and training course instructors

(a) Certified training agencies shall employ a training manager who meets, at a minimum, the education and experience requirements set forth in this subchapter and the U.S.E.P.A. Model Accreditation Plan for States and includes:

1. A minimum of two years of classroom experience in teaching workers and/or adults;
2. A Bachelors or graduate level degree in building, construction technology, or engineering or industrial hygiene or safety or health; or four years experience in managing an occupational safety or health program;
3. Completion of a 40 hour train-the-trainer course which provides instruction in the planning and teaching of any adult education course; or *[has obtained]* ***attainment of*** a Bachelors degree in adult education; and
4. Completion of a minimum of 24 hours of lead specific training.

(b) To be eligible for certification of any training course, three or more course instructors shall be employed. Instructors shall meet the minimum requirements as outlined in the U.S.E.P.A. Model Accreditation Plan for States in addition to the following qualifications:

1. Successful completion of a 40 hour train-the-trainer course, or a minimum of two years of classroom experience teaching adults, or *[has]* ***attainment of*** a degree in adult education from an accredited college or university;

2. *[Have successfully completed]* ***Successful completion of*** 24 hours of lead-specific training;

3. *[Have a]* ***A*** minimum of two years of experience related to health, safety, or regulatory aspects of lead abatement, or *[have]* a minimum of one year of lead abatement experience.

i. To qualify to teach hands-on training, instructors shall have a minimum of two years of experience in construction trades, including but not limited to, lead or asbestos abatement, painting, carpentry, or renovation and remodeling;

ii. To qualify to teach the sections on health effects, the instructor shall be a qualified health professional;

[4. Translators shall have previously attended and successfully completed the appropriate lead worker course and the requisite examination;]

[5.] ***4.*** *[Shall maintain]* ***Maintenance of*** professional competency *[by participating]* ***through participation*** in continuing education or professional development programs at least twice a year; and

[6.] ***5.*** *[Shall have their]* ***Annual*** performance *[reviewed annually]* ***reviews*** by the Training Manager. Only those instructors receiving a satisfactory annual review shall provide course instruction.

8:62-4.6 Criteria for topics in the lead abatement worker for housing and public buildings training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. Background information on lead:
 - i. History of lead use; and
 - ii. Sources of environmental lead contamination;
2. Relevant Federal, State, and local regulatory requirements, procedures, and standards:
 - i. The scope of all relevant New Jersey regulatory requirements; and
 - ii. The penalties imposed for violation of this chapter;
3. Health effects of exposure to lead*[*]**;
- i. **Health effects on children under the age of six years*;**
4. Hazard recognition and control (hands-on training required)
 - i. Site characterization;
 - ii. Exposure measurements;
 - iii. Material identification;
 - iv. Safety and health plan;
 - v. Medical surveillance; and
 - vi. Engineering and work practices;
5. Personal protective equipment (hands-on training required)
 - i. Respiratory protection:
 - (1) Respiratory equipment selection;
 - (2) Air-purifying respirators;
 - (3) Care and cleaning of respirators; and
 - (4) Respiratory program.
 - ii. Protective equipment; and
 - iii. Hygiene practices;
6. Lead-based paint abatement and hazard reduction methods (hands-on training required);
7. Interior dust abatement methods and clean-up or lead hazard reduction (hands-on training required);
8. Soil and exterior dust abatement methods or lead hazard reduction (hands-on training required);
9. Waste disposal (hands-on training required); and
10. Course review, course examination and hands-on skills assessment.

8:62-4.7 Criteria for topics in the lead abatement supervisor for housing and public buildings training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.6;
2. Legal issues;
3. Insurance and bonding;
4. Development of pre-abatement work plans (hands-on training required);
5. Project management;

6. Employee information and training;
7. Community relations process;
8. Cost estimation;
9. Recordkeeping; and
10. Course review, course examination and hands-on skills assessment.

8:62-4.8 Criteria for topics in the lead inspector/risk assessor training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.6 *(b) through (d)]* ***(a)1-3***;
2. Lead-based paint inspection methods (hands-on training required);
3. Lead-based paint testing procedures (hands-on training required);
4. Preparation of final inspection report of test results (hands-on training required);
5. Dust and soil clearance sampling methodologies (hands-on training required);
6. Legal responsibilities and potential liabilities;
7. Performance of risk assessments;
8. Visual inspection (hands-on training required);
9. Risk assessment report form completion (hands-on training required);
10. Sampling and inspection guidelines (hands-on training required);
11. Interpretation of results and preparation of final report (hands-on training required);
12. Recommendations to abate or reduce lead-based paint hazards including instruction when interim controls are appropriate;
13. Development of interim control plan;
14. Recordkeeping; and
15. Course review, course examination and hands-on skills assessment.

8:62-4.9 Criteria for topics in the lead abatement planner/project designer training course

(a) The training course shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.7;
2. Hazard report interpretation (hands-on training required);
3. Worker protection/worker safety;
4. Environmental safety;
5. Project design (hands-on training required);
6. Construction techniques;
7. Abatement and lead hazard reduction methods;
8. Operations and maintenance planning;
9. Clean-up;
10. Clearance testing (hands-on training required);
11. Waste disposal;
12. Insurance and liability; and
13. Course review, course examination and hands-on skills assessment.

8:62-4.10 Criteria for topics in the lead abatement worker for commercial buildings and superstructures training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.6;
2. Welding, burning and torch cutting;
3. Mechanical disturbance of lead; and
4. Course review, course examination and hands-on skills assessment.

8:62-4.11 Criteria for topics in the lead abatement supervisor for commercial buildings and superstructures training course

(a) The training course shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.7;
2. Identification of lead-based paint (hands-on training required);
3. Welding, burning, and torch cutting;

4. Mechanical disturbance of lead; and
5. Course review, course examination and hands-on skills assessment.

8:62-4.12 Criteria for topics in refresher training courses

(a) Refresher training for all lead training courses shall consist of topics designed to increase or enhance an individual's skills and knowledge necessary to perform the job tasks and job functions associated with the respective certification.

(b) Refresher training shall include, but not be limited to:

1. An overview of key health and safety practices;
2. An update on any relevant federal, state, or local regulatory changes;
3. Any new developments in applicable state-of-the-art technologies and abatement procedures;
4. Respiratory protection programs and medical surveillance; and
5. Issuance of a closed book, written examination.

8:62-4.13 Granting of certification

(a) A biennial certification shall be granted to a training agency which has demonstrated compliance with this subchapter including course content, teaching methods, and instructor qualifications based upon the application submission required by N.J.A.C. 8:62-4.3, and such investigation as the Commissioner *[should]* ***shall*** deem necessary.

[(b)]* All applicants shall be of good moral character. If the applicant is a corporation, this requirement shall apply to both the corporation and to those individuals who are responsible for the day-to-day operation of the corporation.*]

[(d)]**[(b)]** A biennial letter of certification shall:

1. Specify the date of issuance;
2. Specify the expiration date;
3. Specify the name and address of the training agency which is certified;
4. Specify which training course(s) the certificant is authorized to teach;
5. Bear the signature of the Commissioner; and
6. Be non-transferable.

8:62-4.14 Renewal of training agency certification

(a) A complete application for renewal of certification shall be submitted at least 180 ***calendar*** days prior to its expiration. When a completed application is submitted within the required time period, the certification shall continue in effect until the Commissioner renders a final decision on the application.

(b) In order to approve a training agency's certification renewal application, the Commissioner shall determine, based upon the application^{*}, that:

1. The certificant has certified that all of the information contained on the original application is still accurate, or where applicable, has updated such information;
2. All outstanding penalties imposed on the certificant have been paid;
3. The certificant has exhibited competence, integrity, and responsibility; and
4. The certificant has submitted a certified statement, bearing the signature of the training manager, that the training agency can operate in compliance with this subchapter.

(c) The biennial application fee for renewal of the certification shall be \$500.00 per discipline. The application fee shall be submitted with the application and shall be non-refundable. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss or delay in the transmission of the application fee.

(d) Any application not complying with (a) above shall be treated as a new application pursuant to N.J.A.C. 8:62-4.3.

(e) Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:62-4.3.

8:62-4.15 Suspension or revocation of training agency certification or instructor approval

(a) Any certified training agency **[may]* ***shall*** have its application denied, certification suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:

1. Incompetence;
2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department;
3. Performing as a training agency without certification;
4. Submitting false information on an initial or renewal application, trainee evaluation form, or course notification form;
5. Failure to submit information or notifications in a timely manner;
6. Falsification of training records, instructor qualifications, or other certification information;
7. Failure to maintain required records;
8. Any violation of this subchapter; or
9. Any good cause within the purpose and meaning of the law.

(b) Any instructor **[may]* ***shall*** have his or her application denied, approval suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:

1. Submitting false information on an application for approval as a lead training instructor;
2. Falsification of training records;
3. Failure to perform quality training;
4. Any violation of this subchapter; or
5. Any good cause within the meaning and purpose of the law.

SUBCHAPTER 5. COMPLIANCE AND ENFORCEMENT

8:62-5.1 Scope of the subchapter

This subchapter shall constitute the rules of the Department governing the enforcement of compliance with this chapter.

8:62-5.2 Compliance

(a) Every worker, supervisor, inspector/risk assessor, and planner/project designer falling within the scope of this chapter, shall comply with the provisions of this chapter and shall be duly permitted by the Commissioner of Health.

(b) All individuals, applicants, trainees, instructors, and certificants shall comply in all respects with the requirements of N.J.A.C. 8:62.

8:62-5.3 Statement of imminent hazard

The Commissioner may order a permit holder or certificant to temporarily cease and desist operations, pending the outcome of a hearing held pursuant to N.J.A.C. 8:62-5.5^{*}, if an applicant or certificant is causing an imminent threat to the public health, safety, or welfare.

8:62-5.4 Civil administrative penalties

(a) Whenever the Department finds that **[a]* ***an*** individual, applicant, trainee, instructor, or certificant has violated any provision of N.J.A.C. 8:62, the Commissioner may assess a civil administrative penalty not to exceed \$1,000 per day for the first offense and \$5,000 per day for each subsequent offense. If the violation is of a continuing nature, each day shall constitute an additional and separate offense.

(b) No assessment shall be levied pursuant to this section until the violator has received notice which shall:

1. Be delivered by personal service or certified mail to the violator's last known address;
2. Specify the provisions of N.J.A.C. 8:62 which have been violated;
3. Contain a concise statement of the facts alleged to constitute the violation;
4. Specify the amount of civil administrative penalties to be imposed;
5. Provide notice of the violator's right to a hearing or an informal conference or review, pursuant to N.J.A.C. 8:62-5.5. Such notice shall:

i. Specify the time period in which the violator may submit a written request for a hearing; and

ii. Specify the address to which such request may be submitted.

*[(d)]****(c)*** In assessing a civil administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation:

1. Degree of hazard posed to human health and the environment;

2. Degree of harm posed to the proper administration of the lead permitting/certification program;

3. Category of culpability evidenced by the violator's action, including knowing action, reckless action, or negligent action;

i. In determining culpability, ignorance of any legal requirement of any statute or rule shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless;

ii. Actual notice of the legal requirement of this chapter would constitute a finding of knowing action.

4. Past history of compliance on the part of the violator;

5. Economic benefit that the violator accrues as a result of the violation; and

6. Performance of the violator in correcting the violation.

*[(e)]****(d)*** In addition to other sanctions in this chapter, the Commissioner shall require:

1. The immediate correction of any violation;

2. The removal of any worker from the job site within the meaning and purposes of this chapter;

3. The removal of any supervisor from the job site within the meaning and purpose of this chapter;

4. The removal of any inspector/risk assessor from the job site within the meaning and purpose of this chapter; and

5. The removal of any planner/project designer from the site within the meaning and purpose of this chapter.

8:62-5.5 Hearings

(a) Where the Commissioner assesses an administrative penalty under N.J.A.C. 8:62-5.4 above or proposes to suspend or revoke a permit or certification, denies an application for a permit or certification, or revokes an instructor's approval, the violator, certificant, applicant or instructor, as the case may be, shall have the right to an informal conference under (b) below or a formal hearing under (c) below or both.

(b) ***[The]*** ***Any*** violator shall have the right to an informal conference or review before the Commissioner's designee. Such conference or review shall be held provided that a written request for the same has been submitted within 10 calendar days from receipt of the notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:62-5.4. When the conference or review is held before the Commissioner's designee, he or she shall state his or her findings and conclusions in writing and transmit a copy to the violator. ***In the event that the violator does not agree with the findings and conclusions of the Commissioner's designee, he or she may submit a written request for a formal hearing in accordance with (c) below.***

(c) Any violator shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, provided that a written request for the same is submitted within 10 ***calendar*** days after the assessment of an administrative penalty.

(d) In the alternative, recipients of an administrative penalty assessment may request the initiation of a settlement conference ***pursuant to N.J.S.A. 26:2Q-8*.**

(e) Where a violator fails to request a hearing within the 10 ***calendar*** day period, his or her right to a hearing pursuant to this section shall be deemed waived and the Commissioner's proposed action shall become final.

(f) Payment of the civil administrative penalty shall be due when a final order is issued or the notice becomes a final order.

HIGHER EDUCATION

(a)

COMMISSION ON HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Equipment Leasing Fund Act

Adopted Recodification with Amendments: N.J.A.C. 9:17 to 9A:14

Proposed: December 19, 1994 at 26 N.J.R. 4878(a).

Adopted: January 27, 1995 by the Commission on Higher Education, Joseph D. Williams, Chairman.

Filed: January 27, 1995 as R.1995 d.113, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72A-40 and P.L.1993, c.136.

Effective Date: February 21, 1995.

Expiration Date: February 22, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

There are no Federal standards or requirements applicable to the subject matter of this rulemaking.

Summary of Changes Upon Adoption:

In N.J.A.C. 9A:14-1.2, the word "the" is added before "Chair of the Commission on Higher Education" and "Executive Director of the Commission on Higher Education" for consistency with definitions in other sections of code.

Full text of the recodification with amendments follows (additions to proposal indicated in boldface with asterisks ***thus***):

CHAPTERS 1 THROUGH 13. (RESERVED)

CHAPTER 14

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

9A:14-1.1 (No change in text).

9A:14-1.2 Definitions

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

... "Board" means the former State Board of Higher Education.

... "Chair" means ***the*** Chair of the Commission on Higher Education.

"Commission" means the Commission on Higher Education.

"Emerging needs program" means a degree program, function or activity at one or more public or private institutions of higher education directed to meeting new and advanced technology needs within an existing academic program, or to support new academic programs in science and technology or to support new instructional technologies, as solely determined by the Commission.

... "Executive Director" means ***the*** Executive Director of the Commission on Higher Education.

9A:14-1.3 Process for purchase of higher education equipment

(a) Upon approval by the governing board of an institution or an entity authorized to act on their behalf, participating institutions shall propose equipment purchases to the Commission to be acquired with the proceeds of bonds. No proposal shall be for an amount less than 25 percent of the respective institution's total

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allocation pursuant to N.J.A.C. 9A:14-1.5 or \$1,000,000, whichever is less, unless it is for the final portion of its allocation. Proposals shall include information concerning:

1.-6. (No change.)

7. The source of revenue to pay the institution's annual share of principal and interest on bonds issued to acquire equipment for use by the institution; and

8. Other information as may be required by the Executive Director on a case by case basis and relating to a specific proposal.

(b) Proposals shall be submitted in a format provided by the Commission.

(c) Descriptions of the equipment submitted in the proposal may be illustrative, and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology, or for other reasons provided that the equipment had been approved by the governing board of the affected institution and by the Board (for transactions before July 1, 1994) or Commission.

(d) Equipment to be purchased must be approved at a public meeting of the Commission.

(e) The total dollar amount of purchases approved for any institution shall not exceed the institution's allocation as approved by the Board (for allocations made before July 1, 1994) or Commission.

(f) The Commission shall forward to the Authority requests for equipment approved by Commission resolution.

(g) Lease agreements with institutions for the lease-purchase of equipment approved by the Commission shall require the respective institution to pay to the Authority 25 percent of the principal and interest on the bonds to be issued to finance the equipment purchase for the respective institution.

(h)-(k) (No change.)

9A:14-1.4 Payment of principal and interest

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

(d) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution. As used in this section, "obligation of an institution" means any amount payable by the institution under a lease agreement to meet principal and interest on the bonds issued to acquire equipment for the institution under this program. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Commission.

9A:14-1.5 Allocation of funds

(a) (No change.)

(b) The Commission shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Commission may reallocate to any institution or to the "emerging needs program" any balance in the amounts authorized if the amounts are not committed within 18 months of the effective date of the Amending Act (June 5, 1993) or within 18 months of subsequent allocations by the Commission. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

(d) No reallocation shall be made pursuant to (c) above if:

1. The request for approval has been received by the Commission within 15 months of June 5, 1993 or within 18 months with respect to any amounts that are reallocated or subsequently allocated by the Commission; or

2.-3. (No change.)

4. Other compelling and documentable reasons exist as determined by the Commission.

(e) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments on bonds issued to finance equipment for such institutions shall not constitute good cause for not committing funds as required in (c) above.

(f) The Executive Director shall contact all institutions to which funds have been allocated 15 months following such allocation to

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determine what, if any, funds will become available for reallocation at 18 months.

(g) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

(h) The Chair shall periodically establish and notify institutions of priority areas for the use of funds for emerging needs programs to meet new and advanced technology needs or support new academic programs in science and technology. Institutions may submit an application for funds for a program within the priority areas. The Chair shall review applications on a case by case basis and make recommendations for Commission approval to fund emerging needs programs.

9A:14-1.6 Reporting requirements

The Authority shall report its equipment purchases to the Commission once in each year in which equipment purchases are made. The Commission then shall report to the Governor and the Legislature on equipment purchases that have been approved by the Commission and financed through this program.

(a)

COMMISSION ON HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Facilities Trust Fund Act

Adopted Recodification with Amendments: N.J.A.C. 9:18 to 9A:15

Proposed: December 19, 1994 at 26 N.J.R. 4879(a).

Adopted: January 27, 1995 by the Commission on Higher Education, Joseph D. Williams, Chairman.

Filed: January 27, 1995 as R.1995 d.114, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72A-49 and P.L.1993, c.375.

Effective Date: February 21, 1995.

Expiration Date: June 20, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

There are no Federal standards or requirements applicable to the subject matter of this rulemaking.

Summary of Changes Upon Adoption:

In N.J.A.C. 9A:15-1.2, a punctuation error is corrected.

Full text of the recodification with amendments follows (addition to proposal indicated in boldface with asterisks ***thus***):

CHAPTERS 1 THROUGH 13 (RESERVED.)

CHAPTER 15

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION FACILITIES TRUST FUND ACT

9A:15-1.1 (No change in text.)

9A:15-1.2 Definitions

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

...
"Board" means the former State Board of Higher Education.

...
"Chair" means the Chair of the Commission on Higher Education.

"Commission" means the Commission on Higher Education.

"Executive Director" means the Executive Director of the Commission on Higher Education.

...

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"South Jersey multi-institutional economic development facilities" means facilities which would promote economic development in the eight southernmost counties of the State, including Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem, and which involve more than one public and/or private institution of higher education.

...

9A:15-1.3 Process for application for grant

(a) The Commission shall consider for approval grant requests from institutions for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities. The grants shall be used exclusively for those purposes.

(b) Upon approval by its governing board at a duly authorized meeting, a participating institution shall apply to the Commission for a grant from the trust fund. Proposals shall include the following information:

1.-9. (No change.)

10. Other information as may be required by the Executive Director on a case by case basis and relating to a specific proposal.

(c) The grant request shall be submitted in a format provided by the Commission.

(d) Grant applications must be approved at a public meeting of the Commission.

(e) The total dollar amount of a grant approved for any institution shall not exceed the institution's allocation as approved by the Board (for allocations made before July 1, 1994) or Commission.

(f) The Commission shall forward to the Authority a copy of the resolution approved by the Commission including the amount of the grant.

(g) The Commission shall submit to the Legislature a copy of the resolution approving the grant along with the amount of the grant. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days, the grant shall be deemed to be authorized.

(h)-(k) (No change.)

9A:15-1.4 (No change in text.)

9A:15-1.5 Allocation of funds

(a) (No change.)

(b) The Commission shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Commission may reallocate to any institution or to the "South Jersey multi-institutional economic development facilities" any balance in the amounts authorized if the amounts are not approved by the Commission for a grant within 18 months of the effective date of the Amending Act (January 10, 1994) or within 18 months of subsequent allocations by the Commission.

(d) No reallocation shall be made pursuant to (c) above if:

1. The grant application has been received by the Commission within 15 months of January 10, 1994 or within 18 months with respect to any amounts that are subsequently allocated by the Commission; or

2. (No change.)

3. In the sole determination of the Commission there are other compelling and documentable reasons.

(e) The Executive Director shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation after 18 months.

(f) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority.

9A:15-1.6 Higher Education Facilities Trust Fund Board

(a) The Higher Education Facilities Trust Fund Board shall consist of six members, as follows:

1. The Chair and Vice Chair of the Commission;

2.-4. (No change.)

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5. The Executive Director who shall serve ex officio without vote.

(b) The Higher Education Facilities Trust Fund Board shall ensure that the revenue provided to the trust fund is adequate to support the grants approved by the Commission.

(c) At the end of each three-year period following the effective date of the Amending Act (January 10, 1994), the Higher Education Facilities Trust Fund Board shall review, in consultation with the Commission, the physical plant needs of public and private institutions in the State and shall recommend to the Governor and Legislature a plan to increase, if necessary, the availability and uses of grants made from the trust fund.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services

Drug Reduction

Adopted Amendments: N.J.A.C. 10:51-1.6, 2.6 and 4.6

Adopted Repeal and New Rules: N.J.A.C. 10:51-1.23, 2.21 and 4.22

Adopted New Rules: N.J.A.C. 10:51, Appendix E

Proposed: October 17, 1994 at 26 N.J.R. 4136(a).

Adopted: January 26, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: January 26, 1995 as R.1995 d.104, **without change**.

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, b and c; 30:4D-12; 30:4D-20, 22, 24. P.L. 1994, c.67.

Agency Control Number: 94-A-42.

Effective Date: February 21, 1995.

Expiration Date: September 7, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from the New Jersey Pharmaceutical Association, Palombo's Nor-Lin Pharmacy, Inc., J & J Drug & Medical Service, Town & Country Institutional Pharmacy, Scotchwood Institutional Services, Automated Pharmaceutical Services, Innovative Pharmacy Services, Inc., Suburban Medical Services, Inc., and Vitalink Pharmacy Services, Inc. Comments and responses are as follows:

COMMENT: Five commenters requested the Division of Medical Assistance and Health Services to extend the comment period for the proposal to offer further opportunities for submitting comments, specifically concerning the impact of the proposed changes on services provided to clients in long-term care facilities and the pharmacies that serve this population.

RESPONSE: The Division was unable to extend the 30 day proposal period due to constraints imposed by the regulatory process and the importance of the proposal's timely adoption.

COMMENT: One commenter who provided comments regarding the discontinuation of the Electronic Media Claims (EMC) Incentive program was supportive of this change in Division policy, since this program had accomplished its intended goal of increasing electronic claim submission by Medicaid pharmacy providers.

RESPONSE: The agency appreciates the favorable comment.

COMMENTS: Seven commenters indicated their concerns regarding the impact the adoption of the proposal would have on their financial resources and on their ability to continue to provide quality pharmaceutical services to Medicaid and PAAD beneficiaries residing in nursing facilities, including related services such as 24 hour availability and consultation services. One commenter indicated that removal of the \$24.99 limit in application of the regression factor would have an annual financial impact of \$360,000.

RESPONSE: Reimbursement by the Division of Medical Assistance and Health Services for covered pharmaceutical services provided in nursing facilities includes drug costs, adjusted by a regression of one to six percent, and a monthly capitation for related pharmacy services

including 24 hour availability. Reimbursement for pharmacy consultation services is determined based on contractual arrangements between the pharmacy consultant and individual nursing facilities and is not directly affected by this adoption.

The proposal directly impacts on Medicaid and PAAD reimbursement for drug costs. Eliminating the \$24.99 ceiling will result in the regression calculation being applied to all pharmacy claims, regardless of claim charge. However, this proposal does not impact on the capitation payment rate, which is the source of payment for the related services which the commenter states will be adversely affected. Nor does this proposal directly impact on the payment made by the nursing facility for consultant services. Therefore, the Division anticipates no change in the quality of these services currently being provided to nursing facility residents.

COMMENT: One commenter indicated their concern regarding the financial impact adoption of this proposal would have on the ability of Medicaid pharmacy providers to provide pharmaceutical services to community Medicaid and PAAD beneficiaries.

RESPONSE: The Division of Medical Assistance and Health Services is aware that any reduction in Medicaid/PAAD reimbursement may have an adverse impact on providers of pharmaceutical services. However, the impact will vary significantly, based on the volume of Medicaid and PAAD prescription services provided by individual pharmacy providers, including the number of claims submitted electronically and the number of drugs provided with a drug cost exceeding \$24.99. The proposal has no impact on the Division policy which requires a sliding scale regression based on a pharmacy's prescription volume (see N.J.A.C. 10:51-1.6, 2.6 and 4.6). In addition, the proposal has no impact on the magnitude of the regression traditionally applied by the New Jersey Medicaid and PAAD programs.

COMMENT: One commenter indicated its concern regarding the potential financial impact a two percent increase in the Medicaid/PAAD regression rate would have on pharmacies which provide pharmaceutical services to nursing facilities.

RESPONSE: The proposal will not change the current reimbursement policy of the Division of Medical Assistance and Health Services regarding the magnitude of the regression rates currently applied to Medicaid and PAAD pharmacy claims. However, the proposal will broaden the regression calculation to include all pharmacy claims, regardless of the claim charge, eliminating the current \$24.99 ceiling related to the regression calculation.

COMMENT: The New Jersey Pharmaceutical Association indicated its concern regarding the impact the proposal would have on decisions made by pharmacies concerning drug inventory purchased to service the Medicaid and PAAD beneficiary population. The Association believes that the adoption of the proposal will discourage pharmacies from "stock maintaining" inventory for drugs intended to be dispensed to Medicaid and PAAD beneficiaries. Instead, pharmacists will order the item or supply from their supplier when they receive the prescription and dispense the item on the next or second day, upon receipt of the item from their supplier.

RESPONSE: The Division of Medical Assistance and Health Services recognizes that adoption of the proposal will have a varying financial impact on pharmacies, depending on the volume of Medicaid and PAAD pharmacy services provided by an individual pharmacy. The initial purpose of limiting the application of the regression to drugs costing less than \$24.99 was to exempt certain high cost drugs. Although the proposal will reduce levels of Medicaid and PAAD reimbursement for pharmaceuticals that exceed the existing \$24.99 limit, there is no longer a solid rationale for exempting such drugs from application of the regression factor. In addition, the proposed levels of pharmacy reimbursement are consistent with reimbursement provided by commercial third party payors. The Division believes that these levels of reimbursement are sufficient to support the ability of pharmacies to purchase drugs required to maintain adequate levels of drug inventories.

COMMENT: There were two commenters, J&J Drug and Medical Service, and Scotchwood Institutional Services, that raised basically the same issue. Both commenters felt the application of the regression factor to all drugs, not just those above \$24.99, would provide difficulties for pharmacists that provide required consultant services to long term care facilities/nursing facilities (NF).

RESPONSE: The arrangement between a NF and a consultant pharmacist is a private contractual arrangement. The Medicaid NF reimbursement system recognizes this contractual arrangement by reimbursing the NF at levels determined by the actual payment rates between the NF and the consultant pharmacist, subject to the reasonableness

screens (reflecting 110 percent of the median per diem costs), and within the context of a prospective payment system (see N.J.A.C. 10:63-3.8(c) and (e)). As indicated above, this proposal has no impact on the reimbursement for consultant services.

Executive Order No. 27

PAAD is a completely State funded program and therefore not subject to the provisions of Executive Order No. 27.

The New Jersey Medicaid program (Title XIX) allows prescribed drugs to be a covered service (42 CFR 440.120). Payment for drugs are subject to upper payment limits (42 CFR 447.334). The State has defined the upper payment limits at N.J.A.C. 10:51-1.5, Basis of payment. However, the State has certain discretion to define and revise its payment methodology so long as it stays within the Federal limits.

The reductions that are included with this adoption are not in violation of Federal law or regulations because the Federal government is silent on these issues. There are no pharmaceuticals that are being discontinued with this rule.

The Division is removing the EMC incentive program. The Division is also removing the \$24.99 drug cost ceiling related to the calculation of the pharmacy regression. The economic impact remains the same as the proposal. The standard for EMC is technologically permissible because many pharmacy providers are already submitting claims electronically. The calculation of the regression factor has already been done by the Division's fiscal agent (Unisys).

Full text of the adoption follows:

10:51-1.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (See Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of non-compliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, regardless of prescription cost, by the fiscal agent, from the cost of each covered drug or device during claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

10:51-1.23 Electronic Media Claims (EMC) submission

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services shall complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement shall be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services shall submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

10:51-2.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (see Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of noncompliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, regardless of prescription cost, by the fiscal agent, from the cost of each covered drug or device during the claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

10:51-2.21 Electronic Media Claims (EMC) submission

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services must complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement must be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services must submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

10:51-4.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (See Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of non-compliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, regardless of prescription cost, by the fiscal agent, from the cost of each covered drug or device during claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

10:51-4.22 Electronic Media Claims (EMC) submission

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services must complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement must be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services must submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

APPENDIX E EMC MANUAL

AGENCY NOTE: The Electronic Media Claims (EMC) Manual is filed as an incorporated Appendix of this chapter/manual, but is not reproduced in the New Jersey Administrative Code. When revisions are made to the EMC Manual, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the EMC Manual, write to:

Paramax/Unisys
CN 4801
Trenton, N.J. 08650

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Change

Home Care Services

Traumatic Brain Injury Program; Purpose and Scope

N.J.A.C. 10:60-5.1

Take notice that the Department of Human Services, Division of Medical Assistance and Health Services has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 10:60-5.1 to delete subsection (f) as inaccurate, redundant and unnecessary. N.J.A.C. 10:60-5.1(f) lists the medical and financial eligibility criteria for the Traumatic Brain Injury waiver program proposed at 26 N.J.R. 1566(a). These criteria were also simultaneously proposed at N.J.A.C. 10:49-17.5(f). Upon adoption of the proposal at 26 N.J.R. 3466(b), the criteria listed in N.J.A.C. 10:49-17.5(f) were clarified and duplicated at N.J.A.C. 10:60-5.2(a). The criteria proposed at N.J.A.C. 10:60-5.1(f) were adopted as proposed. As the criteria as adopted at N.J.A.C. 10:49-17.5(f) and 10:60-5.2(a) control program eligibility, the inclusion in the rules of the criteria as proposed is unnecessary. This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the changed rule follows (deletion indicated in brackets [thus]):

10:60-5.1 Purpose and scope

(a)-(e) (No change.)

[(f) Applicants for participation in the TBI waiver program shall meet the following medical and financial eligibility criteria:

1. Be not less than 18 nor more than 65 years of age;
2. Have a diagnosis of acquired brain injury;
3. Exhibit medical, emotional, behavioral and/or cognitive deficits;
4. Meet the Division's nursing facility standard care criteria for Pre-Admission Screening (PAS);
5. Have a rating of at least four on the Rancho Los Amigos Levels of Cognitive Functioning Scale;
6. Be blind, disabled, or a child under the supervision of the Division of Youth and Family Services (DYFS) and be eligible for Medicaid in the community or be eligible for Medicaid if institutionalized. Persons eligible for the Medically Needy segment of New Jersey Care . . . Special Medicaid Programs, or enrolled in Garden State Health Plan, or private Health Maintenance Organizations serving Medicaid recipients are not eligible for this program.
 - i. There is no deeming of spousal income in the determination of eligibility for this program. While spousal resources are considered in the determination of eligibility, up to one-half of the total resources are protected for the use of the spouse; and
7. Be determined disabled by the Social Security Administration (SSA) or by the Disability Review Unit of the Division, using the SSA disability criteria.]

CORRECTIONS

(b)

STATE PAROLE BOARD

Parole Board Rules

Readoption with Amendments: N.J.A.C. 10A:71

Adopted New Rule: N.J.A.C. 10A:71-6.10

Proposed: October 17, 1994 at 26 N.J.R. 4150(a).

Adopted: January 11, 1995 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Filed: January 27, 1995 as R.1995 d.109, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d), 30:4-123.59(c), 30:4-123.63 and 30:4-123.64.

ADOPTIONS

Effective Date: January 27, 1995, Readoption
February 21, 1995, Amendments and new rule.
Expiration Date: January 27, 2000.

Summary of Public Comments and Agency Responses:

The following submitted comments:

Mary C. Williams, WN 10805, EMCFW; Carmen Messano, Prosecutor, County of Hudson; William H. Fauver, Commissioner, Department of Corrections; Richard C. Kramer, President, Voices for Victims, Inc.; Carmen Ferrante, Judge, Superior Court of New Jersey, County of Passaic—Family Part; Charles Holman, Paralegal, Prisoners Self Help Legal Clinic; Honorable Edward T. O'Connor, Jr., Senator, 31st District; Clifford J. Daniels, Warden, Monmouth County Correctional Institution; James F. Barbo, Administrator, Northern State Prison; Honorable Bernard F. Kenny, Jr., Senator, 33rd District; Terrance P. Farley, Director, Division of Criminal Justice; J. Michael Blake, Assistant Deputy Public Defender, Office of the Public Advocate; W. Michael Murphy, Jr., Prosecutor, County of Morris, President, N.J. Prosecutor's Ass'n; and Cathy L. Waldor, Esq., Vice President, Ass'n. of Criminal Defense Lawyers of New Jersey.

1.a. COMMENT: The Association of Criminal Defense Lawyers of New Jersey noted in reference to the amendment to N.J.A.C. 10A:71-1.2(a)2 that there is no provision for any prisoner representative to attend Board meetings and that there is no provision to allow prisoner representatives to rebut what may turn out to be statistics and numbers without basis.

b. COMMENT: The President of Voices for Victims, Inc. expressed support for proposed amendment N.J.A.C. 10A:71-1.2(a)2. It was believed that by permitting attendance of representatives of recognized victims groups at formal meetings the Board would be able to dispel negative opinions by the general public regarding the parole process.

RESPONSE: Legislative enactments have made it clear that it is in the public interest that victims be involved in proceedings within the State's criminal justice system; that victims receive adequate notice and advice concerning critical stages of the criminal justice process to allow victim participation and understanding; that the successful inclusion of victims in the criminal justice process requires the cooperation of agencies who share the responsibility during different stages of the process; and that agencies of government establish procedures to insure adequate notice for the involvement of victims. Parole is certainly a critical stage of the criminal justice process and the Board believed that inclusion of representatives of victim groups in formal Board meetings will further the goal of enlightening victims and the public as to the parole process. Further, the Board believed that inclusion of representatives of victim groups in formal Board meetings gives due recognition to the special status which the Legislature has established for victims in the criminal justice process.

The Board's rules and regulations must be adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. If the Board should propose to amend its rules or regulations the inmate population and interested parties will receive appropriate notice of any proposal and will have the opportunity to offer comments, objections or suggestions to the Board for due consideration. The Board, therefore, does not believe that the lack of a prisoner representative at a Board meeting precludes the inmate population from providing appropriate input to the Board on matters impacting on the inmate population. The Board elected to adopt the amendment as proposed.

2. COMMENT: The Commissioner of the Department of Corrections noted the proposed amendments to N.J.A.C. 10A:71-1.3, 3.7, 3.14 and 3.15 refer to "case review." The Commissioner believed that a definition of case review was necessary in order that the Department could determine the impact of the requirement to produce institutional files on the operation of institutional committees, which must also have access to the files, and on the staff members who would be required to produce institutional files for "case review."

RESPONSE: The Board is satisfied that the proposed amendments adequately reflect that a case review is an administrative review of an inmate's case in lieu of an in person hearing. The necessity of producing institutional files will, therefore, not be increased since a case review will replace an in person hearing and institutional files are already required to be produced for in person hearings. The Board elected not to amend the proposed rules and adopted same as published.

3. COMMENT: The Commissioner of the Department of Corrections, a Superintendent of a State Correctional facility, the Office of the Public

CORRECTIONS

Defender and an inmate objected to the proposed amendment to N.J.A.C. 10A:71-1.9 which would eliminate the requirement for the preparation and distribution of a handbook on the parole process.

It was pointed out that the handbook serves as a valuable source of information to the inmate population; that the handbook enables an inmate to understand the parole process; that the handbook permits a parole counselor to better utilize his or her time by not having to respond to inquiries which the handbook could resolve for an inmate; and that elimination of the handbook would negatively impact on the inmate population.

RESPONSE: The Board upon assessment of the comments elected not to adopt the proposed amendment to N.J.A.C. 10A:71-1.9.

4. COMMENT: The Office of the Public Defender objected to proposed amendment N.J.A.C. 10A:71-2.1(a)10 which provides that all information, statements or testimony provided by a victim or the nearest relative of a murder/manslaughter victim be deemed confidential. The Office of the Public Defender believed that the rule will prohibit prisoner access to parole files and will preclude inmates from being able to refute information submitted in opposition to parole release. In lieu of deeming all information confidential regardless of necessity, the Office of the Public Defender suggested that confidentiality be assessed in specific cases.

RESPONSE: The Board is not cognizant of any statutory provisions or case law which precludes the Board from designating victim input as being confidential. Further, legislative enactments have established the rights of victims in the criminal justice process and have provided for victims to be active participants in the process. The Board believes that confidentiality of victim input is essential to encourage victims to actively participate in the parole process. The Board elected to adopt the amendment as proposed.

5. COMMENT: The Office of the Public Defender objected to the proposed amendment to N.J.A.C. 10A:71-3.2(c)4 which provides for the application of "gap time" credit in the determination of the parole eligibility term derived from a custodial term, which does not include a mandatory-minimum term, imposed on or after June 21, 1994. The Office of the Public Defender believed that the date of sentence was irrelevant and the State Supreme Court decision on which the proposed amendment is based should be applied to any calculation performed by the Board on or after a specific date. The Office of the Public Defender believed that the specific date should be June 9, 1993, the date of the decision rendered by the Appellate Division on the issue of "gap time."

RESPONSE: Upon consultation with the Board's counsel, the Board believed that it has correctly interpreted the prospective application of the Supreme Court decision rendered in *Booker v. State Parole Board*, 136 N.J. 277 (1994). The Board, therefore, elected to adopt the amendment as proposed.

6. COMMENT: The Office of the Public Defender objected to the proposed amendment to N.J.A.C. 10A:71-3.2(c)11 which would preclude an offender from receiving credit toward the service of the parole eligibility term for time served in the Intensive Supervision Program. The Office of the Public Defender believed that the proposal was contrary to case law and that the nature of ISP strongly supports the conclusion that participants remain in custody and must receive full credit for the time spent in the program. Further, it was noted that denial of credit increased the punishment imposed upon offenders and that the Board, as an administrative agency, cannot increase punishment upon individuals convicted of crimes.

RESPONSE: Upon consultation with the Board's counsel, the Board elected not to adopt the proposed amendment.

7. COMMENT: The Office of the Public Defender supported the amendment to N.J.A.C. 10A:71-3.3(a) which would eliminate the restriction which precludes a young adult inmate from earning program participation credits during the service of the first six months of the established primary eligibility term.

RESPONSE: The Board adopted the amendment as proposed.

8. COMMENT: A Superintendent of a State Correctional facility indicated that the proposed amendment to N.J.A.C. 10A:71-3.7(d) requiring the chief executive officer to provide reasons why a preparole report is not filed timely is not productive. The Superintendent advised that if information is not provided, the Board's staff submits an outstanding list of inmate cases to institutional staff and that immediate attention is given to providing the information.

RESPONSE: The Board believed that it is imperative that a written record be established as to the reasons why information was not provided to the Board in a timely fashion. The Board is often confronted through

the administrative appeal process or court action with the issue of lack of timeliness in the conducting of an inmate's hearing. Due to the scheduling of the initial parole hearing being contingent on the receipt of the package of case hearing materials from the institutional authorities, the Board believed that it is imperative for appellate review that a written record be established as to why information was not provided to the Board in a timely fashion. The Board believed that such a requirement is, therefore, productive and elected to adopt the amendment as proposed.

9. COMMENT: The Commissioner of the Department of Corrections objected to N.J.A.C. 10A:71-3.7(e)10 which would require the Department to provide to the Board, in every parole hearing, an itemized account of all fines, penalties, etc., imposed by the court and a statement of the balance owed by the inmate on the obligations. The Commissioner advised that the Department has been unsuccessful in its repeated requests for an appropriation to implement a computerized revenue collection system and that the Department cannot expect to obtain an appropriation for this purpose until the State determines the feasibility of a comprehensive Statewide system for revenue collection.

RESPONSE: The Department of Corrections is statutorily responsible for the collection of revenue obligations imposed by a sentencing court and responsible for providing information to the Board on inmate cases. Information pertaining to an inmate's efforts to pay his or her revenue obligations during the period of incarceration may impact on the Board's assessment of an inmate's progress and rehabilitation and will impact on the establishment of parole conditions, if parole release is granted, and the establishment of a payment schedule. The Board, therefore, elected not to eliminate or modify the proposed amendment and elected to adopt the amendment as proposed.

10. COMMENT: A Superintendent of a State Correctional facility believed that the amendment to N.J.A.C. 10A:71-3.7(g) requiring the chief executive officer of an institution to produce the institutional classification file at parole hearings is not necessary. The Superintendent believed that progress notes reflect the periodic reviews by the Classification Department and the inmate's adjustment and program participation. The Superintendent suggested that the amendment should require updated computerized progress notes and a face sheet in lieu of producing the institutional classification file.

RESPONSE: The Board does not concur that all pertinent information regarding the inmate is contained in the progress notes. Reports such as those relating to instances of institutional misconduct are not regularly included in the package of case materials. The Board believed that the complete institutional file on the inmate is necessary in order to insure all information on the inmate is available for the Board's review. The Board, therefore, did not elect to modify the amendment as suggested and elected to adopt the amendment as proposed.

11. COMMENT: The Commissioner of the Department of Corrections requested in respect to proposed rule N.J.A.C. 10A:71-3.7(h) that the Board establish criteria which should be met before supplemental evaluation of an in-depth nature is requested. Further, the Commissioner suggested that in the alternative the Board employ staff to conduct such supplemental in-depth evaluations.

RESPONSE: The Board does not consider it to be legally required nor a necessity to establish criteria for the referring of an inmate's case for a supplemental in-depth evaluation by Department staff. The Board's experience has been that such supplemental evaluation referrals have generally been made in the cases of offenders with aggressive/assaultive or sexual abuse histories or when the in-person interview raises concerns not addressed in the evaluation report submitted by the Department as part of the case hearing materials. When a referral is made in such cases, the Board Members do identify for the reference of the evaluator the specific concerns of the Board Members. The Board, therefore, elected to adopt the amendment as proposed.

In reference to staffing, the Board is in the process of evaluating qualified applicants for a full time staff position with the Board. Upon the identification and employment of a qualified individual, it is the expectation that the number of supplemental evaluation referrals to the Department will decrease accordingly.

12. COMMENT: The Commissioner of the Department of Corrections and a Superintendent of a State Correctional facility objected to proposed new rule N.J.A.C. 10A:3-7(k) which would permit an inmate to retain the services of a psychologist or psychiatrist to evaluate the inmate for parole. It was noted that such a regulation would be perceived to confer a substantial benefit upon a certain class of inmates based upon financial resources and that the Department does not generally permit

inmates to purchase such services because of the perception of special entitlement. It was also noted that various institutional reports are confidential in nature and a private evaluator would not be afforded access to such reports.

RESPONSE: The Board is statutorily obligated to assess whether in an offender's case there is a substantial likelihood of criminal activity if the offender is released on parole. The Board believes that it is incumbent to receive any and all information that an interested party, the institutional authorities and the offender wish to submit to the Board for consideration. The Board does not believe that inmates who have the financial ability to provide additional information to the Board should be precluded from doing so due to other inmates not having such financial ability.

The Commissioner acknowledged in his comments that a narrow exception to the Department's general practice does exist. Exceptions are made when an inmate must obtain an evaluation which is required to support a motion for a change in sentence to allow an inmate to enter a drug treatment program. In such cases the potential exists that a court may release an offender from confinement in a correctional facility. Parole is also the authorized release of an offender from confinement and any information which will assist the Board in rendering an informed decision should be provided to the Board. The proposed amendment provides for the additional means of information being generated and submitted to the Board for consideration. The Board determined to adopt the amendment as proposed.

13. COMMENT: The Commissioner of the Department of Corrections requested in reference to N.J.A.C. 10A:71-3.13(b) that the Board also obtain the agreement of the facility administrator before scheduling the commencement of parole hearings at other than 9:00 A.M.

RESPONSE: The Board does not believe that the commencement time of the hearing schedule should be subject to the agreement of the facility administrator and the Board, therefore, elected not to amend the proposed rule. However, the Board is cognizant of the necessity to communicate with the institutional authorities when scheduling changes occur in the hearing process. The Board will certainly insure that the facility administrator is apprised of any time change and will cooperate with the facility administrator whenever possible.

14. COMMENT: The Office of the Public Defender objected to the proposed amendment to N.J.A.C. 10A:71-3.16 which would require two members of the Board instead of one member to certify parole release of an inmate when recommended by a hearing officer. The Office of the Public Defender noted that N.J.S.A. 30:4-123.55(b) provides that if the assigned member of the Board panel concurs in a hearing officer's recommendation, the Board member shall certify parole release. The Office of the Public Defender believed that the proposed amendment altered the statutory scheme; that the proposed amendment would make it more difficult and time consuming for parole release to occur; that the proposed amendment is inconsistent with the presumption in favor of parole; and that such a review process would impede the Board in complying with its statutory obligation to conduct an offender's panel hearing at least 30 days prior to the offender's parole eligibility date.

RESPONSE: The Board did not concur with the assessment of the Office of the Public Defender. The Board is confident that requiring two Board members to certify parole release is a reasonable exercise of its vested responsibility to insure that only those offenders who meet the criterion for parole are released. The Board believed that the review of an offenders' case by two Board members will enhance the decision-making process and enhance the public's confidence in the parole system.

The Board recognizes the necessity for the Board staff and Board members to process cases in an efficient and timely manner. The Board anticipates that a second Board member review of an offender's case will have no appreciable impact on the timely processing of an offender's case. The Board did not believe that time consuming delays will occur as a result of the amendment nor did the Board believe that the amendment, in and of itself, would impact on the statutory obligation to conduct panel hearings at least 30 days prior to an offender's parole eligibility date. The Board elected to adopt the amendment as proposed.

15. COMMENT: A Superintendent of a State Correctional Facility noted that the proposed amendment to N.J.A.C. 10A:71-3.18(e) extends the time period from 21 to 30 days during which a Board panel must provide written notice of its decision to grant or deny parole to the inmate, Department and the Prosecutor of the county of commitment. The Superintendent believed that notice of parole release decisions should be provided to the Prosecutor from 90 to 120 days in advance of release and not 30 days as proposed.

RESPONSE: There is no statutory requirement that the Board notify a Prosecutor of a parole release decision 90 to 120 days prior to the date of the release of an offender. At the present time the chief executive officer of an institution is required to provide notice to a Prosecutor at least 30 days prior to the actual release of the offender. The amendment to N.J.A.C. 10A:71-3.18(e) only pertains to when the Board panel must issue its written decision. In rendering a decision, the Board panels are cognizant of the responsibility of the chief executive officer to notify a Prosecutor of an offender's release date and Board panel parole release decision will take into account said responsibility. It is expected that release decisions will be issued as expeditiously as possible and it is not anticipated that a Board panel will delay the issuance of release decision once rendered. Due to the extension in the time period intending to primarily impact on the issuance of decisions to deny parole which require extensive staff processing, the Board did not believe modification to the amendment was necessary. The Board elected to adopt the amendment as proposed.

16. COMMENT: A Presiding Judge of the Family Part of the Superior Court believed that N.J.A.C. 10A:71-3.23(b) (to be recodified as (c)) must be amended. The Judge believed that the provision presently eviscerates consecutive sentences of their deterrent effect and places the most serious, violent juvenile offenders in the same position as less serious offenders. The Judge believed that, instead of considering a consecutive sentence as an aggravating factor to be considered when establishing a tentative parole date, consecutive sentences for the two most serious offenses should be tallied to produce a maximum term from which a tentative parole date should be set.

RESPONSE: Due to the significant and substantive issues raised on a provision not considered for amendment, the Board elected to take the matter under advisement, to permit due consideration of the commenter's concerns.

17. COMMENT: A Presiding Judge of the Family Part of the Superior Court believed that though the proposed amendments to N.J.A.C. 10A:71-3.23(b) created the appearance of getting tougher on serious juvenile crime, in truth, the proposed amendments failed to deliver an enhancement to public safety. The Judge noted that while the "ranges" for the parole eligibility terms would become longer the presumptive terms remained basically unchanged and in the case of felony murder the presumptive term is reduced by 10 months. The Judge believed that the presumptive term, and not the range, is the most critical time factor for releasing juvenile inmates. The Judge believed that by retaining the presumptive terms and, in the case of felony murder, reducing the presumptive term, the code would provide no actual increase in protection of the community. The Judge believed that the presumptive terms are too short now and that the Board is substituting its judgment of what the appropriate length of incarceration should be for that of the Family Part Judge who has a better knowledge and understanding of the juvenile and the juvenile's victim(s).

RESPONSE: The Parole Act of 1979 (N.J.S.A. 30:4-123.45 et seq.) vests in the Board the authority to release juvenile inmates on parole status. The Parole Act of 1979 directs that a juvenile inmate be released on parole when it shall appear to the Board that the juvenile if released, will not cause injury to person or substantial injury to property. The Parole Act of 1979 requires that a juvenile inmate's case be reviewed periodically, but no less than quarterly to determine whether parole release should be granted and requires at least an annual review of a juvenile inmate's case to determine the reasons for the continued confinement of the juvenile. The Board panel on juvenile commitments provides notice of its determinations after the required reviews to the sentencing court.

The imposition of sentence is the function of the sentencing court. By statute, it is the function of the Board to assess at what point during the service of the custodial term the juvenile inmate has achieved the level of rehabilitation which would lead the Board to conclude that the juvenile inmate will not cause injury to person or substantial injury to property. Upon such a determination being rendered, the Board must release the juvenile inmate on parole. Just as a Family Part Judge must act in accordance with the Code of Juvenile Justice, the Board must act in accordance with the Parole Act of 1979. The Board's exercise of its statutory authority should in no way be interpreted as undermining the authority or judgment of a Family Part Judge.

Due to the number of required periodic reviews of a juvenile inmate's case, the Board does not concur that a Family Court Judge has a far better knowledge and understanding of the juvenile offender. The Board believes that the receipt and review of updated institutional reports and

evaluations on a regular basis places the Board in a position to appropriately assess the progress of the juvenile offender. However, the Code of Juvenile Justice does preclude the parole release of a juvenile inmate serving a term for an offense which would constitute a crime of the first, second or third degree if committed by an adult prior to the completion of one-third of the sentence imposed without the consent of the sentencing court. Family Part Judges, therefore, do participate in the release decision when the Board believes that release prior to the service of one-third of the sentence is appropriate. If a Family Part Judge does not concur in the assessment of the Board panel then parole release may not be effectuated prior to the service of one-third of the sentence.

The Board believed that the proposed presumptive terms and ranges, based on the Board's experience in assessing the cases of juvenile inmate's entering the system, to be reasonable. The Board does not believe that the proposed amendments undermine community safety. The proposed amendments provide for a schedule of tentative release dates only. A juvenile inmate will not be released on parole until the Board is satisfied upon a full review of the case, that the statutory criteria has been met. The Board elected to adopt the amendments as proposed.

18. COMMENT: The Office of the Public Defender objected to the proposed amendment to N.J.A.C. 10A:71-4.2(a)1 which would delete the criterion "failure to consider material facts" as a basis for an appeal of a decision to deny parole. The Office of the Public Defender believed that the question of whether or not to grant parole is essentially factual in nature and that, therefore, the criterion that a Board panel failed to consider material facts is necessary to provide for a meaningful review by the full Board. Further, it was offered that deletion of said criterion would deprive inmates of meaningful review by the full Board and will deprive the appellate courts of the expertise of the full Board in the court's review of an essentially factual question.

RESPONSE: Upon consultation with the Board's counsel, the Board elected not to adopt the proposed amendment.

19. COMMENT: The Commissioner of the Department of Corrections questioned in reference to the proposed amendment to N.J.A.C. 10A:71-6.4(e)1 whether a special condition imposed by the District Parole Supervisor or an Assistant District Parole Supervisor will be in effect during the pendency of the Board's review of the special condition. The Commissioner believed that if the special condition was not deemed to be in effect then the proposed rule is viewed as negatively impacting upon case management.

RESPONSE: The Board determined that the imposed special condition was to be deemed effective during the Board's review process. The Board adopted the rule as proposed.

20. COMMENT: The Commissioner of the Department of Corrections, two State Senators, the Director of the Division of Criminal Justice of the Department of Law and Public Safety, a County Prosecutor and the President of the N.J. Prosecutors Association objected to proposed amendment to N.J.A.C. 10A:71-7.3(b)1 which would limit applications for accelerated parole revocation to crimes of the first and second degree. In general, the comments indicated that the proposed limitation would exclude many crimes, such as residential burglaries, auto theft and street level drug crimes, which the community views as serious in nature; that the inability to move for accelerated parole revocation would lessen the credibility of the parole status as a deterrent to the commission of crimes; and the proposed regulation would severely curtail a Prosecutor's power to protect potential victims of crime and would erode public confidence in the criminal justice system.

RESPONSE: The Board, upon assessment of the comments, elected not to adopt proposed amendment N.J.A.C. 10A:71-7.3(b)1 which would have limited applications for accelerated revocation to the alleged commission of crimes of the first and second degree and which would have permitted, only when special circumstances existed, the submission of an application for accelerated revocation in the case of the alleged commission of a crime of a lesser degree.

21. COMMENT: The Director of the Division of Criminal Justice of the Department of Law and Public Safety objected to the proposed amendment to N.J.A.C. 10A:71-7.3(f) requiring the prosecuting authority to present the case for parole revocation and insure the appearance of any necessary witness. The Director believed that it is the Board's statutory responsibility to conduct parole revocation hearings and that the Board is abdicating its responsibilities and placing the burden of presenting revocation cases on the prosecutors' offices.

RESPONSE: N.J.S.A. 30:4-123.60 authorizes a prosecuting authority to request the Board to implement parole revocation proceedings when

a parolee is arrested on criminal charges. The fact that the Board by statute may authorize the implementation of the parole revocation process does not in the Board's opinion place the sole burden on the Board to, in essence, "prosecute" the parolee for the commission of an alleged offense. The prosecuting authority represents the State's interest in the criminal prosecution of the parolee and the Board believes that the parole revocation process, which may be initiated at the request of the prosecuting authority, should be viewed as a component of the prosecution of the matter. In many instances, the witnesses that are required to appear at a revocation hearing are the same witnesses which will be utilized by the prosecuting authority during the criminal prosecution of the case against the parolee. The Board believes that the prosecuting authority, therefore, has a vested interest in the selection of appropriate witnesses and in the out-of-court statements given under oath by witnesses. The Board also believes that the presence of a prosecutor's representative at a parole revocation proceeding will enhance the presentation of evidence; provide information to the Board as to the status of the criminal prosecution; and insure to the Board the prosecuting authority's continuing interest in the revocation process.

The Board did not concur with the concern of the Director and elected to adopt the amendment to N.J.A.C. 10A:71-7.3(f) as proposed.

22. COMMENT: The Prisoners Self Help Legal Clinic objected to the proposed amendments to N.J.A.C. 10A:71-7.7(c)2 and 7.14(c)2. In general, the Clinic believed that the amendments were vague and unworkable; that the amendments penalized parolees who choose attorney representation; and that the procedure to provide counsel is deficient under the Federal standard required by *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). The Clinic believed that the proposed amendments required a parolee, who claimed the parole conditions were violated because of substantial reasons which justify or mitigate the violations, to argue at one and the same time that the reasons are complex or difficult to present and that the parolee did not understand the violations or is incapable of speaking effectively on their own behalf. Thus, the Clinic believed that contradictory demands would be placed on the parolee.

RESPONSE: In consultation with the Board's counsel, the Board elected not to adopt proposed subparagraphs iii and iv of N.J.A.C. 10A:71-7.7(c)2 and 7.14(c)2. The Board believed that the elimination of the subparagraphs resolved the concern of the commenter. The remaining amendments to the respective sections were adopted by the Board.

Summary of Agency-Initiated Changes:

1. At N.J.A.C. 10A:71-1.2(j), "members" is changed to read "member."
2. At N.J.A.C. 10A:71-3.16(b), "member" is changed to read "members."
3. At N.J.A.C. 10A:71-3.48(r), "member" is changed to read "members."
4. At N.J.A.C. 10A:71-6.9(e), "conditional" is eliminated. Also, at N.J.A.C. 10A:71-6.9(f), the phrase "or conditional discharge" is eliminated. The discharge granted by the Board in the specified instances is a full discharge from supervision. The term "conditional" is misleading and, therefore, has been eliminated.
5. At N.J.A.C. 10A:71-7.3(b)3i, "confidential" is eliminated. The requested information, which will constitute a component of a prosecuting authority's application for accelerated revocation, will be released as discovery to defense counsel and will, therefore, not be deemed to confidential in nature.
6. The phrase "case review and" was inserted in the caption of N.J.A.C. 10A:71-3.14. The caption was modified to reflect the insertion of the term case reviews in several subsections.

Executive Order No. 27 Statement

The readopted rules, amendments and new rule do not pertain to any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. An explanation as analysis of the rules and amendments pursuant to Executive Order No. 27 (1994) is, therefore, not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:71.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

10A:71-1.2 Board meetings

(a) Formal Board meetings shall be any meetings where Board policy, rules and regulations are determined.

1. (No change.)

2. Formal Board meetings shall be open only to the Governor and the Governor's representatives, the Commissioner and the Commissioner's representatives, representatives of recognized victim groups and to such other persons as authorized by the Board.

(b)-(i) (No change.)

(j) No Board member*[s]* shall participate in any vote without being present for the deliberation on the subject matter. If no majority decision is reached, no Board action shall result.

1.-2. (No change.)

10A:71-1.3 Parole case reviews, release hearings, board panel and board hearings

(a) The Chairperson shall establish the schedule of all parole case reviews, release hearings, Board panel and Board hearings.

(b) The Chairperson shall give reasonable notice of such case reviews and hearings to the Board panel members.

(c) (No change.)

(d) Except as provided in N.J.A.C. 10A:71-1.4, one member of the Board panel shall constitute a quorum of the panel.

(e) (No change.)

(f) When a Board panel hearing is conducted by two members, the inmate's case shall be referred to the third Board panel member if upon conclusion of the hearing a unanimous decision on the case cannot be reached.

1. In such instances, the third Board panel member shall review all records of the hearing prior to the Board panel rendering a final decision on the case.

2. (No change.)

10A:71-1.5 Disqualification or incapacity of Board members

(a) A Board member shall not participate in any Board or Board panel deliberations or disposition of any case in which the Board member has a personal interest, prejudice or bias.

(b)-(f) (No change.)

10A:71-1.9 Published information

* (a) * As provided by law, the Board shall publish a yearly report detailing the operations, organization and procedures of the Board.

* (b) * The Board will periodically review and update with appropriate amendments handbooks for distribution to all inmates subject to the jurisdiction of the Board detailing parole policies and procedures and shall request the chief executive officer of each state and county facility to make such handbooks available to all inmates subject to the jurisdiction of the Board.*

10A:71-2.1 Confidentiality of information and records

(a) The following information, files, documents, reports, records or other written material submitted to, prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to parole and parole supervision are deemed confidential:

1.-7. (No change.)

8. A transcript, if prepared, of any proceeding of the Board;

9. Such other information, files, documents, reports, records or other written materials as the Board may deem confidential to insure the integrity of the parole and parole supervision processes; and

10. All information, statements or testimony provided by a victim or nearest relative of a murder/manslaughter victim.

(b)-(e) (No change.)

10A:71-3.1 Definitions

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

...

"Primary eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by the court or the

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Board schedules contained in N.J.A.C. 10A:71-3.3; 7.16 and 7.16A. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.21.

...

10A:71-3.2 Calculation of parole eligibility terms

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

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-3. (No change.)

4. Where the inmate is serving a term and a concurrent or consecutive specific term, with no mandatory-minimum term, is subsequently imposed on or after June 21, 1994, the parole eligibility term on the subsequently imposed specific term shall be one-third of the balance of the specific term determined by reducing the specific term by credit awarded pursuant to N.J.S.A. 2C:44-5(b)(2).

5. Where the inmate is serving time due to a revocation of parole, the parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.16 or 7.16A.

Recodify existing 5. to 9. as 6. to 10. (No change in text.)

[11. If an inmate released to the Intensive Supervision Program on or after the effective date of this amendment is returned to confinement, the time served in the Intensive Supervision Program shall not be credited towards the service of the parole eligibility term.]

(d)-(f) (No change.)

(g) Credits shall reduce parole eligibility terms as follows:

1.-3. (No change.)

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21, 3.46, 7.16 and 7.16A.

(h) (No change.)

10A:71-3.3 Parole eligibility for young adult inmates

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

(c) The presumptive primary eligibility date established pursuant to (a) above may be increased by up to 10 months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors are present:

1.-2. (No change.)

3. The inmate has previously adjusted unsuccessfully to parole or probation supervision or the present term involves unsuccessful adjustment to probation supervision.

4.-7. (No change.)

(d)-(f) (No change.)

(g) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71-7.16 or 7.16A may be reduced through program participation by the inmate.

1.-4. (No change.)

(h)-(k) (No change.)

10A:71-3.6 Notice of parole eligibility; adult inmates

(a) (No change.)

(b) Upon such notification and within 90 days of the commencement of the sentence, the Board shall notify the inmate in writing of his or her primary parole eligibility date.

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

10A:71-3.7 Preparation of cases for parole hearings; adult inmates

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

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel and the Bureau of Parole within 60 days of the receipt of the Board's list. If the report is not filed within the 60 day time period, the chief executive officer shall state the reasons therefor in writing and provide such statement in the report when the report is filed with

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the appropriate Board panel. In the case of an inmate identified by the Board's staff as being past eligible for parole consideration, the chief executive officer shall give priority to the preparation and filing of the report on the inmate with the appropriate Board panel.

(e) Such report shall consist of the following information:

1.-9. (No change.)

10. An itemized account of the assessment, penalty, lab fee, fine and restitution amounts imposed by the sentencing court and the balance owed by the inmate on the respective monetary obligation.

(f) (No change.)

(g) It shall be the responsibility of the chief executive officer to produce the institutional classification file at all scheduled case reviews and initial parole, Board panel and Board hearings.

(h) In addition to any psychological or psychiatric evaluation report(s) submitted pursuant to (e) above, a Board panel or the Board may require the Department to perform a supplemental evaluation of an in-depth nature of the inmate.

(i) An inmate may submit to the Board panel or Board any evaluation report prepared in his case by a private psychologist or psychiatrist. The expense for the conducting of such an evaluation shall be the complete responsibility of the inmate. Arrangements for the scheduling of such an evaluation shall be made through the Department and shall be in accordance with Department regulations. If an inmate submits an evaluation report pursuant to this section, the inmate shall be required, upon the request of the Board panel or Board, to produce at his or her expense the examining psychologist or psychiatrist for an interview before the Board panel or Board.

10A:71-3.10 Purpose of parole hearing; adult inmates

(a) The Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of the State of New Jersey if released on parole.

(b) When inmates are sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2A:164-3 et seq., or when inmates are sentenced to and housed at the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-5, the Board panel shall determine whether the inmate, if released, is capable of making an acceptable social adjustment in the community.

(c) If an inmate is being considered for parole on sentences to both the Corrections Complex and to the Adult Diagnostic and Treatment Center, the Board panel shall make independent determinations required pursuant to both (a) and (b) above.

(d) (No change.)

10A:71-3.13 Parole hearing procedures; adult inmates

(a) (No change.)

(b) Parole hearings on a scheduled hearing date shall commence at 9:00 A.M. unless otherwise agreed to by the Board panel members.

Recodify existing (b) to (h) as (c) to (i) (No change in text.)

(j) The hearing officer or presiding Board member shall record the hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled for the next available hearing date.

(k) The Board shall adopt a professional code of conduct and parole hearings shall be conducted in accordance with the professional code of conduct.

10A:71-3.14 Scheduling of *case review and* initial parole hearing; adult inmates

(a) Upon the Board panel's receipt of the reports required pursuant to N.J.A.C. 10A:71-3.7, the Chairperson shall establish a schedule of case reviews and parole hearings to be conducted by a hearing officer assigned by the Chairperson.

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(b) Except as provided in N.J.A.C. 10A:71-3.50, such case reviews and hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such case reviews and hearings at least seven days prior to the hearings.

(d)-(f) (No change.)

10A:71-3.15 Initial hearing and case review notice of decision; adult inmates

(a) At the conclusion of the parole hearing or case review, the hearing officer shall:

1.-3. (No change.)

(b) (No change.)

(c) At the time of the hearing or case review, the hearing officer shall issue a written assessment to the inmate, the Department and the Board panel.

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

10A:71-3.16 Board member review; adult inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign two members of the appropriate Board panel to review such recommendation.

(b) If the assigned Board members concur with the recommendation of the hearing officer, the member*s* shall certify parole release as soon as practicable after the parole eligibility date by:

1.-4. (No change.)

5. Issuing a written decision within 21 days of the Board members' action to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

(c) (No change.)

(d) If such Board members do not concur with the recommendation of the hearing officer, the members shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board members' referral.

(e) If such Board members do not reach a unanimous decision, the Chairperson shall determine whether the case shall be referred to the appropriate Board panel for a hearing or whether the case shall be referred to a third Board panel member for review.

1. If the determination is rendered by the Chairperson that the case shall be referred to the appropriate Board panel for a hearing, a written decision shall be issued to the inmate, the Department and the Board within seven days consisting of the reasons for the referral.

2. If the Chairperson refers the case to a third Board panel member and upon review it is the majority vote of the Board panel members to concur with the recommendation of the hearing officer, parole release shall be certified pursuant to (b) above.

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by Board members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b)-(f) (No change.)

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) (No change.)

(b) If the Board panel determines that the inmate shall be placed in a halfway house facility for a specified time period as a pre-release condition, the Board panel shall refer the matter to the Board for review. If the Board upon reviewing the record concurs that placement of the inmate in a half-way house facility for a specified time period is an appropriate pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board panel shall de-

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termine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

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

(e) Within 30 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

(f) (No change in text.)

10A:71-3.19 Board hearing; scheduling for adult inmates

(a) A case referred to the Board by a Board panel pursuant to N.J.A.C. 10A:71-3.18(c) shall be scheduled by the Chairperson for a hearing by the Board.

(b)-(e) (No change.)

10A:71-3.20 Board hearing; notice of decision for adult inmates

(a) (No change.)

(b) If the Board establishes a parole release date based upon a projected eligibility date, the provisions of N.J.A.C. 10A:71-3.18(d) shall apply.

(c) If the Board determines that the inmate shall be placed in a half-way house facility for a specified time period as a pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board shall determine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

(d) Within 30 days of the Board hearing, the Board shall issue a written notice to the inmate, the Department and the Prosecutor for the county from which the inmate was committed.

(e) (No change in text.)

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

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

(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. If, in the opinion of a two-member Board panel denying parole, the future parole eligibility date which would be established pursuant to (a) or (b) and (c) above is clearly inappropriate as provided herein, the two-member Board panel shall refer the inmate's case to the third Board panel member upon conclusion of the hearing. In such instances, the third Board panel member shall review all the records pertaining to the hearing.

2. The two-member Board panel shall, pursuant to N.J.A.C. 10A:71-3.18, notify the inmate in writing that parole has been denied, that a future parole eligibility date pursuant to (a) or (b) and (c) above has not been established and the reasons therefor, and that a three-member Board panel review will occur for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) or (b) and (c) above.

3. The inmate shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement. The statement may include any information the inmate may deem relevant to the evaluation of his case by the Board panel members.

Recodify existing 3. to 5. as 4. to 6. (No change in text.)

7. The inmate shall have 30 days from the date notice is received pursuant to (d)6 above to prepare and submit a written statement containing any additional information which the inmate may deem relevant to the evaluation of his or her case by the Board.

8. The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing. Upon disposition of the case, the Board shall state in writing to the

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inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.18(c), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. (No change.)

(f)-(i) (No change.)

10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates

(a) This subsection shall apply to juvenile inmates whose offenses were committed prior to *[(the effective date of the amendment to (b) below)]* ***February 21, 1995***. Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree	16	12-18
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	10-14
Crime of Third Degree	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(b) This subsection shall apply to juvenile inmates whose offenses were committed on or after *[(the effective date of the adopted amendment)]* ***February 21, 1995***. Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	100	100-180
Murder (N.J.S.A. 2C:11-3(a)(3))	40	40-120
Crime of First Degree (except Murder)	20	16-42
Crime of Second Degree	16	12-20
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	12-20
Crime of Third Degree	12	12-20
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

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(c) (No change in text.)

(d) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the tentative parole release date from the presumptive term established pursuant to (a) or (b) above:

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

(e) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) or (b) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tentative parole release date, a date within the range contained in the provisions of (a) or (b) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) or (b) above.

3. The decision of the juvenile Board panel to establish a tentative parole release date which is outside the range contained in the provisions of (a) or (b) above may be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2(f). Recodify existing (e) to (f) as (f) to (g) (No change in text.)

10A:71-3.37 Purpose of parole hearing; county inmates

The Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this state if released on parole.

10A:71-3.47 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. Upon the request of a victim or a nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-2.1, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.

(b)-(n) (No change.)

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall be deemed confidential and shall not be released to the inmate.

(p)-(r) (No change.)

10A:71-3.48 Informational hearing

(a)-(p) (No change.)

(q) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board members, Board panel or the Board

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rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(r) Upon receipt of an application by the Chairperson or designee subsequent to the conducting of an initial parole hearing and prior to a decision being rendered in the inmate's case, the appropriate Board member*s*, Board panel or the Board shall not render a decision in the inmate's case until a hearing(s) has been conducted and the written report(s) prepared and made a part of the Board's file.

(s) Upon receipt of an application by the Chairperson subsequent to the rendering of a decision certifying parole release, the appropriate Board members, Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing(s) and the submission of a report(s).

1. (No change.)

(t) (No change.)

10A:71-3.49 Conditions for parole release

(a) Release on a parole release date certified by Board members is conditioned upon:

1. The completion of a parole plan approved by the Board members certifying parole release and acceptable to the Bureau of Parole; and

2. Satisfactory completion of any specific pre-release conditions established by the Board members certifying parole release pursuant to N.J.A.C. 10A:71-3.16(b)(3) or 3.18(a)(1)(iii); and

3. The continuance of good institutional conduct.

10A:71-3.51 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

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

(j) Upon expiration of the 30 days time period, the Chairperson shall assign two members of the appropriate Board panel to review the recommendation of the hearing officer. The assigned Board members shall comply with the provisions of N.J.A.C. 10A:71-3.16.

(k) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by Board members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(l)-(r) (No change.)

10A:71-4.1 Requests by inmates for reconsideration

(a) Any action by a hearing officer, a Board member, a Board panel or the Board shall be appealable to the body rendering the original decision provided one of the following criteria is met:

1.-2. (No change.)

3. The hearing officer or a Board member has failed to comply with the Board's professional code of conduct.

10A:71-4.2 Appeals by inmates

(a) Any denial of parole by the special county, young adult or adult Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The Board panel ***failed to consider material facts or*** failed to document that a preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole.

2. (No change.)

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest or demonstrated prejudice or bias in the case which affected the decision.

4. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(b) Any failure to grant parole to a juvenile inmate by a Board member shall be appealable to the juvenile Board panel, or any failure to grant parole by the juvenile Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-2. (No change.)

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest or demonstrated prejudice or bias in the case which affected the decision.

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4. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(c) Any conditions of parole or pre-parole requirements established by a Board member or a Board panel shall be appealable to the appropriate Board panel or the Board, respectively, provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

(d) Any rescission of a parole release date by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

(e) Any revocation of parole by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

(f) The specific application of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.21, 3.23, 3.24, 7.16 or 7.16A shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

1.-4. (No change.)

5. A hearing officer or Board member has failed to comply with the Board's professional code of conduct.

(g) The computation of a parole eligibility date by the Board's staff shall be appealable to the Chairperson provided one of the following criteria is met:

1.-3. (No change.)

4. A staff member has failed to comply with the Board's professional code of conduct.

(h) A decision not to refer a parolee's case for an assessment as to whether the parolee is indigent and whether an attorney shall be assigned from the list maintained in accordance with R.3:27-2 to represent the parolee at a preliminary hearing or parole revocation hearing conducted pursuant to N.J.A.C. 10A:71-7.7 and 7.14 respectively shall be appealable to the Board.

10A:71-4.3 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 and 4.2 shall be filed in writing and within 180 days of written notice of action or decision being received by the inmate and shall contain the reasons for the appeal and the criteria under which the appeal is submitted.

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

10A:71-4.4 Review of hearing officer, Board member or board panel decisions

(a) (No change.)

(b) A Board member who participated as a hearing officer or Board panel member in a case may request that the Board review any decision of the Board panel on such case.

1. Such a request may be made provided one of the following criteria is met:

i.-iv. (No change.)

v. A Board member failed to comply with the Board's professional code of conduct.

2.-5. (No change.)

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

10A:71-5.3 Alteration of parole eligibility

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

10A:71-5.8 Parole rescission hearing; notice of decision

(a) The Board panel or hearing officer shall record the rescission hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a

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part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1.-2. (No change.)

3. The Board panel members shall not receive or consider any ex parte communications. The inmate's case shall be decided on the basis of the established record.

(c) (No change.)

(d) If the Board panel rescinds parole, the written decision shall include any future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21.

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1. (No change.)

Recodify existing 3. to 8. as 2. to 7. (No change in text.)

8. You are required to make payment to the Bureau of Parole of any assessment, fine, penalty, lab fee or restitution imposed by the sentencing court.

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

(e) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor when, in the opinion of the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

1. Upon notice being received by the Board, the appropriate Board panel or the Board shall review the parolee's case and determine whether to vacate, modify or affirm the additional special condition(s).

2. The Board panel or the Board shall notify the District Parole Supervisor of its determination within 30 days of receipt of notice of the imposition of the additional special condition.

3. The District Parole Supervisor shall notify the parolee in writing of the determination of the Board panel or Board and shall cause a written record of such notice to be made in the parolee's case file.

(f) If a parolee owes an assessment, fine, penalty, lab fee or restitution, the District Parole Supervisor shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a reasonable schedule for payment of such assessment, fine, penalty, lab fee or restitution.

10A:71-6.6 Modification of conditions

(a) The certifying Board members or appropriate Board panel may modify a parolee's conditions of parole at any time for cause.

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

10A:71-6.9 Discharge from parole

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that:

1. (No change.)

2. Continued supervision is not required;

3. The parolee has made full payment of any assessment, fine, penalty, lab fee or restitution or the parolee has in good faith established a satisfactory payment schedule; or*[, and]*

4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.15 and 7.16 or 7.16A.

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

(e) The appropriate Board panel may provide a *[conditional]* discharge from continued parole supervision:

1. In the case of a parolee who has received a non-custodial term for the commission of an offense and the parolee is to be under

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community supervision through a probation or parole agency in another jurisdiction; or

2. The parolee has clearly established that continued parole supervision under a community plan in this State or consideration of a formal transfer of supervision to another state would not be conducive to the timely continuation of the parolee's community reintegration.

(f) If discharge *[or conditional discharge]* is granted, the appropriate Board panel shall issue a discharge certificate on the parolee.

10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction

(a) The appropriate Board panel may permit a parolee to reside outside the State pursuant to the provisions of the uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.) and the interstate compact on juveniles (N.J.S.A. 9:23-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State.

(b) If a parolee seeks to transfer formal supervision of his or her case to another jurisdiction, the parolee shall notify his or her parole officer and complete the documents required by statutory or regulatory provisions.

(c) The District Parole Office shall forward to the Board the completed required documents, a copy of an up-to-date chronological supervision report on the parolee's case, an assessment of the parolee's community adjustment, a copy of the parole certificate and a copy of any other document deemed relevant to the parolee's case.

(d) Upon receipt of the material submitted pursuant to (c) above, the appropriate Board panel shall review the parolee's case and determine whether the parolee is a suitable candidate for the transfer of parole supervision to the designated out-of-State jurisdiction.

(e) If the Board panel determines that transfer of the supervision of the parolee's case to an out-of-State jurisdiction is appropriate, the Board panel shall submit the case materials to the Department's Office of Interstate Services. The Office of Interstate Services, pursuant to the relevant statutory and regulatory provisions, shall forward the parolee's request for transfer of parole supervision to the designated out-of-State jurisdiction for investigation.

(f) Upon the Board panel receiving the completed community investigation by the out-of-State jurisdiction, the Board panel shall review the community plan approved by the out-of-State jurisdiction. If the community plan is deemed acceptable by the Board panel, the Board panel shall notify in writing the Office of Interstate Services and the District Parole Office that supervision of the parolee's case may be transferred to the out-of-State jurisdiction. The Office of Interstate Services and/or the District Parole Office shall notify the parolee of the Board panel's decision and issue the necessary travel documents.

(g) The Board panel shall not authorize the transfer of parole supervision to an out-of-State jurisdiction when:

1. The out-of-State jurisdiction has determined not to accept supervision of the parolee's case; or

2. The parole plan approved by the out-of-State jurisdiction is substantially different from the original parole plan submitted and reviewed by the Board panel and the alternate parole plan is not deemed appropriate by the Board panel.

(h) If the Board panel upon reviewing the parolee's case pursuant to (d), (f) or (g) above determines to deny authorization for the transfer of the parolee's case to an out-of-State jurisdiction, the Board panel shall notify in writing the Office of Interstate Services and the District Parole Office of the determination. The District Parole Office shall notify the parolee of the determination of the Board panel.

10A:71-7.3 Motion for accelerated revocation

(a) (No change.)

(b) If the prosecuting authority or the Chief of the Bureau of Parole determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority or the Chief of the Bureau of Parole

may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings.

[1. Such application shall be limited to crimes of the first or second degree only. The prosecuting authority or the Chief of the Bureau of Parole may, in special circumstances, submit an application for a crime of a lesser degree.]

*[2.]*1.* Such application shall include:

Recodify existing 1. to 4. as i. to iv. (No change in text.)

*[3.]*2.* If the application is submitted by a prosecuting authority, such application shall also include:

i. A *[confidential,]* concise, comprehensive synopsis of the specific facts, statements or other evidence implicating the parolee in the commission of the alleged crime; and

ii. An affirmative representation that the case is not subject to any plea agreement which may result in the imposition of a non-custodial term or a custodial term of less than one year.

*[4.]*3.* If the application is submitted by the Chief of the Bureau of Parole, such application shall also include an up-to-date chronological supervision report on the parolee's case.

(c) Upon receipt of an application from a prosecuting authority pursuant to (b) above, the Chairperson or his or her designee shall direct the Bureau of Parole to submit within three days for consideration an up-to-date chronological supervision report on the parolee's case.

(d) Upon review of the application and chronological supervision report, a determination shall be made by the Chairperson and a designated Board member or a designated two-member Board panel as to whether the charges against the parolee are of a serious nature, whether the parolee otherwise poses a danger to public safety and whether the revocation process shall be initiated. The Chairperson or his or her designated representative shall advise the prosecuting authority or the Chief of the Bureau of Parole and the District Parole Supervisor as to whether the revocation process shall or shall not be initiated.

(e) If the revocation process is initiated pursuant to this subsection, the Chairperson or his or her designated representative shall immediately authorize the issuance of a warrant for the arrest of the parolee.

(f) If the revocation process is initiated at the request of a prosecuting authority, a representative of the prosecuting authority shall appear at any preliminary and any revocation hearing in order to present evidence and/or testimony in regard to the parolee's alleged violation of parole conditions. It shall be the responsibility of the prosecuting authority to insure the appearance of any witness(es) deemed necessary for the presentation of the case against the parolee.

Recodify existing (f) to (g) as (g) to (h) (No change.)

10A:71-7.7 Preliminary hearing; notice of hearing

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

(c) Such notice shall inform the parolee of the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the possible action which may be taken as a result of revocation proceedings; and the following rights to which the parolee shall be entitled at the preliminary hearing:

1. (No change.)

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes such a request based on a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present*]; and

iii. The parolee is not able to understand the violation(s) as charged; or

iv. The parolee is incapable of speaking effectively on his own behalf]*.

3.-8. (No change.)

10A:71-7.14 Revocation hearing; notice of hearing

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

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

1. (No change.)

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present*]; and

iii. The parolee is not able to understand the violation(s) as charged; or

iv. The parolee is incapable of speaking effectively on his own behalf]*.

3.-8. (No change.)

10A:71-7.15 Record of the revocation hearing

(a) The hearing officer shall record the revocation hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the parolee waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the parolee and shall be made a part of the parolee's records. If the parolee does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

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

10A:71-7.16 Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994

(a) This section applies to inmates who violated parole prior to October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record. If parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b)-(o) (No change.)

(p) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. (No change.)

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three member Board panel review of the record will be scheduled.

3. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received to prepare and submit to the Board

panel members a written statement on the inmate's behalf. The statement may include any information the inmate may deem relevant to the evaluation of his or her case by the Board panel members.

Recodify existing 3. to 5. as 4. to 6. (No change in text.)

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (p)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney may deem relevant to the evaluation of his or her case by the Board.

8. (No change in text.)

(q)-(t) (No change.)

10A:71-7.16A Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after October 17, 1994.

(a) This section applies to inmates who violated parole on or after October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

(b)-(p) (No change.)

(q) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. (No change.)

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three member Board panel review of the record will be scheduled.

3. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement on the inmate's behalf. The statement may include any information the inmate may deem relevant to the evaluation of his or her case by the Board panel members.

Recodify existing 3. to 5. as 4. to 6. (No change in text.)

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (q)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney may deem relevant to the evaluation of his or her case by the Board.

8. (No change in text.)

(r)-(t) (No change.)

10A:71-7.20 Revenue cases

(a) For violation of a condition of parole requiring the payment of any assessment, fine, penalty, lab fee or restitution, the appropriate Board panel shall revoke parole only for failure or refusal by the parolee to make a good faith effort to make such payment.

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

INSURANCE

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Consumer Information Statement

Adopted New Rule: N.J.A.C. 11:5-1.43

Proposed: August 1, 1994 at 26 N.J.R. 3113(a).

Adopted: January 26, 1995 by New Jersey Real Estate

Commission, Anita B. Kartalopoulos, Executive Director.

Filed: January 27, 1995 as R.1995 d.110, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: February 21, 1995.

Operative Date: July 1, 1995.

Expiration Date: October 15, 1998.

On January 26, 1995 the New Jersey Real Estate Commission formally adopted new rule N.J.A.C. 11:5-1.43. This rule was initially proposed on May 17, 1993 at 25 N.J.R. 1948(a). After reviewing the written comments submitted and the verbal comments presented at a public hearing held on June 8, 1993 on that initial proposal, the Commission determined to substantially revise the rule as proposed. The revised proposal was republished on August 1, 1994, as is referenced above. A public hearing on the revised proposal was held on September 27, 1994, after which some minor changes were made. Summaries of Agency—Initiated changes to the proposal, of the public comments submitted on it, and of the Commission's responses to those comments follow.

Summary of Agency-Initiated Changes:

In an effort to make the rule as adopted as clear and unambiguous as possible, the Commission determined to make the following revisions to the rule as proposed:

1. An advisory notice was added to the beginning of the rule in section (a) to indicate that references in the rule to sellers and buyers and to the various types of brokerage agreements and business relationships mentioned in the rule should be construed to indicate their appropriate counterparts in rental transactions.

2. The introductory phrase to the list of terms defined in subsection (a) was revised for consistency to provide that as used in the "rule" (rather than "this section"), the listed terms would have the meanings specified. It was concluded that the inclusion of word "indicated" in that phrase was redundant and should be removed.

3. In an effort to keep the text of the rule succinct, a definition of the term "Consumer Information Statement" was added to subsection (a).

4. A phrase has been added to the initial sentence in subsection (g) so as to clarify an apparent ambiguity in the text. As published, subsequent to indicating that no deletions or additions could be made to the text of the consumer information statement as set forth in the rule, subsection (g) went on to provide that brokerage firms could, at their option, include additional statements on the consumer information statements. This ambiguity has been redressed through the text added to subsection (g).

5. In response to a suggestion to do so contained in a comment submitted on the proposal, subsection (j) has been relocated in the adoption to subparagraph (g)1i. Consequently, subsections (k), (l) and (m) have been recodified as subsections (j), (k) and (l). It was therefore necessary to change the reference to subsection (k) in paragraph (g)3 to subsections (i) and (j).

6. In the explanation of a disclosed dual agent contained in the consumer information statement recited in subsection (h), the Commission added text to the sentence which referred to a brokerage firm needing to have the express permission of a party in order to disclose confidential information to the other party to the transaction. The added text more clearly indicates that such permission must be provided "prior to disclosing" such confidential information.

In the same section of the consumer information statement, the Commission determined to delete the concluding phrase of the final sentence which indicated that consumers contemplating entering into a disclosed dual agency relationship with a firm should sign a written

agreement which states how and by whom that firm will be paid. The Commission deleted that phrase in an effort to maintain consistency between the descriptions of the other agency business relationships in the consumer information statement and the description of disclosed dual agents. It was noted that the descriptions of seller agents and buyer agents did not contain any advisories regarding the manner in which firms acting as such would be compensated.

7. To further redress the ambiguity in the rule as proposed with respect to the optional additional statements which may be added to the consumer information statement, the word "mandatory" was added to the statement in the rule indicating where the mandatory text of the consumer information statement ends. To further clarify this portion of the consumer information statement, the abbreviation "cis" was changed to the full phrase, "consumer information statement", and punctuation (that is, a colon) was added to this portion of the consumer information statement.

8. To keep the text of the rule consistent throughout, references in the proposal to declarations of "agency" have been revised to read declarations of "business relationship" in subsections (j) and (l) as adopted. Further changes have been made to subsection (l) to expand its language to cover situations where licensees represent or are working with parties to transactions. To eliminate a redundancy in the revised text, the words "represent a party, and" have been deleted from the beginning of subsection (l).

At the public hearing which was held on this proposal on September 27, 1994 before the full Real Estate Commission, six parties submitted verbal comments to the Commission on the proposal. Of these, all but two reiterated their positions through the submission of written comments. The hearing record may be reviewed by contacting Robert J. Melillo, New Jersey Real Estate Commission, CN 328, Trenton, NJ 08625-0328. In all, the Commission received eight written comments on the proposal. These were submitted from:

Fox & Lazo, Inc.;
Coldwell Banker Real Estate Services Inc.;
The New Jersey State Bar Association;
Diane Disbrow, Broker-Owner of Bayshore Agency;
Frank Kovats, Owner of Kovats Real Estate School;
Katherine T. DeBow, Broker-Owner of the DeBow Agency;
John Illengwarth, on behalf of the New Jersey Chapter of the Society of Industrial and Office Realtors of the National Association of Realtors; and

New Jersey Association of Realtors

The two parties who did not submit written comments, but who commented verbally on the proposal at the public hearing were Norman Kailo, broker-salesperson and Joseph Marovich, broker-salesperson.

Summary of Public Comments and Agency Responses:

COMMENT: One party submitted a comment indicating their total opposition to any disclosure requirement of any kind being imposed upon real estate licensees. This party also opposed licensees being required to obtain the signatures of persons to whom they deliver the Consumer Information Statement (hereinafter CIS) on a copy of it at the time of delivery, and opposed any regulatory action which would further complicate the lives of licensees and impose additional responsibilities on them. Finally, it was averred that if adopted, the rule would make errors and omissions insurance more difficult to obtain.

RESPONSE: The Commission has concluded that the overriding public interest in receiving the disclosures provided for in this rule outweighs concerns regarding the regulatory burdens imposed upon licensees by the rule. Further, contrary to the point made in the comment, the rule does not make it mandatory for licensees to obtain the signatures of persons receiving the CIS on a copy of the CIS at the time of delivery. Rather, the rule provides that licensees may obtain such signatures if they make the business decision to do so.

The Commission is aware that in some 46 other states similar disclosure requirements have been in effect for several years. The Commission has received no information which would indicate that the imposition of these requirements has had any substantial adverse effect upon licensees' ability to obtain errors and omissions insurance coverage in those states. In the absence of any such empirical evidence, the Commission does not feel that this commentator's concerns in that regard form a sufficient basis for the Commission not to proceed with the promulgation of the rule.

COMMENT: Several parties commented on the definition of "informed consent to dual agency" contained in paragraph (a)3 of the proposed new rule. One commenter suggested adding text to the defini-

tion indicating that to obtain informed consent licensees must also advise parties contemplating entering into a dual agency situation of their right to consult with an attorney prior to doing so. Another commenter noted that the text in the proposal referring to the need to disclose "all facts which might impact on that party's decision to authorize dual agency" was too broad a standard for licensees to meet. They suggested as an alternative a requirement to disclose all material facts which might reasonably impact on the party's decision to authorize dual agency. That commenter also suggested revising the final sentence in the proposed definition to only require licensees to advise parties of the standard agency arrangements offered by that licensee's firm. Finally, two other comments suggested replacing this entire section with a substantially shortened definition of informed consent in an effort to make the proposed rule less complicated and confusing.

RESPONSE: The Commission recognized the validity of the first two suggested revisions to the definition of informed consent to dual agency noted above and has incorporated those revisions into the text of the adopted rule. However, in an effort to assure that consumers are aware of all available options before they choose to work with a licensee who will act in the limited capacity of a dual agent, the adopted rule explicitly requires licensees to advise consumers of the business relationships that are not offered by the licensee's firm, as well as those that are offered by that firm. To ensure that consumers are provided with what the Commission perceives as the bare minimum of information essential to their understanding of the concepts, the Commission rejected the suggestions to substantially abbreviate the definition of informed consent to dual agency.

COMMENT: One commenter suggested revising paragraph (a)5 of the proposed rule so as to have the definition of short term rentals refer to rentals with a term of not more than 180 consecutive days, rather than 90 consecutive days. In addition, that commenter suggested that the rule provide that all month-to-month tendencies be deemed short term rentals.

RESPONSE: The Commission rejected the suggested extension of the time frame to be used to determine what are exempt short term rentals under the rule. The 90 day period contained in the proposal is consistent with the time frame used to designate short term rentals in New Jersey's Security Deposit Law, N.J.S.A. 46:8-19. In an effort to minimize any confusion which might result on the part of licensees who deal with short term rentals as defined in that law, the Commission determined to retain the 90 day standard. Furthermore, because all month-to-month tenancies are open ended and have the potential to extend beyond 90 days, the Commission determined that the interests of consumers who enter into month-to-month tenancies are sufficiently substantial so as to warrant receiving the protections afforded by the rule. The Commission therefore rejected the suggestion that all month-to-month tenancies be deemed short term rentals, exempt from the disclosure requirements.

COMMENT: One person commented in the form of a question, inquiring how a cooperating brokerage firm could show a listing on which no subagency was offered if they were dealing with a purchaser who did not wish to retain a buyer's agent?

RESPONSE: The Commission recognized that, were no transaction broker alternative available, the involvement of cooperating brokers in such situations would be limited to merely referring the prospective purchaser to the listing broker's firm, to deal with a seller's agent or possibly have that firm act as a disclosed dual agent, prospects certain buyers might find unpalatable. By retaining the transaction brokerage relationship in the rule, an additional choice is afforded to such buyers and the possibility of non-listing brokers participating in transactions on listings on which no offer of sub-agency is made is preserved.

COMMENT: Four commenters recommended eliminating all references to "transaction brokers" contained in the proposed rule. Among the reasons offered were that the inclusion of references to transaction brokers will confuse consumers and licensees, and that the notion of licensees operating as non-agents "does not reflect reality." A question was also raised about what legal recourse consumers would have against transaction brokers. The New Jersey State Bar Association averred that the Commission's sanctioning of the providing of brokerage services devoid of fiduciary obligations was contrary to the public interest. The SBA and other commenters also questioned the Commission's authority to promulgate a rule which they contend is inconsistent with New Jersey case law on real estate brokers.

RESPONSE: In considering the comments mentioned above the Commission noted that licensees have been operating as essentially transaction brokers in a variety of business settings for many years. In

commercial transactions, particularly those involving open listings, it is very common for licensees to act as mere facilitators of a transaction, bringing together interested parties. Once those parties determine to pursue a sale or a lease transaction, in most cases they, with their attorneys, negotiate the terms directly, with the licensees playing no active role in the negotiation of the terms of the agreement. Other situations where licensees do not generally operate as full agents in the classical sense are on referrals, when offering properties at auction, when representing large residential developers who independently set the selling prices of their inventory and negotiate contract revisions through their attorneys or sales managers, and when assisting transferees who need to locate a property for a short term rental, pending closing on a purchase.

Further, the Commission considered potential problems licensees would encounter in providing services to the public were the rule not to recognize the transaction broker concept. For example, where properties are offered "for sale by owner," without being listed with a sellers agent, a prospective buyer might desire the professional assistance of a licensee, but may not wish to retain a licensee to act as their buyer's broker for fear of incurring liability as a principal for the actions of their agent. In such a situation, a buyer would only be able to obtain the professional assistance they desired from a licensee acting as a transaction broker. As noted in the preceding response, similar concerns exist with respect to listed properties on which no subagency is offered. If no transaction brokerage option is available, a purchaser who wished to receive professional assistance from a licensee other than one affiliated with the listing broker's firm, and therefore operating as a seller's agent, would be forced to either retain a firm to act as their buyer broker, thereby incurring potential liability for the actions of their agent, or to deal directly with a seller's agent. For a variety of reasons, buyers may prefer to deal with a licensee from another firm, but not to retain that firm to represent them as an agent. In analyzing these possibilities, the Commission concluded that permitting licensees to operate as transaction brokers affords additional choices to the public, particularly those who are concerned about incurring liability as principals for the actions of an agent. Furthermore, the ability to offer services as transaction brokers will enhance price competition within the brokerage business. If certain brokers choose to offer this lower level of service than traditional full agency representation, it logically follows that market forces will induce them to charge a lower fee for the reduced level of service. These increases in competition and in consumer choices are, in the opinion of the Commission, consistent with the public interest of consumers in this state.

Based upon legal advice provided to the Commission by the Attorney General's office, it appears that under the general principles of the law of agency, the parties to an agency agreement can, by mutual agreement, enter into a contract under the terms of which services are to be provided which do not include the assumption of fiduciary obligations to the principal on the part of the agent. In the American Law Institute's Restatement of the Law of Agency (Second), at section 13, it is indicated that "A real estate broker whose sole function is to find someone who will enter into a transaction with the owner of land, is ordinarily an agent, but the agreement with him may be such that he has no fiduciary duties and he is not an agent."

In response to the concerns raised with regard to what recourse consumers would have against transaction brokers, the Commission noted that they would certainly have recourse through civil actions in tort (negligence) and contract. Furthermore, licensees acting as transaction brokers would still be subject to administrative sanctions by the Commission. When acting as such, licensees must still comply with all of the provisions of the licensing law and of the Commission's rules but for those rules which specifically relate to licensee's obligations when acting as agents.

COMMENT: One commenter questioned whether consumers, particularly buyers, will understand that transaction brokers can bid against them for the same property because they owe no duty of loyalty to the buyer/customer, or that licensees acting as such would be free to tell the seller that the buyer is about to develop adjoining property because they owed no duty of confidentiality to the buyer/customer.

RESPONSE: The Commission noted that the advisory notice on transaction brokers at the beginning of the Consumer Information Statement (hereinafter "CIS") alerts consumers to the fact that all information learned by a transaction broker may be passed on to the other party to the transaction. In addition, N.J.S.A. 45:15-17(e) subjects licensees to sanctions for conduct demonstrating unworthiness, dishonesty and bad

faith. Were a licensee to continue to service a transaction brokerage agreement while at the same time personally competing against the consumer party to that agreement for a property, such conduct would subject a licensee to sanctions under this statute. Finally, the CIS also alerts consumers to their opportunity to obtain legal advice about transaction brokerage and the business relationships described in the statement. That notice appears immediately following the discussion on transaction brokers contained in the CIS. The inclusion of this advisory statement in the CIS is a further attempt by the Commission to protect the interests of consumers, particularly those who may be contemplating entering into a non-traditional business relationship with a licensee, such as disclosed dual agency or transaction broker relationship.

COMMENT: One commenter suggested that subsection (a) contain a definition of the term "business relationships" since that phrase is used throughout the text of the proposed rule. They suggested that the definition be comprised of a recitation of the four business relationships referenced in the proposed rule.

RESPONSE: The Commission recognized the value of this suggestion and has incorporated the definition into the rule at new paragraph (a)8.

COMMENT: Two commenters submitted suggestions on subsection (b) of the proposed rule. One would eliminate this section entirely and replace it with a single sentence added at the end of the definition of informed consent. The other questioned the purpose of the second sentence in subsection (b), noting that since the rule is creating a regulatory standard, that is, that informed consent to dual agency must be secured prior to acting as a disclosed dual agent, the rule should identify the means through which the standard can be met.

RESPONSE: The Commission rejected the initial suggestion noted above because it feels that disclosed dual agency is the most difficult method of operation for licensees to understand and practice legally and is the business relationship most fraught with risk for licensees who choose to practice it unless it is well defined and expressed in the regulation. For those reasons, the Commission determined to retain in the rule information it felt was critical to an adequate understanding of disclosed dual agency and informed consent, rather than abbreviate the discussions of those concepts in an attempt to simplify the rule. In response to the second comment regarding the purpose of the second sentence in subsection (b), it is the intent of the Commission, by including such language, to alert licensees to the fact that additional actions may be required of them under the common law to establish that they have obtained the informed consent of their principals to act as dual agents, beyond merely distributing the CIS as required by this rule. As members of a regulated profession, real estate licensees are subject to administrative liability for violations of the license law and the Commission's rules. However, they are also subject to civil liability under the common law and, as noted above, their risk of incurring such liability is substantial when they endeavor to operate as disclosed dual agents. To assure that licensees memorialize their having acquired truly informed consent, the second sentence as proposed has been deleted. It has been replaced by new text which more specifically sets forth the means through which licensees must secure evidence of their having secured the informed consent of parties to their acting as disclosed dual agents.

COMMENT: One commenter suggested combining subsections (c) and (d) into one subsection in an effort to simplify and streamline the text of the rule.

RESPONSE: The Commission has attempted to craft this rule in as clear and concise a manner as possible, while still achieving the objective of adequately informing licensees of their disclosure responsibilities and obligations. The Commission concluded that combining subsections (c) and (d) would detract from the clarity of the rule and therefore rejected this suggestion.

COMMENT: One commenter suggested eliminating paragraph (d)3, one suggested revising its text so as to have it read more clearly, and a third suggested clarifying it in order to eliminate a perceived ambiguity in the text as published with regard to commercial transactions being exempt from the rule.

RESPONSE: The Commission rejected the suggestion to eliminate this paragraph, as it deemed the interests of landlords who offer their properties for short term rentals to be substantial and therefore worthy of the protections afforded by the disclosure requirements. The Commission agreed that the text of paragraph (d)3 could be revised so as to read in a more clear and understandable fashion and to, in no way, state or infer that the rule applies to commercial transactions. The Commission has revised the text of the rule accordingly.

COMMENT: Two parties submitted general comments on subsection (e). Fox & Lazo, Inc. opposed any requirement that verbal disclosures be made by licensees in situations where it is impractical to deliver the written CIS. They noted that any verbal disclosure requirement is imprecise and nearly impossible to enforce. The New Jersey Association of Realtors (NJAR) averred that it would be too burdensome to require licensees to provide a full explanation of the four business relationships during initial telephone conversations with prospective buyers and sellers or in a social setting. NJAR also noted the difficulty in enforcing a verbal disclosure requirement. They then suggested that the language of subsection (e) be simplified, but that the verbal disclosure requirement be retained, with licensees being required to "verbally describe the types of business relationships as set forth in this rule . . . to a potential buyer, prior to the first discussion of a buyer's motivation or financial ability to buy," and "to a potential seller, prior to the first discussion of the seller's motivation or selling price."

RESPONSE: The Commission is aware of and sensitive to the difficulties created by any verbal disclosure requirement, including the enforcement problems. However, to accomplish the objective of this proposal, which is to provide consumers with significant information early on in their course of dealings with licensees, and before the consumer has conveyed information which might be detrimental to their interests to someone acting as an agent for their counterpart in a transaction, the Commission determined that some verbal disclosure requirement is essential. It is important to note that the text of the rule merely requires licensees to verbally "inform" parties of the four possible business relationships prior to the initial discussion at which a buyer's motivation or financial ability, or a seller's motivation or desired selling price is discussed. The rule does not require licensees to volunteer a detailed explanation of those relationships when conversing with buyers and sellers in a social setting or during an initial phone call. Naturally, if licensees are asked questions about one or more of the relationships after having verbally informed buyers and sellers of them, the licensee should provide detailed explanations in response to such questions. The Commission concluded that to require licensees to "verbally describe the types of business relationships," as was suggested by one commenter, would impose a higher and more burdensome standard upon licensees than does the requirement that licensees "verbally inform" the parties of the four business relationships. Were the Commission to require licensees to verbally describe the relationships, rather than to inform buyers and sellers of them, the enforcement problems attendant on any verbal disclosure requirement would be exacerbated, rather than alleviated, as was averred by the commenter making that suggestion. On the basis of the foregoing, the Commission determined to retain the text of this subsection as published in the proposal, so as to require licensees to verbally inform buyers and sellers of the four business relationships.

COMMENT: One commenter suggested deleting subparagraphs (e)1ii and 2ii, in an effort to simplify and clarify the text of the rule.

RESPONSE: While the Commission is cognizant of the need to keep the rule as streamlined and clear as possible, the goal of creating a system which effectively informs consumers of information on brokerage business relationships in New Jersey is paramount. For that reason, the Commission concluded that it was necessary for the rule to spell out that at their first reasonable opportunity after having verbally informed a buyer or a seller of the available business relationships, licensees must follow-up by providing the written CIS to that consumer. Consequently, the Commission determined to retain subparagraphs (e)1ii and (e)2ii in the text of the adopted rule.

COMMENT: Two commenters supported retaining subparagraphs (e)1iii and iv, but one party questioned whether a walk-through at an open house constitutes a "showing," requiring delivery of the written consumer information statement. They also inquired whether buyers who visit several open houses on the same day will receive the written statement at each open house.

RESPONSE: The Commission does consider a walk-through at an open house to constitute a showing, triggering the requirement that the written CIS be delivered. The Commission acknowledges that buyers who visit several open houses on the same day will receive several copies of the CIS. However, the purpose of the delivery of the CIS is to educate consumers, and the Commission feels that a certain amount of redundancy in the education process will in no way detract from, and will probably enhance the efficacy of the disclosure scheme created by the rule.

COMMENT: Two parties commented on subsection (f) of the proposal. One would delete it in an effort to keep the rule clear and concise. The other suggested revising the last sentence of subsection (f),

since as proposed it indicates that, even by complying with the requirements of the rule, licensees have not met the threshold obligation of providing all necessary information regarding agency law. That is, the rule as published could be read to mean that a comprehensive explanation is required, but in providing the CIS, such a comprehensive explanation will not have been given. This commenter suggested revising this sentence to read "the information to be provided need not be a comprehensive explanation of agency law."

RESPONSE: The second comment referenced above has correctly discerned the intent of the Commission in proposing subsection (f). As is noted in the introductory sentence of subsection (f), subsections (e) and (h) of this rule require licensees to provide "basic and introductory information" to the public. In an effort to clarify that that is the case, the Commission has revised the text of subsection (f) to indicate that that is the nature of the regulatory requirement being imposed, and that licensees are to provide that information "rather than" a comprehensive explanation of agency law. Based upon cases which have been litigated in other states, the Commission is aware that a higher standard of disclosure would, in all probability, be required of New Jersey licensees engaging in disclosed dual agency, and possibly transaction brokerage. Licensees who choose to operate in those fashions are cautioned to obtain competent legal advice on the level of disclosures required of them by the common law. The purpose of subsection (f) is to re-emphasize to licensees the fact that this rule requires licensees to disclose what is only basic and introductory educational information and to inform them that merely verbally identifying to parties the four available business relationships at the initial stages of a transaction, and subsequently delivering the CIS to the parties will, in all probability and based upon previous court decisions in other states, not be deemed adequate disclosure of the pertinent information needed to secure a person's informed consent to the licensee acting as a disclosed dual agent. The public interest in so alerting licensees, and to thereby minimize the potential of consumers' misunderstanding the concepts involved, and the litigation which would inevitably ensue, was deemed to outweigh the desire to keep the text of the rule as simple as possible.

COMMENT: New Jersey Association of Realtors suggested relocating subsection (j) in the proposal to subsection (g), as a new subparagraph (g)1i. By doing so, it was urged, the rule would become more organized.

RESPONSE: The Commission agreed that placing former subsection (j) in this location would make the rule read more clearly and has incorporated that change into the text of the rule as adopted.

COMMENT: Fox & Lazo noted that subparagraph (g)3ii refers only to licensee-prepared documents. They suggested that there should also be a requirement to confirm in a separate writing licensees' business relationships with parties named in documents which are not prepared by licensees.

RESPONSE: The Commission recognizes the merit of this suggestion. However, it also recognized that in the vast majority of residential sale and lease transactions, licensees do prepare the contracts or leases. Thus, the number of transactions in which licensees do not prepare the documents is relatively small. Imposing a requirement that licensees in such transactions prepare a separate writing specifying their business relationships with the parties to those transactions would be difficult to accomplish without unduly burdening the licensees in those transactions, as they may lack sufficient information on when a contract may be executed, so as to make such disclosures prior to that event. The Commission will monitor the frequency of complaints received from parties to transactions where licensees did not prepare the contract or lease, to see if there is a need for additional rulemaking with regard to such transactions.

COMMENT: One commenter suggested making the title to the CIS set forth in subsection (h) more specific and relocating the fifth paragraph in subsection (h) to the beginning of the statement, immediately following the title.

RESPONSE: The Commission noted the merits of these suggestions and has revised the title of the statement and the order of the paragraphs accordingly.

COMMENT: One comment suggested qualifying the phrase at the conclusion of item 1 in the CIS (subsection (h)) which, as proposed, indicated that "all information supplied to me by the buyer will be told to the seller." The comment suggested that this statement was overbroad and did not accurately reflect the obligations of a seller's agent.

RESPONSE: The Commission agreed with this suggestion and has revised the text of item 1 so as to qualify that statement by having it

indicate that all "material" information supplied by the buyer will be told to the seller.

COMMENT: One commenter suggested deleting the term "I" from items 1 through 4 in the CIS and replacing it with the term "a licensee," as the use of the term "I" might be confusing to the consumer.

RESPONSE: The Commission recognized the potential for confusion as noted by the commenter, and has amended the text of the adopted rule so as to utilize the phrase "I, as a licensee," throughout items 1 through 4 in the statement.

COMMENT: Two commenters suggested that at the beginning of the sixth paragraph of the CIS, additional text be added to the proposal alerting consumers that before they disclose confidential information to a licensee, they should understand what type of business relationship they have with that licensee.

RESPONSE: The Commission agreed with this suggestion and has incorporated into the adopted rule the additional text suggested in these comments.

COMMENT: One comment suggested revising the reference to subagency in the CIS, so as to have more emphasis placed on the seller's prerogative to authorize a seller's agent to work with subagents.

RESPONSE: The Commission determined not to revise the text of the CIS in response to this comment. The final sentence in the section of the statement on seller's agents adequately informs sellers that the utilization of subagents is within the seller's discretion.

COMMENT: One comment suggested adding obedience as one of the specified fiduciary duties which the sections of the CIS on seller's agents and buyer agents indicate are owed sellers and buyers, respectively.

RESPONSE: Because it felt that there was no substantial need to add this verbiage to it, and in an effort to keep the CIS simple and succinct, the Commission determined not to revise the rule as suggested in this comment. Furthermore, by specifying the fiduciary obligations of undivided loyalty, confidentiality and full disclosure in these sections, the Commission has attempted to emphasize the distinction between these single agency relationships and disclosed dual agency. Enumerating the fiduciary duties which are not necessarily affected by a dual agency relationship, such as obedience and the obligation to provide an accounting of funds expended, would detract from this attempt to have consumers focus on these differences.

COMMENT: One comment suggested revising the last sentence in the seller's agent section of the CIS so as to replace the word "marketed" with the word "sold" as, in the opinion of that commenter, subagents do not usually "market" properties.

RESPONSE: The Commission disagreed with the rationale for this proposed revision. In the Commission's view, it is more correct to indicate that listing brokers sell the properties listed with them, and that, where they are involved, subagents do market the property.

COMMENT: Two comments suggested deleting the references to "all persons licensed with" the listing broker's firm and the cooperating (subagent) broker's firm. One suggestion was offered as another means through which the text of the rule and of the statement could be streamlined and simplified. The other was offered as part of a more general comment on the approach to disclosed dual agency contained in the proposed rule.

RESPONSE: The Commission determined to retain the references in the rule to all persons licensed with firms acting as selling agents, cooperating subagents and buyers agents. It concluded that the public interest in consumers understanding that it is an entire brokerage firm, and not an individual licensee, which is retained when a consumer enters into a brokerage agreement outweighed the desire to keep the text of the CIS as simple as possible. The other comment mentioned above will be addressed below as a comment on disclosed dual agency.

COMMENT: Three parties commented directly on the description of buyer's agents contained in the CIS (subsection (h)) of the proposal. One party suggested adding language addressing licensees' acting as buyers' subagents; one party suggested that this description should clearly indicate that buyer's agents must disclose any impediments to their buyer-client's ability to complete a transaction; and, as noted above, one party suggested adding obedience as one of the specified fiduciary duties owed to buyer clients by buyer agents.

RESPONSE: In an effort to keep the CIS relatively simple, and yet adequate for the purposes intended, the Commission determined not to add a reference in this section to licensees acting as subagents of buyers. At this time it is not anticipated that licensees will act as such with any degree of frequency. If problems arise as a result of licensees

doing so and the absence of any language in the disclosure statement addressing this point, the Commission will consider adding language to the statement in the future.

The comment with respect to adding obedience as one of the specified fiduciary duties owed to buyers by buyer agents was addressed above.

The Commission determined not to add language to the CIS regarding an obligation of a buyer's agent to disclose impediments to the buyer's ability to complete a transaction. In the interest of keeping the statement simple and understandable, the Commission determined that the prohibition upon a buyer's agent making any "misrepresentations on matters material to the transaction, such as the buyers financial ability to pay" was sufficient.

COMMENT: The New Jersey State Bar Association (SBA) indicated that, while generally favoring agency disclosure and the use of the CIS, it opposed the "tacit recognition" of dual agents contained in the rule. The SBA maintained that notwithstanding the absence of a prohibition on this role in the license law, N.J.S.A. 45:15-1, et seq., allowing licensees to operate as such is inconsistent with prior court decisions and not in the best interests of the public.

They continued by noting that while it may be theoretically possible, dual agency should not be "encouraged" by the Commission and that, in the real world, dual agents cannot function without making disclosures that are inimical to the interests of one party, unless they are relieved from responsibility (liability?) for doing so.

The SBA averred that as fiduciaries, brokers have obligations of undivided loyalty, confidentiality, and full disclosure and that the Commission cannot, through rulemaking, overrule these fiduciary obligations imposed upon licensees by the common law of agency.

They concluded their comment by noting that by attempting to limit full disclosure, the proposal is not in the public interest, and that, as New Jersey courts have disallowed dual representation by attorneys in real estate transactions, even with full disclosure, the Commission should do no less with respect to brokers.

RESPONSE: The Commission does not believe that by including information on the possibility of licensees acting as disclosed dual agents in the CIS it is "encouraging" the practice. On the contrary, the Commission has, throughout the texts of the rule and the CIS, attempted to emphasize the risks to licensees and to the public of the practice of disclosed dual agency and the significance of consumers' having a complete and thorough understanding of the concept as a prerequisite to their making an informed choice in authorizing a firm to act as a disclosed dual agent. However, the Commission has concluded that it lacks the statutory authority to completely ban a method of doing business which the license law itself does not proscribe, based upon its belief that by attempting to engage in disclosed dual agency licensees may expose themselves to substantial liability. The Commission has concluded that, absent a clear statutory prohibition, whether they choose to accept the risks attendant upon attempting to practice dual agency is a decision best left to the individual business judgment of licensed brokers.

The SBA contends that dual agents cannot function unless they are relieved of responsibility for making disclosures that will hurt one party. The Commission acknowledges that this may be true. However, it perceives this as a risk which licensees will assume when they undertake to operate as dual agents. When entering into listing agreements and buyer brokerage agreements wherein the possibility of the brokerage firm acting as a disclosed dual agent is provided for, and in other writings which may be utilized, such as a separate consent to dual agency form, it is anticipated that language will be included in such writings addressing how the firm will be relieved from the obligation to make such disclosures.

The Commission does not feel that it is, by rulemaking, overruling the fiduciary obligations imposed upon licensees by the common law of agency and real estate brokerage. Rather the Commission is, based upon the legal advice it has received, indicating that by agreement with consumers, after having obtained their informed consent, brokers can work for two parties to a transaction under circumstances wherein they will not take on the full panoply of fiduciary obligations they would owe to a principal were they retained to operate solely as a seller's agent or buyer's agent.

Finally, the Commission is not attempting to limit full disclosure by exposing the public to information on the possibility of licensees acting as disclosed dual agents. To the contrary, the Commission is encouraging full disclosure of all possible legal choices open to the public when they enter into a business relationship with a real estate brokerage firm. It

is then left to the consumer and the brokerage firm to agree on which business relationship they will enter into. The rule and the CIS are replete with references to the importance of a consumer given their informed consent to enter into a disclosed dual agency relationship and consumers are alerted to their opportunity to obtain legal advice prior to doing so. The objective of this approach is to have knowledgeable consumers make informed decisions on whether or not to enter into a disclosed dual agency relationship, and to make that decision after they have been fully apprised of the reduced level of representation they will receive if they do.

COMMENT: One comment suggested deleting the detailed explanations of informed consent and of the limitations on licensees acting as disclosed dual agents contained in the disclosed dual agent section of the CIS (subsection h) as proposed. This commenter suggested replacing those explanations with text indicating that when acting as a dual agent, a licensee's fiduciary duties "may be more limited if he represents both parties and the licensee will not be able to disclose all known information to either the buyer or the seller."

RESPONSE: The Commission rejected this suggestion. It is the Commission's view that this section of the CIS addresses the business relationship on which the public needs the most education. Providing less rather than more information on disclosed dual agents cannot, in the view of the Commission, help accomplish that objective. Further, the Commission disagrees with the proposed revised language indicating that a disclosed dual agent's fiduciary duties "may" be more limited than if they were acting as a single agent. In fact, those fiduciary duties must be more limited than in the single agency situation.

COMMENT: One commenter suggested adding additional text to the section in the CIS on disclosed dual agents to reiterate that a licensee whose firm is acting as such will not be able to put one party's interests ahead of those of the other party, and that, like a transaction broker, a disclosed dual agent does not promote the interests of one party over those of the other and cannot advise or counsel either party on how to gain an advantage at the expense of the other party.

RESPONSE: The Commission agreed that the information to which these suggested revisions pertained is significant. However, the Commission felt that that information is already adequately conveyed to consumers through the current text of the CIS section on disclosed dual agents. Accordingly, the Commission determined not to add any additional text to that section in the statement.

COMMENT: One commenter suggested deleting the phrase "or subagent" from the end of the first paragraph in the description of disclosed dual agents. This party also suggested deleting the reference to licensees being required to explain dual agency and the effect of their acting as such on the fiduciary obligations they owe to each party. This commenter suggested that since the written disclosure will facilitate that explanation, that the reference in the rule to the written disclosure alone would be sufficient. They also queried whether the reference to such an explanation in this section of the rule refers back to the verbal explanation mentioned in subsection (e), or to some more expansive explanation. This party also suggested adding to the final sentence in the dual agency section the phrase "among other things." Finally, this party suggested deleting the reference in that last sentence to "an agreement which clearly states what that firm will and will not do to protect your interests." This commenter averred that the phrase is overbroad and unclear and establishes a standard which it is impossible for licensees to meet.

RESPONSE: The Commission disagreed with the suggested elimination of the phrase "or subagent" from the end of the first paragraph in the description of disclosed dual agents. It is clearly foreseeable that brokerage firms may have occasion to be acting as a subagent with respect to a given property and also to be acting as a buyer's agent for buyer-clients interested in the same property. Consequently, the Commission determined that it was necessary to include this reference in the description of disclosed dual agents.

The Commission also rejected the suggestion that the references to licensees being required to give a full explanation of dual agency and of its effect on their fiduciary duties to each party be deleted from the CIS. As noted above, in the judgment of the Commission, consumers contemplating entering into a dual agency relationship with licensees need to have a thorough understanding of the nature of that business relationship. Only by including this language in the CIS can the Commission have reasonable assurance that consumers are at least being advised that they should not form a mistaken belief, based upon

preliminary verbal disclosures and their receipt of the CIS, that they have been given all of the information they need in order to make an informed choice to enter into a dual agency relationship.

The reference to providing such an explanation contained in this subsection does not refer back to the verbal explanation mentioned in subsection (e) as proposed. As noted above, the intent of subsection (e) is to require that, in situations where it is impractical to deliver the CIS, licensees verbally inform consumers of the four available business relationships before the consumers convey to them information the consumer might wish to be kept confidential. The information on the four available business relationships is in no way akin to the detailed and comprehensive explanation of disclosed dual agency to which this section of the rule refers.

In an effort to keep the text of the CIS clear and direct, the Commission determined not to add the phrase "among other things" to the final sentence in disclosed dual agents section.

The Commission recognized that the final phrase in the disclosed dual agent section of the CIS as proposed, requiring that firms and consumers who enter into a disclosed dual agency relationship execute a written agreement which "clearly states what that firm will and will not do to protect your interests . . .", would have established an overbroad and unclear standard. Consequently, the Commission determined to delete that phrase from the rule as adopted.

COMMENT: One party suggested deleting from the last sentence in the explanation of disclosed dual agency contained in the CIS the phrase indicating that consumers contemplating entering into a dual agency relationship should sign a written agreement with the brokerage firm "which clearly states what that firm will and will not do to protect your interests." The comment averred that this creates an overbroad and unclear standard which is impossible for firms to meet.

RESPONSE: The Commission recognized the breadth and vagueness of the phrase objected to in this comment and determined to delete it from the rule as adopted.

COMMENT: One party suggested adding text to the statement advising consumers of their opportunity to obtain legal advice about the business relationships described in the CIS, so as to have it indicate that a party might obtain such advice "from your own lawyer."

RESPONSE: It is the Commission's view that it is extremely important that the CIS alert consumers that they may obtain independent legal advice about the various business relationships they may enter into with real estate brokers. Again, the objective of this rule is to supply consumers with information they need in order to understand the differences between, and the advantages and disadvantages of the various business relationships they may enter into with real estate brokerage firms. Alerting consumers to their opportunity to obtain independent legal advice about those business relationships before deciding which relationship best suits their needs is consistent with that objective. The Commission agreed with this comment and has revised the text of the statement accordingly.

COMMENT: Coldwell Banker Real Estate Services Inc. commented on the approach to disclosed dual agency contained in the proposal. They urged the Commission to revise the rule to allow brokerage firms the option of providing disclosed dual agency in another way. They suggested that the rule be amended to permit firms to enter into dual agency agreements under the terms of which it would be agreed that the consumer would be fully represented by one licensee with the firm, who would act as their full agent, and their counterpart in the transaction would be similarly represented by another individual licensee from that firm. The management of the firm would maintain a neutral posture vis-a-vis both the buyer and the seller with whom that firm had such dual agency agreements. It was also noted that the final sentence in the second paragraph of the explanation of disclosed dual agency in the CIS was overbroad. It was asserted that, if read literally, that sentence would preclude licensees, when acting as disclosed dual agents, from rendering professional advice to parties on the basis of neutral factors, such as comparable sales and comparable available properties.

Coldwell Banker averred that if firms are limited to practicing dual agency in the manner described in the proposal, they will not do so, nor would they engage in buyer brokerage, because by so doing they would be unable to compete for listings with other firms which limited their business to strictly seller agency. It was argued that in the competition for listings, firms which limit their operations to seller agency would be able to advertise that they give full agency representation to sellers at all times, while firms wishing to offer buyer brokerage and to engage in disclosed dual agency as delineated in the proposal would not be able

make such claims. Their inability to do so, it was urged, would place them at a competitive disadvantage, and result in their losing out in the competition for listings. Rather than run that risk, it was averred that they would simply choose not to offer buyer brokerage and disclosed dual agency at all.

In support of their approach to dual agency, Coldwell Banker averred that the common law of agency allows principals and agents to, by agreement, establish the terms of the agency relationship, including the freedom to specify in the agreement that only one member of the brokerage firm, rather than all persons employed by that firm, would act as a full agent of the contracting seller or purchaser. They also cited situations in which the Public Defender's office and the Attorney General represent parties with conflicting interests in the same case as examples of such an approach to dual agency.

RESPONSE: Based upon legal advice received from the Attorney General's office, the Commission has concluded that the approach to disclosed dual agency proposed in this comment is inconsistent with the Real Estate Licensing Law, N.J.S.A. 45:15-1. In that law, real estate salespersons are defined as persons who are employed by and operate under the supervision of a licensed broker. N.J.S.A. 45:15-3. See also N.J.S.A. 45:15-14. Other references to the requirement that salespersons operate under the authority and supervision of the brokers through whom they are licensed are found in numerous provisions of the Commission's administrative rules, including N.J.A.C. 11:5-1.3(a)1, 2, 1.4(a)1 and 1.14(b) and 1.18(a). On the basis of these authorities, it is the position of the Commission that all individual licensees, by law, work for and under the supervision of a licensed broker.

Real estate brokerage is a regulated profession and, in addition to the limitations upon broker's freedom to contract imposed by the license law, there are other statutory limitations on what real estate licensees can do. These limitations further restrict brokers' common law freedom to enter into certain types of agency agreements. One example is the proscription in New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et seq., upon licensees providing agency representation or brokerage services which discriminate against certain persons. Clearly, notwithstanding the common law of agency, a real estate licensee may not enter into a listing agreement with a seller under the terms of which the licensee agrees not to attempt to sell a property to certain persons based upon their race, religion or national origin. Thus as members of a regulated profession, real estate licensees do not enjoy unfettered freedom to enter into whatever type of agency agreement they and their principal might agree on.

As noted above, pursuant to the Real Estate Licensing Law, salespersons cannot engage in real estate brokerage activity as independent actors, detached from the direction and supervision of the brokers through whom they are licensed. This structure is established in the license law as a means of affording essential protections to the public. Salesperson licensees have not fulfilled the same experience, education and examination requirements which broker licensees have. Until they do and are issued broker licenses, they are prohibited by law from dealing independently, without the supervision of senior (that is, broker) licensees, with consumers. Under Coldwell Banker's proposed approach to disclosed dual agency, brokers could not effectively supervise the individual salespersons who purportedly were to act as full agents of a seller and a buyer with respect to how they fulfill their fiduciary obligations to their respective principals. This is precisely the area which most directly affects the interests of the consumers who would be parties to such dual agency agreements. It is therefore the area on which the knowledge and experience of broker licensees is most needed, and on which the direct supervision of less knowledgeable licensees is most necessary. Yet, under the disclosed dual agency approach posited by Coldwell Banker, the management (that is, the broker) of the firm would remain neutral. Such a scenario is clearly not consistent with the public interest.

Coldwell Banker's comment avers that the broker would remain responsible under the license law for the actions of the salespersons acting as full seller's agents and full buyer's agents. However, responsibility is not synonymous with supervision. In reviewing Coldwell Banker's proposal, the Commission was concerned with how one individual, that is, the broker, can effectively supervise and direct the actions of two licensees who are legally obligated, under the terms of the respective brokerage agreements with the buyer and seller, to give their undivided loyalty to two parties whose interests are in conflict. It was concluded that there was no way such a broker could effectively supervise those salespersons' fulfillment of their full disclosure and confidentiality obliga-

tions without knowing the information which might have to be disclosed or kept confidential. However, once a broker knows such information, how could they give direction to the listing salesperson on how to advise their seller-principal without considering confidential information the broker may have learned as a result of counselling the licensee acting as the buyer's agent, and vice versa? The Commission's conclusion was that this cannot be done. Consequently, when such questions arose, brokers in such circumstances would, just as Coldwell Banker suggested, have to refrain from providing direction and supervision to the salespersons involved. However, as noted above, such a hands off approach is inconsistent with the license law. To sanction that approach would be to elevate salesperson licensees to the status of independent brokers for the purposes of fulfilling the most sensitive obligations licensees can undertake, that is, discharging the fiduciary duties they owe to their principals when acting as agents.

In support of their proposal, Coldwell Banker cited two examples from the legal community which they maintained were analogous. These were situations where the Public Defender's office represents multiple defendants in the same criminal trial and situations where the Attorney General's office provides legal advice to two State agencies which have assumed conflicting positions in the same litigation. The Commission has determined that the first example is incorrect, as it has been advised that in such cases the Public Defender's office farms out the representation of additional defendants to pool attorneys and does not assign in-house public defenders to represent multiple defendants in the same case. With regard to the second example, the Commission has concluded that it is inapposite. The Attorney General's office is authorized by statute to represent public agencies in this state in the public interest. The Attorney General's office, which itself is a public agency, thus has statutory authority to render such representation. This is not akin to a private enterprise seeking to fully represent parties with conflicting interests based upon general principles of the common law of agency and the private firm's desire to maximize its profits. The Commission has noted that in some other states the approach to disclosed dual agency advocated by Coldwell Banker has been implemented. However, in all such cases with which the Commission is familiar, this was done only after statutory amendments to the Real Estate Licensing Law in those states were enacted, so as to permit such representation by salesperson licensees. In the absence of such legislative action in New Jersey, for the reasons discussed above the Commission determined to reject Coldwell Banker's proposed revisions to the rule which would authorize the practice of disclosed dual agency as described above. However, the Commission recognized the merits of Coldwell Banker's concerns regarding the final sentence in the second paragraph of the CIS section on disclosed dual agency. Accordingly, text has been added to that sentence to clarify that, in transactions wherein a firm is acting as a disclosed dual agent, licensees may not, on the basis of confidential information which the licensee has not been authorized to disclose, counsel or advise a party on how to gain an advantage at the expense of the other party to whom the information pertains.

COMMENT: One party who did not submit a written comment verbally commented on the proposal at the public hearing on September 27, 1994. This party urged the Commission to work for legislation to make all listing licensees seller's agents, and all other licensees buyer's agents. It was urged that a single licensure standard be introduced in New Jersey, with every licensed individual being, essentially, a brokerage firm unto himself or herself. By thus proceeding, it was averred that piecemeal, stop-gap measures would be avoided and what is essentially current practice and perception would be converted into legal reality. It was also urged that by pursuing such legislation, uniformity rather than the providing of several options to brokers would be achieved, which would result in the saving of millions of dollars in needless litigation. This party also noted his belief that the Commission will have enforcement problems with regard to the restrictions being imposed upon disclosed dual agency by the rule as proposed, and the public would be better served were the Commission to ban dual agency entirely.

RESPONSE: The major part of this comment did not directly address the content of the proposal, but rather suggested the Commission work for legislation to extensively revise the current real estate licensing framework in New Jersey. The Commission is considering the appropriateness of doing so and has not yet arrived at any conclusions on this approach.

With respect to the one aspect of this comment which did directly address the rule as proposed, the Commission acknowledges that there may well be enforcement problems with respect to the restrictions under

which licensees are to operate, should they proceed to engage in disclose dual agency. However, the Commission does not believe that that is a sufficient reason to abandon the concept entirely. The enforcement problems will be monitored and if future amendments to the rule are warranted, appropriate action will be taken. At the present, it is the Commission's position that disclosed dual agency is a permissible method of operation for New Jersey real estate licensees. Therefore, information on it, including detailed information on its risks, and on the reduced level of representation it affords to parties who opt for dual agency as opposed to full buyer or seller agency, will be included in the CIS and the rule as adopted.

COMMENT: One party, who also totally opposed the inclusion of the concept of transaction broker in the rule, averred that in the event the concept is retained, the order of the sentences in the description of transaction broker be revised, with the second sentence in the proposal being made the first sentence in the rule as adopted. Another of the parties who totally opposed inclusion of the transaction broker concept in the rule took the position that if the concept is retained, a substantially abbreviated explanation of it should be included in the consumer information statement, rather than the explanation contained in the proposal.

RESPONSE: As noted above, the Commission has determined to retain the concept of transaction broker in the rule. However, the Commission agreed that the suggested revised order of sentences made the description of transaction broker in the CIS more clear and has revised the rule accordingly. The Commission further concluded that, while simplicity is a desirable objective, it is of paramount importance that the text of the CIS adequately inform consumers of the basic information which characterizes each of the business relationships described in the statement. Merely identifying the relationships and providing an inadequate explanation of them would, the Commission believes, not be an effective means of achieving that objective. This is particularly true of the disclosed dual agent and transaction broker concepts. For these reasons the Commission determined not to substantially abbreviate the explanation of transaction broker contained in the CIS.

COMMENT: One party urged the Commission to simplify the text of the optional acknowledgment of receipt of the CIS which is recited at the conclusion of subsection (h).

RESPONSE: The Commission agreed that the suggested revised format for the optional acknowledgement of receipt was preferable to text of the acknowledgement as proposed. Accordingly, that suggested revision has been incorporated into the text of the rule as adopted.

COMMENT: One party urged the Commission to delete from subsection (h) the requirement that the brokerage firm be identified in the optional statement acknowledging receipt of the CIS which appears at the conclusion of subsection (h). Again, no specific reason was supplied to support this suggestion, other than the commentator's general position that the rule should be as simple and clear as possible.

RESPONSE: The Commission rejected this proposed revision. It is the Commission's position that it is important for the consumer to know that the licensee from whom they received the CIS is working for a particular brokerage firm. The significance of this information, in the opinion of the Commission, outweighs the desire to keep the text of the information statement as streamlined as possible.

COMMENT: One party suggested revising subsection (i) so as to include all clauses required to be contained in brokerage agreements in this subsection of the rule.

RESPONSE: The Commission agrees that making this revision would make the rule more understandable and has revised the text of subsection (i) accordingly.

COMMENT: Another party suggested deleting the acknowledgements required to be included in offers, contracts or leases by subsection (i) as they are redundant to the acknowledgements which will have been previously secured in brokerage agreements.

RESPONSE: The Commission recognizes the redundancy alluded to in this comment. However, the Commission feels it is important to have the parties to a transaction reconfirm their receipt of the CIS when they are about to enter into a transaction by executing an offer, contract or lease. Requiring the inclusion of the acknowledgement in such documents may cause parties to contemplate the manner in which they have interacted with the licensee with whom they have been dealing up until that point in time, and to again review the statement before committing to proceed with a transaction by executing an offer, contract or lease document.

COMMENT: One commenter supported the inclusion of a requirement that acknowledgments be obtained as set forth in subsection (i) but suggested the use of abbreviated language to do so.

RESPONSE: The Commission agreed that the language suggested by this commentator was more succinct, and yet sufficiently clear so as to make its inclusion in the rule preferable to the text as proposed. Accordingly, the Commission revised subsection (i) as suggested by this commenter.

COMMENT: The same commenter who suggested placing all references to clauses which are required to be included in brokerage agreements in one subsection of the rule, as noted above, made the same suggestion with regard to all clauses which are required to be included in licensee-prepared offers, contracts or leases. Thus, they suggested revising subsection (k) accordingly. (Note that because subsection (j) has been relocated in the text of the adopted rule as a new paragraph of subsection (g), subsection (k) from the proposal is now codified as subsection (j)).

RESPONSE: The Commission agreed that making the revisions suggested by this commenter would make the rule more easily understandable by licensees. Consequently, subsection (j) as adopted (formerly subsection (k) in the proposal) has been revised accordingly.

COMMENT: One commenter suggested retaining the requirements included in paragraphs two and three of subsection (j) in the rule as adopted, but with abbreviated disclosure language.

RESPONSE: The Commission recognized that the suggested language was more succinct, yet adequately conveyed the necessary information. Accordingly, the Commission revised the text of those two paragraphs as suggested by this commenter.

COMMENT: One party suggested deleting the verbal disclosure requirement imposed upon licensees acting as buyer-brokers who deal with sellers who are attempting to sell their property without the assistance of licensees, which was included in proposed paragraph (k).

RESPONSE: The Commission disagreed with this suggested deletion from the rule. In order to protect the legitimate interests of such sellers, licensees acting as buyers-brokers should be required to reveal that they are acting as agents of prospective buyers of the property before the seller has disclosed any information to that licensee which they might wish to have kept confidential from prospective buyers.

COMMENT: One party suggested that if receipt of the CIS is acknowledged and a declaration of the business relationship the licensee's firm intends to enter into with the consumer is included on the CIS itself, licensees should only be required to attach a copy of the CIS to the brokerage agreement and include in the brokerage agreement a reference to the consumer's receipt of that attachment. This comment was offered as a suggested revision to proposed paragraph (k)2.

RESPONSE: The Commission agreed with this suggested clarification of paragraph (k)2 (subsection (j) of the adoption) and has revised the text accordingly.

COMMENT: One party noted that proposed paragraph (k)3 was silent as to the obligations of licensees who prepare offers, contracts or leases on transactions other than in-house deals, to indicate in those documents the business relationship which the other firm involved in the transaction has with the party it is representing or working with. It was suggested that it was not the intent of the Commission in proposing this section that only the business relationship between the firm of the licensee preparing such a document and the party they are working with or representing be declared in the document.

RESPONSE: The Commission acknowledged that the rule as proposed could be clearer on this point and that the comment correctly discerned that it was not the intent of the Commission to require that offers, contracts or leases prepared by licensees only indicate the business relationship between the firm of the licensee preparing the document and the party they are representing or working with. The Commission has revised the rule to clearly require, in transactions in which more than one firm is actively involved, the inclusion of statements specifying the business relationships which both firms participating in the transaction have with the parties they are representing or working with. Subsection (k) as adopted requires listing brokers who direct notices to other firms in writing, via computer or through a multiple listing service to indicate therein whether they are operating as a seller's agent or a transaction broker. Brokers acting as subagents, transaction brokers or buyer agents may rely on the information in such notices when indicating in an offer, contract or lease they prepare the business relationship which the listing broker has with the owner. In cases where their firm has not received such a notice, the licensee preparing the document will have

to make an inquiry to the licensee working with the other party to the transaction as to the nature of their business relationship, and then include in the required statement the information supplied in response to that inquiry.

COMMENT: A comment was submitted pointing out that under current law, the attorney review language contained in licensee-prepared contracts and leases must be stated in the predominant size type contained in the lease or contract documents. The commenter noted that the requirement contained in proposed paragraph (k)3, that is, that the declaration of business relationship be in print larger than the predominant size print in the writing, was inconsistent with this mandate.

RESPONSE: The Commission acknowledged the apparent inconsistency pointed out in this comment and has revised the text of adopted paragraph (j)3 (subsection (k) in the proposal) so as to require that the declaration of business relationship be stated in print as large as the predominant size print in the writing.

COMMENT: Three parties commented on subsection (l). One urged that this subsection be entirely deleted in an effort to make the rule more simple and streamlined. One questioned the need for the inclusion of the last sentence in paragraph (l)2, which directs that when an inquiry is made about a listed property by another licensee in the firm of the listing salesperson, the licensee receiving the inquiry must first ascertain what business relationship the inquiring licensee has with any party on behalf of whom they are making the inquiry. The commenter queried why this would be necessary with respect to "inter-office" inquiries, presumably from a licensee which has the same business relationship as that which exists between the listing salesperson and the owner. Finally, a third comment raised the question of how broadly or narrowly the reference to "notices circulated" to licensees other than through a multiple listing system is to be interpreted. It was suggested that this language was overbroad and that it should be limited to information contained in a MLS book.

RESPONSE: The Commission concluded that it was necessary to have the rule direct that licensees with a listing brokerage firm make the disclosures described in subsection (l), and the inquiries specified in paragraph (l)2, in order that they might not inadvertently reveal confidential information to a licensee acting as an agent for a buyer. In the Commission's judgment, this need outweighed the desire to keep the text of the rule streamlined and simple.

The Commission also foresaw the possibility of licensees in larger brokerage firms making inquiries to listing salespersons with whom they have had no prior contact. It is conceivable that the respective offices from which the two licensees operated could be in different parts of the state. Because a licensee with a firm which offers disclosed dual agency might be acting only as a buyer's agent, that is, representing a buyer who has not consented to the firm acting as a dual agent, it is incumbent upon listing salespersons to ascertain what business relationship exists at the time of the inquiry between such a licensee and their buyer principal before volunteering any information which a seller might wish to be kept confidential.

Finally, the Commission acknowledged the lack of specificity in the language in paragraph (l)1 with respect to the circulation of notices through a multiple listing system or otherwise to other firms, as was mentioned in the third comment referenced above. The Commission has revised the text of the rule so as to indicate that only notices which are transmitted through a multiple listing system or are written or generated by computer and directed to other firms need include information on the business relationship the listing broker has with the owner of the listed property. The reference to computer generated notices refers to notices transmitted by "E Mail" and other similar means.

COMMENT: Two parties commented on subsection (m). One would delete it entirely in an effort to streamline and simplify the text of the rule. The other suggested that the section should specify to whom disclosures are required to be made by Commission Rule N.J.A.C. 11:5-1.38, which is referred to in the text of this section.

RESPONSE: The Commission determined that the significance of reminding licensees in this rule of their disclosure obligations imposed by N.J.A.C. 11:5-1.38 was sufficiently significant so as to warrant its inclusion in the rule, notwithstanding that by doing so the rule may be made slightly more complex. However, the Commission did not feel it was necessary to reiterate the specifics of N.J.A.C. 11:5-1.38 in subsection (m), as suggested in the second comment referenced above. The reference in the text of subsection (m) that the required information "shall also be disclosed to both parties as required by N.J.A.C. 11:5-1.38" was deemed sufficient.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the practice of real estate brokerage is governed by the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and is not subject to any Federal requirements or standards.

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

11:5-1.43 Consumer Information Statement

(a) ***When applied to rental transactions which are not exempt from this rule, references to sellers and buyers, and to the various types of brokerage agreements and business relationships mentioned throughout this rule should be construed as indicating their appropriate counterparts in rental transactions. For example, references to sellers should be read as lessors or owners and references to buyers should be read as lessees or tenants, etc.*** As used in this ***[section]* *rule***, the following terms or phrases shall have the following meanings ***[indicated]***:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. Consumer Information Statement* means the Consumer Information Statement on New Jersey Real Estate Relationships as prescribed in (h) below.

[3.]*4.* "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party ***[all facts which might]* *all material facts which might reasonably impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the ***[alternatives to dual agency which are available to that party]* *other business relationships offered by that licensee and of those not offered by that licensee, and of that party's right to consult an attorney***.**

***[4.]*5.* "Party" shall mean actual or prospective sellers, lessors, buyers or lessees of an interest in real estate.**

***[5.]*6.* "Short term rental" shall mean the rental of a residential property for not more than 90 consecutive days, under the terms of an oral rental agreement or written lease which contains a specific termination date. Month-to-month tenancies are not considered short term rentals.**

***[6.]*7.* "Transaction broker" shall mean a brokerage firm which works with both parties in an effort to arrive at an agreement on the sale or rental of real estate and facilitates the closing of a transaction, but does not represent either party, and has no agency relationship with either party to the transaction. The New Jersey Real Estate License Law, N.J.S.A. 45:15-1 et seq., and the administrative rules promulgated thereunder do not mandate that licensees must act as agents when rendering real estate brokerage services.**

8. "Business relationship(s)" means real estate licensees working as a seller's agent; a buyer's agent; a disclosed dual agent; or a transaction broker.

(b) Prior to acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction. ***[It is not the purpose of (e) through (k) below to provide brokerage firms with a means through which they may secure evidence of having acquired the written informed consent of the parties to act as a dual agent.]* *Informed consent is not acquired through distribution of the Consumer Information Statement on New Jersey Real Estate Relationships as required by (e) and (k) below alone.**

At a minimum, licensees must also secure the signature of the party on a separate writing which confirms the party's informed consent to the licensee acting as a Disclosed Dual Agent for that party. Such a writing may be part of, or an attachment to a brokerage agreement.*

(c) Licensees shall supply information with regard to their working relationship with parties to real estate transactions as provided in this section.

(d) Licensees shall comply with all requirements of this section when involved in:

1. Transactions which involve the sale of residential real estate containing one to four dwelling units or the sale of vacant one-family lots;

2. Residential lease transactions other than short term rentals. However, in short-term rental transactions, licensees shall include in all leases prepared by them a statement indicating that they are acting in the transaction either as an agent of the landlord, an agent of the tenant, a disclosed dual agent or a transaction broker; and

3. The securing of *[listing agreements which have terms of more than 90 days, even if the brokerage firm is retained to secure short-term rentals of the property which is the subject of the rental listing agreement]* ***brokerage agreements on residential properties, including rental listing agreements on residential properties to be offered for short term rentals***.

(e) All licensees shall supply information on business relationships to buyers and sellers in accordance with the following:

1. With respect to buyers:

i. All licensees shall verbally inform buyers of the four business relationships described in this section prior to the first discussion at which a buyer's motivation or financial ability to buy is discussed.

ii. If the first such discussion occurs during a business meeting on the buyer's real estate needs, licensees shall deliver the written Consumer Information Statement to the buyers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the buyer, the Consumer Information Statement shall be included with such material.

iii. In cases where there have been no discussions on motivation or financial ability to buy prior to the first showing, licensees shall deliver the statement no later than the first showing.

iv. Those licensees who intend to enter into a buyer-brokerage relationship with such persons shall deliver the Consumer Information Statement no later than the commencement of their buyer-brokerage agreement presentation.

2. With respect to sellers:

i. All licensees shall verbally inform sellers of the four business relationships described in this section prior to the first discussion at which the seller's motivation or desired selling price is discussed.

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. In unlisted properties, absent any discussions prior to their first showing of the property, all licensees shall deliver the statement no later than their first showing of the property.

(f) The purpose of (e) ***above*** and (h) ***[above]* *below*** is to require licensees to provide basic and introductory information to the public in a convenient and consistent manner*. The information to be provided is not]**, **rather than*** a comprehensive explanation of agency law.

(g) The statement as supplied by the Commission shall be reproduced and delivered by licensees as required in this section as a separate item, with no deletions or additions*, **other than the optional additional text referred to in (g)1 and 2 below, and recited in (h) below***.

1. Brokerage firms may acknowledge delivery of the Statement by procuring the signature of the party to whom it was delivered and the date of delivery in the appropriate place at the bottom of the Statement.

i. On transactions which result in fully executed contracts of sale or consummated rental transactions, copies of Consumer Information Statements on which receipt has been acknowledged as set forth in (g)1 above, shall be maintained as business records for six years in accordance with N.J.A.C. 11:5-1.12(c).

2. Brokerage firms may also indicate on the Statement the capacity in which they intend to work with the party to whom they deliver the Statement.

3. Regardless of whether brokerage firms choose to include on the Statement the additional information referred to in (g)1 and 2 above, all brokerage firms, as is required by ***[(k)]* *(i) and (j)*** below, shall:

i. Indicate in all brokerage agreements the business relationship they intend to have with the other party to the agreement; and

ii. Indicate in all offers, contracts, or leases prepared by licensees the business relationship the firm has with respect to the parties named in those documents.

(h) The mandatory text of the Consumer Information Statement to be delivered by licensees as provided in (e) above is as follows:

CONSUMER INFORMATION STATEMENT *ON NEW JERSEY REAL ESTATE RELATIONSHIPS*

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the term "buyers" and "sellers" should be read as "tenants" and "landlords," respectively).

1. AS A SELLER'S AGENT OR SUBAGENT, I*, AS A LICENSEE,* REPRESENT THE SELLER AND ALL ***MATERIAL*** INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I*, AS A LICENSEE,* REPRESENT THE BUYER AND ALL ***MATERIAL*** INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I*, AS A LICENSEE,* REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I*, AS A LICENSEE,* DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

[In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively).]

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

***[There are several types of business relationships that are possible and you should understand these before a licensee provides specific assistance to you in buying or selling real estate. These are]* ***There are four business relationships:** (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.**

SELLER'S AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in

working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms, are called "sub-agents". Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND THE SELLER**. To work as a dual agent, a firm must first obtain the **informed written consent** of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party *[to disclose]* ***prior to disclosing*** confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party ***on the basis of confidential information obtained from or about the other party***.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm *[which clearly states what that firm will and will not do to protect your interests and how and by whom that firm will be paid]*.

TRANSACTION BROKER

[A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone.] The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. ***A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone.*** A TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but

cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS *FROM YOUR OWN LAWYER*.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

(END OF *MANDATORY* CONSUMER INFORMATION STATEMENT TEXT)

(OPTIONAL ACKNOWLEDGEMENT OF RECEIPT AFTER TEXT OF *[CIS]* *CONSUMER INFORMATION STATEMENT*):*

FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives."

FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

***(OPTIONAL INDICATION OF IN WHAT CAPACITY FIRM INTENDS TO WORK WITH RECIPIENT OF CONSUMER INFORMATION STATEMENT AS PERMITTED BY (g)2 ABOVE:)**

I, _____, as an authorized representative of
(Name of licensee)

_____, intend, as of this time, to work with you as a
(Name of brokerage firm)

_____.
(indicate one of the following):

seller's agent only

buyer's agent only

seller's agent and
disclosed dual agent if the
opportunity arises

buyer's agent and disclosed
dual agent if the
opportunity arises

transaction broker*

*[(i) A statement acknowledging receipt of the Consumer Information Statement shall be included in all brokerage agreements. In addition, all offers, contracts, or leases not exempt by this section which are prepared by licensees shall include the following statements:

By signing below the sellers (or landlords, as applicable) acknowledge that, prior to or at the first meeting at which their motivation to sell or their desired price was discussed, they received from a representative of **(the real estate firm participating in the transaction which first supplied the statement to the sellers)** a Consumer Information Statement as required by New Jersey Real Estate Commission rule N.J.A.C. 11:5-1.43.

By signing below the purchasers (or tenants, as applicable) acknowledge that, prior to or at the first meeting at which their motivation or financial ability to buy was discussed, they received from a representative of **(the real estate firm participating in the transaction which first supplied the statement to the purchasers)** a Consumer Information Statement as required by New Jersey Real Estate Commission rule N.J.A.C. 11:5-1.43.]*

INSURANCE

***(i) In all brokerage agreements, brokerage firms must include the following:**

1. A statement acknowledging receipt of the Consumer Information Statement; and

2. A declaration of business relationship indicating the regular business name of the broker and in what capacity the licensee servicing the agreement and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of business relationship in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
(Name of licensee)

_____, intend, as of this time, to work with you as
(Name of firm)

(indicate one of the following):

seller's agent only

buyer's agent only

seller's agent and
disclosed dual agent if the
opportunity arises

buyer's agent and disclosed
dual agent if the
opportunity arises

transaction broker

3. Where brokerage firms secure a written acknowledgement of receipt of the Consumer Information Statement on the Statement itself as provided in (g)1 above and include on the Consumer Information Statement a declaration of the business relationship they intend to have with the other party to the brokerage agreement as provided in (g)2 above, the attachment of a copy of the Consumer Information Statement to the brokerage agreement and the inclusion of a reference to the receipt of the Consumer Information Statement in the brokerage agreement shall constitute compliance with this section.*

[(j)] Copies of Consumer Information Statements on which receipt has been acknowledged, as set forth in (g)1 above, shall be maintained for six years as business records in accordance with N.J.A.C. 11:5-1.12(c) on transactions which result in fully executed contracts of sale or consummated rental transactions.]

***[(k)]**[(j)]* Licensees shall disclose to consumers what type of brokerage services they will provide in the following manner:**

1. Buyer-brokers shall verbally disclose to sellers that they are acting on behalf of a buyer prior to their first communication with the seller during which the seller's motivation to sell or desired price is discussed.

***[2. In all brokerage agreements, licensees shall include a declaration of agency indicating the regular business name of the broker with whom they are licensed and in what capacity they and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of agency in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:**

I, _____, as an authorized representative of
(Name of licensee)

_____, intend, as of this time, to work with you as
(Name of firm)

(indicate one of the following):

seller's agent only

buyer's agent only

seller's agent and
disclosed dual agent if the
opportunity arises

ADOPTIONS

buyer's agent and disclosed
dual agent if the
opportunity arises

transaction broker]*

***2. All offers, contracts or leases not exempt by this rule which are prepared by licensees shall include the following statements:**

"By signing below the sellers (or landlords as applicable) and purchasers (or tenants as applicable) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property."*

3. In all offers, contracts, or leases, including leases for short-term rentals, prepared by licensees as permitted by N.J.A.C. 11:5-1.16(g), licensees shall include the regular business name of the broker with whom they are licensed and a declaration of *[agency]* *business relationship* indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration of *[agency]* *business relationship* in all offers to purchase or to lease property, including those made on contracts of sale or lease documents prepared by licensees, shall contain, in print *[larger than]* *as large as* the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
(Name of licensee)

_____, am working in this transaction as
(Name of firm)

(indicate one of the following):

seller's agent only

buyer's agent only

disclosed dual agent

transaction broker

***i. In transactions in which more than one firm is involved, all licensee-prepared offers, contracts and leases, including leases on short-term rentals, shall contain, in the same size type and immediately following the declaration of business relationship set forth above, the following clause:**

Information supplied by _____
(Name of firm)

has indicated that it is operating in this transaction as a _____

(indicate one of the following):

seller's agent only

buyer's agent only

transaction broker

ii. The requirement to include the clause cited in (j)3i above in licensee-prepared offers, contracts and leases shall not apply with respect to firms whose involvement in a transaction was limited to merely referring a party to another firm.*

***[(l)]**[(k)]* Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:**

1. In all *written or computer generated* notices *[circulated]* *directed or other brokerage firms* through a Multiple Listing Service or otherwise *[to licensees with other firms]*, the listing broker shall indicate whether they are working as a seller's agent or as a transaction broker. On listings where the listing broker is operating as a seller's agent, such notices shall also state:

i. Whether subagency is offered;

ii. Whether the seller has authorized the sharing of the listing broker's compensation with cooperating subagents and/or transaction brokers and/or buyer/brokers; and

iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker's firm shall also be responded to as set forth in this subsection.

[(m)](l)* In transactions where brokers *[represent a party and]* seek compensation for their brokerage services from a party to the transaction whom they *[do not represent]* ***are not representing or working with***, the *[agency]* ***business*** relationship with the party they *[represent]* ***are representing or working with*** and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-1.38.

(a)

DIVISION OF ACTUARIAL SERVICES

Financial Examinations Monitoring System ("FEMS") Actuarial Data and Analysis Subsystem ("ADAS") Data Submission Requirements for All Domestic Life/ Health Insurers

Adopted New Rules: N.J.A.C. 11:19-4

Proposed: March 7, 1994 at 26 N.J.R. 1195(a).

Adopted: January 27, 1995 by Andrew J. Karpinski,
Commissioner, Department of Insurance.

Filed: January 27, 1995 as R.1995 d.112, **with substantive changes** not requiring additional public notice and comment.
(See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:17-1 et seq.

Effective Date: February 21, 1995.

Expiration Date: February 1, 1998.

Summary of Public Comments and Agency Responses:

Two written public comments were received from Garden State Life Insurance Company and Prudential Insurance Company.

COMMENT: One commenter questioned what the Department meant by the definition of "Amount 1" found in N.J.A.C. 11:19-4.2. The commenter stated that the proposed new rules indicate that this field is for inforce amount or benefit amount. The commenter stated that since some of their reserves are calculated based on premiums, they question whether the premium amount should go in this field instead. The commenter also stated that if this is so, can this field be expanded two decimal places for premium type of units.

RESPONSE: Where reserves are based on premiums, the premium should go in the "Amount 1" field. The figure should be provided without a decimal point, because the decimal point is implied.

Currently this field cannot be expanded two decimal places. However, the Department has delayed the operative date for the submission of data requested in Appendix B, Exhibits 2, 3 and 4, while it considers changes to the age and policy detail levels. These changes would permit insurers to provide additional information, such as the number of decimal places in the "Amount 1" field.

COMMENT: One commenter questioned whether there are requirements for defining "amounts" consistently, for example the converting of premium units to \$1,000.

Another commenter questioned whether they can indicate the unit being used for the "Amounts" fields (Amount 1 through 3).

A third commenter questioned Amount 2 and 3. The commenter believes that the Department needs to provide more clarification as to how these fields will be used by the Department's system, especially for other than traditional ordinary factor-driven plans. Additionally, the commenter stated that the "amounts" field may need more decimal places to build in flexibility up front which may be needed.

RESPONSE: The Department has delayed the operative date for the submission of this information. These concerns will be considered when changes are made to the age and policy detail levels.

COMMENT: One commenter questioned the definition of "basis level." The commenter believes that more clarification is needed. The commenter stated that they assumed that the definition of basis level

has the same definition valuation ID has for individual insurance, but the commenter stated that it is not as clear for certain items such as "type of function" etc.

RESPONSE: The basis level field is intended to describe in detail the actuarial method and assumptions used to calculate reserves. This description includes mortality or morbidity tables, gender, interest, reserve method, type of function (curtate or continuous), and any other appropriate assumptions used in determining the reserves. If the valuation ID describes the basis assumption in sufficient detail to calculate the reserve for the specific plan, it may be used in the basis level field. Additional data may be included with the valuation ID to make the description in the basis level field distinguishable from similar basis.

COMMENT: One commenter questioned the definition of certificate line. The commenter stated that the proposed rule indicates that the text of the description should not change or vary from year to year. The commenter questions whether it is correct to assume that this description will not contain the year of issue detail, as this changes from year to year. The commenter also questioned whether there are any guidelines for the deletion and/or addition of lines. The commenter asked whether, for example, they can leave a blank line instead of deleting it when reserves become zero.

RESPONSE: There are no specific guidelines. The system will accommodate new lines as they first appear. Lines can be dropped by excluding them from the valuation submission. An insurer can also report a line with a zero reserve.

Also the commenter correctly assumes that the certificate may not include the year of issue detail applicable to specific reserve amounts.

COMMENT: One commenter questioned the Department's use of the definition of certificate line number. The commenter stated that the certificate line numbers will be part of a file record and each block of business may require the submission of separate files. The commenter questioned whether they can assume that each block of business will compile its own valuation certificate and have its own certificate line numbers.

RESPONSE: The system will permit the certificate line numbers to vary from block to block; however, the company will have to provide the Department with the ordering of the certificate lines for the consolidated company in the required file format. (Note that this final ordering may be provided using zeros in the required fields.) There will not be a separate certificate for each block. The blocks will be consolidated or combined into the company total.

COMMENT: One commenter questioned whether the certificate line numbers submitted in the third quarter have to be consistent with those submitted at year end, for example, if the certificate line changes in the fourth quarter. The commenter also questioned whether the line number for the summary of the company's year end reserve valuation can be different from the line numbers for separate blocks of business. Finally, the commenter questioned whether the line numbers for a company's summary have to be consistent with the line numbers for the annual statement.

RESPONSE: Line numbers submitted in the third quarter do not have to be consistent with those submitted at year end. The final summary, or consolidated insurer, will determine the final certificate line numbers and order for the certificate. The line numbers used for the valuation do not have to be consistent with the line numbers used for the annual statement.

COMMENT: One commenter questioned the definition of duration. The commenter asked what determines whether something is a traditional versus non-traditional reserve. The commenter stated that its definition may not be consistent with the Department's definition. For example, the proposed rules show extended term plans as non-traditional while the commenter would have defined them as traditional. Additionally, the commenter stated that duration is not an element used in the calculation of group annuity, group life or health reserve. The commenter believes that the substitution of "contract" for "duration" would result in a level of detail that is consistent with what is currently submitted.

RESPONSE: Where age level detail can be used to verify the reserve and the reserve will be equal to the product of "Amount 1" and the "Factor," the product should be considered traditional. For any products where policy level detail is needed to confirm the reserve, the product would be considered non-traditional. Also, any products which do not fit the traditional format of an amount times a factor should be considered non-traditional.

COMMENT: One commenter questioned the definition of "factor." The commenter stated that a two decimal factor may not be accurate

to calculate many of the factor driven reserves. The commenter questioned whether the field can be expanded for more decimal places. Additionally, the commenter questioned how these factors will be used on the Department's software. The commenter stated that an insurer may calculate factors by interpolating terminal reserves based on the month of issue and the Department may base factors on some other assumption.

Another commenter questioned the definition of file type. The commenter stated that the definition of "policy level" detail is not clear for group business. The commenter stated that group reserves and funds are not calculated using participant level (for example, group term life reserves data). Therefore, the commenter stated that "age level detail" and "policy level detail" submissions will not be possible. The commenter further inquired regarding group reserves, where data is available at the participant's level, what the Department's selection criteria will be for "age level detail" and "policy level detail" submission. The commenter stated that usually tabulated records are not produced at the participants level due to its large volume. Finally, the commenter stated that the final decimal point requirement seems to be inconsistent for "factor," while "duration level record" field shows decimal points, the definition section requires no decimal point.

RESPONSE: The Department has delayed the operative date of these provisions and will consider these comments when it revises the age and policy detail levels.

COMMENT: One commenter questioned the definition of "Number of policies." The commenter stated that it would like to confirm whether this means contract counts, in which case most of the records in this field would be zero. The commenter also stated that it interprets this to mean that the total number of participants for their appropriate level of detail, such as policy contract level, age level, or duration (newly defined as contract) level. The commenter stated that this type of information is not currently available on their system. The commenter also questioned how they account for multiple benefits, such as riders.

RESPONSE: The information required by these rules is intended to be used as a cross-check of the policy or contract count with the information provided in the age, policy level or duration levels. If an insurer has difficulty providing a count for such things as rider benefits, the Department may permit the company to use zero as the number of policies in these cases.

COMMENT: One commenter questioned the definition of plan ID. The commenter stated that for the individual reserves it is assumed that the Plan ID is equivalent to the "kind code" and questioned whether that this assumption is correct. The commenter also stated that plan ID identifies the name of a factor deck file and asked whether this sufficiently identifies the "plan" of which the factor deck is representative. The commenter stated that its group annuity products defines plan ID as the Benefit Piece Form Code/Val Plan. For instance, the commenter also stated that it finds limited use of this field for Group Life and Health Plans. Finally, the commenter stated that policy ID, as interpreted by the group annuity section, means the participant's social security number.

RESPONSE: The plan ID is equivalent to "kind code." This field is intended to provide an identification for a plan or benefit structure which is unique. For group annuities, the plan ID would be equivalent to a product type or grouping of contracts. The commenter's interpretation of policy ID for its group annuity valuation is acceptable, if policy level details is required. Policy detail will not be required if the Department is able to reconcile the reserves at the contract level.

COMMENT: One commenter questioned whether the PC diskette filing under N.J.A.C. 11:19-4.3(b) is the best form for a large volume of data, and asked whether the Department has considered other mediums such as tape or CD-ROM. The commenter stated that the number of diskettes could become unmanageable. The commenter stated that it estimates that the number of diskettes required for "contract" level detail within plan basis may exceed 60 for the third quarter of submission. The commenter also stated that if the Department will only accept diskettes, further clarification on what criteria should be used to break down data into multiple diskettes is needed. The commenter stated it would like to have a sample diskette with the information in a desired format to ensure that they are compatible with the Department's system. Finally, the commenter stated that since they conduct business in Canada there is an additional concern that diskettes will have to be checked by customs.

RESPONSE: The Department has amended N.J.A.C. 11:19-4.3 on adoption to permit insurers to submit their data on tape or cartridges.

CD-ROM submissions are not permitted. The Department does not anticipate problems in submitting data from Canada.

A sample diskette with information in the desired format can be provided upon request.

COMMENT: One commenter questioned N.J.A.C. 11:19-4.3(c)2, which addresses the cover letter. Since this letter will list all plans, the commenter asked whether it replaces the format of the affidavit and the material supporting the affidavit which are currently being submitted. The commenter stated that the rule only requires listing for the plans, for which the factors are being provided. The commenter asked about the application to non-factor plans.

RESPONSE: A cover letter is to accompany each data submission and is to describe in sufficient detail the contents of the filing. It is necessary to list all plans for the submission of the factor deck. These provisions also apply to non-factor plans.

If an insurer provides a cover letter with the year-end submission that incorporates the signature of the documents by two officers who shall attest to the accuracy of the reserves in total, then an insurer is not required to file a separate affidavit. The Department has also added language to N.J.A.C. 11:19-4.3(c)4 (formerly N.J.A.C. 11:19-4.3(c)2), to clarify that the cover letter should accompany each data submission.

COMMENT: One commenter questioned N.J.A.C. 11:19-4.3(c)2, regarding the signed affidavit. The commenter asked what the format will be and stated that since affidavits and the supporting data files for each block of business can be submitted separately, whether they need to provide another affidavit for the entire insurance company for the year end submission.

RESPONSE: The Department has not changed its requirements with respect to the format of affidavits to be submitted in conjunction with the valuation. Separate affidavits for each block of business will be acceptable.

COMMENT: One commenter questioned the third quarter submission requirements. The commenter asked about the purpose of this submission and how the duration level detail will be used. In order to report its third quarter reserves, the commenter questioned which reserve factor should be shown: BOY, EOY or the interpolated EOP factor. The commenter also asked whether 12/31 factors should be applied to 9/30 inforce for the calculation of "third quarter" reserves. The commenter noted that certain blocks of business currently do not perform a full valuation at third quarter, and additional systems and salary costs will be incurred. Finally, the commenter noted that data should be submitted by diskette and by a hard copy report (for the first year). The commenter questioned whether a hard copy report is an exact replica of the diskette filing; and whether it should be in the format that is currently provided at year end or in some other format.

RESPONSE: The purpose of the third quarter submission is to provide the Department with data which can be used to make a selection for which the insurer will be required to provide age or policy level detail with the year-end submission. In this regard, the factor used in the third quarter submission is not significant. This Department does not believe that requiring insurers to provide a third quarter submission will be overly burdensome to insurers.

The required hard copy report should be in the format that is currently provided at year-end. Figures provided in the hard copy report and in the diskette or tape filing should agree.

COMMENT: One commenter questioned whether the filing requirements for closed block of business, for example, individual health business, can be simplified. The commenter stated that separate files may be necessary. For example, for secondary benefits or minimal factors in order to verify excess minimum reserves. The commenter asked how the impact of change in reserve basis will be considered. Finally, the commenter questioned whether the Department needs any pre-existing factor files.

RESPONSE: The Department may consider simplifying the filing requirements for closed blocks of business. Insurers should make specific requests to the Department with an alternative submission format.

Where there is a change in reserve basis, either the reserves will be reported under a new basis or they will be combined with an existing basis. As previously required by the Department, an insurer shall provide the Department with advance notice of a basis change and, in the case of reserve destrengthening, obtain Department approval.

The Department does not require pre-existing factor files.

COMMENT: One commenter suggested that the Department include a phase-in timetable to allow both the Department and insurers to test the waters and work out the differences in a progressive manner. The

commenter stated that this time table may be prioritized by the type of reserves (for example, factor-driven or not), blocks of business, level of details (for example, contract level detail data for Group) and/or amount of reserves, etc.

RESPONSE: The Department has amended these rules to provide for a delayed operative date for the submissions of data in Appendix B, Exhibits 2, 3 and 4, which it believes will provide sufficient time for insurers to comply.

COMMENT: One commenter stated that the difference between "Basis Level" and "Certificate Line" is unclear. The commenter questioned whether "Basis Level" either describes the "Certificate Line" in more detail or supplies extra information about "Certificate Lines."

RESPONSE: "Basis Level" is a more detailed description of the assumptions and methods used to determine the reserve liabilities than is provided by the "Certificate Line." For example, a basis description will specify whether the mortality table used is male or female, but both the male and female basis totals will be combined on one certificate line.

COMMENT: One commenter questioned whether each piece of a policy gets counted in the "Number of Policies" fields. For example, the reserves for a policy with two riders may appear on three different "Certificate Line Numbers." The commenter also questioned whether the "Number of Policies" field, for each "Certificate Line Number," base plan for each rider increases by one or just the "Certificate Line Number" for the base plan.

RESPONSE: The policy number field is designed in ADAS to be used as a cross-check that all the data provided at the more detailed age level or policy level is consistent with the data provided at the duration level. The Department has revised N.J.A.C. 11:19-4.3(c) to permit insurers more flexibility in the submission of data in accordance with these rules. Where the insurer can demonstrate that the format does not permit the company to accurately provide data necessary to determine the reserves for specific products, the Department will consider permitting variations in the information to be provided.

COMMENT: One commenter questioned whether all reinsurance should appear as one "Plan ID" or be divided based upon the base plans involved. The commenter also questioned whether the reinsurance number will be used to tie back to Exhibit 8 of the Annual Statement.

RESPONSE: The level of detail that should be provided will depend on the type of reinsurance. Insurers should follow the current format in submitting this data. For example, business ceded on a Yearly Renewable Term ("YRT") basis should have separate Plan IDs for each basis. A further breakdown of the ceded business can be made by the assuming insurer, if desired. Similarly, business ceded on a co-insurance basis will need separate Plan IDs for base plans if the ceded reserve is determined by multiplying a ceded in force amount or benefit amount by a reserve factor. For ceded business where the ceded reserve is a straight percentage of the basic reserve, less detail is required. The totals for reinsurance ceded should match with each section of Exhibits 8 and 9 of the Annual Statement.

COMMENT: One commenter questioned whether all the deficiency reserves should appear as one "Plan ID" or be divided based upon the plans involved. The commenter asked which valuation basis should be used (statutory or minimum standard) if it is to be divided based upon "Plan ID."

RESPONSE: Insurers should follow the format that they currently use.

COMMENT: One commenter questioned whether an initial "Factor Deck" is required for all plans.

RESPONSE: No. Factor decks will be required only for those plans requested by the Department.

COMMENT: One commenter stated that for the policies placed on Extended Term Insurance ("ETI") with a pure endowment its system maintains the reserve for both pieces on one record. As a result, the commenter stated that within the "Plan ID" and "Certificate Line Number," there will be some ETI policies with a reserve that includes pure endowment and some ETI policies that do not.

RESPONSE: This format is acceptable. In reviewing the reserves, there are a number of areas where the Department may request additional information. For ETI reserves, the Department will require a hard copy of detailed information sufficient to confirm the reserves for selected contracts.

COMMENT: One commenter stated that it is concerned about the method that will be used to match reserves. The commenter questioned how the Department's systems will take into account differences such

as varying benefit schedules and premiums. The commenter asked where it would find the appropriate benefit and premium schedules.

RESPONSE: When the Department selects plans for review and requests factor decks, the insurer will be required to submit an actuarial memorandum for each plan. The memorandum must provide sufficient information as to benefit schedules and premium schedules necessary to verify the reserve calculations. This information will be manually entered by an analyst into either the Hawley Actuarial Software ("HAS") subsystem or on a spreadsheet and then used in the reserve calculation.

COMMENT: One commenter stated that the record layouts for policy, age and duration level summaries are not designed to roll up from the lowest level of detail to the highest level of summary (for example, the Amount 1 field appears on the age level record layout but not on the policy level record). The commenter stated that in order to summarize this field for the age level detail, a separate program would have to be written to add all the Amount 1 fields from a source other than the policy level records. The commenter stated that if this field was contained on the policy record level records, they would need only one program to summarize all the necessary fields into the age level records.

RESPONSE: These concerns will be considered when changes are made to the age and policy detail levels.

Summary of Agency Initiated Changes:

The Department has added a definition of "EBCDIC" to N.J.A.C. 11:19-4.2. The term means the Extended Binary Coded Decimal Interchange Code.

The Department has provided a due date for initial submissions. The due date for the initial submission (1994 ADAS data) shall be April 1, 1995 and the submission shall be limited to ordinary traditional plans, excluding supplemental benefits.

The Appendix reference at N.J.A.C. 11:19-4.3(c) has been corrected to include both Appendices.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these adopted new rules are dictated by N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B-17.1 et seq. and are not subject to any Federal requirements or standards.

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

SUBCHAPTER 4. DATA SUBMISSION REQUIREMENTS FOR ALL DOMESTIC LIFE/HEALTH INSURERS

11:19-4.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the filing and reporting requirements and procedures for the submission of data related to an insurer's valuation of its reserves as part of the Financial Examination Monitoring System (FEMS) for all domestic life/health insurers. ***The due date for the initial submission (1994 ADAS data) shall be April 1, 1995 and the submission shall be limited to ordinary traditional plans, excluding supplemental benefits. For the purpose of ADAS 1994 data, insurers are only required to file year-end data submissions in accordance with this subchapter with the exception of the following provisions: N.J.A.C. 11:19-4.3(d)1, 2ii through 2v, (e)2 through 4 and Appendix B Exhibit 2 through 4 which do not have to be filed for any 1994 ADAS data. For 1995 and subsequent years data, insurers will be required to submit all the information required by this subchapter.***

(b) These rules apply to all domestic life/health insurers regulated under the laws of New Jersey unless specifically stated otherwise.

11:19-4.2 Definitions

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

"ADAS" means the Actuarial Data and Analysis Subsystem, which provides tools to help the Department's analysts to value the reserves of domestic life/health insurance companies.

"Age" means the insured's age at issue of the policy or benefit or some other age significant to the development of the "Reserve Amount"; for example, the attained age in the year of valuation for extended term insurance.

"Amount 1" means the inforce amount or the benefit amount which is directly used in determining the "Reserve Amount." If the "Traditional Indicator" is "T," the amount times the "Factor" is equal to the "Reserve Amount." Otherwise, this relationship need not exist.

"Amount 2" and "Amount 3" mean other information significant for the development of the "Reserve Amount," such as fund balances or dates. Dates shall be in numeric format. They may also be used to identify a specific portion of the value shown in "Amount 1."

"ASCII" means the American Standard Code for Information Interchange. It is a byte-oriented coding system based on an eight bit code and used primarily to format information for transfer in a data communications environment.

"Basis level" means the code or detailed description of the unique actuarial assumptions used in developing valuation premiums and reserves, including, but not limited to, the mortality or morbidity table(s), interest rate(s), reserve method, gender, type of function, age nearest birthday ("ANB") or age last birthday ("ALB"), grading and age setbacks. Any coding system shall be fully documented.

"Certificate Line" means the unique description of the mortality, interest and reserve method used for the total reserve shown on a specific line of the Certificate of Valuation. The text of the description shall not change or vary from year to year.

"Certificate Line Number" means the location of the specific reserve amounts on the Certificate of Valuation. If the "Reinsurance Indicator" is "Y," the "Certificate Line Number" shall be ***9999,*** the last line number in the "Certificate Section" and its description shall be "Reinsurance." If "N" then the relationship need not exist.

"Certificate of Valuation" means certification by the Commissioner with respect to the valuation of an insurer's total reserve liability, pursuant to N.J.S.A. 17B:19-2 and 5.

"Certificate Section" means the appropriate Code described in Appendix A, incorporated herein by reference.

"Certificate Section Description" means the appropriate Category of Insurance as related to the "Certificate Section" of the Certificate of Valuation as described in Appendix A.

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

"Department" means the Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17B:18-1 et seq.

"Duration" means, if the Traditional Indicator is "T," the number of years the policy has been in force. If the indicator is "N," this field may contain a number significant to a time period relevant to determining the reserves, such as years to run for extended term or years of disablement for disabled lives. If no time period is relevant to determine the reserve, "999" shall be used to fill the field.

"EBCDIC" means the Extended Binary Coded Decimal Interchange Code which is a computer code for representing data. This code is used in all IBM mainframe systems.*

"Factor" means a number with two decimal places equal to the reserve per unit of "Amount 1." This field assumes two decimal places; therefore, the company shall not include the decimal point. This number shall be determined using actuarial principles and methodology and be referred to as the reserve factor. This reserve factor is used in calculating the reserve liability for an insurance contract or policy. If the Traditional Indicator is "T," the result of "Factor" times "Amount 1" is equal to the "Reserve Amount."

"Factor deck" means the diskette or report containing reserve factors listed by age and duration for one or more plans of insurance in the Company's portfolio.

"File Type" means Age Level detail submission, Duration Level detail submission, Policy Level detail submission, or Factor Deck submission. The layout for each is specified in Appendix B.

"NAIC" means the National Association of Insurance Commissioners.

"New indicator" means that if the plan appears for the first time during the current valuation year, the indicator shall be "Y"; otherwise, this field shall contain "N."

"Number of policies" means the total number of policies/certificates for the appropriate level of detail, such as policy/contract level, age level, or duration level.

"Plan ID" means the unique code to identify each plan of insurance.

"Policy ID" means the policy/contract or certificate number for the individual item.

"Reinsurance indicator" means that if the reserve amount reported represents reinsurance ceded, the indicator shall be "Y"; otherwise the indicator shall be "N."

"Reserve amount" means the amounts used to determine the reserves reported in the Annual Statement. If the "Traditional Indicator" is "T," the reserve amount shown is obtained as a result of the multiplication of "Amount 1" by the corresponding "Factor" associated with it.

"Traditional indicator" means that the field contains a "T" (Traditional) or an "N" (nontraditional). If this field contains a "T," the plan has a factor driven reserve; otherwise, if the field contains an "N" then it represents a plan that has a non-factor driven reserve.

11:19-4.3 ADAS filing requirements

(a) All domestic life/health insurance companies shall provide the Department with a report on the insurer's third quarter and year end summary valuation on a personal computer diskette*, **tape or cartridge*** in accordance with (b) through ***[(d)]* *[(e)]*** below.

(b) All personal computer diskette*[s]* ***submissions*** shall be IBM compatible, formatted with IBM DOS so that it can be read by an IBM Personal System/2 ("PS/2") computer. The diskette shall be a high density, double-sided, 1.44 megabyte (3.5 inch) or 1.2 megabyte (***[5.24]* *5.25*** inch) diskette (3.5 inch diskettes are preferred). ***If the personal computer diskette report is more than 20 diskettes, then domestic life/health insurers may submit their report on either IBM compatible 3490 cartridges or 1600 BPI tapes, in accordance with (e) below (3490 cartridges are preferred with 1600 BPI tapes as a secondary preference).***

1. The ***diskette*** file shall be a non-delimited ASCII text file with a carriage return or line feed as the last character of each record. The data shall not be in compressed format.

2. The filename ***(for diskettes) or data set name (for tapes and cartridges)*** except for the factor deck file ***or data set***, is to be named using the first letter of the "File Type" (A, D, or P) followed by a letter representative of the company type, that is, L for L/H, F for Fraternal, etc., followed by the quarter (3Q or YE), followed by the year (two digits) and the disk number ***for diskettes***. All filenames ***or data set names*** except the factor deck file ***or data set*** shall end with the ASCII extension (.ASC) ***for diskettes and the EBCDIC Extension (.ADAS) for tapes or cartridges***. The factor deck filename ***or data set name*** shall be consistent with the plan ID, but shall not exceed eight characters.

(c) All reports on an insurer's valuation data filed by domestic life/health insurance companies with the Department shall include the information and ***shall*** be submitted in the format set forth in the record layout in ***[Appendix]* *Appendices A and* B** to this subchapter which ***[is]* *are*** incorporated in this rule by reference. ***Subject to prior approval by the Department, an insurer may submit data in a format which differs from the record layout in Appendix B to the extent that the data provided in some fields differs from that described in Appendix B. There can be no variation in the field length or start position.*** The report shall include the following information:

1. An external label shall be affixed to ***all*** diskette(s) and ***shall*** include the following information:

i. The company's name, NAIC number, and year and quarter relating to the data submitted;

ii. The date when the diskette was mailed;

iii. The volume label (VOL), created using the DOS, shall consist of the ***volume*** sequence number ***(VQN)*** of the diskette preceded by the first three characters of the file type; for example, "DUR 2 of 4"; ***and***

iv. The volume serial number ("VSN") of the diskette (this can be determined by executing the DOS "VOL" command) ***[; and]*.***

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***2. An external label shall be affixed to the tapes or cartridges and shall include the following information:**

- i. The company's name and NAIC number, and the year and quarter relating to the data submitted;
- ii. The volume serial number and the volume sequence number if the file is multi-volume (for example, 1 of 5);
- iii. The date when the tape or cartridge was mailed; and
- iv. The letters "SL" on the external label indicating that the internal IBM standard tape information is included.*

***[v.]**3.* The information *on the external label(s)* shall be displayed as follows:**

NAME:	
NAIC #:	YEAR:
DATE MAILED:	QUARTER:
VOL:	*VQN:*
VSN:	

[2.]**4.* A cover letter indicating the same information on the external labels shall *accompany each data submission and shall* also describe what certificate sections or types of insurance are included on the diskette*(s), tape(s) or cartridge(s)*. The description shall be in sufficient detail so the Department may determine *[that]* ***whether the valuation reports and/or factor deck submissions are complete *[or not]*. The cover letter accompanying the factor deck shall list all of the plans for which factors are being provided, together with the Lowest Age and the Highest Age submitted for each plan;**

***[3.]**5.* A signed affidavit by two officers from the insurer which shall accompany all transmissions attesting to the accuracy of the information contained on the diskette(s)*, tape(s) or cartridge(s)*; and**

***[4.]**6.* The diskette(s)*, tape(s) or cartridge(s)* must be received by November 15 for third quarter reports and February 15 for year end reports at the address listed below:**

New Jersey Department of Insurance
FEMS—Valuation *[and Statement]* Bureau
20 West State Street
CN 325
Trenton, New Jersey 08625

***i. If mailed, they shall be mailed in standard secure containers with a pre-addressed, prepaid return address label enclosed or attached.**

ii. The box or container and any label thereto, shall be clearly and legibly printed or typed in capital letters.*

(d) All reports on an insurer's valuation data filed by domestic life/health insurance companies with the FEMS—Valuation *[and Statement]* Bureau for the third quarter and year-end reports shall include the following information:

1. All third quarter submissions shall provide:
 - i. The duration level detail for all in force business;
 - ii. The factor decks for plans first issued since the last year-end; and
 - iii. A plan listing that provides, for each plan included in the valuation report, the plan code, a description of the plan, the valuation basis, the certificate line, and a description of the data contained in each field.
2. All year-end submissions shall provide:
 - i. The duration level detail for all in force business;
 - ii. An age level detail for each duration level record selected by the Department from the third quarter reports;
 - iii. The policy level detail for each duration level record selected by the Department from the third quarter report;
 - iv. The factor decks for new plans not submitted with the third quarter filing;
 - v. The factor decks for plans requested by the Department;
 - vi. A plan listing which provides, for each plan included in the valuation report, the plan code, a description of the plan, the valuation basis, the certificate line, and a description of the data contained in each field; and
 - vii. A complete summary of the company's year-end reserve valuation which identifies each reserve item by its appropriate actuarial

bases and is consistent with the applicable Annual Statement reports, Exhibit 8 and 9 for the General Account and Exhibit 6 for Separate Accounts.

3. Insurers may treat blocks of business separately when submitting valuation reports to the Department. In order to make separate submissions, an insurer shall submit a plan describing how its blocks of business will be split and shall obtain the Commissioner's approval for the plan.

4. For year-end 1994 ***and 1995***, each domestic life/health insurer shall submit a hard copy of the valuation report along with the diskette*, **tape or cartridge*** filing. The Department may require that an insurer continue to submit a hard copy until such time as the Department determines that the insurer's diskette*, **tape or cartridge*** filing is adequate to permit the Department to complete its audit of the insurer's reserve liabilities.

***[e) All cartridge or computer tape report submissions on an insurer's valuation data filed by Domestic Life/Health Insurance Companies with the Department shall include the information in (b) through (d) above and shall be submitted in accordance with the format set forth below.**

1. The duration level report for third quarter and year end shall include an internal IBM standard tape label containing:

- i. Duration level data set name;
- ii. The data shall be EBCDIC character set and alphas in upper case;
- iii. Volume serial number (will be assigned by the company);
- iv. Tape density;
- v. Record format (must be fixed block);
- vi. Record length (must be 215);
- vii. Block size (must be 31,820); and
- viii. Create date.

2. The age level report for year end shall include an internal IBM standard tape label containing:

- i. Age level data set name;
- ii. The data shall be EBCDIC character set and alphas in upper case;
- iii. Volume serial number (will be assigned by the company);
- iv. Tape density;
- v. Record format (must be fixed block);
- vi. Record length (must be 122);
- vii. Block size (must be 31,964); and
- viii. Create date.

3. The policy level report for year end shall include an internal IBM standard tape label containing:

- i. Policy level data set name;
- ii. The data shall be EBCDIC character set and alphas in upper case;
- iii. Volume serial number (will be assigned by the company);
- iv. Tape density;
- v. Record format (must be fixed block);
- vi. Record length (must be 134);
- vii. Block size (must be 31,892); and
- viii. Create date.

4. The factor deck report for third quarter and year end, unless provided on diskette, shall include an internal IBM standard tape label containing:

- i. Factor deck data set name;
- ii. The data shall be EBCDIC character set and alphas in upper case;
- iii. Volume serial number (will be assigned by the company);
- iv. Tape density;
- v. Record format (must be fixed block);
- vi. Record length (must be 12);
- vii. Block size (must be 31,992); and
- viii. Create date.*

11:19-4.4 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties pursuant to N.J.S.A. 17B:21-1 and 17B:21-2 and any other penalties permitted by law.

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APPENDIX A (CERTIFICATE SECTION/CERTIFICATE SECTION DESCRIPTION)

CERTIFICATE SECTION CODE	PRIMARY CATEGORY OF INSURANCE
	GENERAL ACCOUNT—EXHIBIT 8
I A	Life Insurance:
I B	Annuities (excl Supp Contracts with Life Cont):
I C	Supp Contracts with Life Contingencies:
I D	Accidental Death Benefits:
I E	Disability—Active Lives:
I F	Disability—Disabled Lives:

I G	Miscellaneous Reserves:
	ACCIDENT AND HEALTH—EXHIBIT 9
II A	Active Life Reserve:
II B	Claim Reserve:
	SEPARATE ACCOUNT—EXHIBIT 6
III A	Life Insurance:
III B	Annuities (excl Supp Contracts with Life Cont):
III C	Supp Contracts with Life Contingencies:
III D	Miscellaneous Reserves:

Additional categories may be used by an insurer upon notification to and approval by the Commissioner.

Appendix B Exhibit 1 DURATION LEVEL RECORD LAYOUT

FIELD NUMBER	FIELD NAME	START POSITION	FIELD TYPE & LENGTH	REQUIRED FIELD	COMMENTS
1	CERTIFICATE SECTION	1	X(5)	Y	See Code in Appendix A.
2	CERTIFICATE SECTION DESC	6	X(50)	Y	See Appendix A.
3	CERTIFICATE LINE NUMBER	56	N(8)	Y	Range (1-9999). The specific number assigned to this field represents the location of the line in the Certificate Section of the Certificate of Valuation. However, for reserves ceded, the "Reinsurance Indicator" must be 'Y' and the "Certificate Line Number" must be *9999,* the greatest number assigned in the "Certificate Section."
4	CERTIFICATE LINE	64	X(50)	Y	This field's description must be identical to any prior years' description of the valuation basis (i.e., spaces, upper and lower case lettering, hyphens, text, etc.). However, this field's description must be "Reinsurance" if the "Reinsurance Indicator" is 'Y'.
5	BASIS LEVEL	114	X(50)	N	Basis code or description of basis.
6	PLAN ID	164	X(12)	Y	Unique plan code or kind code.
7	DURATION	176	N(3)	Y	If "Traditional Indicator" is 'T', the field represents the number of years all of the policies in the record are in force. Otherwise, the field must identify a time period relevant to the reserve calculation. Enter "999" if field does not apply.
8	AMOUNT 1	179	N(13)	Y	Inforce/benefit amount used to calculate reserve. If the "Traditional Indicator" is 'T', "Amount 1" times "Factor" must equal the "Reserve Amount."
9	RESERVE AMOUNT	192	N(12)	Y	Total dollar amount of reserve for "Duration" and plan specified.
10	NUMBER OF POLICIES	204	N(9)	Y	Policy Count.
11	TRADITIONAL INDICATOR	213	X(1)	Y	Enter 'T' for a "Traditional" "Plan ID". This reserve is factor driven (i.e. the "Reserve Amount" equals a verifiable "Factor" times "Amount 1.") Age level data records described in Exhibit 2 shall be available for "Traditional" plans upon request. Enter 'N' for a "Nontraditional" "Plan ID". This reserve is not factor driven (i.e. the "Reserve Amount" is not computed as the "Factor" times "Amount 1.") Policy level data records described in Exhibit 3 shall be available for "Nontraditional" plans upon request.
12	NEW INDICATOR	214	X(1)	Y	Enter 'Y' if the "Plan ID" is new this current valuation year; otherwise, enter 'N'.

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13 REINSURANCE INDICATOR 215 X(1) Y Enter 'Y', if the "Reserve Amount" in the record represents reinsurance ceded; otherwise enter 'N'.

NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.
- (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
- (c) There are no spaces between fields.

Appendix B Exhibit 2 AGE LEVEL RECORD LAYOUT

FIELD NUMBER	FIELD NAME	START POSITION	FIELD TYPE & LENGTH	REQUIRED FIELD	COMMENTS
1	CERTIFICATE SECTION	1	X(5)	Y	Same as Duration Level Record Field.
2	CERTIFICATE LINE NUMBER	6	N(8)	Y	Same as Duration Level Record Field.
3	BASIS LEVEL	14	X(50)	N	Same as Duration Level Record Field.
4	PLAN ID	64	X(12)	Y	Same as Duration Level Record Field.
5	DURATION	76	N(3)	Y	Same as Duration Level Record Field.
6	AGE	79	N(3)	Y	Age $x \geq 0$. If "Traditional Indicator" is 'T', then x is the issue age. Age may equal attained age or the age significant to the reserve calculation.
7	AMOUNT 1	82	N(13)	Y	Consistent with Duration Level Record Field.
8	RESERVE AMOUNT	95	N(12)	Y	The value resulting from multiplying the "Factor" (below) times "Amount 1."
9	NUMBER OF POLICIES	107	N(9)	Y	Consistent with Duration Level Record Field.
10	FACTOR	116	N(6)	Y	NNN.DD per unit "Reserve Amount." (Must include decimal point and two decimal places)
11	TRADITIONAL INDICATOR	122	X(1)	Y	Same as Duration Level Record Field.

NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.
- (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
- (c) There are no spaces between fields.

Appendix B Exhibit 3 POLICY LEVEL RECORD LAYOUT

FIELD NUMBER	FIELD NAME	START POSITION	FIELD TYPE & LENGTH	REQUIRED FIELD	COMMENTS
1	CERTIFICATE SECTION	1	X(5)	Y	Same as Duration Level Record Field.
2	CERTIFICATE LINE NUMBER	6	N(8)	Y	Same as Duration Level Record Field.
3	BASIS LEVEL	14	X(50)	N	Same as Duration Level Record Field.
4	PLAN ID	64	X(12)	Y	Same as Duration Level Record Field.
5	DURATION	76	N(3)	Y	Same as Duration Level Record Field.
6	AGE	79	N(3)	Y	Age used to calculate the individual policy, contract or certificate reserve. See Age Level Record Layout.
7	POLICY ID	82	N(15)	Y	Policy number, contract number, account number, etc.
8	RESERVE AMOUNT	97	N(12)	Y	The total dollar amount of reserve for the "Age," "Duration," and "Policy ID" specified in the record.
9	AMOUNT 2	109	N(12)	N	Identifies significant information relevant to the "Reserve Amount" calculation (i.e., fund value, dates, etc.). This field shall be consistent for like/similar plans, and must be identified in the plan list when the field is filled in.

10	AMOUNT 3	121	N(12)	N	Identifies significant information relevant to the "Reserve Amount" calculation (i.e., fund value, dates, etc.). This field shall be consistent for like/similar plans, and must be identified in the plan list when the field is filled in.
11	TRADITIONAL INDICATOR	133	X(1)	Y	Same as Duration Level Record Field.
12	NEW INDICATOR	134	X(1)	Y	Same as Duration Level Record Field.

NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.
 (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
 (c) There are no spaces between fields.

Appendix B

Exhibit 4

FACTOR DECK RECORD LAYOUT

FIELD NUMBER	FIELD NAME	START POSITION	FIELD TYPE & LENGTH	REQUIRED FIELD	COMMENTS
1	AGE	1	N(3)	Y	Issue age x > = 0.
2	DURATION	4	N(3)	Y	Number of years from the policy issue date.
3	FACTOR	7	N(6)	Y	The actuarial value which when multiplied by "Amount 1," will result in the "Reserve Amount" for the appropriate plan of insurance. The field has two (2) implied decimal places. (No decimal point to be shown)

NOTE:

- (a) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
 (b) Records must be sorted by age and duration.
 (c) There are no spaces between fields.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

BOARD OF ARCHITECTS

Board of Architects Rules

Adopted New Rules: N.J.A.C. 13:27

Proposed: December 19, 1994 at 26 N.J.R. 4952(a).

Adopted: January 19, 1995 by the State Board of Architects,
 James S. Hsu, Executive Director.

Filed: January 25, 1995 as R.1995 d.101, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:3-3.

Effective Date: February 21, 1995.

Expiration Date: February 21, 2000.

Summary of Public Comments and Agency Responses:

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:27 expired on February 20, 1995. Opportunity to be heard with regard to the proposed repeal and adoption of a new body of rules was invited by notice published December 19, 1994 at 26 N.J.R. 4952. Notice of the special meeting on January 19, 1995, for adoption of the rules at the close of the comment period, was sent to the media.

The New Jersey State Board of Architects received seven comments with regard to the proposal. The comments are available for inspection at the office of the Executive Director of the Board, James S. Hsu, 124 Halsey Street, Newark, NJ 07101. The comments were reviewed and are summarized below with the Board's comments. The commenters were:

Department of Community Affairs, William Hartz, Chief, Bureau of Technical Services

Kevin M. Hale

Helen Henrickson Heinrich, ASLA (voiced general support)

New Jersey Chapter, American Society of Landscape Architects,
 Thomas Bauer, President

New Jersey Coalition for Interior Design Legislation, Diane Gote ASID

New Jersey Society of Architects, Alan M. Wallack, Esq., Counsel
 New Jersey Society of Professional Land Surveyors, Richard F. Smith Jr., P.L.S., Legislative Chair

COMMENT: N.J.A.C. 13:27-3.1. New Jersey Society of Architects recommended that the definition of architectural services include providing opinions in legal disputes and proceedings that require the identification, application and breaches of architectural standards of care. Such legal decisions may alter standards of care that are employed by architects on future projects and, therefore, constitute the practice of architecture.

RESPONSE: While the Board finds the proposal significant, it represents a substantive change in the proposed rules and will be considered in future rulemaking by the Board.

COMMENT: N.J.A.C. 13:27-3.2(f)2. The New Jersey Coalition for Interior Design Legislation. The commenter found the provisions restricted the scope of work by interior designers.

RESPONSE: The Board carefully considered this comment but disagrees that interior designers are restricted. Maintenance of the structural integrity of a building protected under this paragraph is part of an architect's professional skill.

COMMENT: N.J.A.C. 13:27-3.2(f). The commenter stated the prohibition against interior designers preparing construction documents was too broad and should be deleted.

RESPONSE: The Board rejected the comment because the language of the rule is consistent with the BOCA National Code (Building Officials and Construction Administrators) and municipal ordinances. Construction documents are those which must be signed and sealed by a licensed or registered architect to be submitted to municipal building officials for approval. Therefore, interior designers cannot produce construction documents.

COMMENT: N.J.A.C. 13:27-3.3(a). Kevin M. Hale recommended a new definition of "immediate family" in connection with design of one's residence.

RESPONSE: The Board rejected the comment because such a definition is beyond its jurisdiction, because the concept of "family" is defined by case law and statute.

COMMENT: N.J.A.C. 13:27-3.4. The New Jersey Society of Architects. Further clarification of the rules governing impersonal names is needed in future rulemaking, particularly to correct certain existing anomalies.

RESPONSE: The Board agrees with the commenter and is devising an administrative procedure to be timed to the next renewal cycle.

COMMENT: N.J.A.C. 13:27-4.5. The date in the section heading, "January 1, 1988," is an error.

RESPONSE: The correct date to be inserted is January 1, 1998.

COMMENT: N.J.A.C. 13:27-4.7. The New Jersey Society of Architects questioned requiring one year of experience in "private practice" as a predicate to sitting for the Architectural Registration Examination.

RESPONSE: After long consideration, the Board reaffirmed its traditional belief that private practice is uniquely essential for a new architect to obtain diversity of experience for a foundation in the profession. It should be noted, however, that while the Board continues to require at least one year of "private practice" experience, the new rules now approve a wider range of experience in public and private non-profit institutions, pursuant to N.J.A.C. 13:27-4.4 and 4.5.

COMMENT: N.J.A.C. 13:27-4.9. The New Jersey Society of Architects supports the addition of a third section, "Division A, Pre-Design," of the A.R.E. as a requirement for engineers seeking an architect's license.

RESPONSE: The Board appreciates the comment.

COMMENT: N.J.A.C. 13:27-5. The New Jersey Society of Architects believes the Rules of Professional Conduct "could well constitute a judicially enforceable standard of care . . . we would hope that substantial efforts toward educating the profession in these responsibilities is intended."

RESPONSE: The Board agrees. The interests of the consumer will be advanced by the rules and their dissemination within the profession.

COMMENT: N.J.A.C. 13:27-5.2(a)1. William Hartz, Department of Community Affairs (DCA), asked that the Board specifically identify DCA as one of the agencies to which architects shall report a decision taken by an employer or a client which the architect believes would materially and adversely affect the health, safety and welfare of the public.

RESPONSE: The Board recognizes that DCA is responsible at a State level for enforcement of the construction code. It accepts this comment as a clarification of the proposed language and revises it as follows:

1. Report the decision to the local municipal construction official *[or other public official]* charged with the enforcement of the applicable *federal,* state, *county* or municipal building laws and regulations*, and to the Department of Community Affairs, Director, Division of Codes and Standards, CN 802, Trenton, NJ 08625*."

COMMENT: N.J.A.C. 13:27-5.2(b). New Jersey Society of Architects. Simplify the language as follows:

An architect who knows that another architect has violated these rules or any act administered by the Board shall report the violation to the Board when the architect reasonably believes that the violation constitutes a threat to the public health, safety and welfare.

RESPONSE: The Board accepts the revised language as a clarification.

COMMENT: N.J.A.C. 13:27-7.2. New Jersey Society of Professional Land Surveyors, Richard F. Smith, Jr., P.L.S., Legislative Chair. Did the Board inadvertently omit a sentence which appeared in a rule adopted by the Board on July 5, 1994 at 26 N.J.R. 2794, as follows:

N.J.A.C. 13:27-6.2(a)1. Survey information may be transferred to the site plan . . . A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.

RESPONSE: The Board acknowledges the oversight and will restore the language to the new rule, N.J.A.C. 13:27-7.2.

COMMENT: N.J.A.C. 13:27-7.3(c). Kevin M. Hale pointed out that the word "detention" should replace the erroneous word "detection."

RESPONSE: The typographical error will be corrected.

COMMENT: N.J.A.C. 13:27-7.5(b). Kevin M. Hale. Should the word "plats" be inserted after "major subdivision"?

RESPONSE: The Board prefers to pluralize "subdivision" for grammatical accuracy. The word will read "subdivisions."

COMMENT: N.J.A.C. 13:27-8.1. Thomas Bauer, President, New Jersey Chapter, American Society of Landscape Architects. For consistency and clarity, include a reference to N.J.A.C. 13:27-8.20, as follows:

. . . but no person shall hold himself or herself out as, or use the title, 'landscape architect' or other similar nomenclature, as provided by N.J.A.C. 13:27-8.20, unless he or she has been certified by the Board as a landscape architect.

RESPONSE: The Board accepts the qualification as helpful.

COMMENT: N.J.A.C. 13:27-8.5. Kevin M. Hale recommends inserting the word "initial" before certification.

RESPONSE: The Board agrees, for clarity.

COMMENT: N.J.A.C. 13:27-8.6(d)2. Kevin M. Hale questions the use of the term, "base jurisdiction," in discussing reciprocal admission of applicants.

RESPONSE: The Board agrees that base jurisdiction is an outmoded term. The language will be amended to read,

2. Demonstrate five years of experience in the practice of landscape architecture subsequent to licensure or certification in **any jurisdiction where he or she is presently licensed.**

COMMENT: N.J.A.C. 13:27-8.7. Kevin M. Hale suggest deleting "Initial" from the title of this section, which deals with certification and renewals.

RESPONSE: The Board agrees. The heading will read, "Certifications and renewals."

COMMENT: N.J.A.C. 13:27-8. Kevin M. Hale asks if the words, "certification," "registration" and "licensing" are interchangeable. If not, could a single term be applied?

RESPONSE: The Board treats the words as interchangeable, pursuant to the statute and other authorities. No change is anticipated.

COMMENT: N.J.A.C. 13:27-8.11. Kevin M. Hale recommends retitling the section, "Continuing education credit hour requirements."

RESPONSE: The Board disagrees. However, to clarify that an inactive registrant must earn the same number of continuing credit hours as an active registrant must prove upon biennial registration, the Board deleted the qualifier "at least" in N.J.A.C. 13:27-8.11(c), and added the "biennial" qualifier.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to the practice of architecture are governed by N.J.S.A. 45:3-3 and are not subject to any Federal requirements or standards.

Summary of Agency-Initiated Changes:

In repealing the existing rules and adopting new rules N.J.A.C. 13:27 on January 19, 1995, the Board of Architects noted a number of typographical and grammatical errors as originally published in the New Jersey Register in 26 N.J.R. 4952, Monday, December 19, 1994, which are herein corrected.

Concerning N.J.A.C. 13:27-3.2(b), in identifying those entities which shall render architectural services, at least one architect shall be part of the entity. By oversight, the words, "including at least one architect," were omitted from the mention of corporations formed under the "Professional Service Corporation Act." Therefore, for consistency with the other elements of this rule, the phrase should read: . . . "a professional service corporation, **including at least one architect**, established pursuant to the "Professional Service Corporation Act" (N.J.S.A. 14A:17-1 et seq.);

At N.J.A.C. 13:27-8.9(b), "working drawings and specifications" has been changed to "construction documents" in helping with a change in terminology in the BOCA National Code. In N.J.A.C. 13:27-8.9(c), "drawings" have been clarified as "construction contract drawings."

For clarification, the Board decided to reword the second sentence of N.J.A.C. 13:27-8.14(c) as follows: "Failure to provide requested documentation . . . may result in an appearance before the Committee, **or a formal hearing followed by penalties and/or suspension of registration, where appropriate.**"

For consistency with N.J.A.C. 13:27-5.2(a), the language governing the architects, N.J.A.C. 13:27-8.19(a) will be reworded without any substantive change, as follows:

(a) **If, in the course of his or her work on a project, a landscape architect becomes aware of a decision taken by his or her employer or client, against the landscape architect's advice, which violates applicable Federal, state, county or municipal building laws and regulations and which would, in the architect's exercise of reasonable judgment, materially and adversely affect the health, safety and welfare of the public, the landscape architect shall notify the employer or the client of such consequences and such other public authority as may be appropriate in the situation.**

Full text of the adoption follow (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 27 NEW JERSEY STATE BOARD OF ARCHITECTS

SUBCHAPTER 1. PURPOSE AND SCOPE

13:27-1.1 Purpose

These rules define and establish guidelines for the practice of architecture in the State of New Jersey.

13:27-1.2 Scope

The practice of architecture is regulated by P.L. 1902, c.29, p. 54 as amended and supplemented (N.J.S.A. 45:3-1 et seq.) and by rules adopted in accordance with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

SUBCHAPTER 2. ADMINISTRATION

13:27-2.1 Establishing Board name

In accordance with P.L. 1902, c.29, p. 54 as amended and supplemented (N.J.S.A. 45:3-1 et seq.) the name of this Board shall be the New Jersey State Board of Architects.

13:27-2.2 Office location

The offices of the Board are located at 124 Halsey Street, PO Box 45001, Newark, New Jersey 07101.

13:27-2.3 Meetings of *[board]* ***Board***; quorum

(a) The Board shall hold an annual meeting at the Board office in July of each year.

(b) The meetings of the Board shall be held as scheduled and notice thereof shall be filed in accordance with the Open Public Meetings Act (P.L. 1975, c.231).

(c) A majority of the appointed membership of the Board shall constitute a quorum (N.J.S.A. 45:1-2.2(d)).

(d) Chronic absence and/or lack of participation by a member in Board activities, as documented by Board records, may be the basis for the submission of a request for replacement to the appropriate authority, as determined by a majority vote of the Board.

13:27-2.4 Election of officers; term; vacancies

(a) At its annual meeting, the Board shall elect from its members a President and a Vice President. These officers shall be elected by a quorum of the Board.

(b) The term of each officer so elected shall be for one year, but shall continue until a successor has been elected and qualified, unless such officer is removed for cause by vote of a quorum of the Board. In the event of a vacancy in an office, an officer shall be elected by a quorum of the Board to fill the unexpired term.

13:27-2.5 Duties of officers; committee appointments

(a) The President of the Board shall preside at all meetings, appoint all committees and chairpersons and shall perform all other duties ordinarily pertaining to the Office of the President or as may be directed by the Board.

(b) The Vice President shall perform the duties of the President during the absence or incapacity of the President. In the absence of both the President and Vice President, the Board member with seniority shall preside.

13:27-2.6 Executive Director; duties

(a) An Executive Director shall serve as chief administrative officer and official custodian of the records of the Board.

(b) The Executive Director shall, in a thorough and efficient manner, fulfill administrative duties, including, but not limited to, duties in connection with the keeping of minutes of meetings, examinations, correspondence, staff and records.

13:27-2.7 Roster; dissemination of statutes, rules and code data

A roster of architects and landscape architects registered in the State of New Jersey shall be issued every two years. The roster shall also include the laws and regulations pertaining to the practice of

architecture and landscape architecture and shall list other appropriate codes relating to the practice of architecture and landscape architecture in New Jersey.

SUBCHAPTER 3. ARCHITECTURAL PRACTICE AND RESPONSIBILITY

13:27-3.1 Definitions

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

"Advertisement" means any communication to the public including, but not limited to, newspaper, periodical, journal, flyer, business card, radio, telephonic or television communication in which architectural services are offered or by which the availability of architectural services is made known.

"Advertiser" means a person offering architectural services in the State of New Jersey by way of an advertisement.

"Aesthetic principles" means the concepts of order, balance, proportion, scale, rhythm, color, texture, mass and form as used in the design process.

"Architect" means an individual who through education, training, and experience is skilled in the art and science of building design and has been licensed or registered by the New Jersey State Board of Architects to practice architecture in the State of New Jersey.

"Architectural services" means the design of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and construction supervision for the purpose of determining compliance with construction documents.

"Architecture" means the art and science of building design and particularly the design of any structure for human use or habitation. Architecture, further, is the art of applying human values and aesthetic principles to the science and technology of building methods, materials and engineering systems as required to comprise a total building project with a coherent and comprehensive unit of structure and site.

"Board" means the New Jersey State Board of Architects.

"Certificate of authorization" means a certificate issued by the Board to a general business corporation to permit the practice of architecture pursuant to N.J.S.A. 45:3-18.

"Certificate of Registration" or "license" means official documents attesting to the fact that the individual has met the minimum requirements to practice architecture in the State of New Jersey. For the purposes of this chapter, the terms "licensed" and "registered" are used interchangeably.

"Closely allied professional" means and is limited to licensed architects, professional engineers, land surveyors, and professional planners.

"Construction documents" means all of the written, graphic, and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a construction project.

"Design services," as provided by a builder or home improvement contractor, means conceptual drawings or sketches of floor plans or elevations and the rendering of price quotations or estimates all of which may be necessary to develop the scope, character and potential cost of a one or two-family, detached home or improvement thereto.

"Diversified experience in architecture" means a wide spectrum of professional experience consistent with the elements defined by the National Council of Architecture Registration Boards (NCARB) through its Intern Development Program (IDP).

"Human use or habitation" means the activities of living, including, but not limited to, fulfilling domestic, religious, education, recreational, employment, assembly, health care, institutional, memorial, financial, commercial, industrial and governmental needs.

"Human values" means the social, cultural, historical, economic and environmental influences that have an impact on the quality of life.

"Office of a registered architect in private practice" means an organization which offers architectural service, is in the responsible charge of a registered architect(s) who is/are the principal owner or owners of the organization, and has no affiliate engaged in construction activities.

"Organization or affiliate 'engaged' in construction" means one which: undertakes to provide labor and/or material for all or any portion of a construction project, whether on lump sum, cost plus or other basis of compensation; and agrees to guarantee to a property owner the maximum construction cost for all or any significant portion of a construction project.

"Person" means any individual or any business associations or entity.

"Principal" means a registered architect who is an owner in whole or in part of any business entity authorized by law to offer or render architectural services.

"Responsible charge" means the rendering of regular and effective supervision by a competent licensed architect to those individuals performing services which directly and materially affect the quality and competence of architectural services rendered by the licensee.

13:27-3.2 Scope of architectural service; advertising

(a) No person, except an architect licensed in the State of New Jersey, shall use the title "architect" or its substantial equivalent or otherwise represent to the public that the person is licensed to practice architecture in this State.

(b) No advertisement shall include the terms "architect," "architectural," "architect on staff," "architectural services" or the substantial equivalent thereof unless the advertiser is a business association authorized to render architectural services pursuant to N.J.S.A. 45:3-17. Specifically, such services shall only be rendered by the following: a sole proprietorship of a licensed architect; a partnership of licensed architects; a partnership of closely allied professionals, including at least one licensed architect; a professional service corporation*, **including at least one licensed architect*** established pursuant to the "Professional Service Corporation Act" (N.J.S.A. 14A:17-1 et seq.); or a general business corporation holding a Certificate of Authorization from the Board of Architects issued pursuant to the "Building Design Services Act" (N.J.S.A. 45:4B-1 et seq.).

(c) A builder registered pursuant to the "New Home Warranty and Builder's Registration Act" (N.J.S.A. 46B-1 et seq.) or a home improvement contractor may advertise, or offer to perform "design services" either in the construction of one- to two-family homes or in connection with the demolition, enlargement or alteration thereto. A builder or home improvement contractor shall render such services only to the owner-occupant of such dwellings.

(d) An advertisement for design services by a builder or home improvement contractor pursuant to (c) above shall not in any way be limited except as set forth in (e) below, and may contain the following terms or their substantial equivalent:

1. Construction design services;
2. Design;
3. Design services;
4. Design/build;
5. Design/build services; and/or
6. Building design services.

(e) Builders and home improvement contractors shall not advertise, offer or perform design services that involve the preparation of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for building or other construction permits.

(f) It shall be permissible for a person not authorized to render architectural services to utilize the terms "space planning," "interior design," "interior design services" or the substantial equivalent thereof provided that the design services advertised, offered or performed:

1. Are limited to the function of the interior space within an existing or proposed building;

2. Do not affect the means of egress and life safety of the building, nor involve any alteration or modifications of the building's existing or proposed structure, seismic integrity, or partitions that affect the means of egress and life safety, or its electrical, mechanical, HVAC (heating, ventilation and air conditioning) or plumbing systems;

3. Do not require or involve the skill, training or expertise of a licensed architect; and

4. Do not include the production of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for a building or other construction permit.

(g) Nothing in this section shall prohibit any person or entity authorized by law to render professional engineering services from utilizing the terms set forth in (d) above in connection with the advertising of professional engineering services.

13:27-3.3 Single family exemption

(a) In accordance with N.J.S.A. 45:3-10, any person in this State may act as a designer of a detached single family dwelling and appurtenances thereto to be constructed by that person solely as a residence for that person or member of that person's immediate family.

(b) A person may design the dwelling and all appurtenances thereto, prepare the construction drawings and file the construction drawings with an affidavit indicating the name of the person who drew the construction drawings.

(c) In lieu of personally preparing the construction drawings, a person may utilize pre-prepared (commercially published, available to the public) construction drawings which bear a certification that they were originally prepared by an architect licensed in any United States' jurisdiction, provided these construction documents are reviewed, signed, sealed and adapted to the specific site by a New Jersey licensed architect. By signing and sealing these construction documents, the New Jersey licensed architect assumes full responsibility for said construction documents, just as if the construction documents were prepared under the direct supervision of the architect.

(d) A person, in lieu of personally constructing the residence, may engage others to perform the work.

13:27-3.4 Impersonal names

(a) Impersonal names shall not be used by individuals, firms, partnerships, associations or any other entities unless they have formed either a professional service corporation established in accordance with N.J.S.A. 14A:17-1, or have formed a general business corporation which qualifies for and holds a Certificate of Authorization as provided for in accordance with N.J.S.A. 45:3-18 and issued by the Board of Architects.

(b) The name of a professional service corporation shall contain the full or last names of one or more of the licensed shareholders, or a name descriptive of the type of professional service which will be provided by the professional service corporation.

(c) The name of a general business corporation which holds a certificate of authorization shall also contain the last names of one or more licensed shareholder(s), or a name descriptive of the professional service which will be provided.

13:27-3.5 Restrictions in titles

(a) A sole proprietorship shall not be conducted under a title which designates or suggests the existence of more than a single principal.

(b) The term "Associates," when used officially in the title of a firm, shall refer only to more than one individual licensed in this State as architects or in a closely allied licensed profession.

(c) When any partner, shareholder, associate or other licensed professional whose name is used in the title ceases to be a member of a firm or partnership for any reason including death or disability, then the title of the firm shall be changed within two years of this disassociation. This requirement does not apply to an organization established as a professional service corporation pursuant to N.J.S.A. 14A:17-1 or a general business corporation established pursuant to N.J.S.A. 45:3-18.

LAW AND PUBLIC SAFETY

13:27-3.6 Notification of change of address; service of process

(a) A licensed architect shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address which is currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

SUBCHAPTER 4. LICENSING PROCEDURES

13:27-4.1 Requirements for admission to examination

(a) No applicant shall be entitled to consideration for admission to the examination for licensure, or shall be permitted to take the examination, while a formal complaint is pending in which the individual is charged with the illegal practice of architecture or while penalties for violations of the Board's statutes and regulations remain unsatisfied.

(b) No later than 60 days prior to the examination, an applicant shall present evidence to the satisfaction of the Board that:

1. The applicant is 18 or more years of age and of good moral character, as established by references from individuals, schools and other records acceptable to the Board;

2. Except as set forth in N.J.A.C. 13:27-4.2, the applicant holds a professional degree in architecture from a college or university whose degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after graduation; and

3. The applicant has either completed the Intern Development Program (IDP) administered by the National Council of Architect Registration Boards (NCARB) or earned three years of training credits prior to January 1, 1998 pursuant to the provisions of N.J.A.C. 13:27-4.3 through 4.6. At least one of the three years shall consist of diversified training in the office of a registered architect in private practice and shall be under the direct supervision of a registered architect, who need not be the principal in the firm. The Board retains discretion to approve other forms of professional training experience, based on a review of the candidate's work product and areas of architectural work experience.

13:27-4.2 Applicant with a degree from a foreign college or university

(a) An applicant with a degree from a foreign college or university shall obtain, at his or her own expense, and submit to the Board, either:

1. A "Detailed" evaluation by Education Credential Evaluators, Inc., or other evaluation services recognized by the Board certifying that the degree is the equivalent in level, scope and intent of a bachelor or a master degree of architecture that would be accredited in the United States; or

2. If the "Detailed" evaluation does not certify equivalency, a "Comprehensive" evaluation outlining specific academic deficiencies. The application will not be considered until those academic requirements are completed.

13:27-4.3 Training requirements; prerequisites

(a) Training credits shall accrue only after the following educational requirements have been met:

i. After the third full year in an NAAB-approved professional degree program;

ii. After one year in an NAAB-approved professional master's degree program; or

iii. After 96 semester credit hours in an NAAB-approved professional degree program, of which no more than 60 semester credit hours shall be in the general education category.

ADOPTIONS

13:27-4.4 Training requirements prior to January 1, 1998

(a) Prior to January 1, 1998, training credits may be acquired in the following ways:

Item	Description of Training	Percent Credit Allowed	Maximum Credit Allowed
A	Diversified experience in architecture as an employee in the office of a registered architect in private practice under the direct supervision of a registered architect.	100%	No Limit
B	Diversified experience in architecture as an employee of an organization, other than offices of a registered architect in private practice, when the experience is under the direct supervision of a registered architect. Three years of credit will be granted if the Board has pre-approved an organization's intern development program that is comparable to NCARB/IDP.	100%	2 years
C	Experience directly related to architecture, under the direct supervision of a licensed professional engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction); certified landscape architect; or licensed professional planner.	50%	1 year
D	Experience directly related to on-site building construction operations or experience involving physical analyses of existing buildings.	50%	6 mos.
E	A post-professional degree in architecture or teaching or research in a NAAB-accredited architectural program obtained subsequent to a professional degree as defined in N.J.A.C. 13:27-4.1(b)2	100%	1 year

13:27-4.5 Training prior to January 1, *[1988]* *1998*; public or private non-profit institutions

Training credits may be earned in a public or private non-profit institution, under the direct supervision of a registered architect, provided that the documentation submitted by that agency or institution demonstrates that it provides diversity of experience comparable in scope to that offered by a private architectural office. In deciding if training represents "diversified experience in architecture," the Board will compare the training provided by the agency or institution with the training requirements mandated by the Board. Such entities shall submit documentation of these training programs to the Board prior to the implementation of the training program.

13:27-4.6 Training prior to January 1, 1998; non traditional settings

(a) A candidate may receive a maximum of two years of IDP training credits while working under the supervision of a registered architect when both the architect and the intern are employees of a firm or corporation that is not an architectural firm in private practice but which meets all of the following criteria:

ADOPTIONS

1. The firm or corporation does not engage in construction other than for its own use and occupancy; and
2. The proposed IDP program of the firm or corporation has been examined and approved by the New Jersey State Board of Architects prior to such time as the IDP training program can commence in that firm or corporation.

13:27-4.7 Training requirements subsequent to January 1, 1998

(a) Effective January 1, 1998, the Intern Development Program (IDP) training criteria and value units as administered by the National Council of Architectural Boards shall be mandatory for all applicants for registration.

(b) Applications for registration submitted after January 1, 1998 shall present evidence of successful completion of the Intern Development Program (IDP) administered by the National Council of Architectural Registration Boards. The IDP training shall be at least three years in duration and shall include at least one year of training in the office of a registered architect in private practice as defined in N.J.A.C. 13:27-3.1.

13:27-4.8 Architect Registration Examination; subjects covered

(a) The subjects covered in the written examination are based on the examinations recommended by the National Council of Architectural Registration Boards and reviewed and approved by the Board as follows:

Division A	Pre-Design
Division B	Site Design
Division C	Building Design
Division D	Structural: General
Division E	Structural: Lateral Forces
Division F	Structural: Long Span
Division G	Mechanical, Plumbing, Electrical and Life Safety Systems
Division H	Materials and Methods
Division I	Construction Documents and Services

(b) Each division successfully passed will be credited to the record of the candidate and may be carried over without limitation.

13:27-4.9 Eligibility of licensed professional engineer for licensure as an architect by limited examination

A professional engineer licensed in the State of New Jersey in good standing, holding an accredited degree in engineering, and without restriction of complaint or charge of illegal practice of architecture shall be eligible for licensure upon successful completion of the following sections of the Architects Registration Examination (ARE): Division A (Pre-Design); Division B (Site Design—Written and Graphic); and Division C (Building Design).

13:27-4.10 Registration by reciprocity

(a) Any person registered or licensed to practice architecture in another jurisdiction of the United States or one of its territories or possessions may be granted registration provided that:

1. The applicant is 18 or more years of age and of good moral character, as established by references from individuals, schools, and other records acceptable to the Board;
2. The applicant is not charged by the New Jersey State Board of Architects or any other jurisdiction with a violation of any law or regulation relating to the practice of architecture or any violation which would indicate a lack of good moral character as required by statute or regulation; or, having been found guilty of a violation, has not satisfied the penalty imposed;
3. The education, training and examination requirements in such other jurisdiction are substantially equal to those required in this State, under current law; and
4. The applicant has provided satisfactory evidence of competency as the Board, in its discretion, may require, including, but not limited to:
 - i. Exhibits of three architectural projects illustrated in construction documents and photographs;
 - ii. Oral examination by the Board; and/or
 - iii. Satisfactory completion of such portion(s) of the Architect Registration Examination (ARE) as the Board may deem necessary.

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(b) In cases where the applicant has been granted registration in another United States jurisdiction on the basis of less experience than the three years required for registration in this State, the Board in its discretion may accept, in lieu of the deficiency, periods of experience in the "practice of architecture," as defined in N.J.A.C. 13:27-3.1*[(e)]*, gained subsequent to registration as an architect in that jurisdiction.

(c) In cases where the applicant has been granted registration in another United States jurisdiction on the basis of education or examination qualifications that are not equal to the requirements of this State, the Board may grant registration upon presentation by the applicant of evidence satisfactory to the Board of at least five years of responsible "practice of architecture," as defined under N.J.A.C. 13:27-3.1*[(e)]*, while holding a valid license as an architect.

13:27-4.11 Fees

(a) The following fees shall be charged by the Board:

1. Application Fee	\$ 50.00
2. Initial License Fee	
i. If paid during the first year of a biennial renewal period	160.00
ii. If paid during the second year of a biennial renewal period	80.00
3. Biennial Renewal Fee	160.00
4. Reciprocity Application Fee (plus initial license fee)	75.00
5. Replacement or Duplicate Seal Press	40.00
6. Duplicate wall certificate	25.00
7. Late Fee	50.00
8. Verification of Licensure	30.00
9. Reinstatement Fee	100.00
10. Roster	15.00

(b) The "Roster of Architects" shall be issued without charge to State, county and municipal government agencies and to all architects and landscape architects listed therein.

(c) Certificate of Authorization fees shall be as follows:

1. Application fee	\$100.00
2. Initial registration	
i. If paid in the first year of a biennial renewal period	50.00
ii. If paid in the second year of a biennial renewal period	250.00
3. Biennial Renewal	500.00

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

13:27-5.1 Competence

(a) An architect shall at all times recognize the primary obligation to protect the health, safety and welfare of the public in the performance of professional duties, shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by architects of good standing, practicing in the same locality.

(b) An architect shall take into account all of the applicable Federal, state, county and municipal laws, regulations and ordinances including, but not limited to, New Jersey Uniform Construction Code Regulations (N.J.A.C. 5:23); zoning ordinances; master plans*[:]* *and* site plan regulations. While an architect may rely on the advice of other professionals (for example: attorneys, other architects, engineers, landscape architects and other qualified persons) as to the intent and meaning of such statutes and regulations, once having obtained such advice, an architect shall not knowingly proceed in violation of such statutes and regulations.

(c) An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific scope of contractual obligation*s* and technical areas involved.

(d) No person shall practice architecture if such person is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public health, safety and welfare.

13:27-5.2 Duty to report and cooperate

(a) If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable Federal, state, county or municipal building laws and regulations and which would, in the architect's exercise of reasonable judgment, materially and adversely affect the health, safety and welfare of the public, the architect shall:

1. Report the decision to the local municipal construction official ***[or other public official]*** charged with the enforcement of the applicable ***Federal,* state*, county*** or municipal building laws and regulations*, and to the **Department of Community Affairs, Director, Division of Codes and Standards, CN 802, Trenton, N.J. 08625***;

2. Refuse to consent to the decision; and

3. In circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his or her objection, terminate his or her services with reference to the project.

(b) ***[An architect possessing knowledge of an alleged violation by another architect of these rules or any act administered by the Board shall report such alleged violation to the Board when it appears to constitute a threat of harm to the public health, safety and welfare.]*** ***An architect who knows that another architect has violated these rules or any act administered by the Board shall report the violation to the Board when the architect reasonably believes that the violation constitutes a threat to the public health, safety and welfare.***

(c) An architect shall not deliberately make a false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal, or any other official request for information made by the Board.

(d) An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.

(e) An architect shall not impede the application of a registrant for licensure by failure to cooperate with the Board in its request for information.

13:27-5.3 Conflict of interest

(a) An architect shall provide professional services to the client competently and independently through contractual arrangements with the client which safeguard the exercise of unprejudiced judgment of the architect.

(b) An architect shall not accept compensation for his or her services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(c) An architect shall not solicit or accept compensation, goods or services from material or equipment manufacturers or suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of construction contract documents and the judge of construction contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

13:27-5.4 Full disclosure

(a) An architect making public statements on architectural questions shall disclose when he or she is being compensated for making such statements.

(b) An architect shall accurately disclose to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

13:27-5.5 Professional practice and procedures

(a) Each office maintained for the purpose of providing architectural services or other professional work shall have an architect in responsible charge, as defined in N.J.S.A. 45:3-1.1(l).

1. A licensee engaged in any of the following acts or practices shall be deemed not to be in responsible charge:

i. The regular and continuous absence from principal office premises from which professional services are rendered, except for performance of field work or presence in a field office maintained exclusively for a specific project;

ii. The failure to personally inspect or review the work of subordinates where necessary and appropriate;

iii. The rendering of a limited, cursory or perfunctory review of plans for a building or structure in lieu of an appropriate detailed review; and/or

iv. The failure to be personally available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

(b) Except as set forth in N.J.A.C. 13:27-3.3(c), an architect shall not sign or seal drawings, construction documents, reports or other professional work for which he or she does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of such professional work prepared by the architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy.

(c) An architect shall not aid nor abet an unlicensed individual or entity in the practice of architecture by permitting his or her name, seal, and/or signature to be used in connection with an individual, firm or corporation not authorized by law to practice architecture.

(d) An architect shall neither offer nor make any gifts with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

SUBCHAPTER 6. CERTIFICATES; SEALS; TITLE BLOCKS

13:27-6.1 Issuance of Certificates

Upon approval by the Board and payment of all fees, an architect shall be issued a certificate and seal press as proof of licensure and authorization to practice.

13:27-6.2 Renewals of license and Certificate of Authorization

(a) A licensee shall renew his or her license and/or a Certificate of Authorization on or prior to its expiration date as indicated on the biennial renewal notice.

(b) If the renewal application is submitted within 30 days after the expiration date, the licensee shall pay, in addition to the biennial renewal fee, the late fee set forth in N.J.A.C. 13:27-***[4.13]*** ***4.11***.

(c) Failure to renew a license or Certificate of Authorization within 30 days of the expiration date of a biennial period will require payment of reinstatement fees and biennial renewal fees as set forth in N.J.A.C. 13:27-***[4.13]*** ***4.11***.

13:27-6.3 Reinstatement of Certificates

(a) An architect whose license has expired and who seeks reinstatement shall provide the following to the Board prior to being considered for reinstatement of licensure:

1. Payment of the renewal fee for the current biennial period and the appropriate renewal fees for all biennial periods since the date the license expired;

2. Payment of the reinstatement fee set forth in N.J.A.C. 13:27-***[4.13]*** ***4.11***; and

3. A notarized affidavit delineating the professional activities in which he or she has engaged since his or her license expired including a listing of all projects for which architectural services were performed.

(b) An applicant for reinstatement found to have practiced architecture in the State of New Jersey since the date the license expired shall be required to pay, in addition to the fees set forth above, a penalty for unlicensed practice as determined by the Board.

(c) A licensee may be denied reinstatement in the event that charges relating to the unlawful or improper practice of architecture are pending against the architect in any state or jurisdiction.

(d) The applicant for reinstatement shall be required to produce satisfactory evidence of competency such as the Board, in its discretion, may require.

1. Such evidence may consist of, but not be limited to, exhibits of three architectural projects illustrated by construction documents and photographs and may include oral examination.

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2. The Board may require the applicant to demonstrate evidence of efforts to maintain and advance his or her knowledge of the art and science of architecture during the period of non-licensure.

13:27-6.4 Seals

(a) A registrant shall seal architectural documents only with seal presses purchased or exchanged through the Board.

(b) Rubber stamps shall not be used for the purpose of sealing documents.

(c) Upon the death of a registrant or upon forfeiture of a certificate, the seal shall be returned to the Board.

(d) The family of a deceased architect may petition the Board to retain an architect's seal press as a memento. The family shall be responsible for the safekeeping of the seal to prevent its use in the illegal practice of architecture.

(e) Failure to return a seal rendered invalid by non-payment of renewal fees shall subject the individual to such penalties as provided by law and may be grounds for refusal of the Board to reinstate a license.

13:27-6.5 Signing and sealing documents

(a) The architect in responsible charge shall sign, date and seal all original tracings of construction drawings and the title page of the specifications prepared by the architect or under his or her supervision on the original tracing. In lieu of affixing the personal signature only to the original tracing, the architect may sign, date and seal each copy of each drawing prior to submission to the client or filing with a public agency.

(b) All certifications that amend, clarify, or modify construction documents prepared by the architect in responsible charge shall be signed and sealed prior to forwarding to a public agency.

13:27-6.6 Title block on drawings; general requirements; form; removal

(a) A title block shall appear on all drawings and site plans. Title block information is not required on renderings. Similar information shall appear on the title page of all specifications which are prepared, signed and sealed by the architect in responsible charge.

(b) The title block shall be in such form as set forth in N.J.A.C. 13:27-6.7.

(c) The title block shall be distinct and separate from any other title block, box, plaque or any similar device of illustration or lettering included on the drawings or on the title page of the specifications.

(d) The title block shall be affixed on each drawing in such a manner as to reproduce clearly on all prints and reproductions thereof.

(e) No person shall remove a title block from any print, reproduction, or electronic media.

(f) A non-licensed person's name, other than the name of the owner or lessee of the building, shall not appear within the title block.

13:27-6.7 Title block contents; requirements by form of architectural practice

(a) When the architect practices as an individual or sole proprietor the title block shall contain:

1. The full name of the architect;
2. The title "architect";
3. The address of the architect;
4. A space for the name of the client and the location of the project; and

5. The name, license number, and space for the handwritten signature of the architect in responsible charge, and the date when signed.

(b) When two or more licensed architects practice architecture as a firm or partnership, the title block shall contain:

1. The firm name;
2. The title "architects";
3. The address of the firm or partnership;
4. A space for the name of the client and the location of the project; and

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5. The name, license number, and space for the handwritten signature of the architect in responsible charge, and the date when signed.

(c) When professionals practice architecture as a professional service corporation organized under N.J.S.A. 14A:17-1 et seq., the title block shall contain:

1. The professional service corporation name;
2. The title "architects," and titles of any other closely allied professionals;
3. The address of the professional service corporation;
4. A space for the name of the client and the location of the project; and
5. The name, license number, and space for the handwritten signature of the architect in responsible charge, and the date when signed.

(d) Title block contents for a general business corporation organized under N.J.S.A. 45:3-18 and holding a Certificate of Authorization shall contain:

1. The general business corporation name, Certificate of Authorization number and expiration date;
2. The title "architects" or titles of any other "closely allied professionals";
3. The address of the general business corporation;
4. The name and location of the project; and
5. The full name, license number, and space for the handwritten signature of the architect in responsible charge, and the date when signed.

(e) When an architect is a subcontractor on an engineering project pursuant to the Building Design Services Act (N.J.S.A. 45:4B-8), the architect shall include a secondary title block with all the information required in (a), (b), (c) or (d) above. Reference to the name and location of the project need not be repeated in the secondary title block.

(f) An architect practicing as an employee of a business entity which does not offer architectural services to the public shall use a title block which contains the name of the entity as the "owner" and all other elements required by this section.

(g) The title block may contain the initials of the draftsman or checker, and dates, drawing numbers, revision numbers and such similar incidental items as are customarily used in the architects' offices.

13:27-6.8 Submission of title block form for approval

Any architect may submit a proposed form of title block to the State Board of Architects for approval.

SUBCHAPTER 7. PERMISSIBLE DIVISION OF RESPONSIBILITY IN SUBMISSION OF SITE PLANS AND MAJOR SUBDIVISION PLATS

13:27-7.1 General provisions

(a) All words, terms, and phrases used in this subchapter shall be as defined in the Municipal Land Use Act, N.J.S.A. 40:55D-1 et seq.

(b) Preparation and submission of the various elements of a preliminary or final site plan or major subdivision plat shall be within the professional scope of the various professions as listed in this subchapter.

13:27-7.2 Depiction of existing conditions on a site plan

(a) Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. ***A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.***

(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, certified landscape architect, or other person acceptable to the reviewing governmental body.

13:27-7.3 Preparation of site plan

(a) The location of proposed buildings and their relationship to the site and the immediate environs: By an architect or engineer.

(b) The locations of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, engineer, or certified landscape architect.

(c) Drainage facilities for site plans of *[ten]* ***10*** acres or more; or involving stormwater *[detection]* ***detention*** facilities; or traversed by a water course: By an engineer only.

(d) Other drainage facilities: By an architect or engineer.

(e) Utility connections and on tract extensions: By an engineer or architect.

(f) Off tract utility extensions: By an engineer only.

(g) On site sanitary sewage disposal or flow equalization facilities: By an engineer only.

(h) Preliminary floor plans and elevation views of buildings illustrating the architectural design of a project: By an architect, except when the building is part of an engineering or industrial project, floor plans and elevation views may be by an engineer.

(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, certified landscape architect, or other person acceptable to the reviewing governmental body.

(j) The general layout of a conceptual site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs: By an architect, planner, engineer, or certified landscape architect.

13:27-7.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and lot layouts: By an architect, engineer, land surveyor, planner, or certified landscape architect.

(b) The design and construction details of all public improvements including street pavements, curbs, sidewalks, sanitary sewage, storm drainage facilities: By an engineer only.

(c) Final subdivision map with metes and bounds: By a land surveyor only.

13:27-7.5 Effect of local ordinances

(a) Informal site plans not required by local ordinances are excluded from this rule.

(b) No municipal or county ordinance, policy or action purporting to define the scope of professional activity of architects, engineers, land surveyors, planners, or certified landscape architects in the preparation of site plans or major subdivision*s* shall reduce or expand the scope of professional practice recognized by the Boards.

SUBCHAPTER 8. CERTIFIED LANDSCAPE ARCHITECTS

13:27-8.1 Definitions

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

"Board" means the New Jersey State Board of Architects.

"Certified landscape architect" means an individual who, by reason of his or her knowledge of natural, physical, and mathematical sciences, and the principles and methodology of landscape architecture and landscape architecture design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and is certified by the board as a landscape architect.

"Committee" means the Landscape Architect Examination and Evaluation Committee of the New Jersey State Board of Architects.

"Practice of landscape architecture" means any service in which the principles and methodology of landscape architecture are applied in consultation, evaluation and planning, including the preparation and filing of sketches, drawings, plans and specifications, and responsible administration of contracts relative to projects principally directed at the functional and aesthetic use of land. Nothing contained in this section shall be construed to restrict or otherwise affect the right of any person or corporation to engage in the practice of landscape architecture, but no person shall hold himself or herself

out as, or use the title "landscape architect" ***or other similar nomenclature as provided by N.J.A.C. 13:27-8.20***, unless he or she has been certified by the Board as a landscape architect.

13:27-8.2 Office of the *[committee]* ***Committee***

The office of the Committee shall be that which is maintained by the Board pursuant to N.J.A.C. 13:27-2.2, Administration, under the supervision of the person selected to serve as executive director.

13:27-8.3 Committee organization

(a) The *[committee]* ***Committee*** shall, at an annual meeting to be held in July of each year, elect from its membership a chairperson and vice-chairperson.

(b) The *[committee]* ***Committee*** shall adopt annually a schedule of regular meetings. Special meetings may be held at the call of the chair or at the action of a quorum of the membership.

(c) A quorum of the committee shall consist of three members. No affirmative action at a meeting shall be taken without at least three affirmative votes.

(d) The *[committee]* ***Committee*** shall keep a record of its proceedings and a record of all applicants for certification, showing for each the date of application, name, age, education, and other qualifications, place of practice and place of residence, whether or not an examination was required, and whether the applicant was rejected or a certificate granted, and the date of that action.

13:27-8.4 Approval of landscape architecture curricula and credentials

(a) For purposes of this section, any educational program accredited by the Landscape Architectural Accreditation Board of the American Society of Landscape Architects shall be deemed an approved program.

(b) An applicant for certification as a landscape architect who is a graduate of a school or program not accredited by the Landscape Architectural Board shall provide to the Committee, in addition to a certified transcript of his or her courses, a true and accurate course description for each of the landscape architecture courses for which the candidate is seeking credit toward certification. The *[committee]* ***Committee*** shall, in its consideration of the academic program, compare the degree to the standards promulgated by the Landscape Architecture Accreditation Board. Thereafter, the Committee may, in its discretion, require the candidate to appear before the Committee for a personal interview and to present representative samples of his or her landscape architecture work.

13:27-8.5 Application for ***initial*** certification; general requirements

(a) Each candidate for ***initial*** certification as a landscape architect shall apply to the Board on the form and in the manner prescribed by the Committee. The *[board]* ***Board*** shall immediately refer each completed application to the Committee for appropriate action. Each applicant shall furnish evidence satisfactory to the Committee that he or she:

1. Is of good moral character;

2. Is the holder of a bachelor's or higher degree in landscape architecture from a college or university having a landscape architecture curriculum approved by the Committee;

3. Has engaged in landscape architectural work satisfactory to the Committee to an extent that his or her combined college study and practical experience total at least six years, four years of which must be college study with three years in a landscape architecture curriculum and two years of which must be practical landscape architecture experience approved by the Committee. The practical landscape architecture experience shall be obtained after the completion of the educational requirements; and

4. Has successfully completed the Landscape Architect Registration Examination (LARE) and an examination on New Jersey plant materials, soil types, geology and laws and regulations governing land use and planning, including the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

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13:27-8.6 Certification of persons holding certificate from another state or authority

(a) All reciprocal applicants for certification as landscape architects in New Jersey shall take and pass an examination on New Jersey plant materials, soil types and geology, as well as laws and regulations governing land use and planning including the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) The Committee shall issue a certificate to any applicant who holds a license or certificate in good standing as a landscape architect from a legally constituted agency in any other state, district or territory of the United States, provided that the requirements for licensure or certification of the issuing agency are substantially equal to those of the Committee and ***[board]* *Board***, and provided further that the applicant meets all applicable requirements of N.J.S.A. 45:3-1 et seq.

(c) Except as set forth in (d) below, the Committee shall exempt from examination an applicant who holds a current Council of Landscape Architectural Registration Board (CLARB) certification and who meets all other applicable requirements of N.J.S.A. 45:3-1 et seq. The applicant shall submit current CLARB certification records to the Committee for review.

(d) When the applicant has obtained CLARB certification based upon qualifications not substantially equal to those required by the State of New Jersey, the Committee shall require the applicant to:

1. Take the pertinent portion or portions of the LARE that test(s) the areas of landscape architecture education or experience in which the applicant is deficient; or
2. Demonstrate five years of experience in the practice of landscape architecture subsequent to licensure or certification in ***[the base jurisdiction]* *any jurisdiction where he or she is presently licensed***.

13:27-8.7 ***[Initial certification]* *Certifications* and renewals**

(a) A Certificate holder shall renew his or her certificate on or prior to its expiration date as indicated on the biennial renewal notice.

(b) If the renewal application is submitted within 30 days after the expiration date, the licensee shall pay, in addition to the biennial renewal fee, the late fee set forth in N.J.A.C. 13:27-8.23.

(c) Failure to renew a certificate within 30 days of the expiration date of a biennial period will require payment of reinstatement fees and biennial renewal fees as set forth in N.J.A.C. 13:27-8.23.

13:27-8.8 Duplicate certificates

A duplicate certificate may be issued upon the presentation to the ***[board]* *Board*** of the fee as provided in N.J.A.C. 13:27-8.23 with an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated or is otherwise no longer in the custody of and cannot be recovered by the certified landscape architect; or attesting to the fact that the certified landscape architect is employed in more than one location.

13:27-8.9 Seal and signature

(a) Every certified landscape architect shall have a seal of a type recommended by the committee and approved and issued by the Board, which shall contain the name of the landscape architect, his or her certificate number, the legend "Certified Landscape Architect" and such other words or figures as the committee may deem necessary.

(b) All ***[working drawings and specifications]* *construction documents*** prepared by the landscape architect or under his or her supervision shall be signed on the original with the personal signature of the landscape architect. Thereafter, all copies of such drawings and specifications shall be sealed prior to submission to the client or filing with a public agency.

(c) A certified landscape architect shall provide the following information in a title block which shall be placed on all ***construction*** contract drawings prepared under his or her direction. The information shall appear legibly on the ***construction contract*** drawing***s*** and shall be clearly reproducible.

1. The full name of the certified landscape architect as it appears on the certificate issued by the Board;
2. The signature of the certified landscape architect;

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3. The license number and title: New Jersey Certified Landscape Architect; and

4. The date when signed.

(d) Other information may appear with or within the title block provided that the required information is distinct and the name of the certified landscape architect is readily discernible from the other information on the document.

13:27-8.10 Registration renewal; continuing education requirements

The Committee shall not issue a registration renewal application for any biennial period unless the applicant submits proof that he or she has completed courses of continuing professional education of the types and number of hours specified in this subchapter. Proof of completion of the required number of continuing education hours shall be in the form outlined in N.J.A.C. 13:27-8.14. In the event a registrant fails to meet the continuing education requirements, the landscape architect certificate will not be renewed until all delinquent credit shall have been ***[remediated]* *completed*** to the satisfaction of the Committee and Board and reinstatement and registration fees for each two years or portion thereof in which the holder is in arrears have been paid pursuant to N.J.S.A. 45:3A-12.

13:27-8.11 Credit hour requirements

(a) After the initial biennial registration period, each applicant for a renewal shall be required to complete, for each succeeding biennial period, a minimum of 30 credit hours of continuing education.

(b) A maximum of 15 credit hours in excess of the required 30 credit hours may be carried over into a succeeding biennial period.

(c) A registrant on inactive status who seeks to reactivate his or her registration shall submit satisfactory proof to the Committee of successful completion of continuing education credit hours in an amount ***[at least]*** equal to the amount required for an active ***biennial*** registration renewal.

13:27-8.12 Continuing education programs and other sources of continuing education

(a) The registrant may obtain continuing education credit units from the following:

1. Programs approved by the Committee, including, but not limited to, university-sponsored or university-level seminars, conferences and other programs offered for the purpose of keeping the registrant apprised of advancements and new developments in the profession. Suitable programs include, for example, any of the subjects tested in the Landscape Architect Registration Examination (LARE), such as professional practice, design (conceptual site design, planting design, comprehensive site design), or design implementation (grading construction details, layout);

2. Graduate course work beyond that required for professional licensure, at university-sponsored programs or at university-level, subject to Committee approval; and/or

3. Participation, other than as a student, in university-level education processes and programs, subject to Committee approval. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks or articles, or similar activities which are determined to be equivalent to obtaining continuing education.

(b) An individual, group or association seeking course or program approval may impose a reasonable differential in course or program fees based upon membership within a group or association. However, in no event shall a sponsoring individual, group or association completely exclude from the course or program any licensee who is not a member of the group or association.

(c) The Committee shall maintain a list of all approved programs, courses and lectures at the Committee offices and shall furnish this information to registrants upon request.

13:27-8.13 Continuing education credit unit calculations

(a) Credit for continuing education shall be granted as follows for each two-year period:

1. For attendance at programs approved by the Committee, one credit for each hour of attendance at an approved course. Credit

will not be granted for courses which are less than three instructional hours long. Completion of an entire course or segment of course instruction is required in order to receive any continuing education credit.

2. For successful completion of graduate course work taken beyond that required for professional licensure, a maximum of nine hours of credit for each course.

3. For publication in a refereed professional journal of a copyrighted article related to the profession, nine credit hours per article to a maximum of 18 per biennial cycle.

4. For teaching and research appointments at a university level, nine hours for each new course, to a maximum of 18 hours per biennial cycle. "New" means new to the person teaching it, that is, a course which the registrant has never taught before in any educational setting.

13:27-8.14 Reporting of continuing education units

(a) Prior to the expiration of a biennial registration, the Committee shall request each registrant to complete a renewal form listing the continuing education programs and credit hours completed during the previous registration cycle.

(b) Documentation of completed continuing education programs shall be maintained by each registrant for a period of no less than five years.

(c) All registrants shall be subject to audit by the Committee and shall submit documentation of completed continuing education programs upon request. Failure to provide requested documentation or falsification of any information submitted to the Committee may result in an appearance before the Committee, or ***a formal hearing followed by* penalties and/or suspension of registration** **(after a hearing)* *where appropriate**.

(d) Documentation of continuing education requirements shall consist of the following:

1. For advance approval of attendance at seminars, conferences and other programs, a descriptive outline of the program or a description as prepared by the sponsor, including dates and hours;

2. For subsequent approval of the events in (d)1 above, written verification by the sponsor of attendance;

3. For publication in a national professional journal, submission of the published article; and

4. For teaching or research appointments, a statement from the appropriate school authority verifying the appointment.

(e) Registrants may submit each documentation in (d) above to the Committee 60 days prior to enrollment or participation in any of the activities in (d) above, to confirm acceptability by the Committee of the anticipated credit hours.

13:27-8.15 Waiver of continuing education requirements

(a) The Committee may, at its discretion, waive or modify continuing education requirements on an individual basis for reasons of hardship, such as illness or disability which prevents attendance at or completion of continuing education, or other good cause as demonstrated by a licensee.

(b) Any registrant seeking a waiver of the continuing education requirements must apply to the Committee in writing and set forth with specificity the reasons for requesting the waiver. The registrant shall also provide the Committee with such additional information as it may reasonably request in support of the application.

13:27-8.16 Responsibilities of continuing education sponsors

(a) Prior to representing that a course or seminar has been approved, a sponsor of continuing education for landscape architects shall submit the following, for each course offered, for evaluation by the Committee:

1. A detailed description of course content and estimated hours of instruction which shall be consistent with the requirements of N.J.A.C. 13:27-8.12; and

2. A summary of qualifications of the lecturer.

(b) The sponsor shall monitor the attendance at each approved course and furnish to each enrollee a verification of attendance, which shall include at least the following information:

1. The title, date and location of course offering;
2. The name and registration number of the attendee;

3. The number of hours awarded by the sponsor and, if known, the number of continuing education hours approved by the Committee, and

4. The name and signature of the officer or responsible party and seal of the organization.

(c) The sponsor shall solicit evaluations from both the participants and the instructors.

13:27-8.17 Continuing education credit by endorsement

(a) A New Jersey registrant who is authorized by licensure/certification/registration to practice landscape architecture in another state shall satisfy the credit hour requirements of N.J.A.C. 13:27-8.11 by submitting the following:

1. Certification from the appropriate governmental authority in that other state confirming that the person has satisfactorily completed all continuing education credits required for renewal of licensure/certification/registration in that state;

2. Proof that that state is the primary practice location of the New Jersey registrant; and

3. Proof that that state requires review and approval of continuing education of rigor and extent which are substantially equal to the requirements imposed by New Jersey.

13:27-8.18 Committee certificate for endorsement of continuing education credit hours

A registrant of this State who is in good standing may request of the Executive Director of the Board of Architects a document attesting that the official record confirms satisfactory completion of all New Jersey continuing education requirements. Good standing for this purpose means the registrant is currently registered, has paid all required fees, and is not the subject of any disciplinary complaint or under current disciplinary sanction.

13:27-8.19 Rules of professional conduct

(a) **[A landscape architect shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of professional duties. If the landscape architect's judgment is disregarded by the employer or client under circumstances where the safety, health and welfare of the public are endangered, the employer or client shall be informed of the possible consequences and the landscape architect shall notify such other proper public authority as may be appropriate, of the situation.]**

****If in the course of his or her work on a project, a landscape architect becomes aware of a decision taken by his or her employer or client, against the landscape architect's advice, which violates applicable Federal, state, county or municipal building laws and regulations and which would, in the landscape architect's exercise of reasonable judgment, materially and adversely affect the health, safety and welfare of the public, the landscape architect shall notify the employer or the client of such consequences and such other public authority as may be appropriate in the situation.****

(b) A landscape architect may accept an assignment or employment requiring education or experience outside of his or her field of competence, but only to the extent that the services are restricted to those phases of the project in which he or she may, without undue cost or hardship to the client, reasonably become qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees in conformance with the statutes and rules governing their respective professions.

(c) A landscape architect shall not affix a personal signature and/or seal to any plan or document dealing with subject matter in which there is a lack of competence by virtue of education or experience, nor to any such plan or document not prepared under his or her direct supervision and control.

(d) A landscape architect shall be completely objective and truthful in all professional reports, statements or testimony and shall include all relevant and pertinent information.

(e) When issuing any statements, criticisms or arguments on matters connected with public policy which are inspired or paid for by an interested party, or parties, a landscape architect shall preface such comments by explicit personal identification, by disclosing the

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identity of the party or parties on whose behalf he or she is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matters.

(f) A landscape architect shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to by, all interested parties.

(g) A landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products unless such consideration is disclosed to the client.

(h) A landscape architect shall not solicit or accept gratuities or anything of value not related to work performed, directly or indirectly, from contractors, their agents, or other parties dealing with his or her client or employer in connection with work for which he or she is responsible.

(i) When in public service as a member, advisor or employee of a governmental body or department, a landscape architect shall not participate in considerations or actions with respect to services provided by the individual or the individual's professional organization in private practice.

(j) A landscape architect shall not solicit or accept a contract from a government body on which a principal or officer of his or her organization serves as a member.

(k) A landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, gift or other consideration in order to secure or retain work, exclusive of securing positions through employment agencies.

(l) A landscape architect shall not falsify or permit misrepresentation of academic or professional qualifications. He or she shall not misrepresent or exaggerate degrees of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing his or her qualifications and work.

(m) A landscape architect shall not knowingly associate with or permit the use of a personal name or firm name in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is otherwise engaging in unlawful activities.

(n) All advertisements and public representations of certificate holders which make specific reference to service as a "landscape architect" shall list the name and certificate number of the landscape architect. If the certificate holder conducts the practice under a corporation or trade name, the advertisement/public representation may list the business name under which the practice is conducted but shall also conspicuously disclose the name and certificate number of at least one of the principal practitioners. This requirement applies to all advertising locations, including, but not limited to, listings in a telephone or other consumer information directory, the public media, commercial property, and motor vehicles.

1. Landscape architects, whose advertisements/listings in a telephone or other consumer information directory do not comply with this requirement, shall immediately notify the directory publisher of the additional data which shall be published in the next available directory in which the landscape architect intends to continue such advertisement/listing. The certificate holder, personally or through the business entity, shall retain a copy of the notification which shall be made available for inspection at Board request.

(o) If a landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions, he or she shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required by the Board.

LAW AND PUBLIC SAFETY

13:27-8.20 Nomenclature for non-certified persons

(a) Any individual who is not a certified landscape architect as defined by N.J.S.A. 45:3A-2 may advertise and offer services to the public provided that the description of the advertiser's title and services conforms to the requirements of (b) below.

(b) An individual who is not a certified landscape architect as defined in N.J.S.A. 45:3A-2 shall not, for example, use the following titles or description of services:

TITLES

Landscape Architect
Certified Landscape Architect
Licensed Landscape Architect
Registered Landscape Architect
Professional Landscape Architect

DESCRIPTIONS OF SERVICES

Landscape Architecture
Landscape Architectural Design
Landscape Architectural Construction
Landscape Architectural Planting Design
Landscape Architectural Service

(c) The titles and descriptions listed in (b) above are not meant to be all-inclusive.

13:27-8.21 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are nonrefundable.

1. Application Fee	\$125.00
2. Examination fee for the New Jersey portion of the Landscape Architect Registration Examination (LARE) when Board administered:	\$ 35.00
3. Initial Certification Fee (including seal press)	
i. If paid during the first year of a biennial renewal period	\$160.00
ii. If paid during the second year of a biennial renewal period	\$ 80.00
4. Biennial Renewal Fee	\$160.00
5. Late Fee	\$ 50.00
6. Reinstatement Fee	\$100.00
7. Reciprocity Fee	\$75.00
plus initial certification fee and application fee	
8. Duplicate certificate fee	\$ 25.00
9. Replacement seal press	\$ 40.00
10. Verification of Certification	\$ 25.00
11. Roster of certified landscape architects	\$ 15.00
(provided free to all registrants and public agencies)	

13:27-8.22 Notification of change of address; service of process

(a) Landscape architects shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING**

Board of Nursing Rules

Readoption with Amendments: N.J.A.C. 13:37

**Adopted Repeals and New Rules: N.J.A.C. 13:37-2,
3, 4 and 5**

Adopted Repeal: N.J.A.C. 13:37-12

Proposed: December 5, 1995 at 26 N.J.R. 4731(a).

Adopted: January 17, 1995 by the State Board of Nursing,
Golden Bethune, President.

Filed: January 19, 1995 as R.1995 d.88, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:11-23.

Effective Date: January 19, 1995, Readoption;
February 21, 1995, Amendments, repeals and
new rules.

Expiration Date: January 19, 2000.

Summary of Public Comments and Agency Responses:

The State Board of Nursing afforded all interested parties an opportunity to comment on the proposed readoption at 26 N.J.R. 4731(a) on December 5, 1994. The official comment period ended on January 4, 1995.

Announcements were forwarded to: Newark Star-Ledger, Trenton Times, Asbury Park Press, Currier Post, Bergen Record, Family Planning Association of New Jersey, Hospital Professionals and Allied Employees of New Jersey, and to other interested individuals and organizations.

A full record of the opportunity to be heard can be inspected by contacting the Board of Nursing, 124 Halsey Street, Newark, New Jersey 07102.

Written comments were received from the following: Monmouth College, Emily S. Tomkins, Associate Professor and Chairperson, N.J. Department of Education, Marion A. Mullarkey, Education Program Development Specialist, and Thomas A. Henry, Office of Adult and Occupational Education, Seton Hall University, Barbara A. Beeker, Dean, College of Nursing, Family Planning Association of N.J., Anita Leone, Executive Director, Atlantic County Vocational Technical School, Rosalie G. Mocco, Practical Nurse Coordinator, Mercer County Vocational Schools, Virginia Clevenger, Principal, Health Occupation Center (HOC), the Advisory Council of the HOC, and Carol A. Wolczak, Instructor of Practical Nursing at the HOC, Burlington County Institute of Technology, Alice H. Sinclair, Health Occupations Coordinator, University of Medicine and Dentistry, Carole Stapleton Rhodes, Chief Planning Officer, and the Hospital Professionals and Allied Employees of N.J., Marie Rizzo, First Vice President.

A summary of the comments received and the Board's responses follows:

N.J.A.C. 13:37-1.9

COMMENT: One commenter questioned the need for the administrator of a baccalaureate nursing program to have earned their doctoral degree at an accredited school of nursing or for the administrator of an LPN nursing program to have earned their bachelor of science degree at an accredited school of nursing.

RESPONSE: The commenter has misread N.J.A.C. 13:37-1.9. The Board's rule permits administrators and faculty to earn their degrees in regionally accredited schools and their doctorates in disciplines other than nursing. Only baccalaureate nursing programs require that the administrator have a doctoral degree. Associate and diploma nursing programs require that the administrator have an earned master's degree in nursing. LPN program administrators are required to have an earned bachelors degree in nursing. The requirements that these degrees must be earned at accredited schools of nursing is not a change in the Board's existing interpretation of its rule.

N.J.A.C. 13:37-1.10

COMMENT: Two commenters questioned the need for nursing faculty members to maintain professional competency by way of on-going clinical practice.

RESPONSE: In order for faculty to properly supervise and monitor students, it is essential that they maintain current clinical skills which is best accomplished through on-going clinical practice.

N.J.A.C. 13:37-1.12

COMMENT: One commenter requested that the Board delete its use of "philosophy" and replace it with the word "mission" so that it will be consistent with NLN standards.

RESPONSE: The Board has incorporated this change into the readoption.

N.J.A.C. 13:37-1.13

COMMENT: Five commenters object to the theory/clinical ratio 40 percent to 60 percent required of LPN programs.

RESPONSE: It has been the long standing practice of the Board that since LPNs are engaged in hands-on clinical nursing, there should be a definite emphasis on clinical skills in their training. While the Board believes its current position is consistent with current trends, it would be willing to revise this issue at such future time as the current trends and practice demonstrate the need for a change.

COMMENT: It is not feasible for a community college nursing program to prepare its students for community practice.

RESPONSE: It is feasible for a community college nursing program to expose its students to community based practice since there are about 500 possible clinical affiliates throughout the State. These include home health agencies, nurses' registries, visiting nurse services, county and municipal nurse services, as well as acute and long term facilities that operate home care services.

N.J.A.C. 13:37-2.1

COMMENT: One commenter raised a concern that this rule may prevent professional nurses from working the capacity of an LPN.

RESPONSE: N.J.A.C. 13:37-2.1 will prohibit RN students from taking the LPN exam. RN and LPN education have different and distinct elements in terms of philosophy, conceptual framework, objectives, curriculum content and clinical practice component. The rule is necessary to ensure that those practicing as LPNs have received their training in a school which is applicable to their practice.

N.J.A.C. 13:37-5.2

COMMENT: Concern was expressed that this rule may prevent RNs from working as LPNs.

RESPONSE: The rule does not prohibit RNs who are also licensed as LPNs from working in the capacity of LPNs provided they have made a conscious decision to limit their responsibilities by terminating their RN license or maintaining it on an inactive basis. The purpose of the rule is to ensure that nurses are held to the highest level of their education and skills.

N.J.A.C. 13:37-5.8

COMMENT: Clinical nurse specialists were omitted from the fee schedule.

RESPONSE: This was a technical error and will be corrected upon adoption by adding "clinical nurse specialists" after "nurse practitioners" in N.J.A.C. 13:37-5.8(c). This similar fee treatment is implicit in the Board's similar regulation of the certifications in N.J.A.C. 13:37-7.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules being readopted with amendments and new rules do not involve any Federal standard or regulation.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:37.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. PROGRAMS IN NURSING EDUCATION

13:37-1.2 Eligibility for accreditation

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

13:37-1.3 Criteria for granting and withdrawing accreditation

(a) Except as set forth in (b) below, full accreditation shall be granted to any eligible program meeting all the standards and re-

quirements of this subchapter. A certificate of full accreditation shall be issued in accordance with N.J.S.A. 45:11-34.

(b) Provisional accreditation shall be granted to a new program that meets the standards and requirements for accreditation set forth in this subchapter. Upon Board receipt and evaluation of the results of the licensing examination of the first graduating class, the program shall be eligible for full accreditation.

(c) A Board staff field representative shall visit all nursing programs and clinical affiliates at regular intervals as determined by the Board. The field representative shall examine the program for compliance with this subchapter and shall prepare a written report for the review of the Board.

(d) The Board may withdraw program accreditation in the event the program does not comply with the rules of this subchapter. The institution shall be given the opportunity for a hearing to appeal this decision.

(e) The eligibility of students currently enrolled in a program to sit for the licensing examination shall not be affected in the event a program has its accreditation withdrawn or in the event of a change in accreditation status from full to conditional.

13:37-1.4 Conditional accreditation

(a) The Board shall place an accredited program on conditional accreditation if:

1. The program fails to meet or maintain the standards and requirements for accreditation contained in this subchapter; or
2. Less than 80 percent of its graduates achieve passing grades in the licensing examination.

(b) The Board may limit the number of students enrolled in a program placed on conditional accreditation. The institution shall be given the opportunity for a hearing to appeal this decision.

(c) The program shall be notified by letter of conditional accreditation by the Board including any conditions which must be corrected within a specific time period established by the Board.

(d) The Board may, upon request, remove a program from conditional accreditation if it can be demonstrated that the standards and requirements contained in this subchapter have been met.

13:37-1.6 Probation

A program may be placed on probation when its graduates fail to achieve 80 percent passing on the licensing examinations for two consecutive years. A program placed on probation shall not admit new or transfer students into the program. The institution shall be given the opportunity for a hearing to appeal this decision.

13:37-1.7 Plans of organization and administration

Recodify existing (d)1 through 3 as (a) through (c) (No change in text.)

13:37-1.8 Program philosophy and objectives

(a) The nursing program shall have in writing a defined statement of philosophy and program objectives which are consistent with the definition of nursing as set forth in N.J.S.A. 45:11-23(b);

(b) The philosophy and program objectives shall be developed by the faculty;

Recodify existing (e)3 through 7 as (c) through (g) (No change in text.)

13:37-1.9 Qualifications of program administrator

(a) In Registered Nursing Programs (Baccalaureate), in addition to the qualifications contained in N.J.A.C. 13:37-1.10, the administrator shall hold a masters degree with a major in nursing and an earned doctoral degree.

(b) In Registered Nursing Programs (Associate Degree and Diploma), in addition to the qualifications contained in N.J.A.C. 13:37-1.10, the administrator shall hold a minimum of a masters degree with a major in nursing.

(c) In Licensed Practical Nursing Programs, in addition to the qualifications contained in N.J.A.C. 13:37-1.10(a)1, 3, 4 and 5, the administrator shall hold a minimum of a bachelors degree in nursing with additional courses in education.

(d) All degrees shall be earned at accredited schools of nursing.

13:37-1.10 Faculty qualifications

(a) For purposes of this section, faculty shall include persons from out-of-state nursing programs who are responsible for teaching students in a clinical affiliate located in New Jersey.

(b) All individuals with faculty responsibilities shall have the following qualifications:

1. Current registration in New Jersey as a professional nurse;
2. Graduation from accredited Masters Degree Program with a major in nursing, except that
 - i. Faculty in Licensed Practical Nursing Programs shall hold a minimum of a bachelors degree with a major in nursing; and
 - ii. Instructors in any school operated by a public board of education in any local or county school district shall meet the professional qualification requirements of the school district;

NOTE: Only those faculty members who began their employment on or before September 1, 1981 may qualify for an exemption from this requirement in accordance with previous Board policy.

3. Academic, professional/clinical experience qualifications appropriate to the specific area of responsibility of the appointed position.

4. Maintenance of up-to-date professional competence (that is, participation in on-going clinical practice);

5. Maintenance of up-to-date continuing education (that is, participation in) professional conferences, workshops, seminars, advanced academic courses, research projects and writing);

6. Compliance with all academic and professional qualifications for appointment required by the sponsoring institution.

(c) All degrees shall be earned at accredited schools of nursing.

(d) Each newly appointed faculty member shall file a record of professional preparation and experience with the Board.

13:37-1.11 Required number of faculty

(a) The number of faculty members in the program shall be sufficient to achieve program goals. The required number of faculty shall be determined by the following factors:

- 1.-4. (No change.)

13:37-1.12 Development and implementation of nursing program

(a) Responsibility for developing and implementing the program shall be placed in the nursing faculty. Faculty responsibilities shall include, but not be limited to:

1. Development and maintenance of a written statement of the purposes, *[philosophy]* ***mission*** and objectives of the program, consistent with the requirements of N.J.S.A. 45:11-23 et seq.;

2. Active participation in the construction, implementation, teaching and evaluation of the curriculum consistent with the requirements of N.J.A.C. 13:37-1.13;

3. Participation in the establishment and implementation of criteria for faculty promotion and retention;

4. Establishment and implementation of criteria for student admission, promotion, retention and completion of the program consistent with the requirements of N.J.A.C. 13:37-1.17;

- 5.-7. (No change.)

13:37-1.13 Curriculum organization and content

(a) (No change in text.)

Recodify existing (k)1-6 as (b) through (g) (No change in text.)

(h) All professional nursing programs shall be designed to prepare the practitioner to provide care in a variety of delivery systems and arenas, including community nursing/home care.

13:37-1.14 Changes in nursing programs

(a) No major change in a nursing program shall be implemented without the prior approval of the Board. Major program changes include:

- 1.-5. (No change.)

13:37-1.15 Required educational and administrative resources

(a) Classrooms, laboratories, conference rooms, offices and other space as needed shall be provided to meet the needs of the students and faculty;

(b) Adequate office space and equipment consistent with current technology shall be provided for the administrator, faculty and clerical staff;

(c) Furnishings, supplies and equipment consistent with current technology shall be provided to achieve the educational purposes of the program;

(d) The library shall be adequate in size and holdings to meet the educational needs of the students and faculty. Provision shall be made in the budget for regular and adequate acquisitions to the library collection. Library facilities consistent with current technology, including audio-visual equipment, shall be adequate and available to students and faculty.

13:37-1.16 Clinical affiliates

(a) Every clinical affiliate shall be approved or disapproved on the basis of the following:

1.-5. (No change.)

13:37-1.17 Criteria for student admission, promotion, retention and completion of the program

(a) The program's nursing facility shall ensure that the program meets all the requirements of N.J.S.A. 45:11-26 or 45:11-27.

Recodify existing (p)2 through 8. as (b) through (h) (No change in text.)

(i) Written policies regarding health, counseling and guidance services, financial aid, and living accommodations shall be established.

(j) All written policies affecting students shall be distributed to students.

(k) Current information about the school shall be distributed to students, applicants for admission and the Board of Nursing. The bulletin shall include the following items:

1. General description of the program;
2. Accreditation;
3. Admission, retention, promotion and graduation requirements;
4. Curriculum plan and course descriptions; and
5. Statement of tuition fees and refund policies.

13:37-1.18 Program recordkeeping and reporting requirements

Recodify existing (s), (t) as (a) and (b) (No change in text.)

(c) (No change in text.)

13:37-1.19 Program termination or suspension

(a) Procedures for termination of the program include:

1. "Phasing out," in which students enrolled continue until they complete the program; no students are admitted or accepted by transfer; qualified faculty remain; and Board requirements continue to be met;

2. Transfer of students to other schools in a manner providing a minimum loss to the students.

(b) The administrative officer responsible for an educational institution or hospital which plans to discontinue the educational program in nursing, or to suspend any essential part of its program, shall so advise the Board, in writing, at least six months prior to the admission of the last class. The written notification shall include the reasons for terminating the program and the specific plans for students enrolled.

(c) The administrative officer shall be responsible for the safekeeping of records and shall notify the Board of the future custody of records at least 10 days prior to the official date of closure. The official date of closure shall be the date on which the last student is properly transferred or completes the program.

SUBCHAPTER 2. LICENSURE BY EXAMINATION; PROFESSIONAL AND PRACTICAL NURSES

13:37-2.1 Eligibility requirements

(a) Each applicant for licensure as a professional nurse or a practical nurse shall meet all of the qualifications for the type of licensure sought, as set forth in N.J.S.A. 45:1-14 et seq., 45:11-23 et seq. and this chapter and shall pass the Board approved examination identified in N.J.A.C. 13:37-2.2. The course of practical nursing study must be at least 44 weeks in length, excluding vacations and holidays.

(b) Attendance in or successful completion of a professional nursing program shall not serve as an equivalent or substituted qualification for the practical nursing educational requirement.

13:37-2.2 Board approved licensing examination

(a) The Board-approved licensing examination for professional nurses is the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(b) The Board-approved licensing examination for practical nurses is the National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(c) The passing score on the examination shall be determined by the Board and will be reported to the applicant as pass or fail.

(d) An applicant who fails to pass three consecutive licensing examinations shall submit to the Board, prior to the fourth licensing examination, proof of successful completion of a remediation course conducted by a qualified instructor within the meaning of N.J.A.C. 13:37-1.10 in the area(s) of need.

13:37-2.3 Application requirements; professional and practical nurses

(a) Each applicant for licensure shall file the following with the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The non-refundable application fee set forth in N.J.A.C. 13:37-12.1(a)1; and

3. A written certification from the program administrator or registrar attesting that the applicant has successfully completed all requirements for graduation from a Board accredited professional/practical nursing program. The certification shall indicate the date of actual graduation or the date the degree/diploma was actually conferred.

13:37-2.4 Application requirements; graduates of foreign nursing programs

(a) An applicant for licensure who graduated from a foreign nursing program shall submit the following:

1. All of the documents required in N.J.A.C. 13:37-2.3;

2. For professional nurse applicants, a valid certification by the Commission on Graduates of Foreign Nursing Schools (CGFNS);

3. For practical nurse applicants, a valid certificate of successful completion of TOEFL, with a minimum score acceptable to the Board;

3. Written verification of licensure in good standing from each country and/or state in which the applicant is or has been licensed. For purposes of this section, licensure in good standing means a license which is not expired, suspended, revoked, surrendered or restricted; and

4. Evidence of possession of a properly issued and held visa or immigration card.

(b) Graduates of foreign practical nursing programs shall also submit an official transcript indicating that the applicant successfully completed the equivalent of graduation from an approved nursing program. The transcript shall indicate the date of graduation or the date the degree/diploma was conferred. The Board or its agent shall review the transcript to determine equivalency. An applicant who is deficient in medical, surgical, pediatric, obstetric or psychiatric nursing shall be required to complete a course in a Board approved practical nursing program in the area(s) of deficiency.

(c) Any applicant who obtained his or her credentials (for example, transcripts, licenses or certificates) through fraud, deception, misrepresentation, false promise or false pretense shall not be eligible to take the examination nor to be licensed.

SUBCHAPTER 3. PRACTICE AS A GRADUATE NURSE

13:37-3.1 Qualifications to practice as a graduate professional or practical nurse

(a) An individual may be employed as a graduate professional or practical nurse pending notification of examination results provided that, within 60 days of successfully completing a Board-

approved course of study or, for graduates of foreign nursing programs, within 60 days of the date of first arrival in the United States of America, the individual:

1. Applies to the testing service and takes the appropriate licensing examination; and

2. Applies to the Board for licensure and submits all of the documents required pursuant to N.J.A.C. 13:37-2.1.

(b) A graduate nurse shall practice only in approved settings, as set forth in N.J.A.C. 13:37-3.2, and only under the direct supervision of a registered professional nurse. For purposes of this subchapter, direct supervision shall require the physical presence of a registered professional nurse within the patient care unit or home.

(c) Individuals who have completed a nursing program or who have arrived in the United States more than 60 days prior to application for licensure shall not be permitted to work as graduate nurses.

13:37-3.2 Approved settings for graduate nurse practice

(a) A graduate nurse shall be permitted to practice only in settings approved by the Board. Board approval shall be limited to licensed acute, long-term, rehabilitation and/or psychiatric hospital facilities and/or home health agencies.

(b) A graduate nurse shall not assume charge responsibilities.

(c) A graduate nurse shall not render nursing services in a physician's or dentist's office, nor for a private employment agency, temporary help agency, visiting nurses' agency, residential or ambulatory care facility, and shall not perform private duty nursing.

SUBCHAPTER 4. LICENSURE BY ENDORSEMENT; PROFESSIONAL AND PRACTICAL NURSES

13:37-4.1 Eligibility requirements

(a) Each applicant for licensure by endorsement shall:

1. Meet all of the qualifications for the type of licensure sought, as set forth in N.J.S.A. 45:1-14 et seq., 45:11-23 et seq. and this chapter;

2. Be licensed by examination in a jurisdiction which is a member of the National Council of State Boards of Nursing; and

3. Have attained a passing score on the licensing examination consistent with the provisions of N.J.A.C. 13:37-4.2 and 4.3.

(b) Attendance in or successful completion of a professional nursing program shall not serve as an equivalent or substituted qualification for the practical nursing educational requirement.

(c) An applicant who is deficient in the required curriculum content set forth in N.J.A.C. 13:37-1.13 or who fails to provide written verification of licensure in good standing from the state of original licensure and from the state in which the applicant is currently licensed shall not be eligible for licensure by endorsement.

(d) Any applicant who obtains his or her credentials (for example, transcripts, licensure) through fraud, deception, misrepresentation, false promise or false pretense shall not be eligible to be licensed.

13:37-4.2 Examination scores; professional nurses

(a) Applicants for professional nurse licensure by endorsement shall be required to have attained a passing score on the licensing examination as follows:

1. If licensed prior to March 1954, the passing score required in the state of original licensure.

2. If licensed between March 1954 and July 1982, the passing score required in New Jersey in all subjects of State Board Test Pool Examination.

3. If licensed after July 1982, the score required for all applicants for licensure by NCLEX-RN.

(b) Applicants for practical nurse licensure by endorsement shall be required to have attained a passing score on the licensure examination as follows:

1. If licensed prior to January 1, 1949, the passing score required in the state of original licensure.

2. If licensed between January 1, 1949 and December 31, 1960, a score of 350.

3. If licensed after January 1, 1961, a score of 375 on the State Board Test Pool Examination.

4. If licensed after October 1982 a score of 350 on the NCLEX-PN.

5. If licensed after October 1989, a "pass" score on the NCLEX-PN.

13:37-4.3 Application requirements; licensure by endorsement

(a) Each applicant for licensure by endorsement shall submit or arrange to submit the following to the Board:

1. All of the documents required in N.J.A.C. 13:37-2.3; and

2. Written verification of licensure in good standing from the state in which the applicant was originally licensed and from the state in which the applicant is currently licensed. The verification shall be forwarded directly to the Board from the applicable state board. The verification from the state of original licensure shall indicate that the applicant attained a passing score on the national licensing examination equal to that required of candidates in New Jersey at the time of the applicant's initial licensure in the original state of licensure.

(b) Where the state of original licensure did not utilize the examinations referred to in this subsection or the applicant otherwise fails to attain a passing score, the applicant shall be required to apply for licensure by examination pursuant to N.J.A.C. 13:37-2.

SUBCHAPTER 5. GENERAL REQUIREMENTS OF LICENSURE; LICENSE RENEWAL; FEE SCHEDULE

13:37-5.1 License requirement

No licensee shall engage in nursing practice without being in possession of a current license which is active and not suspended, revoked or surrendered.

13:37-5.2 Responsibilities of dual licensure

(a) A licensed registered professional nurse who is also licensed as a practical nurse shall be held to the level of responsibility of a registered professional nurse, regardless of his or her employment or work status.

(b) A dually licensed individual who wishes to limit his or her nursing responsibilities to those required of a licensed practical nurse shall either:

1. Terminate his or her registered professional nurse license by submitting written notification to the Board of said intent; or

2. Maintain registered professional nurse licensure in inactive status.

13:37-5.3 Notification of change of address

A licensee or certificate holder of the Board of Nursing shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license or certificate. Such notice shall be given not later than 30 days following the change of address.

13:37-5.4 Reporting of unlawful conduct

Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board.

13:37-5.5 Self-reporting

(a) Every nurse and homemaker-home health aid licensed and/or certified under the Nurse Practice Act, N.J.S.A. 45:1-14 et seq., shall immediately notify the Board, in writing, upon the following:

1. Acquiring a physical or mental impairment or disability that adversely affects his or her current ability to practice nursing with reasonable skill and safety;

2. Being the accused in an indictment or conviction of a crime involving moral turpitude or a crime adversely relating to his or her practice when such indictment or conviction is rendered after the effective date of this regulation;

3. Being a named defendant or respondent in a civil, criminal or administrative investigation, complaint or judgment involving alleged

malpractice, negligence or misconduct relating to his or her practice when such investigation, complaint or judgment occurred after the effective date of this regulation;

4. Being the subject of any voluntary license or certification surrender or any disciplinary action or order by any state or Federal agency, board or commission, including any order of limitation or preclusion; or

5. Failing to maintain or renew any certification which is required by law as a condition of practice and/or as a condition of license or certification renewal.

(b) Any nurse or homemaker-home health aid licensed and/or certified under the Nurse Practice Act, N.J.S.A. 45:11-23 et seq., who violates any provision of the Act or N.J.S.A. 45:1-14 et seq. may, upon notice to the licensee and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., be subject to disciplinary action by the Board including practice restriction.

13:37-5.6 Biennial license renewal

(a) All licenses shall be valid for two calendar years, except that initial licenses shall be valid from the date the applicant passed the examination to the end of the current biennial period.

(b) The Board shall send a biennial renewal notice by regular mail to each current licensee at the last known address on or about October 1 of the year of expiration. The renewal form requests information on current employment status as well as on any criminal proceedings pending against the licensee.

(c) Licenses shall be divided into two categories known as "active" and "inactive" licenses. "Active" licenses are required of all persons engaged in any type of nursing practice. An "inactive" license may be requested by an individual who is eligible for an active license but who is not engaged in any type of nursing practice.

(d) Each licensee in either class shall truthfully complete and file the biennial renewal form with the Division of Consumer Affairs, State of New Jersey, CN 152, Trenton, New Jersey 08625-0152 on or before December 31 of the year of expiration. The biennial renewal form shall be accompanied by a check or money order for the renewal fee set forth in N.J.A.C. 13:37-12.1.

13:37-5.7 Reinstatement

An individual whose license has been inactive, suspended or revoked for more than two years shall be required to complete, as a condition of reinstatement, a nurse refresher course approved by the Board.

13:37-5.8 Fee schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses:

1. Application fee	\$50.00
2. Initial license fee	50.00
3. Licensure by endorsement	60.00
4. Verification for endorsement	30.00
5. Renewal of license (Biennial)	
i. Active	50.00
ii. Inactive	25.00
6. Late license renewal (after 30 days)	50.00
7. Lapsed license fee	100.00
8. Duplicate license	25.00
9. Change of name or address	15.00
10. Written verification of licensure	15.00
11. Notary fee	5.00
12. Record duplication	5.00
13. Copy of Nurse Practice Act	5.00
14. Copy of L.P.N. Standards of Practice	3.00

(b) The following fees shall be charged by the Board in connection with certification of homemaker-home health aides.

1. Application fee	20.00
2. Program approval fee for each location at which course is offered (annual)	100.00
3. Instructor's Manual	20.00
4. Student Manual	10.00
5. Initial certification fee	

i. If paid during the first year of a biennial renewal period	10.00
ii. If paid during the second year of a biennial renewal period	5.00
6. Renewal of certificate (Biennial)	10.00
7. Late renewal of certificate	10.00
8. Duplicate certificate	5.00
9. Certification by endorsement	10.00
(c) The following fees shall be charged by the Board in connection with certification of nurse practitioners*/clinical specialists*:	
1. Application fee	100.00
2. Initial certification fee	
i. If paid during the first year of a biennial renewal period	75.00
ii. If paid during the second year of a biennial renewal period	37.50
3. Renewal of certification (biennial)	75.00
4. Certification by endorsement	75.00
5. Late renewal of certificate (one to 30 days)	50.00
6. Reinstatement fee (after 30 days)	100.00
7. Duplicate certificate	25.00

SUBCHAPTER 7. CERTIFICATION OF NURSE PRACTITIONERS/CLINICAL NURSE SPECIALISTS

SUBCHAPTER 13. NURSE ANESTHETISTS

13:37-13.1 Nurse anesthetist practice

(a) The conditions for practice as a nurse anesthetist in this State shall be as follows:

- 1.-4. (No change.)
5. Compliance with (b) below and with the reporting requirements of N.J.A.C. 13:37-8.3.
- (b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS OFFICE OF CONSUMER PROTECTION

Personnel Services

Registration Requirements for Health Care Service Firms and Standards for Placement of Health Care Practitioners

Adopted Repeals: N.J.A.C. 13:45B-5 and 9

Proposed: November 7, 1994 at 26 N.J.R. 4316(a).

Adopted: January 24, 1995 by Mark Herr, Director, Division of Consumer Affairs.

Filed: January 26, 1995 as R.1995 d.106, **without change, but with the remaining proposed amendments, repeal and new rules still pending.**

Authority: N.J.S.A. 34:8-54 and 56:8-1 et seq.

Effective Date: February 21, 1995.

Expiration Date: September 21, 1997.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed repeals relating to personnel services, which were part of a group of rules proposed for adoption, amendment, or repeal on November 7, 1994. The official comment period ended on December 7, 1994. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on November 7, 1994, at 26 N.J.R. 4316(a). Announcements were also forwarded to the Star Ledger, the Bergen Record, the Courier-Post, the Atlantic City Press, the Trenton Times, the Asbury Park Press, the New Jersey Association of Staffing Professionals, the New Jersey Association of Temporary Services, the Mid-Atlantic Association of Personnel Consultants, the Association of Human Resource Consultants, various personnel services and other interested parties.

ADOPTIONS

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, Post Office Box 45027, Newark, New Jersey 07101.

N.J.A.C. 13:45B-5 and 9 are being repealed immediately because they are duplicative of statutory provisions. Action on the remainder of the rules proposed on November 7, 1994 for adoption, amendment, or repeal, will be published in a future issue of the New Jersey Register.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Division of Consumer Affairs received two letters voicing general support of the Division's efforts, from M. Lynn Clare, President of the New Jersey Association of Temporary Services, and Theodore S. Kissel, President of Unitemp Temporary Personnel. A third letter, from George F. Gandenberger, President of Lakeland Temporary Services, Dover and Bridgewater, New Jersey, specifically commented, among other things, on the repeal of N.J.A.C. 13:45B-5. The comment follows:

COMMENT: The total deletion of subchapter 5 removes the registration administration guidance for Temporary Help Service Firms which appears then only under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1.1. It also removes the definition of the term "liquidated damages," which appears nowhere else, though the term "liquidated charge" is used in N.J.S.A. 34:8-46(h). The doctrine of liquidated damages is important to protect temporary help service firms from clients who hire away temporary employees to avoid paying employment agency or consultant fees.

RESPONSE: Firms are free to charge liquidated damages to client companies. However, if a firm charges liquidated damages to job seekers, it places itself in a different licensing category because the N.J.S.A. 34:8-46 exemption would no longer apply.

Executive Order No. 27 Statement

The two subchapters repealed herein do not relate to Federal requirements in any way.

(a)

NEW JERSEY RACING COMMISSION

Horse Racing Rules

Readoption: N.J.A.C. 13:70

Proposed: December 5, 1994 at 26 N.J.R. 4742(a).

Adopted: January 19, 1995 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: January 25, 1995 as R.1995 d.102, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: January 25, 1995.

Expiration Date: January 25, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22 et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules subject of the instant adoption are not addressed by any Federal requirements or standards. The United States Congress has promulgated law, however, known as the "Interstate Horseracing Act of 1978," which concerns interstate off-track wagering and imposes certain requirements related to and requiring the consent of the host racing association, the host racing commission, the off-track racing commission, and certain operating tracks within a designated proximity to the off-track betting facility, as prerequisites to the acceptance of an interstate off-track wager. The rules subject of the instant adoption do not address or exceed the Federal standards, as set forth in the "Interstate Horse Racing Act of 1978," and those requirements are thus cumulative to the rules encompassed by the instant adoption. Accordingly, the instant adoption shall not have any consequences or implications to Federal requirements or standards, including those of the "Interstate Horse Racing Act of 1978."

TRANSPORTATION

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:70.

(b)

NEW JERSEY RACING COMMISSION

Harness Racing Rules

Readoption: N.J.A.C. 13:71

Proposed: December 5, 1994 at 26 N.J.R. 4744(a).

Adopted: January 19, 1995 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: January 25, 1995 as R.1995 d.103, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: January 25, 1995.

Expiration Date: January 25, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute N.J.S.A. 5:5-22 et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules subject of the instant adoption are not addressed by any Federal requirements or standards. The United States Congress has promulgated law, however, known as the "Interstate Horse Racing Act of 1978," which concerns interstate off-track wagering and imposes certain requirements related to and requiring the consent of the host racing association, the host racing commission, the off-track racing commission, and certain operating tracks within a designated proximity to the off-track betting facility, as prerequisites to the acceptance of an interstate off-track wager. The rules subject of the instant adoption do not address or exceed the Federal standards, as set forth in the "Interstate Horse Racing Act of 1978," and those requirements are thus cumulative to the rules encompassed by the instant adoption. Accordingly, the instant adoption shall not have any consequences or implications to Federal requirements or standards, including those of the "Interstate Horse Racing Act of 1978."

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:71.

TRANSPORTATION

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Collins Avenue-Nixon Drive (under State Jurisdiction)

Mount Laurel Township, Moorestown Township and Maple Shade Township in Burlington County

Adopted New Rule: N.J.A.C. 16:28-1.61

Proposed: November 7, 1994 at 26 N.J.R. 4337(b).

Adopted: January 27, 1995 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: January 27, 1995 as R.1995 d.95, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98, 39:4-198.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.61 Collins Avenue-Nixon Drive

(a) The rate of speed designated for Collins Avenue-Nixon Drive (under State jurisdiction) described in this subsection shall be established as the maximum legal rate of speed thereat for both directions of traffic:

1. In Burlington County:

i. In Mount Laurel Township, Moorestown Township and Maple Shade Township:

(1) Zone 1: 30 miles per hour between Route 73 and Lenola Road.

(2) Zone 2: 35 miles per hour between Lenola Road and the State of New Jersey-Township of Mount Laurel jurisdictional line (Nixon Drive and Route I-295 Ramps).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 45

Harrison Township, Gloucester County

Adopted Amendment: N.J.A.C. 16:28-1.96

Proposed: December 19, 1994 at 26 N.J.R. 4970(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.97, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.96 Route 45

(a) The rate of speed designated for the certain parts of State highway Route N.J. 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

ii. In Gloucester County:

(1) (No change.)

(2) Harrison Township:

(A) (No change.)

(B) Zone 2: 35 miles per hour between 350 feet south of New Street and the intersection of Route N.J. 45-Route N.J. 77 (approximate mileposts 16.98 to 17.39; thence

(C) Zone 3: 30 miles per hour between the intersection of Route N.J. 45-Route N.J. 77 and the northernmost intersection of Route N.J. 45-Route U.S. 322 (approximate mileposts 17.39 to 18.16); thence

(D) Zone 4: 35 miles per hour between the northernmost intersection of Route N.J. 45-Route U.S. 322 intersection and 350 feet south of Colson Road (approximate mileposts 18.16 to 18.35); thence

(CITE 27 N.J.R. 734)

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(E) Zone 5: 50 miles per hour between 350 feet south of Colson Road and the Harrison Township-Mantua Township corporate line (approximate mileposts 18.35 to 19.35); thence
(3)-(5) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 47

Dennis Township, Cape May County

Adopted Amendment: N.J.A.C. 16:28-1.132

Proposed: December 5, 1994 at 26 N.J.R. 4745(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.98, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows.

16:28-1.132 Route 47

(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. In Cape May County:

i.-iii. (No change.)

iv. Dennis Township:

(1) (No change.)

(2) Zone 2: 45 miles per hour between Beaver Dam Road (County Road 657) and Washington Avenue (County Road 557) (approximate mileposts 16.79 to 20.16).

(3) Zone 3: 50 miles per hour between Washington Avenue (County Road 557) and the Dennis Township-Maurice River Township corporate line (approximate mileposts 20.16 to 24.45).

2.-4. (No change.)

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 30

Oaklyn Borough, Camden County

Adopted Amendment: N.J.A.C. 16:28A-1.21

Proposed: December 19, 1994 at 26 N.J.R. 4971(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.93, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

ADOPTIONS

TRANSPORTATION

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.1.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: The Department of Transportation received a faxed copy of a comment on January 24, 1995 from Shirley A. DeLibero, Executive Director of New Jersey Transit, regarding the following text that should be included as part of subsection (a) "except as provided for in N.J.S.A. 39:4-139." New Jersey Transit pointed out that by not including this text could result in the possible elimination of bus stops along this route by the Department of Transportation.

RESPONSE: The Department of Transportation is in agreement that the missing text may eliminate the established bus stops and has advised New Jersey Transit in a letter dated January 26, 1995 that the text will be changed to include bus stops and other parking restrictions in the adoption.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

16:28A-1.21 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times*, **except in areas designated as bus stops and other approved parking restrictions***.

1.-6. (No change.)

7. No stopping or standing in Oaklyn Borough, Camden County:
i. Westbound on the north side:

(1) Between East Haddon Avenue and the Oaklyn Borough—Collingswood Borough corporate line (approximate mileposts 5.13 to 5.44).

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 70

Cherry Hill Township and Pennsauken Township in Camden County

Adopted Amendment: N.J.A.C. 16:28A-1.37

Proposed: November 7, 1994 at 26 N.J.R. 4338(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.94, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.

1.-5. (No change.)

6. No stopping or standing in Cherry Hill Township, Camden County.

i.-ii. (No change.)

iii. Along both sides:

(1) From the Pennsauken Township-Cherry Hill Township corporate line to Haddonfield-Stoys Landing Road, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

(2) (No change.)

7.-8. (No change.)

9. No stopping or standing in Pennsauken Township, Camden County.

i. Along both sides:

(1) For the entire length within the corporate limits of Pennsauken Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 173

Town of Clinton, Hunterdon County

Adopted Amendment: N.J.A.C. 16:28A-1.52

Proposed: December 19, 1994 at 26 N.J.R. 4971(b).

Adopted: January 24, 1995 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.96, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.52 Route 173

(a) The certain parts of State highway Route 173 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

1.-5. (No change.)

6. No stopping or standing in the Town of Clinton, Hunterdon County:

i. Along the westbound (north) side: between 4:00 P.M. and 6:30 P.M., except Saturdays, Sundays and public holidays.

TRANSPORTATION

(1) Between at a point 35 feet west of the prolongation of the westerly curb line of Hancock Street to the Route I-78/U.S. 22 off-ramp (approximate milepost 13.15).

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Route U.S. 9

Middle Township, Cape May County

Adopted New Rule: N.J.A.C. 16:30-3.13

Proposed: December 5, 1994 at 26 N.J.R. 4746(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.99, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-183.6, 39:4-198 and 39:4-199.1.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:30-3.13 Route U.S. 9

(a) Turning movements of traffic on certain parts of Route U.S. 9, described in this subsection are regulated as follows:

1. In Cape May County:

i. In Middle Township:

(1) Center lane for left turns only:

(A) Both directions of Route U.S. 9 from the intersection of Romney Place to Stone Harbor Boulevard (approximate mileposts 12.7 to 13.0).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route N.J. 27

Metuchen Borough and Highland Park Borough in Middlesex County

Adopted Amendment: N.J.A.C. 16:31-1.26

Proposed: November 21, 1994 at 26 N.J.R. 4488(a).

Adopted: January 24, 1995 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: January 25, 1995 as R.1995 d.100, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Effective Date: February 21, 1995.

Expiration Date: May 7, 1998.

ADOPTIONS

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:31-1.26 Route 27

(a) Turning movements of traffic on certain parts of State highway Route 27 described in this subsection are regulated as follows:

1. In the Borough of Metuchen, Middlesex County:

i.-ii. (No change.)

iii. No left turn from the driveway of 890 Route 27 (Middlesex Avenue) as measured to be 130 feet north of Bridge Street (east-bound) to (northbound) Route 27.

2. (No change.)

3. In the Borough of Highland Park, Middlesex County.

i. No left turn from the driveway of 75-85 Route 27 (Raritan Avenue) as measured to be 40 feet south of South First Avenue (eastbound) to (northbound) onto Route 27.

(c)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

BUREAU OF STATEWIDE PLANNING

State Highway Access Management Code

Definitions, Unsignalized Access Points, Access

Point Control Dimensions for Streets and

Driveways, Curb, General Restrictions, Municipal and County Actions, Permit Process, Permits and

Permit Fees, Companion Department Permits, Minor Access Permits Checklist for Single-Family

Residential and Residence and Business

Combined, Minor Access Permits Checklist for

Other Minor Traffic Generators, Major Access

Permits Checklist, Major Access Permits with

Planning Review Process, Major Access Permits

with Planning Review Checklist, General Level of

Service Standards, Uninterrupted-flow Standards,

Signalized Intersection Standards, Unsignalized

Intersection Standards, Ramp Standards,

Department Initiated Projects and Permits,

Fairshare Financial Contributions, Waivers, Traffic

Impact Study Area, Traffic Counts, Application

Requirements for Change in Classification

Adopted Amendments: N.J.A.C. 16:47-1.1, 3.5, 3.8,

3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14,

4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36,

4.37, 5.2 and Appendices B, C, and E

Adopted Repeal: N.J.A.C. 16:47 Appendix L

Adopted Repeal and New Rule: N.J.A.C. 16:47

Appendix B

Proposed: June 20, 1994 at 26 N.J.R. 2549(a).

Adopted: December 9, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Planning.

Filed: January 26, 1995 as R.1995 d.107, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.

ADOPTIONS

Effective Date: February 21, 1995.

Expiration Date: April 20, 1997.

Summary of Public Comments and Agency Responses:

The Department received written comments from the following:

Commenter No. 1—Kenneth E. Fears, P.E., Nelson Engineering, Eatontown, NJ.

Commenter No. 2—Michael Fink, New Jersey Builders Association, Plainsboro, NJ.

Commenter No. 3—Pasquale V. Papero, Township of Hamilton, Hamilton, NJ.

Commenter No. 4—Honorable Cheryl J. Seiferheld, Mayor, Township of Bedminster, Bedminster, NJ.

Commenter No. 5—Robert P. Bzik, AICP/PP, Somerset County Planning Board, Somerville, NJ.

COMMENT: Commenter No. 1 suggested clarification to the first sentence under N.J.A.C. 16:47-3.8(s)3 which reads, "The sidewalk area shall not be paved." To eliminate any confusion, more appropriate wording might be, "The area between the sidewalk and curb shall not be paved."

RESPONSE: The sidewalk area extends from the curb line to the right-of-way line. Where there is emergency access and a sidewalk exists or is proposed, the sidewalk is to be the only paved area. The commenter is referred to the last sentence that describes the sidewalk condition when an emergency access crosses the sidewalk.

COMMENT: Commenter No. 2 supports the proposed amendments to N.J.A.C. 16:47-4.24, 4.25, 4.26, 4.27 and 4.29 to more equitably distribute available highway capacity among potential applicants.

RESPONSE: The Department appreciates the support.

COMMENT: Commenter No. 2 objects to the wording of N.J.A.C. 16:47-4.33 as exceeding the authority granted the Department under the law by placing requirements on an applicant when conditions on one access permit require changes to another property owner's access including even the closure of another permittee's access.

RESPONSE: The Department recognized that it could not best provide for the health, safety, and welfare of the motoring public by just collecting a financial contribution towards the fair-share improvements under N.J.S.A. 27:7-91h. Under N.J.S.A. 27:7-90, "Legislative findings and declarations," several references to managing the safety and protecting and preserving the functional integrity of State highways are listed with the authority given to the Commissioner of Transportation to carry out these declarations at N.J.S.A. 27:7-91. Under N.J.S.A. 27:7-1, the definition for "Improvement also may consist of alterations to driveways and local streets, acquisition of rights-of-way, construction of service roads and other actions designed to enhance the functional integrity of a highway."

As such, under N.J.A.C. 16:47-4.34(a), the Department provided the ability for permittees to construct highway improvements with the approval of the Department.

When a development's traffic accelerates the need to improve a highway segment, the developer is bound by the Department's design and access standards. Neither the State Highway Access Management Act nor the Access Code create distinctions based on the source of a highway improvement. The applicable standards are the same, whether a highway improvement is initiated by the Department or an access applicant.

The Access Code at N.J.A.C. 16:47-4.33(a) indicates that projects which had not reached the Phase 2 level of design by September 21, 1992 may be subject to the provisions of the Access Code. Since September 21, 1992, the Department has been redesigning existing accesses within the limits of its projects to have the accesses comply with the standards in the Access Code. The only exception the Department has made has been to not apply this to resurfacing and maintenance projects.

The Access Code requirements recognize that there is a continuum of highway safety which ranges between the low level associated with situations which are blatantly unsafe to the high level associated with those situations which are extremely safe. In establishing standards, the Department has, in effect, prescribed a safety threshold. On the basis of an access application, the Department cannot spend public monies to construct or change existing access in order to maintain the safety and efficiency of the State highway system when the applicant's proposal dictates a change in someone else's access. The failure of an applicant to meet the standards means that the access also fails to meet that minimum level of safety.

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It is the Department's practice to make access along State highways conform to its standards. This was the case before the Access Code and it is still acceptable and reasonable practice.

The clarification that access standards apply to highway improvement projects and permits rather than only Department initiated projects and permits is reasonable and consistent with the Department's authorities and responsibilities to the public safety.

COMMENT: Commenter No. 1 suggested replacing the word "site access point" with the word "highway access point" at N.J.A.C. 16:47-4.36(a)3ii(1). This will allow inclusion of other access points and interchanges other than those within 2,000 feet of a site access point.

RESPONSE: The Department did not mean to eliminate analysis points more than 2,000 feet from a site access point. Therefore, to clarify the rule at N.J.A.C. 16:47-4.36(a)3ii(1), the wording will be changed on adoption to "highway access point"; thereby including locations where such weaving is expected to occur.

COMMENT: Commenter No. 2 supports the proposed amendments at N.J.A.C. 16:47-4.36 to eliminate those locations where mitigation is not likely.

RESPONSE: The Department appreciates the support.

COMMENT: Commenter No. 5 formally notified the Department of possible suggested changes to Appendix B at the Desirable Typical Sections for portions of Routes 22, 27, 28, 202 and 206 as follows:

CORRIDOR/MUNICIPALITY(IES)	CHANGE
Route 22/Watchung, No. Plainfield & Green Brook	6A to 4A
Route 28/Bound Brook, Bridgewater, Somerville & Raritan	4D & 2B to 2A
Route 27/Franklin	
Kingston Village	2B to 1A
south of CR 518 intersection	2B to 2A
north of CR 518 intersection	4F to 2B
Route 202/Bernards	4C to 2B
Route 206/Hillsborough & Somerville	
north of Brooks Blvd.	6A to 4B
Route 206/Hillsborough	
Old Somerville Rd. to Raider Blvd.	4A to 4C
Routes 202/206/Bridgewater	4F to 2C
Routes 202/206/Bedminster	
Pluckemin Village	4B to 1A
Route 206/Bedminster & Peapack-Gladstone	4A to 2B

RESPONSE: Since the commenter states his submitted comments may change based on the county's submittal to the Department under N.J.A.C. 16:47-8.5(b), the Department will give these comments a thorough examination as part of that process. The Department is concerned with the regional impacts of any changes to Appendix B. The Department appreciates the commenter's concerns. The process for changing any highway segment's access classification is available to anyone as explained at N.J.A.C. 16:47-5 Procedure for changes in classification.

COMMENT: Regarding Appendix B, Commenter No. 3 recommended expanding the Desirable Typical Section for Route 130 for the segment within Hamilton Township from 4A to 6A to be consistent with the transportation modelling as part of the local master plan.

RESPONSE: The Department will consider this change as part of the dialogue process with the county. The Department under N.J.A.C. 16:47-8.5(b) will give these comments a thorough examination as part of that process. The Department is concerned with the regional impacts of any changes to Appendix B. The Department appreciates the commenter's concerns. The process for changing any highway segment's access classification is available to anyone as explained at N.J.A.C. 16:47-5 Procedure for changes in classification.

COMMENT: Regarding Appendix B at Route 202/206, Commenter No. 4 requests a change in the Desirable Typical Section classification to 1A in Pluckemin Village.

RESPONSE: The Department will consider this request as part of the dialogue process with the county. The Department under N.J.A.C. 16:47-8.5(b) will give these comments a thorough examination as part of that process. The Department is concerned with the regional impacts of any changes to Appendix B. The Department appreciates the commenter's concerns. If a change is needed sooner, the process for changing any highway segment's access classification is available to anyone as explained at N.J.A.C. 16:47-5 Procedure for changes in classification.

COMMENT: Commenter No. 4 recommends reducing the Desirable Typical Section through Bedminster Village from the DTS 2C.

RESPONSE: The Department will consider this request as part of the dialogue process with the county. The Department under N.J.A.C. 16:47-8.5(b) will give these comments a thorough examination as part of that process. The Department is concerned with the regional impacts of any changes to Appendix B. The Department appreciates the commenter's concerns. If a change is needed sooner, the process for changing any highway segment's access classification is available to anyone as explained at N.J.A.C. 16:47-5, "Procedure for changes in classification."

COMMENT: Commenter No. 4 recommends that in Appendix B at Route 206 between the Morris County line and Lamington Road be changed from a four-lane, divided highway with shoulders, DTS 4A, to a four-lane facility without shoulders, DTS 4D. This is based on the Township's adopted Circulation Plan and a low density residential district. Concern was expressed for pedestrian and cyclist movements.

RESPONSE: The Department will consider this request as part of the dialogue process with the county. The Department under N.J.A.C. 16:47-8.5(b) will give these comments a thorough examination as part of that process. The Department is concerned with the regional impacts of any changes to Appendix B. The Department appreciates the commenter's concerns. If a change is needed sooner, the process for changing any highway segment's access classification is available to anyone as explained at N.J.A.C. 16:47-5, Procedure for changes in classification.

COMMENT: Commenter No. 4 and No. 5 requested a comment period extension to allow a more substantive public review and analysis of Appendix B, the Desirable Typical Sections and access levels for each highway segment.

RESPONSE: The proposed amendments in the Appendix B appearing in the June 20, 1994 proposal at 26 N.J.R. 2549(a) were those caused by changing the urban and rural definitions. Adoption of the June 20, 1994 Appendix B proposal to incorporate the new urban and rural definitions based on the State Plan along with the response to specific comments is appropriate at this time.

Several substantive reviews of Appendix B have been held. Municipal officials were notified of the Access Code proposals in 1990 and 1991. Additionally, in 1991 the Department sent municipalities a detailed package and conducted two workshops to explain the regulations. The Department responded to approximately 100 local agencies and incorporated many comments into a third proposal of Appendix B in September 1991. As part of the second proposal and adoption, the Department agreed under N.J.A.C. 16:47-8.5(b) to allow the counties an additional 17 months until September 21, 1993 a special opportunity to submit comments on Appendix B. At the request of several counties, this period was extended one full year until September 21, 1994.

The Department collected those comments from the counties on Appendix B and is evaluating the suggestions to see what changes appear consistent with other plans and priorities. The Department cannot further extend this special opportunity to comment on the classification system. When those comments are evaluated, Appendix B will appear as a proposal in the New Jersey Register subject to another public comment period. Affected municipalities will be informed of the proposal.

In addition, under N.J.A.C. 16:47-5, Procedure for changes in classification, anyone may request a change for any highway segment at any time.

Summary of Agency Initiated Change:

Route 120 was erroneously classified as rural in the June 20, 1994 proposal as indicated by cell numbers 25 and 28.

The Department will make the technical correction to Appendix B for Route 120. Route 120 is classified as urban which is denoted by cell numbers 1 and 4. The desirable typical sections and access levels are the same as the previously adopted regulation.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statutes and are not subject to any Federal requirements or standards.

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

16:47-1.1 Definitions

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

... "Adjustment of access" means changes to an access point, in conjunction with the implementation of a highway improvement project, which result in changing the width of an access point by five feet or less, changing the location of an access point by 10 feet or less, or moving an access point away from the centerline of the highway.

... "Corner clearance (C)" means the distance along the curbline between the point of curvature of the corner radius and the point of curvature of the nearest curbline opening at an intersection.

... "Designated center" means a specific area where a compact form of development (exists or is planned) with a core or node (focus of residential, commercial and service development) which is listed in Appendix C of the State Development and Redevelopment Plan adopted June 12, 1992 or superseding issue, or other designated center officially recognized by the State Planning Commission. Other designated centers, recognized after the June 12, 1992 adoption of the State Development and Redevelopment Plan or superseding issue are shown on the approved Resource, Planning and Management Maps of the State Plan and Redevelopment Plan available at the Office of State Planning.

... "Emergency access" means a driveway which shall only be used by police, fire, and emergency service vehicles when responding to an emergency service situation. Such driveways shall not include the access to a police station, fire house, or emergency service facility.

... "Fire house" means a lot where fire service vehicles are stored.

... "Half-trip" means half the distance of a vehicle trip.

"High speed rural" means the access classification for roadways in planning areas other than Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B where the posted speed limit is 50 miles per hour (mph), or greater.

"High speed urban" means the access classification for roadways in urban Planning Area 1, Planning Area 2, or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission, or urban areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B where the posted speed limit is 45 mph or greater.

... "Intersection" means the location where two or more roadways, other than driveways, cross at grade, without a bridge. The intersection is the largest area encompassing the curb returns, stop bars, and crosswalks.

... "Lot" means a single tax map parcel or two or more tax lot parcels which are in common ownership, have a unity of use and are contiguous. All land adjacent to a State highway is considered to be part of a lot.

... "Low speed rural" means the access classification for roadways in rural planning areas other than Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the

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Hackensack Meadowlands District as determined by the Access Code Appendix B with posted speed limits 45 mph or less.

"Low speed urban" means the access classification for roadways in urban Planning Area 1, Planning Area 2, or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B with posted speed limits 40 mph or less.

"Modification of access" means changes to access in conjunction with the implementation of a highway improvement project, which results in changing the number of access points, changing the width of an access point by more than five feet, or changing the location of an access point by more than 10 feet.

"Rural area" means any area of the State which is not within Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B.

"Rural lot" means a lot with 50 percent or more of its State highway frontage located in a rural area.

"Site" means the lot which is the subject of an access application or permit.

"Study area location" means access point locations or those other locations on the State highway system exceeding both 100 new half-trips during the critical peak hour(s) and 10 percent of the anticipated daily site traffic which are analyzed in a traffic impact study. Applicant's driveways, intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of study locations.

"Traffic signal" means an electrically operated device that assigns time to conflicting transportation movements. For the purposes of this Access Code, traffic control devices which are installed for the exclusive purpose of allowing pedestrians to cross the highway or traffic control devices installed to meter traffic are not considered to be traffic signals in the Access Code.

"Urban area" means an area of the State which is included in Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or an area within the Pinelands or within the Hackensack Meadowlands District identified as urban by the Access Code Appendix B.

"Urban lot" means a lot with more than 50 percent of its State highway frontage located in an urban area.

16:47-3.5 Unsignalized access points

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

(d) The following provisions apply to shared access:

1. Two or more adjacent lots can be treated as a single lot if the lots share a single driveway. The determination of conformance set forth in (a)4 above, shall then be made for the combination. If the combination is conforming, then no vehicular use limitations shall be applied. If the combination is nonconforming, then the permissible vehicular use limitations set forth in (b) above shall be determined for the combination.

2. The Department will only approve a subdivision which creates a nonconforming lot if all of the following conditions are provided:

- i. The nonconforming lot created shares access with an adjacent lot;
- ii. The shared access is the only direct state highway access for the lots; and

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iii. There is a perpetual condition written into the deed for each lot establishing the shared access.

3. No bonus pursuant to (b)4i above shall apply to nonconforming lots created under (d)2 above. In addition, if a nonconforming lot is subdivided, the permissible vehicular use limitation shall not increase as a result of the subdivision.

(e) The location of unsignalized access points shall be established using the access point control dimensions set forth in N.J.A.C. 16:47-3.8 and safety considerations based on sight distance and other geometric requirements found in the "New Jersey Department of Transportation Design Manual—Roadways". Unsignalized access points shall only be located where the traffic volumes at the access points do not meet the warrants set forth in Part 4C of the "Manual on Uniform Traffic Control Devices for Streets and Highways" (U.S. Department of Transportation, Federal Highway Administration 1988 edition or a superseding edition). Unsignalized access points, whether on conforming or nonconforming lots, shall also be subject to the following requirements:

1.-5. (No change.)

6. No access point shall be located along a striped right or left-turn lane where the lane is at its full width. This prohibition does not apply:

- i. Along two-way left-turn lanes;
- ii. To a right turn in-only access point from a divided highway adjacent to a left-turn lane;
- iii. To access points on the opposite side of a highway within the limits of a right-turn lane; or
- iv. To access to a lot zoned and used for a single-family residential unit.

7. (No change.)

8. A left-turn lane shall be provided for access points on State highway segments with access level 4 when the criteria set forth in "Transportation and Land Development", Figure 5-15 and "Highway Research Record 211", "Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections", incorporated herein by reference, are met. Left-turn access shall be prohibited if the criteria have been met but there is insufficient space for a left-turn lane, unless the Commissioner determines that left-turns can be made safely, considering traffic volumes and sight distances.

9. If the criteria set forth in "Transportation and Land Development", Figure 5-15, and "Highway Research Record 211", "Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections", incorporated herein by reference, have not been met, the Commissioner may decide to permit left-turn access, pursuant to (e)8 above, if the applicant improves the highway shoulder to enable the bypassing of vehicles waiting to turn left into the access point.

10. (No change.)

11. Access points shall be designed to enable vehicles to leave the State highway without restriction, queuing, or hesitation on the highway. Access shall not be approved for parking areas that require backing maneuvers within the State highway right-of-way. All off-street parking areas must include on-site maneuvering areas and aisles to permit vehicles to enter and exit the site without hesitation. An applicant shall not place a gate on Department right of way. If an access point is gated, the gate shall be a minimum of 50 feet from the curbline, and there shall be provisions for U-turns without the need for vehicles to back onto the highway.

12. (No change.)

(f) (No change.)

16:47-3.8 Access point control dimensions for streets and driveways

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

(e) Driveway width (W) shall be as follows:

1. (No change.)

2. Non-residential as follows:

i.-ii. (No change.)

iii. Fire house: maximum allowable 100 feet.

3. (No change.)

(f)-(r) (No change.)

(s) The Department may approve one emergency access on a lot which has no other means to address emergency access. The Depart-

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ment will consider the merits of the requested emergency access on a case-by-case basis based on need, safety, and conformity to this Access Code. In no event shall such a driveway be approved unless all of the following conditions are met:

1. As part of the access application, the lot owner shall provide the Department with an official letter from the head of the emergency service unit which supports the need for an emergency access. The Department may also accept as supporting documentation general requirements such as fire codes;

2. Neither depressed curb nor curb returns shall be provided at the emergency access;

3. The sidewalk area shall not be paved. It shall be strengthened by gravel or pavers over which grass shall be grown. This requirement supersedes the provisions of N.J.A.C. 16:47-3.10(a). If there is existing or proposed sidewalk, the sidewalk across the emergency access shall be strengthened to support emergency vehicles; and

4. The emergency access shall have sufficient length in advance of any gate to allow the anticipated emergency vehicles to temporarily park in the driveway without interfering with highway traffic.

(t) Emergency access shall not be counted as an access point for the purposes of determining the number of access points under N.J.A.C. 16:47-3.5(c).

16:47-3.9 Curb

(a)-(f) (No change.)

(g) Where curb exists or is to be constructed, all driveways are to have depressed curbs, constructed in accordance with Figure 4 below.

1.-5. (No change.)

(h) (No change.)

16:47-3.12 General restrictions

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

(d) No advertising signs or devices shall be erected on or overhanging State highway right-of-way, nor shall any portion thereof be used for the display of merchandise. The Department can only authorize the erection and maintenance of signs on public property that are regulatory, directional, and warning signs allowed by State laws or authorized by the Department in conjunction with alternative access as set forth in N.J.A.C. 16:47-4.3(n)5.

(e)-(n) (No change.)

16:47-3.16 Municipal and county actions

(a) As of September 21, 1992, no lot abutting a State highway shall be subdivided in a manner which would create additional lots abutting that highway unless all the abutting lots created are conforming under the Access Code, restricted from access to the State highway, or established pursuant to N.J.A.C. 16:47-3.5(d)2. Subdivisions are considered to be created on the date of preliminary municipal approval. Direct access from subdivided lots to a State highway shall only be permitted by the Department if the access meets the requirements of conforming lots under this Access Code. Nonconforming lots in existence as of September 21, 1992 shall not be subdivided in a manner which would make them less conforming, except that those nonconforming lots on State highways classified as access level 2 may be subdivided because of the creation of new street intersections.

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

16:47-4.3 Permit process

(a)-(j) (No change.)

(k) Permits expire when the permittee violates any permit conditions. In addition to site-specified conditions imposed by the Department, all future permits shall include the following conditions:

1.-5. (No change.)

6. The permittee shall make a copy of the permit available for review at the construction site;

7. The conditions of the permit are binding upon all successors in interest in the lot; and

8. An access permit expires on the date when another access permit is issued for the same lot.

(l)-(m) (No change.)

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(n) The Department may revoke any permit after the Commissioner determines that reasonable alternative access is available for the lot served by the permit and that elimination of direct access will benefit the safety and efficiency of the State highway. For a lot with existing direct access that is used for purposes more intense than it is zoned for, the existing use shall be used to classify which revocation standards apply. The permit shall not be revoked until the alternative access is completed and available for use. Prior to revocation, the Department shall:

1. Determine that the lot has reasonable access to the general system of streets and highways in the State, other than its State highway access, and that:

i. (No change.)

ii. For a lot zoned or used for industrial purposes, has access onto any improved public street, highway, access road, or assessment across an industrial access road, which is of sufficient design to support necessary truck and employee access as required by the industry; and

iii. For a lot zoned or used for residential or agricultural purposes (except as provided in (n)li(6) above), has access onto any improved public street or highway.

2.-6. (No change.)

(o)-(r) (No change.)

16:47-4.6 Permits and permit fees

(a)-(n) (No change.)

(o) In order to obtain a permit, the applicant shall include a title block on the permit plans. The title block shall be located in the lower right corner of the plans and should be three inches high and seven inches wide and shall include the block, lot, municipality, county, date, and name of the lot owner.

16:47-4.7 Companion Department permits

Access permits do not cover all types of occupancy of the Department's right-of-way. Other permit applications may be required in conjunction with the access application. These applications will become companion applications to the access application. They will be reviewed together. All of the required permits will be issued at the same time. The Department may accept one access application for combining activities for access, drainage, curb, sidewalk, left-turn slots, lot consolidation or subdivision and landscape and issue a single access permit to authorize all of these activities.

16:47-4.9 Minor access permits checklist for single-family residential and residence and business combined

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-22. (No change.)

23. Location of any access easements on the lot;

24. Applicability of the Pinelands Act; and

25. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.10 Minor access permits checklist for other minor traffic generators

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-37. (No change.)

38. Location of any access easements on the lot;

39. Applicability of the Pinelands Act; and

40. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.12 Major access permits checklist

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-44. (No change.)

45. Location of any access easements on the lot;

46. Applicability of the Pinelands Act; and

47. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.14 Major access permits with planning review checklist

- (a) (No change.)
- (b) The following information shall be submitted with the application:
 - 1.-47. (No change.)
 - 48. Applicability of the Pinelands Act;
 - 49. Travel demand management plan (optional); and
 - 50. A copy of the current deed for the lot.
- (c) (No change.)

16:47-4.24 General level of service standards

(a) General LOS standards applicable to traffic from a lot are based on whether the lot is located in an urban or rural area and the LOS of the highway segments at the time the access opens. These LOS standards, and those in N.J.A.C. 16:47-4.25 through 4.29, apply to applications classified as majors with planning review.

- 1. For study locations, applicable to an urban lot, for highway segments anticipated to operate under the no-build condition at:
 - i. LOS A, B, C, D, or E, some deterioration will be allowed, provided that the LOS does not drop below LOS E;
 - ii. LOS F, no deterioration will be allowed.
- 2. For study locations, applicable to a rural lot, for highway segments anticipated to operate under the no-build condition at:
 - i. LOS A, B, C, or D, some deterioration will be allowed, provided that the LOS does not drop below D;
 - ii. LOS E or F, no deterioration will be allowed.

16:47-4.25 Uninterrupted-flow standards

(a) Uninterrupted-flow standards for determining fair-share financial contributions are as follows:

- 1. The general standards listed in N.J.A.C. 16:47-4.24 apply. LOS will be measured by the volume to capacity ratio (V/C) and conform to the values shown in Tables 3-1, 7-1, and 8-1 of the "1985 Highway Capacity Manual," Special Report 209, or superseding issue. Table 3-1 does not define LOS B for limited access highways having a design speed of 50 mph. For these limited access highways, LOS B is defined as a V/C ratio equal to or less than 0.50.
- 2. For study locations, applicable to an urban lot, which are anticipated under the no-build condition to operate at:
 - i. LOS A or B, increase in the uninterrupted-flow V/C ratio to the midpoint of LOS C will be allowed;
 - ii. LOS C, D, or E, increase in the uninterrupted-flow V/C ratio of 0.1 will be allowed, provided that the LOS does not drop below LOS E; and
 - iii. LOS F, no increase in the uninterrupted-flow V/C ratio will be allowed.
- 3. For study locations, applicable to a rural lot, which are anticipated under the no-build condition to operate at:
 - i. LOS A or B, increase in the uninterrupted-flow V/C ratio to the midpoint of C will be allowed;
 - ii. LOS C, or D increase in the uninterrupted-flow V/C ratio of 0.1 will be allowed, provided that the LOS does not drop below LOS D; and
 - iii. LOS E or F, no increase in the uninterrupted-flow V/C ratio will be allowed.

16:47-4.26 Signalized intersection standards

(a) Signalized intersection standards for determining fair-share contributions for State highway approaches are as follows:

- 1. (No change.)
- 2. For all movements at:
 - i. Study locations, applicable to an urban lot, on a State highway approach operating at LOS A, B, C, D, or E under the no-build condition, deterioration by 25 percent of the difference between the no-build condition to the bottom of level of service at the E (60 seconds) will be allowed. If a State highway approach operates under the no-build condition at LOS F, no deterioration will be allowed. Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes;
 - ii. Study locations, applicable to a rural lot, on a State highway approach operating at LOS A, B, C, or D under the no-build condition, deterioration by 25 percent of the difference between the

no-build condition to the level of service at the bottom of LOS D (40 seconds) will be allowed. If the state highway approach operates under the no-build condition at LOS E or F, no deterioration will be allowed. Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes.

3. (No change.)

4. If any no-build movement at a State highway approach:

- i. For study locations, applicable to an urban lot operating at a V/C ratio greater than 1.2, then the build conditions shall not increase the V/C ratio on that movement.
- ii. For study locations, applicable to a rural lot operating at a LOS E or F (delay equal to or greater than 40 seconds), then the build conditions shall not increase the delay on that movement. Also, a no-build V/C ratio exceeding 1.2 shall not be increased.

5.-6. (No change.)

(b) (No change.)

16:47-4.27 Unsignalized intersection standards

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

(c) For a study location at street intersections:

- 1. Applicable to an urban lot which operates under the no-build condition with a no-build LOS of A or B, the reserve capacity may decrease to 250. With a no-build LOS of C, D, or E the reserve capacity may decrease by 50, but shall not drop to less than 0. No-build reserve capacities below 0 shall not be decreased.
- 2. Applicable to a rural lot which operates under the no-build condition 250. With a no-build LOS of C or D, the reserve capacity may decrease by 50, but shall not drop to less than 100. No-build reserve capacities below 100 shall not be decreased.

(d) For site driveways:

- 1. Applicable to an urban lot which operates under the no-build condition with a no-build LOS at A, B, C, D or E, the reserve capacity may decrease to 0. Reserve capacities for a new driveway shall not drop to less than 0. No-build reserve capacities below 0 shall not be decreased.
- 2. Applicable to a rural lot:
 - i. Left turns from the State highway to the driveway which operates under the no-build condition LOS of A or B, the reserve capacity may decrease to 250. No-build reserve capacities below 250 shall not be decreased by more than 50 provided that the reserve capacity does not drop below 100. Reserve capacities for new driveways shall not be less than 100. No-build reserve capacities below 100 shall not be decreased.
 - ii. Right and left turns from the driveway which operates under the no-build condition at LOS A, B, C, D or E, the reserve capacity may decrease to 0. No-build reserve capacities below 0 shall not be decreased. Reserve capacities for new driveways shall not be less than 0.

16:47-4.29 Ramp standards

(a) (No change.)

(b) For a study location, applicable to an urban lot on State highway segments, with:

- 1. A merge or diverge which operates at LOS A, B, C, D or E under the no-build condition, the increase in the merge or diverge flow rate shall not exceed 25 percent of the difference between the no-build flow rate and the flow rate at the bottom of LOS E. The actual merge flow rate shall not exceed 2,000 and the diverge flow rate shall not exceed 2,000. These are the maximum merge and diverge traffic flow rates possible for LOS E.

2. A merge-diverge flow rate under the no-build condition operating at LOS F, shall not be allowed to increase the merge and diverge traffic flow rates.

(c) For a study location, applicable to a rural lot on State highway segments, and with:

- 1. A merge or diverge which operates at LOS A, B, C or D under the no-build condition, the increase in the merge or diverge rate shall not exceed 25 percent of the difference between the no-build flow rate and the flow rate at the bottom of LOS D and the actual

merge rate shall not exceed 1,750 and the diverge flow rate shall not exceed 1,800. These are the maximum merge and diverge traffic rates possible for LOS D.

2. A merge or diverge which operates under the no-build condition at LOS E or F shall not be allowed to increase the merge or diverge traffic flow rate.

16:47-4.33 Highway improvement projects and permits

(a) The Department, either in conjunction with its construction projects, in conjunction with projects advanced by others, or through separate access projects, may construct, revoke or modify highway access to provide access conforming to this chapter. The design may use rules in existence at the time the design was initiated for those projects that have advanced beyond the completion of Phase 2 of the Department's plan development process.

(b) (No change.)

(c) Permits issued by the Department for the actions in (a) and (b) above shall be at no cost to the lot owner.

16:47-4.36 Traffic impact study area

(a) Traffic impact study locations shall be established as follows:

1. (No change.)

2. Those locations exceeding both 100 new half-trips during the critical peak hour(s), determined in accordance with N.J.A.C. 16:47-4.30(d)1i and 10 percent of the anticipated daily site traffic shall be analyzed. Intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of locations which shall be analyzed.

3. When determining whether the new 100 peak hour half trips and the 10 percent of the anticipated daily site traffic in accordance with (a)2 above have been met, the following criteria shall be utilized:

i. For signalized intersections:

(1) The number of existing separate traffic signal phases shall be determined;

(2) For each signal phase, the number of new site-generated peak hour half trips assigned to each traffic movement on each approach shall be determined. When a traffic movement is allotted green time in two or more signal phases, the traffic volume based on the percentage of the available green time for traffic movement shall be proportional;

(3) For each signal phase, the site-generated traffic volumes that conflict shall be added together. In the event that the signal phasing and geometry preclude traffic conflict, the highest site-generated half trips traffic volume for any given signal phase by direction shall be considered the traffic volume in conflict. The higher traffic volume in conflict under each signal phase shall be taken;

(4) The traffic volumes for all traffic signal phases obtained in (a)3i(3) above shall be added. This is the total number of new site-generated peak hour vehicle trip impacts for determining study area locations at the signalized intersection;

(5) If the total number of new site-generated peak hour half trips is greater than or equal to 100, then this location may be a study area location and the above four steps shall be repeated for anticipated daily site-generated traffic. If the number is less than 100, then the signalized intersection is not a study area location; and

(6) If the total number of new site-generated daily half trips at the location is greater than or equal to 10 percent of the new site-

generated daily trips, then this location is a study area location. If the number is less than 10 percent, then the signalized intersection is not a study area location.

ii. For divided highways, at ramps and ramp junctions, unsignalized intersections, uninterrupted flow sections, weaving sections, merges and diverges, the assignment of site-generated traffic volumes within the half trip length shall be determined as follows:

(1) Turning site trips are defined as that component of the site-generated traffic volume, within the half trip length, which will turn on to or off of the highway within 2,000 feet of a *[site]* *highway* access point. Through site trips are defined as that component of the site traffic volume, within the half trip length, which will not turn on to or off of the highway within 2,000 feet of a *[site]* *highway* access point;

(2) Through site trips shall be uniformly distributed among the through lanes on the highway. Assign turning site trips to the right-most through lane;

(3) If the total number of turning site trips plus through site trips in the right-most through lane during the peak hour is greater than or equal to 100, then this location may be a study area location and this test shall be repeated for anticipated daily site-generated traffic. If the number during the peak hour is less than 100, then the location is not a study area location; and

(4) If the total number of turning site-generated daily trips is greater than or equal to 10 percent of the daily trips, then this location is a study area location. If the number is less than 10 percent, then the location is not a study area location.

iii. For all other locations, the general standards in accordance with (a)1 and 2 above shall be applied.

4. Driveways to lots except for the applicant's driveways shall not be considered study area locations.

16:47-4.37 Traffic counts

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

(c) Only traffic counts performed outside the seasonal peak period (in tourist or recreational areas) shall be adjusted to the peak period. Traffic count data taken within 12 months of the application date are required. Classified manual turning-movement counts for one day shall be supported by one week of machine counts. To be acceptable, a manual count must be within 10 percent of the machine count on each approach that day, considering the total for the manual counting period. Weekday peak-hour manual counts shall be factored to agree with the weekday machine count for the highest hour of the week. Saturday manual counts, if within 10 percent of the machine counts, need not be factored but shall encompass the machine peak hour for the day. There shall be a machine count for each approach to a signalized intersection. All count material shall be included in the traffic impact study as an appendix. The Department may require evidence of proper calibration of automatic traffic recorder (ATR) equipment.

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

16:47-5.2 Application requirements for change in classification

(a) (No change.)

(b) The application shall include:

1.-10. (No change.)

11. The planned characteristics of the area through which a highway segment passes;

Recodify existing 11. and 12. as 12. and 13. (No change in text.)

APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST

ACCESS LEVEL (AL)

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

DESIRABLE TYPICAL SECTIONS CODES (DTS) AND RIGHT OF WAY WIDTHS (R.O.W.)
DESCRIPTION

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

FOR CELL NUMBER SEE APPENDIX A

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

¹This designation means that social, environmental, or economic constraints may limit the desirability of State highway segment expansion. If compelling safety needs dictate, the Department will construct, or require a permittee to construct, highway improvements consistent with the design standards.

MILEPOST						5	0.00	0.39	5	2A	12
ROUTE	BEGIN	END	AL	DTS	CELL	5	0.39	0.97	4	2B	12
1	0.60	5.46	1	6A	0	5	0.97	1.80	4	2A	12
1	5.46	5.94	3	6A	1	5	1.80	2.16	4	4E	11
1	5.94	7.20	3	6C	1	5	2.16	3.34	6	2A	18
1	7.20	10.79	3	6A	1	7	0.00	0.53	4	4D	5
1	10.79	11.29	3	6B	1	7	0.53	1.40	3	4A	1
1	11.29	22.40	3	6A	1	7	1.40	1.60	3	4A	4
1	22.40	38.34	3	8A	1	7	1.60	4.16	4	4C	5
1&9	38.34	40.45	3	6A	1	7	4.16	5.29	4	4D	11
1&9	40.45	41.80	3	6A	4	7	5.99	9.17	4	4D	11
1&9	41.80	43.20	3	6A	1	7	9.36	10.10	4	4D	11
1&9	43.20	45.45	3	6A	4	9	3.02	6.50	4	4C	32
1&9	45.45	48.68	1	8C	0	9	6.50	9.63	4	4C	35
1&9	48.68	51.09	1	6C	0	9	9.63	11.00	4	4C	32
1&9	51.09	54.65	1	4B	0	9	11.00	13.00	6	2A	42
1&9	54.65	62.00	3	6A	4	9	13.00	15.08	6	2A	39
1&9	62.00	62.13	3	4A	10	9	15.08	23.50	4	4C	32
1&9	62.13	62.80	4	4A	10	9	23.50	24.00	4	4C	35
1&9	62.80	62.93	3	4A	4	9	24.00	28.30	4	4C	32
1&9	63.93	63.20	3	6C	1	9	28.30	28.73	4	4C	35
1&9	63.20	64.90	3	5A	1	9	28.73	29.30	4	4C	29
1 B	0.00	2.73	3	4A	1	9	29.30	29.80	4	4C	26
1&9 T	0.00	2.29	3	6A	1	9	29.80	30.35	4	4C	32
1&9 T	2.29	4.11	3	6A	4	9	30.35	30.72	4	4C	35
3	0.00	6.00	3	8A	1	9	31.84	32.11	4	4C	29
3	6.00	10.40	1	6C	0	9	32.11	32.63	4	4C	2
3	10.40	10.73	1	4A	1	9	32.63	33.22	4	4C	5
3	10.73	10.84	3	4A	1	9	33.22	36.00	4	4C	2
4	0.00	2.20	3	4B	4	9	36.00	41.40	4	4C	5
4	2.20	10.89	3	6A	1	9	41.40	42.80	4	4C	2
						9	42.80	44.53	4	4C	5

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9	44.53	45.30	4	4C	2	22	4.45	5.12	1	6A	0
9	45.30	45.56	4	4C	35	22	19.22	19.39	3	4A	7
9	45.56	46.18	4	4C	32	22	19.39	20.04	3	4A	7
9	46.18	47.21	4	4C	35	22	20.04	28.60	3	4A	7
9	47.21	48.08	4	4C	32	22	28.60	30.63	3	4A	1
9	48.08	49.04	4	4C	35	22	30.63	30.92	3	4A	1
9	49.04	52.58	4	4C	32	22	30.92	31.50	3	4A	1
9	54.85	55.23	4	4C	32	22	31.50	37.10	3	6A	1
9	55.23	57.30	4	4C	35	22	37.10	41.59	3	5A	1
9	57.30	61.60	4	4C	32	22	41.59	60.53	3	6A	1
9	61.60	62.50	4	4C	35	22 A	2.38	3.47	4	4D	5
9	62.50	63.30	4	4A	34	22 A	3.47	3.56	4	4D	2
9	63.30	64.60	2	4A	31	22 A	3.56	4.05	4	4D	2
9	64.60	68.28	3	4A	34	23	0.00	2.06	4	4D	5
9	68.28	69.34	4	4F	34	23	2.06	3.99	4	4D	2
9	69.34	70.20	4	4F	7	23	3.99	5.05	4	4D	5
9	70.20	70.50	3	4B	7	23	5.05	6.30	1	6A	0
9	70.50	71.08	3	4A	10	23	6.30	17.00	3	6A	1
9	71.08	74.48	3	4A	7	23	17.00	27.20	2	6A	25
9	74.48	75.47	3	4A	10	23	27.20	28.78	4	4C	26
9	75.47	79.15	3	4A	7	23	28.78	41.15	4	4C	29
9	79.15	80.70	3	4A	34	23	41.15	45.20	4	4C	26
9	80.70	81.90	4	4D	35	23	45.20	45.21	4	4C	29
9	81.90	84.22	3	4A	34	23	45.21	45.80	4	4C	29
9	84.22	86.56	3	4A	7	23	45.80	46.65	4	4C	26
9	86.56	88.75	3	4A	1	23	46.65	52.53	4	4C	29
9	88.75	89.95	3	4A	4	24	0.00	7.20	1	4A	0
9	89.95	90.97	3	4A	1	24	7.20	10.59	1	6A	0
9	94.47	100.20	3	4A	1	26	0.00	0.70	4	4E	8
9	100.20	102.96	3	4A	4	26	0.70	2.10	4	4E	11
9	102.96	123.09	3	6A	1	27	0.00	1.49	5	1A	6
9	123.09	136.25	3	8A	1	27	1.49	4.00	5	1A	3
9 W	0.00	0.35	3	4B	4	27	4.00	6.80	4	2B	3
9 W	0.35	0.76	3	4A	4	27	6.80	9.50	4	4F	2
9 W	0.76	1.45	4	4E	5	27	9.50	10.20	4	4F	5
9 W	1.45	11.00	3	4A	1	27	10.20	11.54	4	4F	2
9 W	11.00	11.17	4	2A	3	27	11.54	13.85	4	4F	5
10	0.00	10.63	3	4A	1	27	13.85	15.37	4	4E	5
10	10.63	19.70	3	6A	1	27	16.55	18.23	4	4D	5
10	19.70	23.47	3	4A	1	27	18.23	23.85	4	4F	5
12	0.95	1.01	4	4A	34	27	23.85	27.18	4	4F	2
12	1.01	10.44	2	4A	31	27	27.18	35.79	4	4E	2
12	10.44	11.70	4	4A	34	28	0.00	2.22	4	4D	2
13	0.00	0.43	4	4D	11	28	2.22	3.00	4	4D	5
13	0.43	0.58	4	4B	10	28	3.00	3.70	4	2B	5
15	0.00	2.05	4	4C	5	28	3.70	5.08	4	4D	5
15	2.05	2.29	3	6A	1	28	5.08	6.80	4	4D	2
15	2.29	2.46	3	8B	1	28	6.80	12.47	4	4D	5
15	2.46	3.66	3	6A	1	28	17.50	23.00	5	1A	6
15	3.66	6.35	2	6A	31	28	23.00	26.63	4	4A	4
15	6.35	6.75	3	6A	1	29	3.20	6.20	1	4A	0
15	6.75	14.13	1	6A	0	29	6.20	6.70	3	4A	4
15	14.13	16.70	5	4E	38	29	6.70	9.55	1	4A	0
15	16.70	18.29	5	4E	41	29	9.55	13.80	5	2A	9
15	18.20	19.52	4	4E	32	29	13.80	16.72	5	2A	36
17	0.00	3.35	4	4E	5	29	16.72	18.10	6	2A	42
17	3.35	3.50	4	4E	2	29	18.10	18.60	6	4C	41
17	3.50	26.81	3	6A	1	29	18.60	19.60	5	2A	42
18	5.14	30.85	1	4A	0	29	19.60	20.30	6	4C	41
18	30.85	34.25	3	4A	1	29	20.30	23.36	6	2A	42
18	34.25	36.94	3	6A	1	29	23.36	34.26	6	1A	39
18	36.94	41.75	3	8A	1	30	0.96	1.20	3	6A	4
18	41.75	42.00	3	6A	1	30	1.20	3.15	3	8B	1
18	42.00	43.71	1	6A	1	30	3.15	3.32	3	8B	4
19	0.00	0.70	1	4A	0	30	3.32	4.26	3	8A	1
19	0.70	2.91	1	6A	0	30	4.26	6.40	4	4E	2
20	0.00	0.70	3	6A	4	30	6.40	7.95	3	6A	4
21	0.00	0.91	2	6B	1	30	7.95	12.70	3	4A	1
21	0.91	4.00	4	6B	4	30	12.70	16.30	3	4A	7
21	4.00	4.10	3	6A	1	30	16.30	17.05	3	4B	10
21	4.10	12.45	1	6A	0	30	17.05	18.00	3	4B	7
22	0.30	0.62	1	6B	0	30	18.00	21.60	3	4A	7
22	0.62	1.47	3	6N	4	30	21.60	27.97	2	4A	31
22	1.47	2.00	3	6B	1	30	27.97	32.60	4	4G	2
22	2.00	4.45	3	4A	1	30	32.60	35.10	4	4G	32

ADOPTIONS

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30	35.10	40.35	3	4A	32	35	3.51	3.65	3	6B	28
30	40.35	42.10	4	4A	34	35	3.65	3.77	3	4B	28
30	42.10	46.00	4	4G	32	35	3.77	7.29	3	4A	28
30	46.00	52.09	4	4G	2	35	7.29	9.12	4	4A	28
30	52.09	52.20	4	4G	2	35	9.12	12.76	4	4E	29
30	52.39	52.42	4	4G	2	35	12.76	13.00	4	4E	5
30	52.42	53.45	3	4A	1	35	13.00	14.55	4	4A	4
30	53.45	54.39	2	4A	25	35	14.55	16.04	3	4A	4
30	54.39	55.42	2	6B	25	35	16.04	20.10	4	4F	2
30	55.42	56.75	2	8B	25	35	20.10	20.56	3	4A	1
30	56.75	56.79	3	8B	28	35	20.56	21.05	3	4A	4
30	56.79	57.47	3	8B	4	35	21.05	21.39	4	4D	5
30	57.47	58.23	3	6C	4	35	21.39	22.30	3	6A	4
31	1.15	3.82	4	4C	5	35	22.30	24.61	4	4C	5
31	3.82	4.30	4	4C	2	35	24.61	24.94	3	4A	1
31	4.30	4.70	4	4F	2	35	24.94	29.50	3	6A	1
31	4.70	6.34	3	4A	1	35	29.50	31.20	4	4F	5
31	6.34	7.19	3	4A	28	35	31.20	33.15	4	4C	5
31	7.19	8.08	4	4C	29	35	33.15	34.37	4	4E	5
31	8.08	12.37	4	4C	26	35	34.37	35.80	3	4A	1
31	12.37	16.26	3	4A	25	35	35.80	43.91	3	6A	1
31	21.95	22.10	2	4A	25	35	43.91	44.62	3	6B	1
31	22.10	24.40	3	4A	28	35	44.62	49.52	3	6A	1
31	24.40	30.26	2	4A	25	35	50.79	51.00	1	6A	0
31	30.26	34.24	3	4A	1	35	51.00	52.32	4	4E	5
31	34.24	42.12	2	4A	25	35	52.32	53.35	4	4F	5
31	42.12	43.56	3	4A	28	35	53.35	54.87	4	4C	2
31	43.56	46.12	2	4A	25	35	54.87	58.06	4	4C	5
31	46.12	49.00	3	4A	28	36	0.00	4.00	3	6A	1
32	0.00	1.18	3	4A	7	36	4.00	5.72	4	4D	5
33	0.00	0.20	4	4D	5	36	5.72	6.55	3	4A	4
33	1.46	2.30	4	4D	5	36	6.55	6.71	4	4C	2
33	2.30	5.50	4	4C	5	36	6.71	9.74	4	4C	29
33	5.50	7.86	4	4C	2	36	9.74	11.60	4	4C	2
33	12.39	12.70	3	6A	1	36	11.60	11.80	4	4D	2
33	12.70	13.38	4	2B	1	36	11.80	13.00	3	5A	1
33	13.38	13.68	4	4C	2	36	13.00	19.52	3	4A	1
33	13.68	14.70	4	2C	6	36	19.52	24.18	3	6A	1
33	14.70	14.77	4	4D	2	36	24.18	24.40	3	4A	1
33	14.77	15.01	3	6B	1	37	0.00	1.53	3	4A	7
33	15.01	18.90	3	6A	1	37	1.53	2.90	3	4A	1
33	18.90	24.32	2	6A	25	37	2.90	6.02	3	6A	1
33	24.32	29.30	1	4A	0	37	6.02	6.50	3	4A	1
33	29.35	29.74	4	4E	2	37	6.50	6.75	3	8A	1
33	29.74	29.91	4	4E	26	37	6.75	11.45	3	6A	01
33	29.91	33.04	4	4C	32	37	11.45	12.39	1	6A	0
33	33.04	33.25	2	4A	25	37	12.39	13.42	2	6A	25
33	33.25	36.49	3	4A	1	38	0.00	12.00	3	6A	1
33	36.49	36.65	3	4A	1	38	12.00	15.40	3	4A	1
33	36.65	38.30	3	4A	1	38	15.40	16.80	3	4A	4
33	38.30	40.28	4	4C	2	38	16.80	17.38	4	4A	1
33	40.28	40.63	1	6A	0	38	17.38	18.31	2	4C	25
33	40.63	41.82	4	4C	5	38	18.31	19.23	4	4C	32
33	41.82	42.46	4	4C	11	40	1.85	5.47	2	4A	31
33 B	0.00	0.60	1	2D	7	40	5.47	8.03	4	4C	32
33 B	0.60	2.24	4	4C	8	40	8.03	8.55	4	4C	35
33 B	2.24	2.57	3	6A	4	40	8.55	10.02	4	4C	32
33 B	2.57	3.36	5	4D	17	40	10.02	10.21	4	4D	35
33 B	3.36	3.86	4	4E	11	40	10.21	10.40	4	4D	8
33 B	3.86	4.35	5	4C	14	40	10.40	11.20	4	4D	11
33 B	4.35	5.03	5	4C	17	40	11.20	11.25	4	4D	35
34	0.00	0.33	3	4A	1	40	11.25	11.66	4	4C	35
34	0.33	7.70	3	4A	7	40	11.66	19.54	4	4C	32
34	8.75	12.60	2	4A	31	40	19.54	20.27	4	4C	35
34	12.60	20.44	4	4C	32	40	20.27	25.25	4	4C	32
34	20.44	21.20	4	4C	2	40	25.50	25.73	4	4C	8
34	21.20	22.56	4	4C	5	40	25.73	26.30	4	4C	2
34	22.56	26.79	4	4C	2	40	26.30	26.42	4	4C	2
35	0.00	0.26	4	4B	34	40	26.42	26.60	4	4C	5
35	0.26	0.58	5	2A	36	40	26.60	27.37	4	4C	5
35	0.58	1.44	4	4A	34	40	27.37	29.10	4	4C	2
35	1.44	2.07	4	6A	34	40	29.10	29.27	4	4C	26
35	2.07	2.32	4	6B	34	40	29.27	32.55	4	4C	32
35	2.32	2.48	4	8B	34	40	32.55	33.79	3	4A	1
35	2.48	3.51	1	6A	0	40	33.79	34.40	3	4A	4

TRANSPORTATION

ADOPTIONS

40	34.40	35.21	3	4A	1	46	33.45	34.25	4	4C	2
40	35.21	44.95	2	4A	31	46	34.25	35.10	4	4C	5
40	44.95	45.63	3	4A	34	46	35.10	35.38	4	4C	2
40	45.63	46.25	2	4A	31	46	35.38	36.05	3	4A	1
40	46.25	47.48	4	4C	35	46	36.05	36.58	3	4A	4
40	47.48	53.15	2	4A	31	46	36.58	37.22	3	4A	1
40	53.15	53.85	2	6A	31	46	37.22	42.38	3	4A	4
40	53.85	56.79	3	6A	1	46	42.38	42.50	3	6B	4
40	56.79	59.00	3	4A	1	46	42.50	43.18	3	6A	4
40	59.00	59.72	3	4A	4	46	43.18	61.60	3	6A	1
40	59.72	59.98	4	4F	5	46	61.60	62.26	3	6A	4
40	59.98	60.23	3	4A	4	46	62.26	68.28	3	6A	1
40	60.23	60.37	3	4A	28	46	68.28	69.00	3	8A	1
40	60.37	61.63	4	4F	29	46	69.00	69.18	3	6A	1
40	61.63	61.65	4	4F	26	46	69.18	69.38	4	4F	2
40	61.65	63.38	2	4A	25	46	69.38	70.08	4	4F	5
40	63.38	63.57	3	4A	1	46	70.08	70.40	1	4D	0
40	63.57	63.97	4	4F	5	46	70.40	70.73	3	6A	4
40	63.97	64.07	4	4C	5	46	70.73	71.55	3	8B	1
41	0.00	2.32	4	4D	8	46	71.55	72.15	3	6B	1
41	2.32	3.00	4	4C	8	47	0.66	1.16	4	4A	40
41	3.00	3.86	4	4F	8	47	1.16	3.18	4	4A	37
41	3.86	3.91	4	4F	11	47	3.18	3.73	4	4D	41
41	3.91	4.94	4	4C	5	47	3.73	3.90	4	4D	35
41	10.68	11.95	4	4F	5	47	3.90	4.32	4	4C	35
41	11.95	13.02	4	4F	2	47	4.32	6.10	4	4C	32
41	13.02	13.98	3	5A	1	47	6.10	7.00	4	4C	35
42	0.00	6.40	3	6A	1	47	7.00	17.43	4	4C	32
42	6.40	14.28	1	8A	0	47	17.43	17.63	2	4B	31
44	0.00	1.28	6	2A	51	47	17.63	25.60	4	4C	32
44	1.28	2.60	6	2A	39	47	25.60	26.62	4	4C	35
44	2.60	6.28	5	2A	12	47	26.62	33.12	4	4C	32
44	6.28	8.40	5	2A	9	47	33.12	34.12	4	4C	35
44	8.40	9.10	5	2A	12	47	34.12	34.80	4	4C	32
44	9.10	9.60	5	2A	9	47	34.80	36.08	6	2A	39
45	0.00	0.42	4	4E	29	47	36.08	36.73	5	2A	33
45	0.42	2.32	4	4E	35	47	36.73	38.50	4	2A	9
45	2.32	8.79	4	4E	32	47	38.50	40.80	4	2C	12
45	8.79	9.23	4	4E	34	47	40.80	42.20	4	2C	9
45	9.23	10.14	4	4D	11	47	42.20	45.88	4	4D	8
45	10.14	10.45	4	4E	8	47	45.88	46.75	4	4D	11
45	10.45	16.98	4	4E	32	47	46.75	52.03	4	4D	8
45	16.98	17.32	4	4E	35	47	52.03	52.36	4	4C	11
45	17.32	17.77	4	4D	35	47	52.82	56.00	4	4C	8
45	18.16	18.35	4	4E	35	47	56.00	56.78	4	4C	11
45	18.35	20.24	4	4E	32	47	56.78	58.17	4	4C	8
45	20.24	20.88	4	4E	26	47	58.17	58.29	4	4C	2
45	20.88	20.96	4	4E	29	47	58.29	59.80	4	4C	5
45	29.96	22.13	4	4E	2	47	59.80	61.96	4	4C	2
45	22.13	22.53	4	4E	5	47	61.96	62.29	4	4C	5
45	22.53	22.59	3	4A	4	47	62.66	63.15	4	4D	5
45	22.59	24.82	3	4A	1	47	63.15	64.12	4	4C	2
45	24.82	24.90	3	4A	4	47	64.12	74.00	4	4C	8
45	24.90	26.90	5	4D	5	47	74.00	74.98	4	4C	11
45	26.90	28.51	4	4D	2	48	0.00	0.61	4	4C	11
46	0.00	0.85	1	4A	0	48	0.61	0.66	4	4C	8
46	0.85	6.86	4	2A	27	48	0.66	2.10	4	4C	32
46	6.86	7.45	4	4A	25	48	2.10	4.26	6	2A	39
46	7.45	9.63	4	4C	26	49	0.00	0.70	4	4C	2
46	9.63	10.05	4	4C	29	49	0.70	3.00	4	4C	5
46	10.05	10.12	4	4C	35	49	3.00	6.29	4	4C	2
46	10.12	15.82	4	4C	32	49	6.29	8.30	4	4C	32
46	15.82	20.63	4	4C	35	49	8.30	10.10	4	4C	29
46	20.63	21.82	4	4D	29	49	10.10	11.00	4	4C	35
46	21.82	22.40	4	4B	34	49	11.00	12.30	4	4C	32
46	22.40	22.48	4	4A	34	49	12.30	12.88	4	4C	35
46	22.48	24.58	4	4A	31	49	12.88	21.10	4	4C	32
46	24.58	25.50	2	4A	31	49	21.10	21.62	4	4D	35
46	25.50	27.12	2	4A	25	49	21.62	22.10	4	4D	32
46	27.12	28.42	3	4A	28	49	22.10	23.13	4	4C	32
46	28.42	29.60	2	4A	25	49	23.13	24.50	4	4C	2
46	29.60	30.43	3	4A	28	49	24.50	26.25	4	4C	5
46	30.43	31.52	2	4A	25	49	26.25	26.50	3	4B	4
46	31.52	33.30	2	4A	1	49	26.50	26.60	4	4C	5
46	33.30	33.45	3	4A	1	49	26.60	27.20	4	4C	2

ADOPTIONS

49	27.20	29.84	4	4C	8
49	29.84	30.80	4	4C	32
49	30.80	31.45	4	4C	26
49	31.45	35.03	4	4C	2
49	35.03	36.10	4	4C	5
49	36.10	37.37	4	4D	5
49	37.37	38.10	4	4D	2
49	38.10	38.37	4	4C	2
49	38.87	40.80	4	4C	26
49	40.80	53.78	4	4C	32
50	0.00	0.24	3	4B	34
50	0.24	6.18	4	4C	32
50	6.18	7.03	4	4C	35
50	7.03	7.15	4	4C	32
50	7.15	18.56	4	4C	32
50	19.18	19.67	4	4C	35
50	19.67	20.91	4	4C	32
50	20.91	21.20	1	4A	0
50	21.20	23.50	4	4C	32
50	23.50	24.20	2	4A	31
50	24.20	25.53	4	4C	32
50	25.53	26.08	4	4C	35
52	0.00	1.96	4	4E	29
52	1.96	2.74	4	4E	5
53	0.00	1.55	4	2B	8
53	1.55	2.35	4	4C	8
53	2.35	3.32	4	4C	11
53	3.32	4.66	4	4E	11
54	0.00	1.11	4	4C	2
54	1.11	8.20	4	4C	32
54	8.20	8.46	4	4C	2
54	8.46	9.12	3	4A	1
54	9.12	9.98	4	4C	2
54	9.98	11.88	4	4C	5
55 F	20.00	60.53	1	4A	0
56	0.00	0.17	4	4D	8
56	0.17	1.60	5	4D	14
56	1.60	2.00	5	4D	38
56	2.00	7.50	6	2A	39
56	7.50	7.84	3	4B	7
56	7.84	9.23	4	4D	11
57	0.00	0.55	4	4C	26
57	0.55	2.20	4	4C	32
57	2.20	2.80	4	4C	35
57	2.80	4.38	4	4C	32
57	4.38	5.28	4	4C	35
57	5.28	6.40	4	4C	32
57	6.40	9.10	4	4C	35
57	9.10	9.78	4	2B	33
57	9.78	9.81	4	2B	27
57	9.81	11.60	4	2B	30
57	11.60	11.80	4	2B	36
57	11.80	11.90	4	2B	33
57	11.90	14.44	4	2C	32
57	14.44	15.23	4	2B	33
57	15.23	18.60	4	4C	32
57	18.60	19.55	4	4C	35
57	19.55	20.53	4	4C	32
57	20.53	21.10	4	4D	29
59	0.00	0.15	4	4B	22
63	0.00	0.06	3	4A	4
63	0.06	3.00	4	2B	6
63	3.00	3.09	3	4A	4
64	0.00	0.33	3	4B	4
66	0.00	0.40	3	4A	10
66	0.40	3.62	3	4A	7
67	0.00	1.86	4	4E	11
68	0.00	0.60	2	4A	1
68	0.60	1.07	3	4A	1
68	1.07	7.66	2	4A	31
68	7.66	8.02	3	4A	7
70	0.00	8.50	3	6A	1
70	8.50	14.83	3	4A	1
70	14.83	20.10	2	4A	31
70	20.10	26.10	4	4C	32

TRANSPORTATION

70	26.10	26.50	2	4C	31
70	26.50	43.25	4	4C	32
70	43.25	43.45	4	4C	35
70	43.45	44.80	3	4A	34
70	44.80	48.58	3	4A	7
70	48.58	59.84	3	4A	1
71	0.00	0.61	6	2A	18
71	0.61	7.40	5	4D	17
71	7.40	9.40	5	4E	17
71	9.40	10.48	5	4D	17
71	10.48	11.64	4	4A	16
71	11.64	12.53	4	2B	17
71	12.53	13.77	4	2C	17
71	13.77	15.71	4	4D	11
71	15.71	16.76	4	4C	11
72	0.00	5.96	4	4E	32
72	5.96	11.47	4	4C	32
72	11.47	13.70	4	4E	32
72	13.70	18.06	2	4A	31
72	18.06	26.32	3	4A	7
72	26.32	27.18	2	4A	31
72	27.18	27.40	2	5A	31
72	27.40	27.55	2	6A	31
72	27.55	28.18	2	4A	31
72	28.18	28.72	3	5A	34
73	6.00	10.89	2	6A	31
73	10.89	12.70	3	6A	1
73	12.70	14.46	2	6A	31
73	14.46	32.00	3	6A	1
73	32.00	32.35	3	8A	1
73	32.35	34.10	3	6A	1
76	0.00	1.85	1	1A	0
77	0.00	2.19	4	4D	5
77	2.70	3.90	4	2A	3
77	3.90	5.06	5	1A	9
77	5.06	7.18	5	2A	33
77	7.18	8.05	5	2A	36
77	9.81	22.18	5	2A	33
78	4.16	17.85	1	6A	0
78	17.85	19.22	1	8A	0
78	19.22	29.85	1	6A	0
78	29.85	33.13	1	8A	0
78	33.13	48.54	1	6A	0
78	48.54	58.50	1	1A	0
79	0.00	0.35	4	4F	11
79	0.35	0.57	4	2B	12
79	0.57	1.75	4	2C	18
79	1.75	2.50	5	4D	17
79	2.50	3.90	5	4D	14
79	3.90	4.81	5	4C	14
79	4.81	5.08	4	4A	13
79	5.08	5.33	4	4A	7
79	5.33	5.38	4	4A	10
79	5.38	5.79	4	4C	11
79	5.79	9.38	4	4C	8
79	9.38	10.18	4	4C	11
79	10.18	10.95	4	4C	8
79	10.95	11.38	4	4C	11
79	11.38	12.13	4	4D	11
80	0.50	42.10	1	8A	0
80	42.10	42.90	1	8C	0
80	42.90	43.90	1	8A	0
80	43.90	46.13	1	1A	0
80	46.13	62.50	1	8A	0
80	62.50	63.35	1	1A	0
81	0.51	1.18	3	5A	1
82	0.00	2.65	4	4E	5
82	2.65	3.35	4	4E	2
82	3.35	4.25	4	4E	5
82	4.25	4.93	4	4E	2
83	0.00	0.24	2	4B	31
83	0.24	3.84	2	4A	31
87	0.00	0.57	3	8A	7
87	0.57	0.80	3	6A	7
87	0.80	1.72	3	4A	7

TRANSPORTATION

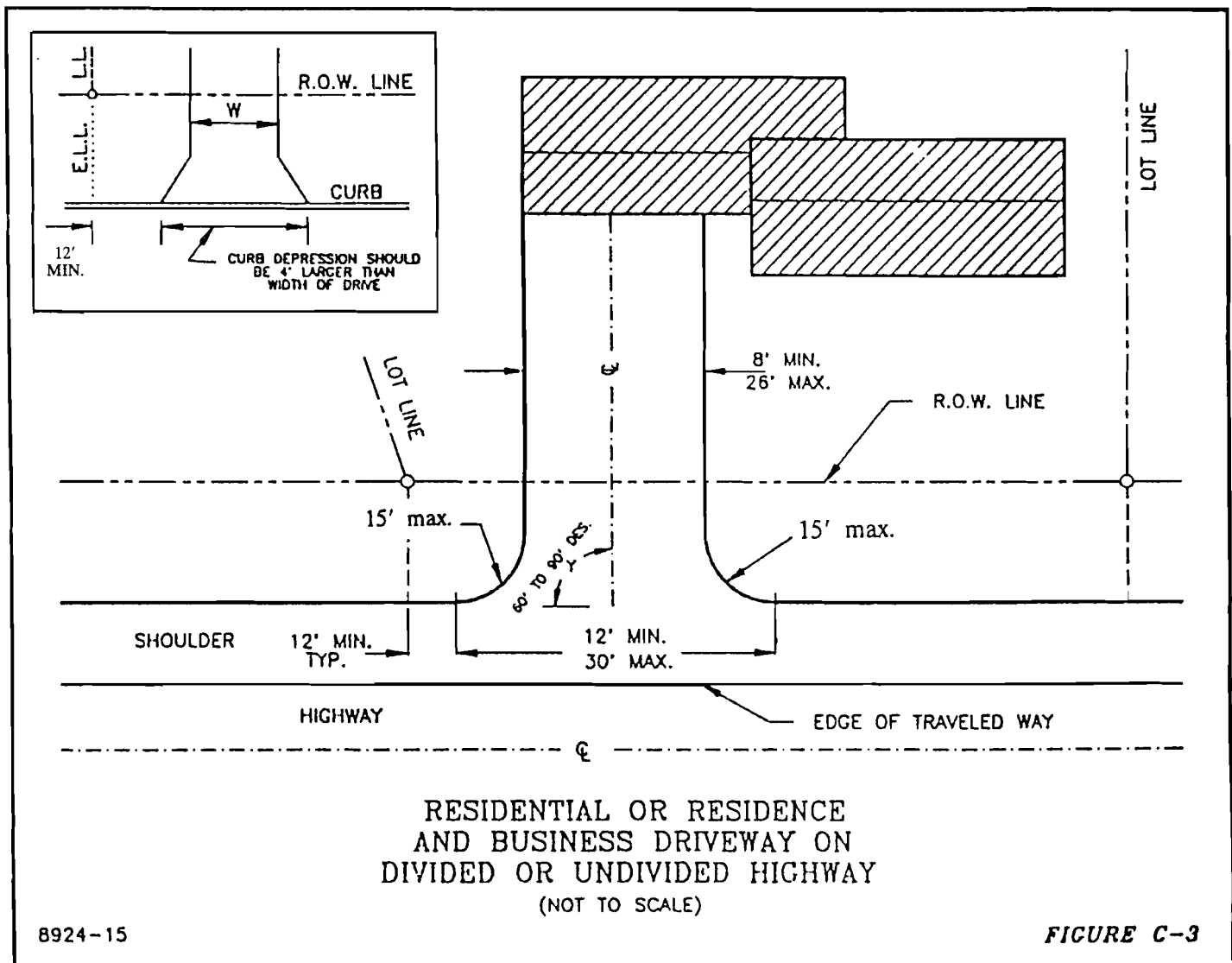
ADOPTIONS

88	0.00	0.30	4	2B	12	152	0.00	0.17	4	4D	5
88	0.30	5.21	4	2C	12	152	0.17	1.58	4	4D	2
88	5.21	8.60	4	2C	6	152	1.58	1.72	4	4D	5
88	8.60	8.96	5	4D	5	152	1.72	3.16	4	4D	2
88	8.96	9.64	4	2C	6	154	0.00	0.30	4	4C	11
88	9.64	10.02	3	4B	4	154	0.30	1.70	4	4C	8
90	2.35	3.20	3	8A	1	156	0.00	1.21	5	2A	12
91	0.00	1.30	4	4C	8	157	0.00	0.43	5	2A	6
91	1.30	2.31	4	4C	11	157	0.43	0.91	4	2A	3
93	0.00	3.52	5	2A	12	159	0.00	0.45	3	4A	1
94	0.20	0.72	4	4D	35	159	0.45	0.56	3	4A	4
94	0.72	2.55	4	4C	32	159	0.56	1.36	4	4E	11
94	2.55	3.36	4	4C	35	161	0.00	1.10	4	2B	12
94	3.36	3.91	4	4C	32	162	0.00	0.73	6	2A	39
94	3.91	9.33	4	4C	35	163	0.00	0.33	6	2A	51
94	9.33	11.82	4	4C	32	165	0.00	0.10	4	4A	40
94	11.82	12.60	4	4D	35	165	0.10	0.26	5	4D	41
94	12.60	14.80	4	4C	35	166	0.00	1.86	4	2C	6
94	14.80	21.25	4	4C	32	166	1.86	1.98	4	4D	5
94	21.35	21.55	4	4D	2	166	1.98	2.23	4	2C	6
94	21.55	22.51	4	4D	5	166	2.23	3.75	4	2C	3
94	24.89	27.68	4	4C	35	167	0.00	0.62	6	2A	54
94	27.95	32.90	4	4C	35	167	0.95	1.49	6	2A	51
94	32.90	35.15	4	4C	32	167	1.52	1.66	6	2A	51
94	35.15	45.76	4	4C	35	167	1.67	2.78	6	2A	51
95	0.00	8.77	1	6A	0	168	0.00	0.78	3	4A	1
109	1.37	1.95	4	4C	35	168	0.78	1.20	4	4C	2
109	1.95	2.50	4	4A	34	168	1.20	2.65	4	2C	6
109	2.50	3.06	4	4C	35	168	2.65	4.73	4	2C	3
120	0.00	0.95	2	6A	*[25]* *1*	168	4.73	7.38	4	2C	6
120	0.95	2.65	3	6A	*[28]* *4*	168	7.38	8.72	4	4C	5
124	0.00	0.40	5	4E	5	168	8.72	9.79	3	4A	1
124	0.40	1.50	5	4D	5	168	9.79	9.92	3	4B	4
124	1.50	2.80	4	4D	11	168	9.92	10.81	4	4C	5
124	2.80	4.50	5	2A	12	169	0.85	2.25	3	4A	1
124	4.50	5.90	5	2A	6	169	2.25	4.65	3	4A	4
124	5.90	7.45	4	4D	5	169	4.65	5.73	3	4A	1
124	7.45	9.00	4	4A	19	171	0.00	0.08	2	4A	10
124	9.00	10.03	4	4A	22	171	0.08	1.00	4	4F	23
124	10.03	11.70	4	4E	5	172	0.00	0.35	6	4E	23
124	11.70	12.58	3	4A	4	172	0.35	0.81	3	4A	10
124	12.58	14.84	4	4E	5	173	0.00	0.25	5	2A	33
129	0.00	0.29	4	2A	3	173	0.25	0.35	4	2B	33
129	0.29	2.41	1	4A	0	173	0.35	3.19	4	2B	39
130	0.00	0.65	4	4D	11	173	3.19	4.20	4	2B	45
130	0.65	2.25	4	4D	8	173	4.20	4.50	4	2B	48
130	2.25	4.15	4	4D	11	173	4.50	12.07	4	2B	45
130	4.15	5.28	4	4D	8	173	12.43	12.80	4	2B	45
130	5.28	5.88	6	2A	15	173	12.80	13.50	4	2B	48
130	5.88	8.90	6	2A	39	173	13.50	14.62	4	2B	54
130	8.90	11.70	4	4A	13	175	0.27	1.58	6	2A	21
130	11.70	14.30	1	4A	0	175	1.58	2.15	6	2A	24
130	23.53	25.43	3	4A	1	175	2.15	2.73	6	2A	21
130	25.43	29.40	3	6B	1	175	2.73	2.90	4	4A	19
130	30.34	37.10	3	6B	1	179	0.12	0.37	6	2A	42
130	37.10	45.90	3	6A	1	179	0.37	1.13	5	4D	41
130	45.90	46.65	4	8B	4	179	1.13	1.45	5	4D	38
130	46.65	55.43	3	6A	1	179	1.45	6.13	6	2A	39
130	55.43	55.77	3	6A	4	179	6.13	7.46	6	2A	42
130	55.77	56.43	3	8B	4	181	0.00	1.65	4	4C	35
130	56.43	70.85	3	4A	1	181	1.65	4.40	5	4C	41
130	70.85	80.38	3	4A	7	181	4.40	5.98	4	4C	11
130	80.38	83.37	3	4A	1	181	5.98	7.43	5	4C	38
138	0.00	3.52	3	4A	1	182	0.00	0.98	4	4D	29
139	0.00	1.45	3	8B	1	183	0.00	0.20	2	4B	31
140	0.00	0.48	6	2A	18	183	0.20	0.43	2	4A	25
140	0.48	0.95	5	2A	12	183	0.43	0.58	3	4A	28
143	0.00	1.00	6	2A	48	183	0.58	2.12	5	2B	30
143	1.00	1.93	6	2A	45	184	0.00	0.32	3	6A	10
143	1.93	2.27	6	2A	48	184	0.32	1.37	3	4A	10
143	2.27	2.35	6	2A	45	185	0.00	1.42	3	4A	4
147	0.00	0.80	4	4D	35	187	0.00	0.47	4	4E	8
147	0.80	1.63	3	4D	32	195	0.00	34.17	1	4A	0
147	1.63	3.30	4	4D	35	202	0.37	19.04	2	4A	25
147	3.30	4.20	4	4D	41	202	19.04	26.25	3	4A	1

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202	26.25	29.00	4	4F	2	206	62.29	68.90	3	4A	1
202	29.00	29.55	3	4A	1	206	68.90	71.25	3	6A	1
202	29.55	29.69	3	4A	4	206	78.32	79.25	2	4A	25
202	29.69	30.02	3	4B	4	206	79.25	89.49	2	4A	31
202	30.02	31.12	3	4A	1	206	89.49	95.61	2	4A	25
202	31.12	31.50	2	4A	25	206	97.01	97.51	2	4A	25
202	31.50	31.80	3	4A	28	206	97.51	97.80	2	4A	31
202	31.80	32.17	4	2C	35	206	97.80	98.40	2	4A	25
202	32.17	32.56	4	2C	35	206	98.40	99.23	3	4A	28
202	32.56	32.77	5	2A	36	206	99.23	102.72	2	4A	31
202	32.77	32.95	6	2A	42	206	102.72	103.35	4	4A	34
202	32.95	34.10	6	2A	39	206	103.35	104.50	4	2C	35
202	34.10	35.80	5	2A	33	206	104.50	107.18	2	4A	31
202	35.80	36.20	5	2A	9	206	107.18	107.48	3	4A	34
202	36.20	36.40	5	2A	12	206	107.48	108.18	3	4A	1
202	36.40	37.85	4	2B	12	206	108.18	109.93	4	2B	6
202	37.85	39.06	4	4C	8	206	109.93	111.10	4	4C	35
202	39.06	39.30	5	2A	9	206	111.10	114.10	2	4A	31
202	39.30	41.03	6	2A	42	206	114.10	116.28	3	4A	34
202	41.03	42.31	6	2A	39	206	116.28	128.20	2	4A	31
202	42.31	42.67	5	2A	9	206	128.20	129.22	3	4A	34
202	42.67	43.90	5	2A	12	208	0.00	11.02	3	6A	1
202	43.90	45.30	5	4E	11	278	0.00	0.90	1	6A	0
202	45.30	45.70	5	4C	11	280	0.00	7.66	1	6A	0
202	45.70	46.31	4	4E	11	280	7.66	12.50	1	8A	0
202	46.31	47.00	4	4D	11	280	12.50	13.28	1	1A	0
202	50.03	50.70	3	4B	1	280	13.28	16.80	1	6A	0
202	51.43	51.87	4	2C	5	284	0.00	0.63	5	2A	36
202	62.99	64.32	3	6A	1	284	0.63	7.03	5	2A	33
202	65.32	65.68	5	2A	6	287	0.00	0.73	1	1A	0
202	72.44	72.66	4	4D	5	287	0.73	17.82	1	8A	0
206	0.00	0.10	3	4A	1	287	17.82	21.20	1	1A	0
206	0.10	2.33	4	4F	2	287	21.20	42.10	1	8A	0
206	2.33	6.27	4	4C	2	287	42.10	60.00	1	6A	0
206	6.27	9.00	4	4C	26	287	60.00	67.54	1	4A	0
206	9.00	23.30	4	4C	32	295	0.95	26.40	1	6A	0
206	23.30	23.70	4	4F	32	295	26.40	27.00	1	8A	0
206	23.70	30.36	4	4C	32	295	27.00	42.90	1	6A	0
206	30.36	31.28	2	4A	31	295	42.90	44.78	1	8A	0
206	31.28	33.26	4	4C	32	295	44.78	68.06	1	6A	0
206	33.26	33.40	4	4C	8	322	2.24	6.30	2	4A	31
206	33.40	34.00	3	4A	7	322	6.30	10.85	4	4D	39
206	34.00	35.50	3	4A	1	322	10.85	11.53	4	4D	35
206	35.50	35.61	3	4A	4	322	11.53	14.41	4	4C	32
206	36.27	38.49	3	4A	1	322	14.41	16.10	4	4C	35
206	38.49	38.90	3	6A	1	322	16.10	16.75	4	4D	2
206	38.90	39.00	3	6A	4	322	16.75	18.55	4	4D	5
206	39.00	40.73	3	4A	4	322	18.55	19.50	4	4D	2
206	44.50	45.01	6	4A	23	322	19.50	23.05	4	4C	11
206	45.01	46.62	4	4C	5	322	23.05	24.10	4	4C	2
206	46.62	47.90	4	4C	29	322	24.10	24.50	4	4C	5
206	47.90	48.50	1	2A	0	322	24.50	26.85	4	4C	2
206	48.50	49.80	5	1A	30	322	26.85	32.90	4	4C	32
206	59.80	52.38	4	2C	29	322	32.90	48.70	2	4A	31
206	52.38	52.90	4	2C	2	322	48.70	50.10	2	6A	31
206	52.90	54.25	4	1A	3	324	0.90	1.51	6	2A	51
206	54.25	54.50	4	1A	5	439	0.00	3.94	4	4E	5
206	54.50	55.77	4	2C	5	440	0.00	3.10	1	6A	0
206	55.77	55.80	4	2C	2	440	3.10	3.98	1	6C	0
206	55.80	57.20	4	2C	35	440	17.60	23.28	3	6A	1
206	57.20	57.38	4	2B	11	495	0.80	1.97	1	6A	0
206	57.38	57.90	4	2B	8	524	0.45	0.90	4	4B	13
206	57.90	58.24	3	4A	1	676	0.00	3.79	1	6A	0
206	58.24	62.69	2	4A	25						



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FIGURE C-3

APPENDIX E ACCESS APPLICATION THRESHOLDS

Category	Land Use Code	Use	Unit	For Major 500 Trips Per Day	For Major With Planning 200 Peak Hour Trips
...	...				
Food	833	Fast Food			
		Restaurant w/o	1,000 sf	0.6	1.9
	834	w/drive through	1,000 sf	0.7	2.9

(a)

NEW JERSEY TRANSIT CORPORATION Use or Occupancy of NJ TRANSIT-Owned Property Readoption with Amendments: N.J.A.C. 16:77

Proposed: December 19, 1994 at 26 N.J.R. 4972(a).
 Adopted: January 27, 1995 by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
 Filed: January 27, 1995 as R.1995 d.111, 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. 27:25-5(e), (h), (k) and 27:26-6(b).

(CITE 27 N.J.R. 750)

Effective Date: January 27, 1995, Readoption;
 February 21, 1995, Amendments.
 Expiration Date: January 27, 2000.

Summary of Public Comments and Agency Responses:

The Hackensack Water Company (Hackensack) and Jersey Central Power and Light Company's (JCP&L) comments and NJ TRANSIT responses are set forth below:

COMMENT: At N.J.A.C. 16:77-1.3(a)1, Hackensack objects to the requirement that a permittee indemnify NJ TRANSIT against the negligent acts of NJ TRANSIT or its employees.

RESPONSE: This provision has been in NJ TRANSIT's use and occupancy rules and permits since August 20, 1979. NJ TRANSIT feels that this requirement is reasonable because there would be no chance of any claim being filed against NJ TRANSIT were it not for the use of NJ TRANSIT property by the permittee. For this reason, NJ TRANSIT sees no reason to change the proposed indemnification provision of the rule.

COMMENT: At N.J.A.C. 16:77-1.3(c), (e) and (j), Hackensack suggested that NJ TRANSIT agree to a provision that would compel NJ TRANSIT to acknowledge notice within a set period of time and if no notice is given, NJ TRANSIT would be deemed to have acknowledged notice.

RESPONSE: When a permit is issued, the permittee has one year to start work, but they can't start work without giving NJ TRANSIT seven days notice. NJ TRANSIT must have notice before work actually begins on its railroad. In most cases, NJ TRANSIT must man the site and take appropriate actions to ensure continued safe operations. There-

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fore, it is not appropriate to incorporate Hackensack's suggested amendment. Language governing emergency situations is already set forth in the actual permit and is adequate to deal with Hackensack's concerns.

COMMENT: N.J.A.C. 16:77-1.3(k) states that a permittee may be required to provide NJ TRANSIT with a certified check in an amount sufficient to guarantee that the permittee restore any disturbed area. There is no provision for return of the check if, in fact, the area is properly restored.

RESPONSE: NJ TRANSIT agrees that this provision should be amended and is making the change on adoption to include the following language at subsection (k):

"When NJ TRANSIT deems it necessary to demand a certified check pursuant to this subsection, NJ TRANSIT will return to the permittee any unused portion of the check upon the completion of the approved corrective measures. The check will be reduced by costs incurred by NJ TRANSIT including, but not limited to, administrative fees, personnel, equipment and damages."

COMMENT: At N.J.A.C. 16:77-1.3(i), (k) and (l), Hackensack claims that they should only have to pay NJ TRANSIT for its "reasonable" costs during the use, occupancy or restoration of NJ TRANSIT property.

RESPONSE: While NJ TRANSIT can understand Hackensack's concern, the insertion of "reasonable" only raises more questions about what is reasonable under what circumstances. Costs NJ TRANSIT must incur on its railroad may not be deemed reasonable by any other business. Therefore, Hackensack's "reasonable" proposed amendment should not be incorporated.

COMMENT: In general, JCP&L claims that NJ TRANSIT's proposed increases are too high and should not be based on the cost-of-living index.

RESPONSE: NJ TRANSIT, since 1979, has based its increases for this program on the cost-of-living index and sees no reason to change to a much more complicated index.

COMMENT: At N.J.A.C. 16:77-1.8, JCP&L complains that the price for conversion to permanent occupancy permits of 16 times the annual fee is excessive.

RESPONSE: NJ TRANSIT disagrees based on negotiations with one of its largest customers who agreed to 16 times. In addition, the current rules allow for 20 times the annual fee, so NJ TRANSIT's proposal is actually a reduction.

COMMENT: If the intent of NJ TRANSIT is to reduce its administrative costs and overhead, there is no reason to place a maximum of \$300.00 on the agreements eligible for conversion to the permanent occupancy permit. Many of the routine aerial crossings referenced in the permit schedule have annual fees up to \$880.00, for example.

RESPONSE: At N.J.A.C. 16:77-1.8, NJ TRANSIT is willing to allow its largest customers to buy out small occupancy permits in order to save administrative and overhead costs. However, NJ TRANSIT is not willing to include, as JCP&L has suggested, permits with higher fees that provide an on-going revenue stream.

COMMENT: At N.J.A.C. 16:77-1.8, JCP&L has suggested that some flexibility be allowed for "minor" changes to existing facilities where a permanent occupancy agreement is in place.

RESPONSE: While NJ TRANSIT has no objections to flexibility, "minor" cannot be defined, and, therefore, this concept should not be incorporated into the rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are governed by State statute and not subject to any Federal regulations or standards.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:77.

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

16:77-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

...
 "Longitudinal occupation" means any occupation of NJ TRANSIT-owned property other than a direct crossing over or under railroad tracks and right-of-way as defined under N.J.A.C. 16:77-1.7.
 ...

"Messenger wires" means any support wire which carries no current, signal or communication transmission and has a specific purpose to assist in installing, servicing and replacing overhead occupancies. Messenger wires shall be considered as part of the wires or cables supported and no charge shall be assessed therefor.

"Municipality" means a local governing body such as a borough, township, city or village.

"NJ TRANSIT-owned property" means railroad property in the State of New Jersey, New York and Pennsylvania owned and/or operated by NJ TRANSIT regardless of the operating agent or active status of the railroad.

...
 "Transverse occupation" means that part of any overhead or under-grade line which crosses a track or tracks or any NJ TRANSIT-owned right-of-way.
 ...

16:77-1.2 Permit applications

(a) No person may use or occupy NJ TRANSIT-owned property without obtaining a permit from NJ TRANSIT. All requests for permits shall be submitted in writing and addressed to:

NJ TRANSIT
 Real Estate Division
 Manager, Property Management—Permits
 One Penn Plaza East
 Newark, New Jersey 07105-2246

(b)-(e) (No change.)

(f) If at any time the permittee seeks to modify its use or occupancy of the NJ TRANSIT-owned property, the permittee shall be required to apply for a new permit according to the provisions of this section.

(g) (No change.)

16:77-1.3 Permit conditions

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

(h) NJ TRANSIT assumes no obligations whatsoever in connection with the use, work, and/or occupancy by the permittee and is not obligated to make any repairs to the property or furnish people, equipment or materials in connection with use, work and/or occupancy by the permittee. The use, work, and/or occupancy provided for by the permit shall be performed at no cost to the involved jurisdiction.

(i)-(j) (No change.)

(k) If it is deemed necessary by NJ TRANSIT, the permittee shall be required to submit a certified check in an amount sufficient to guarantee that, should the permittee fail to restore the disturbed area in a safe and proper manner, there will be enough money to pay for the cost of any work performed by the involved jurisdiction in consequence of that failure. This guarantee shall not operate to waive the permittee's complete responsibility with regard to restoring the affected area. ***When NJ TRANSIT deems it necessary to demand a certified check pursuant to this subsection, NJ TRANSIT will return to the permittee any unused portion of the check upon the completion of the approved corrective measures. The check will be reduced by costs incurred by NJ TRANSIT including, but not limited to, administrative fees, personnel, equipment and damages.***

(l)-(n) (No change.)

16:77-1.4 Administrative fees

(a) Administrative fees will be charged as follows:

1. Wire and cable crossings and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. All transverse crossings not exceeding 300 volts to one individual service \$145.00
 - ii. All other transverse crossings \$295.00
 - iii. All longitudinal occupations and any other agreement not already identified in this section, regardless of voltage \$600.00
2. Pipe and sewer crossings, and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. Pipe not exceeding three inches inside diameter to one individual service \$145.00
 - ii. All other transverse crossings \$295.00

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iii. Any longitudinal occupation requiring more than one field excursion by NJ TRANSIT personnel shall be charged an additional \$100.00 for every outing beyond the single outing allotted each application.

3. All surface drainage not contained within a pipe and occupying NJ TRANSIT property \$590.00

4. Any application for any type of permit by a municipality \$145.00

5. Additional fees:

i.-ii. (No change in text.)

16:77-1.5 Permit fees: general conditions

(a) Long term use or occupancy permit fees are subject to the following conditions:

1. (No change.)

2. The minimum annual permit fee under any application shall be \$145.00.

3. Should the facility be terminated at any time less than the estimated years of occupancy, the fees collected are not subject to a refund.

4. NJ TRANSIT reserves the right to consider additional fees for crossings in excess of 200 feet. When increased preparation costs are incurred, the increases will be passed on to the permittee.

5. (No change in text.)

6. Fees are based on a minimum right-of-way width of 30 feet with the annual rate applicable up to a 200 foot width. For all crossings in excess of 200 linear feet, a per foot charge will be assessed, for each foot in excess of 200 linear feet. The per foot rate will be established through the use of the applicable 30 foot rate. Any facility crossing exceeding 400 linear feet will be assessed an annual fee as described above for the first 400 linear feet. The remainder (that which is in excess of the first 400 linear feet) will be calculated as if it were a longitudinal facility. Example: the annual fee for a 620 linear foot transverse occupancy, would be calculated using the following formula:

First 200 LF: x=base rate

Second 200 LF: y=(Base crossing fee ÷ 30)
Multiplied by 200

Remaining LF: z=longitudinal fee ÷ 4

Add all components (x+y+z) to establish the annual fee.

7. (No change in text.)

8. Should the facility be modified during the term of the permit, during the processing of a new permit, or there is a supplement to an existing permit, the associated increase in fees will be charged. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

Recodify existing 10.-11. as 9.-10. (No change in text.)

(b) An annual occupancy fee for attachments will be charged as follows when higher rates are not fixed:

1. Attachments of aerial wires and cables to poles or other structures of NJ TRANSIT-owned facilities used in wire line construction:

i. Up to and including 32,500 volts for each attachment to NJ TRANSIT-owned cross-arms or brackets \$8.00

ii. Up to and including 32,500 volts for each attachment to (licensee's) permittee's cross-arms or brackets when those brackets are attached to a NJ TRANSIT-owned facility .. \$6.00

iii. Wires over 32,500 volts attached to the NJ TRANSIT-owned cross-arms or brackets \$14.00 per attachment

iv. Wires over 32,500 volts and attached to (licensee's) permittee's cross-arms or brackets when those brackets are attached to NJ TRANSIT-owned facilities \$12.00 per attachment

2. Attachments of aerial wires and cables to buildings or other structures:

i. Each wire or cable attached to railroad owned bridges or structures, including railroad or highway bridges

\$14.00 per attachment

3. Attachments of cable terminals to poles, buildings, or structures, including highway bridges and railroad bridges owned by NJ TRANSIT:

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i. Each cable terminal, loading coil, transformer, or like device is subject to special consideration in each case, but not less than \$53.00

4. Pipelines carried along NJ TRANSIT-owned property on bridges or other supports are subject to special consideration in each case if permitted by current New Jersey Department of Transportation specifications.

5. (No change.)

(c) An annual occupancy fee for guy wire crossings and overhanging cross-arms and power wires and cables of transmission lines outside of NJ TRANSIT-owned right-of-way will be calculated as follows:

1. Each guy wire crossing NJ TRANSIT-owned property but not anchored thereon \$8.00

2. Cross-arms overhanging NJ TRANSIT-owned property from poles located outside thereof, one or more cross-arms on any pole \$6.00

3. (No change.)

(d) (No change in text.)

(e) The minimum permit fee under any agreement where a miscellaneous use of occupancy is involved, not previously defined, shall be \$145.00. The applicant may be subject to possible charges which may result from expenses incurred by NJ TRANSIT's subsidiaries or involved jurisdictions. (NOTE: Permit fees for miscellaneous use or occupancy of NJ TRANSIT-owned property will be determined and charged on an individual basis because of the various types of requests.)

(f) (No change in text.)

(g) Short-term use or occupancy fees are subject to the following conditions.

1. (No change.)

2. The minimum permit fee under any application shall be \$145.00.

3.-6. (No change.)

16:77-1.6 Permit fees: transverse occupation

(a) All fees in this section are based on a minimum right-of-way width of 30 feet, with a fee applicable up to a 200 foot width. For all crossings in excess of 200 feet, an adjustment in the annual fee will be assessed and calculated in accordance with the example contained within this schedule under N.J.A.C. 16:77-1.5(a)7.

(b) Aerial and underground wire (power and communication) crossings not exceeding 200 feet in length will be charged an annual occupancy fee as follows:

1. Power:

i. All crossings up to but not exceeding 6,900 volts . \$145.00

ii. Over 6,900 volts but not exceeding 32,500 volts ... \$265.00

iii. Over 32,500 volts but not exceeding 50,000 volts \$440.00

iv. Over 50,000 volts but not exceeding 345,000 volts \$590.00

v. Over 345,000 volts but not exceeding 500,000 volts \$880.00

vi. Over 500,000 volts \$1,175

vii. Ducts or pipes carrying conductors No Charge

viii. Manholes (each) \$75.00

(NOTE: Attachments of wires, cables, etc. to bridges, buildings, poles or structures of railroad are subject to special consideration in each case. Crossings of right-of-way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe, under inert oil pressure and/or further encases in a larger steel pipe and the space between the pipes filled with compacted or thermal sand will be subject to special consideration and each case will be handled individually.)

2. Communication:

i. Telephone and other communication cables (not including composite coaxial cables or fiberoptic cables):

(1) Cable containing not more than 500 pairs \$145.00

(2) Cable containing 501 to 1100 pairs \$255.00

(3) Cable containing 1101 to 1800 pairs \$370.00

(4) Cable containing over 1800 pairs \$590.00

ii. Composite coaxial cables and coaxial television cables containing not more than four conductors \$215.00

ADOPTIONS

iii. All cables containing over four conductors shall be at a rate of \$30.00 for each additional conductor.

3. Fiberoptics:

i. Fiber optic cable crossings used for long distance telephone and data transmission and for retail distribution to more than 500 households and/or retail businesses \$1,500

ii. Fiber optic cable crossings used for retail distribution to 500 or less than 500 households and/or retail businesses \$800.00

(c) Poles, towers, guys, and anchors and spare ducts or pipes will be charged an annual fee as follows:

1. Single wooden pole (per pole) \$35.00

2. All other supporting structures other than the auxiliary facilities and appurtenances listed in (c)3, 4, 5, 6, 7, and 8 below \$70.00

3. Each brace, stub pole, or anchor \$35.00

4. Each guy anchored on or crossing NJ TRANSIT-owned property \$7.00

5. All towers, if not included in a longitudinal occupation shall be assessed per tower leg at \$45.00

6. Each span guy wire crossing \$35.00

7. Spare or unoccupied ducts or pipes, each (when the duct shall be occupied in the future by a cable, the annual fee for the facility occupying the duct shall govern and the \$35.00 charge cease) \$35.00

8. Guys, stubs, anchors, and push or pull braces required by specification for the support of a crossing pole on NJ TRANSIT-owned right-of-way and at the request of NJ TRANSIT shall be considered as part of the crossing pole and no charge will be made therefor.

(NOTE: The above charges in (c)1-8 above are in addition to the wire and cable occupation charges provided in (b)1-3 above.)

(d) Annual permit occupancy fees for pipes and sewer crossings not exceeding 200 feet in length will be calculated as follows:

1. Circular lines carrying no pressure:

i. Pipes up to and including 12 inches ID \$145.00

ii. Pipes over 12 inches and not exceeding 24 inches ID \$200.00

iii. Pipes over 24 inches and not exceeding 60 inches ID will be charged at a rate of \$6.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$215.00

iv. Pipes over 60 inches ID will be charged at a rate of \$2.75 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of \$440.00

2. Circular lines under pressure and carrying non-flammable, non-explosive, or non-combustible supporting materials, except coal and water slurry:

i. Pipes up to and including 12 inches ID \$175.00

ii. Pipes over 12 inches but not exceeding 24 inches ID \$220.00

iii. Pipes over 24 inches ID and not exceeding 60 inches ID will be charged at a rate of \$8.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$220.00

iv. Pipes over 60 inches ID will be charged at a rate of \$6.00 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of \$470.00

3. Circular lines under pressure and carrying flammable, explosive, or combustible supporting materials, except coal and water slurry:

i. Pipes not exceeding three inches inside nominal diameter—minimum charge for any one crossing \$215.00

ii. Pipes over three inches inside nominal diameter and not exceeding 12 inches inside diameter—minimum charge for any one crossing \$295.00

iii. Pipes over 12 inches inside diameter and not exceeding 24 inches inside diameter shall be charged at a rate of \$14.00 per inch of ID over the first 12 inches. This rate is in addition to a minimum charge for any one crossing of \$295.00

iv. Pipes exceeding 24 inches in inside diameter shall be charged at a rate of \$15.00 per inch of ID over the first 24 inches. This is in addition to a minimum charge for any one crossing of \$470.00

TRANSPORTATION

4.-6. (No change.)

7. Manholes (each) \$70.00

8.-9. (No change.)

16:77-1.7 Permit fee: longitudinal occupations

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

(c) The following charges cover the complete transmission line occupation and additional charges are not to be made unless there are attachments to NJ TRANSIT-owned facilities. For the purpose of determining voltage, guy wires, messengers and grounded conductors shall be considered as zero voltage. All other conductors shall be rated at voltage to other conductors, whichever is higher.

1. Aerial wires:

i. Transmission line, highest voltage not exceeding 6,900 volts \$1,465 per circuit per mile.

ii. Transmission line over 6,900 volts up to and including 32,500 volts \$2,640 per circuit per mile.

iii. Transmission line 32,500 volts, up to and including 50,000 volts \$3,670 per circuit per mile.

iv. (No change.)

2. Aerial and underground cables:

i. All longitudinal fiberoptic facility occupancy fees will be arrived at through negotiations.

ii. Telephone communication cables (not including composite coaxial cables):

(1) Cable containing not more than 1,100 pairs \$1,465 per cable per mile.

(2) Cable containing 1,101 to 1,800 pairs \$2,640 per cable per mile.

(3) Cable containing over 1,800 pairs: The fee will be negotiated at a rate not less than \$2,640 per cable per mile.

(4) For underground communication cables the minimum charge is \$2,935 per cable per mile.

iii. Composite coaxial cable and coaxial television cables are subject to negotiation but not less than \$3,570 per cable per mile.

iv. Underground power cables:

(1) When a cable is buried in an open trench and covered with soil: \$2,115 per circuit per mile.

(2) When a cable is buried in an open trench and surrounded with from 6 to 12 inches of thermal sand: \$3,670 per circuit per mile.

(3) When a cable is encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand: \$8.00 per inch of nominal diameter of the largest pipe per 100 feet of occupation or fraction thereof \$3,670 per cable per mile.

v. Spare or unoccupied ducts or pipes, each per mile \$440.00

vi. Manholes, splicing chambers or pull boxes, each when these structures are necessary for longitudinal occupation No Charge

vii. An additional charge shall be made for use of NJ TRANSIT-owned property duct lines based on the negotiated value of the facility.

(NOTE: Charges shown under (c)2v, vi and vii above are in addition to the charges shown under (c)2ii to iv above inclusive.)

(d) (No change.)

(e) All structures other than manholes will be charged based through their own individual negotiations. Examples of these structures are meter chambers, siphon chambers, substations, pump stations, well sites, towers, etc.

(f) An annual occupancy fee for pipes and sewers will be charged as follows:

1. Circular lines carrying no pressure: \$3.00 per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof.

2. Circular lines under pressure and carrying non-flammable, non-explosive, and non-combustible supporting materials, except coal and

water slurry: \$3.50 per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

3. Circular lines under pressure and carrying flammable, explosive, and combustible supporting materials, and coal and water slurry: \$8.00 per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

4.-5. (No change.)

16:77-1.8 Other provisions

(a) For those applicants having over 200 occupancy permits with NJ TRANSIT, the Corporation reserves the right to negotiate permanent occupancy permits for any occupancy having an annual fee of \$300.00 or less at the time of application. The permittee shall pay to NJ TRANSIT a lump sum which will be equivalent to 16 times the annual rate which will satisfy the annual fee for the life of the facility occupation so long as it remains unchanged. No refunds will be given for any facility which is terminated, cancelled, removed, or abandoned. Permittees who qualify for this option, request such option and are accepted by NJ TRANSIT, will receive a single "blanket agreement" with an attachment containing a list of the affected occupancies covered under individual permits. Acceptance of any request for a blanket agreement and lump sum payment will be at the sole discretion of NJ TRANSIT which shall not be unreasonably exercised. The existence of this option does not obligate NJ TRANSIT to enter into a blanket agreement with any permittee.

(b) Any facility which is altered in such a manner so as to increase the annual fee beyond the original \$300.00 limit will result in that permit being extracted from the blanket agreement and a new annual fee will be calculated, based on the existing fee schedule, and assessed annually thereafter. Monetary credit will be allocated to the new facility fee based on the unused portion of the initial 16 year period. No credit will be given for any facility requiring reassessment which has exceeded the initial 16 years of occupancy.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Public Employees' Retirement System

Adopted New Rules: N.J.A.C. 17:2

Proposed: December 5, 1994 at 26 N.J.R. 4747(a).

Adopted: January 20, 1995, by Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Secretary.

Filed: January 24, 1995 as R.1995 d.91, **without change**.

Authority: N.J.S.A. 43:15A-17 et seq.

Effective Date: February 21, 1995.

Expiration Date: February 21, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the Public Employees' Retirement System rules are dictated by N.J.S.A. 43:15A-17 et seq., and are not governed by Federal standards.

Full text of the adopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

(b)

DIVISION OF PENSIONS AND BENEFITS

Public Employees' Retirement System

School Year Members

Adopted Amendments: N.J.A.C. 17:2-4.3

Proposed: September 19, 1994, at 26 N.J.R. 3823(a).

Adopted: December 30, 1994, by Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Secretary.

Filed: January 4, 1995 as R.1995 d.61, **without change**.

Authority: N.J.S.A. 43:15A-17 et seq.

Effective Date: February 21, 1995.

Expiration Date: February 21, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the Public Employees' Retirement System rules are dictated by N.J.S.A. 43:15A-17 et seq., and are not governed by Federal standards.

Full text of the adoption follows:

17:2-4.3 School year members

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

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Public Employees' Retirement System and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

(c)

DIVISION OF PENSIONS AND BENEFITS

Teachers' Pension and Annuity Fund

School Year Members

Adopted Amendments: N.J.A.C. 17:3-4.3

Proposed: September 6, 1994 at 26 N.J.R. 3606(a).

Adopted: January 3, 1995 by the Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.

Filed: January 23, 1995 as R.1995 d.89, **without change**.

Authority: N.J.S.A. 18A:66-56 et seq.

Effective Date: February 21, 1995.

Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the Teachers' Pension and Annuity Fund rules are governed by N.J.S.A. 18A:66-56 et seq., and are not governed by Federal standards.

Full text of the adoption follows:

17:3-4.3 School year members

(a) (No change).

(b) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Teachers' Pension and Annuity Fund and begins employment on or before the date that was established by the previous year's contract position. Such member will receive service credit within the Teachers' Pension and Annuity Fund for the period between the end of the previous contract and the employment date of the new 12 month position.

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Rules Governing Classification and Qualification of Bidders

Adopted Repeal and New Rules: N.J.A.C. 17:19

Proposed: December 5, 1994 at 26 N.J.R. 4747(b).

Adopted: January 23, 1995 by James Archibald, Deputy State Treasurer.

Filed: January 24, 1995 as R.1995 d.90, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:35-1 et seq.

Effective Date: February 21, 1995.

Operative Date: March 23, 1995.

Expiration Date: February 21, 2000.

Summary of Public Comments and Agency Responses:

Comments were received from Robert A. Briant, Sr., Executive Director, Utility and Transportation Contractors Association of New Jersey (UTCA)

COMMENT: The Utility and Transportation Contractors Association of New Jersey (UTCA) suggested that the classification period be changed to a minimum 12 month period at N.J.A.C. 17:19-2.7(b).

RESPONSE: The current classification period of seven months is set by statute at N.J.S.A. 52:35-8. The Division is pursuing a change to this statute which would increase the classification filing period from seven months to 15 months before opening of bids. However, until such time as the legislative change is proposed and approved, the administrative code at N.J.A.C. 17:19-2.7(b) must remain at seven months.

COMMENT: The UTCA also suggested that the average performance rating formula at N.J.A.C. 17:19-2.9(d) should utilize the actual percentage to achieve the multiplier.

RESPONSE: The Division rejects this suggestion. The Division has been stressing better performance to its construction contractors for the past several years and finds that this formula enforces the Division's pursuit for quality performance from its construction contractors. The formula as adopted offers a significant incentive to contractors to provide quality performance on construction contracts and rewards those firms which are meeting and exceeding established standards.

COMMENT: The UTCA suggested that when rating the performance of contractors, the Division should also weigh for complexity and size of projects.

RESPONSE: The Division's contractor classification determination process includes experience as a criterion. Project size is an integral part of the experience criterion. Project complexity is a nebulous term and as such is difficult to evaluate as part of a performance evaluation process. However, on those projects which are determined to be unique or require specialized work, the Director may establish special classification requirements for that project. Those firms that are classified as meeting these special classification requirements conform to the latest technical or safety developments in that trade and as such a rating on project complexity would be unnecessary. Therefore, the Division does not support the weighing of project size and complexity into the performance evaluation of contractors.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the adopted rules do not pertain to any program established under Federal law, and are not subject to any Federal requirements or standards.

Summary of Agency-Initiated Changes:

Several other changes are being made, although not directly in response to public comment.

First, in N.J.A.C. 17:19-2.9(d)1, the reference to "\$80,000" which correlates to a multiplier of 12 has been changed to "\$80,001 or higher" and in N.J.A.C. 17:19-2.9(d)2 the reference to "89.0" percent has been changed to "89.9" percent to ensure consistency with the remainder of each table.

Second, in N.J.A.C. 17:19-2.11(c) the word "opening" has been changed to "due date" in the first and second sentence to avoid potential bidder misunderstandings which may be caused by the use of the word "opening." The change will clarify the specific intention of the Division

that bidders must be classified at the time bids are due. References to "bid opening" may confuse bidders and cause additional bid protesters. The term bid "due date" is specific and can not be misinterpreted.

Third, in N.J.A.C. 17:19-2.9(d)4 the cross-reference to "N.J.A.C. 17:19-2.7" has been changed to "N.J.A.C. 17:19-2.4." While N.J.A.C. 17:19-2.7 discusses bonding statements, the correct code reference should be N.J.A.C. 17:19-2.4 which specifically requires that a bonding statement be submitted in order for a contractor to bid on projects which require a bond.

Lastly, in N.J.A.C. 17:19-3.11 the "Division of Building and Construction" has been changed to "General Services Administration" to clearly specify the administrative agency which provides the list. The General Services Administration compiles a consolidated list of persons who have been debarred, suspended or disqualified in accordance with their procedures and the procedures of its other agencies and provides the list to the State Treasurer as part of one report.

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

CHAPTER 19

CLASSIFICATION AND QUALIFICATION OF BIDDERS

SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions

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

"Classification" means the process and product of assigning specific construction categories or trades and the maximum aggregate workload level(s) which define the eligibility of prospective bidders as determined by the Division, in accordance with this chapter.

"Director" means the Director of the Division of Building and Construction (hereinafter referred to as DBC) in the Department of the Treasury.

"Person" means any individual, copartnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

"Public work" means any public building or other public betterment, work or improvements constructed, repaired or improved wholly or in part at the expense of the public.

"Questionnaire" means the Request for Classification (GSA-27).

SUBCHAPTER 2. RULES

17:19-2.1 Statements required from prospective bidders; contents

(a) Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as Request for Classification (GSA-27) Current Issue. The GSA-27 shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and shall be used by the Division of Building and Construction (DBC) in classifying prospective bidders pursuant to N.J.S.A. 52:35-1 et seq.

(b) Each GSA-27 submission shall include:

1. A certified audited, or reviewed, financial statement or compilation of financial statements. The financial statement shall include signed cover letter, by an accountant complete with a balance sheet, related statements of income and retained earnings and cash flows and notes to financial statements in complete detail. Such statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq. who is independent of and not an employee of the contractor for which the financial statements are being provided:

i. The certified audited financial statements shall have an unqualified opinion. The CPA review of financial statements shall be in conformity with generally accepted accounting principles. All financial statements shall be for a full one year accounting cycle;

ii. Submission of a CPA compilation of financial statements will limit a contractor's maximum aggregate rating to \$5,000,000.

iii. Submission of a CPA review of financial statements will limit contractor's maximum aggregate rating up to \$15,000,000.

iv. Submission of a certified audited financial statement will be required for aggregate ratings exceeding \$15,000,000.

v. Submission of combined or consolidated statements is not acceptable, unless complete supplementary (combining or consolidating) information is included within the report. This information shall be of such detail as to show the singular financial condition of the entity being classified;

2. A statement as to organization, which shall demonstrate the adequacy of such organization (officers and key management personnel) to undertake a project in the classification desired;

3. A statement as to prior experience, which shall show the number of years the prospective bidder has been engaged in the contracting business and shall further disclose the bidder's experience over that period. In such statement, the applicant may demonstrate the experience of officers, managers and key personnel prior to their affiliation with applicant, which information shall be considered by the DBC;

4. A statement as to the past performance, which shall give an accurate and complete record of work completed in the past four years, by the contractor (not by subcontractors or individuals employed by others) giving the names of the projects, type of work, location, contract price and the names of the owner and of the architect/engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any failure to meet contractual Affirmative Action requirements, any penalties imposed by reason of any contract undertaken within the said four year period. The prospective bidder shall explain any of the above problems, failures or penalties encountered during the past four years and what steps have been taken to avoid the recurrence of such problems, failures or penalties;

5. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and Federal laws, rules and regulations;

6. A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey to the applicant contractor, and shall indicate aggregate bonding limits;

7. If the contractor is a corporation or partnership, a statement setting forth the names and addresses of all stockholders or partners owning 10 percent or greater interest in the contractor. If one or more stockholders or partners is itself, a corporation or partnership, the statement shall also indicate the stockholders holding 10 percent or more of the corporation's stock or the individual partners owning a 10 percent or greater interest in the partnership. The disclosure shall be continued until the names and addresses of every non-corporate stockholder or partner exceeding the 10 percent ownership criterion has been listed; and

8. A statement setting forth any other pertinent material and facts that will justify the classification and ratings requested by the contractor.

(c) All foreign corporations shall include a current "Certificate of Authority to perform work in New Jersey" as issued by the Department of State pursuant to N.J.S.A. 14A:13-4 et seq.

17:19-2.2 Fraudulent statements

(a) "Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000.00 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, co-partnership, association or corporation, to pay such fine or undergo imprisonment, not exceeding six months, or both." (N.J.S.A. 52:35-9)

(b) Any false, deceptive, or fraudulent information provided in the GSA-27, "Request For Classification," will be deemed a material breach; the State may declare any resulting contract(s) void and unenforceable.

17:19-2.3 Joint venture statement

(a) Where two or more contractors, each with valid classifications and ratings for the same trade category propose to form a joint venture for purposes of bidding on one specific project, the venturers shall jointly submit a Statement of Joint Venture Form DBC 606 to the Division which shall:

1. Be received by the Division no less than five calendar or work days prior to the bid due date set for the project on which they propose to bid;

2. State the classifications and ratings of the individual venturers;

3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by the Division;

4. Include a statement from an authorized surety of the bonding capacities of the individual venturers and the bonding capacity of the joint venture; and

5. Be signed by each of the venturers.

(b) Where two or more contractors holding valid classifications, (same trade) and ratings propose to form a joint venture for the purpose of bidding on a project, the joint venture shall submit with its Joint Venture Statement (see (a) above) a statement from an authorized surety of the Joint Venture's bonding capacity.

17:19-2.4 Statements from an authorized surety

(a) Any contractor proposing to submit bids on a public works project which requires a performance bond or a payment bond, or both, shall cause to be submitted with its GSA-27 a certified statement of the contractor's bonding capacity. The statement shall be contained on a standardized form prepared by the DBC and shall be from a surety authorized to issue bid bonds, performance and payment bonds in the State of New Jersey. This statement shall be used in part by the DBC in calculating the applicant's aggregate rating, pursuant to N.J.A.C. 17:19-2.9.

(b) A contractor who does not provide a statement of bonding capacity from an authorized surety shall receive an aggregate rating of no more than \$100,000 and shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the rating limits described in N.J.A.C. 17:19-2.9.

(c) In the event that a contractor obtains the required bonding statement subsequent to being classified and rated under (b) above, the contractor may apply for an amended classification. Such amendment shall be a prerequisite to the receipt by the contractor of any plans, specifications, proposals and associated documents for the preparation of a competitive bid. Amendments to classification will be effective 20 days after the receipt by DBC of required additional information.

17:19-2.5 Responsibility determination

(a) For bidders proposing to submit bids on public work, a determination as to responsibility shall be made by the DBC. Any applicant which has no prior public works experience with the State of New Jersey shall be evaluated on the applicant's financial resources, technical qualifications, organization and facilities, accounting and auditing procedures, integrity, references and experience on previous contracts.

(b) A "responsible" bidder is one which can perform the contracted work as agreed to by the contract parties. A determination of "responsibility" refers to the apparent ability of the bidder to successfully carry out the requirements of a contract. Factors affecting a bidder's responsibility include:

1. Financial resource;

2. Technical qualifications;

3. Experience;

4. Organization and facilities to carry out the work;

5. Resources needed to meet completion of contracts;

6. Satisfactory performance record for completion of contracts;

7. Accounting and auditing procedures adequate to control property, funds and other assets;

8. Civil rights compliance; and

9. Satisfactory record of integrity.

(c) Upon rendering an affirmative finding of responsibility, the DBC shall classify a bidder. A notice of classification will be mailed within a 30 day period upon approval.

(d) If a contractor objects to its assigned classification or a bidder objects to the classification of any other bidder, a hearing may be requested pursuant to N.J.S.A. 52:35-4. In the case of a contractor objecting to its own classification, the request must be made, in writing, to the Director within 15 calendar days after the date of the classification notice. In the case of a bidder objecting to the classification of another bidder, the request must be submitted to the Director in accordance with N.J.S.A. 52:35-4 and within three calendar days after the bid opening or at least three calendar days prior to the proposed date of contract award, whichever date is earlier. If a contractor or bidder remains dissatisfied, an appeal may be made pursuant to N.J.S.A. 52:35-6. The appeal hearing shall be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1.

17:19-2.6 Performance ratings

(a) For any contractor proposing to submit bids on public work, a performance rating shall be determined. The rating shall be based on the information contained in the Performance Evaluation Form.

(b) For any applicant who has no prior public work experience with the State of New Jersey, the performance rating shall be based on an evaluation of the applicant's references and past experience on private sector projects, as identified in the applicant's form GSA-27.

(c) For any applicant who has prior public works experience with the State of New Jersey, a performance rating shall be based on the project evaluations done for those State projects as follows:

1. A project evaluation shall be made for each of the prime contractors on a public works project. The evaluation shall be made by no less than two persons employed by the State directly involved in the management, supervision or inspection of the project. The evaluators for a given project shall be appointed by the Director or his or her designee.

2. Project evaluations shall be presented on a standardized form (GSA-33) prepared by the DBC. Where necessary, interim evaluations may also be prepared and filed as required.

3. While the Director may establish special evaluation criteria for special projects, in general, a project evaluation shall be based on the following factors:

- i. Schedule adherence, including job planning, manning and submissions;
- ii. Workmanship;
- iii. Supervision;
- iv. Subcontractor performance;
- v. Compliance with all bidding and contract documents;
- vi. Cooperation with other prime contractors;
- vii. Completion of punch list items and prompt furnishing of closeout documents; and
- viii. Timely and cooperative processing of change orders.

4. A contractor's performance rating shall be calculated as the average of the various project evaluations.

(d) The performance ratings of contractors shall be updated as State work is completed and as these contractors bid on other projects.

(e) A contractor shall be notified of a project evaluation or performance rating which would adversely affect the contractor's classification. The contractor shall be afforded an opportunity to respond to such adverse evaluation or rating.

(f) Where a contractor receives an unfavorable performance rating, and where the contractor's performance exhibits a disregard for the standards of the DBC contract, the DBC may institute suspension or debarment proceedings against that contractor, pursuant to Executive Order No. 34(1976).

17:19-2.7 Bidders to be classified

(a) Upon receipt of the completed GSA-27, the Director or his or her designee shall classify the applicant as to the trade, character, and the dollar value of the work on which the applicant shall be

qualified to submit bids. Classifications will be based on the information contained in and with the GSA-27 and on the contractor's performance rating. Applicants shall be classified as to the trades listed on current form GSA-27 as to the dollar value of total projects public and private on which they may work at any given time pursuant to the Aggregate Rating Limit.

(b) Bidders shall re-classify every seven months in order to remain eligible to bid on public work. However, prior to the expiration of the classification, a bidder may apply, in writing, for a single seven month extension of classification without filing a new Questionnaire.

1. In applying for an extension, the bidder shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a Questionnaire that a change of classification would be warranted. The Division of Building and Construction may verify this statement and request additional documentation before an extension is granted.

2. The Division shall grant or deny the extension no later than 10 calendar days following receipt of the written extension request.

3. No more than one extension may be granted per classification period. Thereafter, a bidder shall submit an updated Questionnaire in order to continue its classification.

4. The extension of a classification shall be effective for a period of seven months from the expiration date of the preceding rating period which was based upon the submission of a GSA-27.

(c) Where a bidder has not been granted an extension or where an extension period is expiring, the bidder shall file an updated Questionnaire with the DBC. Based on this Questionnaire, the DBC shall reclassify the bidder, as appropriate.

(d) Where, in the course of a classification period, the financial, bonding and/or corporate status of a contractor changes so substantially as to warrant a change of classification or rating, the contractor shall notify the Division, in writing, within 30 days of the change(s) and include the submission of revised Form GSA-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity and changes in ownership.

1. With this notice, the contractor may also request a change of classification or rating.

2. The DBC shall review the request for revision and issue a decision not later than 20 days from the date of the request.

3. Any change of classification or rating shall be effective only for the remainder of the original classification period.

17:19-2.8 Trade classifications

(a) In order to be classified for a given trade, a contractor must have successfully completed at least two significant projects in that trade within the previous four years. These projects may have been either public projects or private sector projects, or a combination of the two. Certified copies of contracts shall be submitted as proof.

(b) The trades for which an applicant may request classifications are as listed on the current issue of Form GSA-27.

17:19-2.9 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on three factors:

1. The contractor's net current quick assets reported in its Financial Statement;

2. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.4; and

3. The contractor's performance rating as described in N.J.A.C. 17:19-2.6.

(b) Net current quick assets shall be determined according to generally accepted accounting principles, but shall not include:

1. Costs and estimated earnings in excess of billings on uncompleted contracts;

2. Any assets not in the name of the contractor;

3. Any past due accounts;

4. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash such as assets in escrow;

5. Securities which are not readily saleable;

6. Securities which have been pledged;
 7. The cash surrender value of a life insurance policy on the contractor unless that value is verified, in writing, from the insurance company; and
 8. Any amounts due from related parties (affiliates, officers, employees, etc.)

(c) In no event shall a contractor's aggregate rating exceed the contractor's aggregate bonding capacity.

(d) The contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets according to the following table:

Net Current Assets	Multiplier
\$1-20,000	6
\$20,001-40,000	8
\$40,001-80,000	10
[\$80,000] \$80,001 or higher*	12

2. Multiply the result of this calculation by the performance multiplier based upon at least three projects completed in last four years.

Average Performance Evaluations (APE)	Performance Multiplier
90.0 percent or higher	2.00
80.0 percent to * [89.0]* *89.9* percent	1.00
70.0 percent to 79.9 percent	0.50
69.9 percent or lower	0.25

EXAMPLES: The following examples show the effect of a performance multiplier for a contractor (1) having an APE of 90.0 percent or higher and (2) an APE of 80.0 percent to ***[89.0]* *89.9*** percent.

- A = Net Current Assets
 B = Asset Multiplier
 C = Calculated Classification Limit
 D = Performance Multiplier
 E = Final Classification Limit

(Formula) $A \times B = C \times D = E$

1. $85,000 \times 12 = 1,020,000 \times 2.00 = 2,040,000$
 2. $85,000 \times 12 = 1,020,000 \times 1.00 = 1,020,000$

3. If a contractor has received no performance evaluations and/or has not completed a project for the DBC, a performance multiplier of 1.00 will be assigned to that contractor.

4. Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.7****2.4***, the contractor's aggregate rating shall be equal to the total obtained above but not greater than \$100,000. Further, the contractor may bid only on projects which do not require any bond.

5. When the contractor's APE is less than 0.25, the Director may reject the application or assign a classification rating less than that provided for in N.J.A.C. 17:19-2.9, based on all factors relevant to contractor's ability to perform.

17:19-2.10 Special classification requirements

(a) The Director may establish appropriate and special classification requirements for a given project as may be necessary in order to ensure competitive bidding for that project or as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special classification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified contractors via direct mail and/or published in major State newspapers and trade journals.

17:19-2.11 Effective dates of classifications and ratings

(a) A classification or rating resulting from the filing of a GSA-27 shall be effective eight days after receipt of all required and approved

information in accordance with this subchapter, or the day following expiration of existing classification, whichever is later.

(b) A revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective 20 days from the date of the approved request but only for the unexpired remainder of the existing classification period.

(c) In order to be an eligible bidder for a project, a contractor must have been assigned by the DBC a valid classification and rating which is appropriate to the project and which is effective as of the date of the bid *[opening]* ***due date*** for the project. Any classification or rating which, as of the date of the bid *[opening]* ***due date***, either has expired or has not yet been assigned, shall not be valid for that bid.

(d) If during a pre-bid review of a bidder's classification rating, a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

17:19-2.12 Award of contracts exceeding aggregate rating limits

(a) A contractor shall not be awarded a contract which, when added to the uncompleted portions of all other currently held contracts from whatever source (public or private) sources, would exceed the contractor's aggregate rating limit. For example, for purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for the contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its uncompleted work, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contract is eligible for a given award shall be determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid due date, and the dollar value of the contractor's uncompleted contract work as of the bid due date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the uncompleted portions of other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid due dates; and

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

17:19-2.13 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he/she shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3 shall be followed.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:19-3.1 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

"DBC contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for a private or public person where the Division of Building and Construction (DBC) provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service, or the person(s) who may supply or perform the same.

"Debarment" means an exclusion from DBC contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

"Disqualification" means the denial or revocation of a qualification to bid or otherwise engage in DBC contracting, which has been granted or applied for pursuant to statute or rules and regulations.

"Person" means any natural person, company, firm, association, corporation or other entity.

"Suspension" means an exclusion from DBC contracting for a temporary period of time, pending the completion of an investigation, legal or hearing proceedings.

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Building and Construction shall debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;

3. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violations of any of the laws governing the conduct of elections of the Federal government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Division of Building and Construction to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment by some other department or agency in the executive branch.

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation,

gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

i. Any State officer or employee or special State officer or employee having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof; or

ii. Any person, firm or entity with which the State officer or employee is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g.

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

17:19-3.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Director, Division of Building and Construction, except as otherwise provided by law;

2. The existence of any of the causes set forth in N.J.A.C. 17:19-3.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, Division of Building and Construction, unless otherwise required by law, and shall be rendered in the best interests of the State;

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted;

4. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person, unless other cause for debarment exists;

5. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)9 through 11 shall be established by evidence which the Division of Building and Construction determines to be clear and convincing in nature;

6. Debarment for the cause set forth in N.J.A.C. 17:19-3.2(a)12 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-3.2(a)1 through 11 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency.

17:19-3.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, period of debarment and scope of debarment to be followed by the Division of Building and Construction are as follows:

1. The Division of Building and Construction seeking to debar a person or his/her affiliates shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be afforded an opportunity for a hearing if he/she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. However, where another department or agency has imposed debarment upon a party, the Division of Building and Construction may also impose a similar debarment without affording an opportunity for a hearing, provided that the Division of Building and Construction furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part;

2. Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed;

3. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Division of Building and Construction upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed;

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his/her official duty or was affected by him or her with the knowledge or approval of such person.

17:19-3.5 Causes for suspension of a person(s)

In the public interest, the Division of Building and Construction shall suspend a person for any cause specified in N.J.A.C. 17:19-3.2, or upon adequate evidence that such cause exists.

17:19-3.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Director of the Division of Building and Construction, except as otherwise provided by law or code;

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director of the Division of Building and Construction and shall be rendered in the best interest of the State;

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists;

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts;

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 17:19-3.2(a)1 through 8 may be established by the rendering

of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by evidence that such violations of civil or criminal law did in fact occur;

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:19-3.2(a)1 through 13 may be the basis for the imposition of a concurrent suspension by the Division of Building and Construction, which may impose such suspension when found to be in the best interest of the State.

17:19-3.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Division of Building and Construction:

1. The Division of Building and Construction may suspend a person or his or her affiliates, provided that within 10 days before the effective date of the suspension, the Division of Building and Construction provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Director, Division of Building and Construction determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a contested case hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if he or she so requests, or a statement declining to give such reasons and setting forth the Division of Building and Construction's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Division of Building and Construction, the latter shall note the fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he/she is affiliated, where such conduct was accomplished within the course of his/her official duty or was effectuated by him/her with the knowledge or approval of such person.

17:19-3.8 Disqualification of a person(s)

The disqualification of a person shall be based upon the responsibility of the bidder as determined by the factors set forth in N.J.A.C. 17:19-2.5.

17:19-3.9 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Division of Building and Construction, including any contracts which utilize State funds. When it is determined by the Director of the Division of Building and Construction to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract.

17:19-3.10 Prior notice by Division of Building and Construction

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General and the State Treasurer.

17:19-3.11 List of debarred, suspended or disqualified persons

The *[Division of Building and Construction]* *General Services Administration* shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended or disqualified in accordance with the procedures prescribed in this subchapter. Such list shall at all times be available for public inspection.

17:19-3.12 Director's authority to contract

Nothing contained in this chapter shall be construed to limit the authority of the Director of the Division of Building and Construction to refrain from contracting within the discretion allowed by law.

SUBCHAPTER 4. HEARING PROCEDURES

17:19-4.1 Hearings; subject matter

(a) Administrative hearings conducted by the Division of Building and Construction (DBC) may be called as follows:

1. Informal hearings requested by any participating bidder protesting an award by the Director, Division of Building and Construction;
2. Informal hearings requested by a consultant/contractor regarding evaluation or re-evaluation of classification for bidding;
3. Formal hearings heard by the Director, in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to suspend or debar a current or prospective bidder from doing business with the State of New Jersey for any of the reasons enumerated in subchapter 3 of this chapter; or
4. Certain other matters of dispute that may occur relative to the activities of the Division of Building and Construction.

17:19-4.2 Parties who may request hearings

(a) The following parties may request hearings in the above named matters:

1. The Director, Division of Building and Construction;
2. Any consultant/contractor that has submitted a bid for the contract in question; or
3. Any consultant/contractor duly objecting to a classification relative to evaluation of performance.

17:19-4.3 Request for hearings; hearing procedures; time limitations

(a) Any participating bidder seeking a hearing shall make written request to the Director setting forth the specific grounds for challenging the award. The request must be received by DBC within five calendar days after the opening of bids.

(b) Any consultant/contractor seeking to challenge a classification issued as a result of evaluation or re-evaluation must make written request to the Director setting forth the specific grounds for the challenge. Such request must be duly submitted within five calendar days of receipt of DBC's written notification of classification.

(c) Hearings which are not under the jurisdiction of the Office of Administrative Law shall be informal and held, where feasible, within 15 calendar days of receipt of request. Hearings will be heard, where practicable, by an impartial hearing officer. The hearing officer shall prepare a report to the Director within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 calendar days to provide written comments or exceptions to the Director. Subsequent to the 10 calendar day period for exceptions, the Director shall make a final judgment on the matter.

(d) Such informal hearings as convened under these rules are fact-finding for the benefit of the Director. The Director may determine that sufficient information already exists in the records so that a decision can be made without an informal hearing. The Director may waive the informal hearing and publish a final decision accordingly.

(e) The Director may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames noted above. In these instances, the Director shall document for the record the rationale for such amendment and give adequate notice to the parties involved.

(f) Hearings in those matters which are contested cases as defined pursuant to N.J.A.C. 1:1 shall be held under the jurisdiction of the Office of Administrative Law except in those instances where the Director reserves the right to hear the case in person. The judge designated by the Office of Administrative Law shall prepare a recommended report and decision to the Director within 45 calendar days of the conclusion of the hearing. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the administrative law judge's report and decision, and shall have 13 days from the date the administrative law judge's initial decision was mailed to provide written comments or exceptions to the Director, who shall make a final judgment in the matter within 45 calendar days following receipt of the comments or exceptions. Pursuant to N.J.S.A. 52:14B-10, failure to modify or reject the hearing report will result in the adoption of the decision of the administrative law judge as the final decision of the Director, Division of Building and Construction.

17:19-4.4 Necessary parties to the hearing

(a) In those instances where a hearing is requested by a participating bidder, the Director shall extend invitations to all consultants/contractors who participated in the bidding for the contract in question. The extent of the participation of these parties shall be limited to those matters in question as expressed by the complainant. The Director has discretionary authority to exclude invitations to bidders in those cases where such bidders are deemed to have no potential interest in the outcome of the hearing.

(b) Representatives of the protesting bidder or bidders, or in the case of debarment/suspension proceedings or of classification disputes, representatives of the party or parties against whom the action is called, shall be necessary parties to the hearing. Any such party has a right to be represented by counsel for such hearings, if desired.

(c) The State shall be represented by the Office of the Attorney General where necessary, as well as responsible members of the Division of Building and Construction staff and the using agency concerned.

17:19-4.5 Effect of requests for hearings on contract award

(a) The Division of Building and Construction shall, except in those instances noted in (b) below, hold, in situations where there has been a bypass of the apparent low bidder, all awards of contracts for at least five calendar days pending the outcome of any protests filed by interested parties. In these situations, all bidders will be notified of the intent to award to the successful bidder. If, in fact, the award of the contract is protested, the Division of Building and Construction shall not award the contract in question until the completion of the hearing process.

(b) The Director may, in those instances where the failure to award the contract will result in substantial costs to the State of New Jersey, or in those instances where the public exigency so requires, award the contract notwithstanding the provisions in (a) above. The Director shall document all cases where such action is required and shall notify all interested parties.

17:19-4.6 Discovery procedures

The Director shall be entitled, upon request, to review all records and documents used in evidence by a complainant. Such documents shall be made available to the Division of Building and Construction at the cost of reproduction, if such reproduction is required.

SUBCHAPTER 5. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

17:19-5.1 Purpose

The consultant selection procedures are established to give qualified architectural, engineering, construction management or other consultant firms an open opportunity to be selected for State project assignments on the basis of demonstrated competence and experience. Selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

17:19-5.2 Scope

(a) The principal elements of the consultant selection procedures provide for:

1. Verifying the qualifications of firms interested in providing consultant services to the State;
2. Initiating and advertising projects (which may include other solicitation requirements);
3. Screening all interested and qualified firms;
4. Evaluating procedures by Selection Committee; and
5. Obtaining final approval by the Director.

17:19-5.3 Definitions

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

"Administrator" means the Administrator, General Services Administration.

"Agency consultant" means a firm providing technical and professional services in support of construction projects for a client agency.

"Chairperson" means the principal member of the selection committee who is responsible for the management of the selection process.

"Client agency" means that Department or other element of State government for which the Division provides consultant selection services for design and construction projects.

"Construction cost estimate" for the purpose of these procedures means the estimated construction cost of a specific project.

"Consultant" means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction project.

"Consultant selection committee" (Committee) means the body responsible for the review, evaluation and selection of consultant firms for State projects.

"Cost proposal" means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

"Director" means the Director of the Division of Building and Construction or his or her duly authorized representative.

"Division" means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

"Major project" means a project with an anticipated fee greater than that allowed by the term contract.

"Member" means an individual appointed to serve on a selection committee.

"Prequalification" means a process of reviewing information and experience data to determine the prequalification level and professional disciplines of consultant firms.

"Prequalification level" means the maximum construction cost estimate dollar level for which a consultant is prequalified. Prequalification rating levels are established and periodically adjusted by administrative procedure authorized by the Director, in accordance with this subchapter.

"Screening" or "ranking" means the process of evaluation utilized by the Committee to determine those firms to be given final consideration from among the total applicants for a specific project.

"Selection coordinator" means the administrator of the day-to-day committee operations and procedures, including advertising of projects, scheduling of meetings, preparing agendas, recording scores, preparing minutes of committee meetings and similar administrative responsibilities.

"Technical scoring" means the process of developing numerical ratings of consultants by individual Committee members in their evaluation of those firms seeking assignments.

"Term contract" means contracts awarded to multiple consultants for a specific time period based upon hourly rates.

"Work order" means a Division form utilized by an agency consultant to submit term contract hourly rates for work done for a client agency.

17:19-5.4 Prequalification of consultant firms

(a) Firms desiring to be considered for consultant work with the Division shall submit prequalification forms as specified by the Division. These forms provide comprehensive information on the management of the firm, its financial history, the type and value of past project work and other related information. This information is used to assist in the evaluation of firms for Division work and to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified. The result of this evaluation is the firm's "prequalification."

(b) Review of the firm by the Division shall be completed within 30 calendar days of receipt of fully completed prequalification forms, and a notification of results shall be mailed to the firm within the same time period.

(c) If a prequalification is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the Division.

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the State Architect for reconsideration. Results of this review will be made known to the firm in writing. If the firm still does not agree with its prequalification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update and keep current all prequalification forms. Major changes occurring in the firm's status shall be brought to the attention of the Division in order that the prequalification record is current.

(f) Any firm seeking prequalification shall have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for prequalification.

(g) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files which may be reviewed during the selection processes.

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. The Division endeavors to assign a level which is justified by applicable overall experience, length of time in business, prior Division experience, staffing and management depth.

(i) Firms may increase their technical qualification for a specific project by joint-venturing with other firms. Each individual firm of the joint venture must be separately prequalified. One of the firms shall have been prequalified at the level stipulated for the project.

17:19-5.5 Public notification

(a) The Division may publicly solicit the interest of prequalified firms to provide professional services by advertising in one or more of the following methods:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. In newspapers;
3. By written notice to New Jersey professional societies; or
4. By use of direct mailings to prequalified firms.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

17:19-5.6 Set-aside program—minority-owned and female-owned businesses

The Division will conform to the provisions of N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14 in the award of contracts and subcontracts to eligible minority-owned and women-owned businesses.

17:19-5.7 Major project selection procedures

(a) The selection process is initiated upon the receipt by the Division of a request from a State client agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both design and the construction of the project.

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(b) A selection committee is then established to choose a consultant for that specific project. The committee develops the selection schedule and evaluation criteria for the project.

(c) The evaluation process may include submission of Project Questionnaire Forms, technical proposals and interviews.

(d) Each individual member of the committee will evaluate all submissions based upon specific criteria. The selection coordinator shall compile and tabulate all individual scores and prepare a consolidated ranking. The chairperson shall call for a meeting of the committee to review the ranking and shortlist the appropriate number of firms for further consideration. Additional technical and/or organizational information may be requested from the firms before a final technical ranking is prepared.

(e) When all evaluations are completed, cost proposals shall be solicited from the top technically-ranked firms.

(f) Site visits, pre-interview conferences and pre-proposal conferences may be scheduled. Attendance shall be mandatory when so stipulated.

(g) Sealed cost proposals will be accepted on a pre-determined date and time by the selection coordinator. The committee will meet to open and review the cost proposals. Upon completion of the review, the committee may begin negotiations with the highest technically-ranked firm or firms. If the top-ranked firms have insignificant differences in their technical scores, the committee may decide to meet with each of those firms to review and negotiate various aspects of their cost proposal. As required, the committee may request additional meetings, additional technical, organizational or cost data from any of the firms. If a satisfactory conclusion cannot be reached with the top technically ranked firm, the committee may negotiate with the next highest technically ranked firm. All proposals will be made a matter of public record and will be open to the public after award of the contract.

(h) The committee shall have the responsibility to recommend to the Director the selection of the proposal which will be most advantageous to the State-technical qualifications, cost and other factors considered.

(i) The technical scores, ranking and cost proposals of all firms, as well as all discussions and correspondence, are confidential until the contract is awarded.

17:19-5.8 Term contracts

(a) Firms desiring to perform consultant services for the Division may submit proposals for term contracts. Term contracts shall be awarded by the Director to consultants who have complied with the terms and conditions of the term contract request for proposal.

(b) Term contracts shall be used to provide consultant services for client agencies by utilizing a more expeditious selection process, especially in cases of construction emergencies.

17:19-5.9 Term contract project selection procedures

(a) Term contract site specific projects are those with a fee and/or construction value threshold established by the terms and conditions of the term contract. The initiation of the selection process shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(a).

(b) Firms are selected to submit technical and cost proposals for site specific projects by computer-generated random selections and/or by special client agency requests.

(c) Emergency projects may be directly awarded upon the Director's authorization.

(d) Pre-proposal conference, site visits and interviews may be scheduled.

(e) Technical proposals shall be evaluated and ranked in accordance with the specific technical criteria for the project.

(f) The selection process regarding the sealed cost proposals shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(g).

(g) The committee shall have the responsibility to recommend to the Director the most advantageous consultant selection for the State, considering technical qualifications, cost and other factors.

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17:19-5.10 Agency consultant program

(a) The agency consultant program shall assist client agencies in the planning of construction projects, developing scopes of work, investigating construction-related problems, designing small projects and administering construction projects.

(b) The Division may delegate to client agencies the authority to award projects for consultants to perform professional services for construction projects. The client agency shall evaluate and rank the technical submissions according to selection procedures established by Division policy.

(c) An agency consultant fee limit for each work order shall be established by the Division, including a fee limit threshold per year.

(d) The client agency shall monitor and manage all activities of the consultant. Financial data and project files shall be available to Division auditors.

17:19-5.11 Client agency management of design/construction projects

(a) The Division may delegate authority to client agencies to manage design and/or construction phases of a project with a stipulated construction cost estimate.

(b) The selection of firms to submit technical and cost proposals shall be in accordance with the term contract selection procedures, N.J.A.C. 17:19-5.9(b) and as outlined in the terms and conditions of the term contract.

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(a)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Executive Commission on Ethical Standards Rules Attendance at Events, Acceptance of Honoraria, and Acceptance of Compensation for Published Works Adopted New Rules: N.J.A.C. 19:61-6

Proposed: December 5, 1994 at 26 N.J.R. 4757(a).

Adopted: January 25, 1995 by the Executive Commission on Ethical Standards, Rita L. Strmensky, Executive Director.

Filed: January 27, 1995 as R.1995 d.108, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:13D-12 et seq.

Effective Date: February 21, 1995.

Expiration Date: March 2, 1997.

Summary of Public Comments and Agency Responses:

The Executive Commission on Ethical Standards received written comments from:

1. Ellen Radow, Esq.
2. Mitchell R. Malec and Janice I. Malec
3. Henry Maurer
4. William Honachefsky
5. Department of Environmental Protection
6. Division of Youth and Family Services, Department of Human Services
7. Department of Banking
8. Department of Labor
9. Department of Transportation
10. Department of Law and Public Safety
11. Department of Personnel
12. New Jersey Business and Industry Association
13. New Jersey Water Environment Association
14. Association of Environmental Authorities
15. Utility and Transportation Contractors Association
16. Landis Sewerage Authority
17. Commission on Higher Education
18. State League of Municipalities
19. New Jersey Association of Counties

General

COMMENT: Two commenters stated that the proposed rules in their entirety are duplicative of the Election Law Enforcement Act rules which require lobbyist organizations to report expenditures of \$25.00 on behalf of State officials to the Election Law Enforcement Commission.

RESPONSE: The Commission disagrees. The Commission's rules are intended to prevent conflicts of interest and the appearance of conflicts on the part of State officials before they occur. The Election Law Enforcement Act requires reporting by only one element of entities defined as interested parties, that is, lobbyists, and is after-the-fact reporting. There are many entities who fall within the Commission's definition of "interested party" who are not required to file reports with the Election Law Enforcement Commission.

COMMENT: One commenter stated that the proposed rules and attendant paperwork are unnecessary, since adequate provisions such as the Conflicts Law, departmental codes of ethics, applicable executive orders, and the Commission's Guidelines for Secondary Employment currently address the issues if adequately enforced.

RESPONSE: The Commission disagrees. The rules as proposed formalize the Commission's interpretation of the Conflicts Law and other standards as applied to attendance at events since 1972. It provides a bright-line standard that is easily understood.

COMMENT: One commenter urged that the rules be specifically limited to situations where some type of compensation is involved.

RESPONSE: The Commission disagrees. A conflict of interest or the appearance of a conflict can arise in many situations where compensation is not involved.

COMMENT: One commenter asked what occurrences or substantiations precipitated the Commission's feeling that the new rules are necessary.

RESPONSE: The Commission has handled, beginning in 1972, many allegations that State employees, by accepting meals, travel and/or accommodations from regulated or licensed entities or vendors, were then in conflicted positions when they acted in their official capacities on matters affecting those entities. Since 1972, the Commission has taken the position that State officials could attend events sponsored by such entities only if the State or the individual paid the costs. The Commission's Guidelines had evolved into a statement with many confusing scenarios and convoluted procedures. The Commission feels that this rule is necessary to provide a simplified, bright-line standard for State officials and to eliminate the cumbersome reimbursement process associated with the previous Guidelines.

COMMENT: One commenter asked when the Commission's Guidelines for Attendance at Events and Functions, first issued in 1972, was updated and last issued.

RESPONSE: The Guidelines were last updated in August 1992 but had never been issued as part of the Administrative Code.

COMMENT: One commenter asked if procedures and funds have been established so that the State can pay reasonable expenses for attendance at events sponsored by interested parties.

RESPONSE: Most State agencies have funds budgeted for attendance at conferences, seminars, and other such events. The allocation of those funds among various events is, of course, subject to the agency's discretion. Under the Commission's previous Guidelines, State agencies were required to pay the attendance costs when a regulated or licensed entity or a vendor was the event sponsor.

COMMENT: One commenter recommended that the Commission review existing departmental regulations and procedures to ascertain their effectiveness prior to implementing what the commenter characterized as "burdensome, bureaucratic and controlling rules."

RESPONSE: The Commission is very much aware that there are no uniform procedures from one State agency to another and that the effectiveness of existing procedures, as well as the effectiveness of enforcement of the Commission's previous guidelines, has been spotty at best. The Commission maintains a network of ethics liaison officers with whom there is constant communication on this and other subjects.

N.J.A.C. 19:61-6.2 Definitions

COMMENT: One commenter recommended that the definition of "supplier" at N.J.A.C. 19:61-6.2 be clarified to include firms seeking to do business with a State official's agency. The commenter felt that the definition as proposed was too limiting and not consistent with Executive Order No. 189 (Kean, 1988). The current proposed language, "or may reasonably be expected to provide goods and/or services," might only be read to include established vendors in a field, rather than those

newcomers who are "feeling out" an agency's interest in using their services. Thus, for example, an electrical company which has never done business with the Department and which holds a new product information seminar on highway lighting equipment would be assumed to be seeking to do business with the Department.

RESPONSE: The Commission agrees, and has made the change to include the phrase "is seeking to provide," since the addition clarifies the original intent to include current suppliers ("is providing") and possible suppliers ("may reasonably be expected to provide"). Those seeking to provide also may reasonably be expected to provide. This change clarifies the Commission's intent to include those who may be newcomers exploring the possibility of providing, but are not yet applying to provide.

COMMENT: One commenter requested a clarification of "refreshments."

RESPONSE: "Refreshments" is intended to have its ordinary meaning: beverages and snacks such as doughnuts, pastries and cookies. In reviewing this comment, the Commission realized that the rule did not formalize the unwritten "coffee and doughnut" rule used by the Commission for nearly 20 years. The Commission had always permitted a State official to accept refreshment equivalent to the value of a cup of coffee and a doughnut, regardless of the identity of the sponsor. The definitions of direct and indirect benefits have been clarified accordingly. The Commission realized that the term "reasonable subsistence" required clarification, and has, therefore, changed the term to "meals and accommodations".

COMMENT: One commenter recommended that the word "oversight" in the definition of "interested party" in N.J.A.C. 19:61-6.2 be changed because it is subject to an unreasonably broad interpretation. The commenter pointed out that State agencies with law enforcement functions could be viewed as overseeing many entities, even though the agencies have no contact with the entities unless a complaint is filed with the agency.

RESPONSE: The Commission agrees that "oversight" may be an overly inclusive term and has substituted the word "supervisory." "Supervisory" more accurately reflects the intent of the Commission to reach those entities with which agencies interact in a direct and more involved way, with input into the operation of the entities.

N.J.A.C. 19:61-6.3 Granting of approval

COMMENT: One commenter suggested that N.J.A.C. 19:61-6.3 should emphasize that State officials should not be permitted to attend strictly social functions sponsored by interested parties, such as golf outings and holiday parties, on State time.

RESPONSE: The Commission believes that this policy is adequately conveyed in the requirements that a State official's attendance at any event must serve a legitimate State purpose and support the mission of the agency.

COMMENT: One commenter took issue with the Commission's use of the words "permission" rather than "approval" and "maintained" rather than "retained" in N.J.A.C. 19:61-6.3.

RESPONSE: The Commission has made the clarifying changes.

COMMENT: Several commenters suggested that it is burdensome to require State agencies to have a formalized approval procedure and to retain a record of the requests for approvals for five years. One commenter suggested that the five-year period is excessive and that questions as to propriety of attendance at events would be raised within 12 months of the event.

RESPONSE: The Commission disagrees. The approval and retention requirements protect State agencies and State officials by mandating that official actions be reviewed from a conflicts perspective and that an adequate record of that review be kept. A review of Commission cases shows that complaints about attendance at events have been received by the Commission between two and three years after the event.

COMMENT: One commenter asked if approval procedures must be followed if a State official chooses to attend an event on personal time using personal funds when that event is sponsored by an interested party.

RESPONSE: The Commission expects the approval procedures to be followed because of the State's significant interest in monitoring the interactions of State officials with interested parties in order to avoid conflict situations.

COMMENT: One commenter asked how the Department determines the monetary cost of any benefits being provided to a State official.

RESPONSE: The sample form at N.J.A.C. 19:61-6.7 asks that the costs be identified.

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N.J.A.C. 19:61-6.4 Attendance at an event sponsored by an interested party

COMMENT: Several commenters expressed concern that the rule, particularly with respect to events sponsored by interested parties, will inhibit the exchange of information and development of policy because budget constraints will reduce the ability of the State to fund attendance. These commenters recommended that State officials who attend meetings, conferences, seminars, symposia and training courses sponsored by interested parties as participants should be able to accept conference fees and meals associated with the speaking engagement. The commenters argue that such situations would not give rise to conflict situations, since the costs assumed by the interested parties would only include conference fees, materials and meals offered to all attendees as an integral part of the event.

RESPONSE: The Commission agrees that under limited and controlled conditions, State officials who participate in events that are designed to provide training, dissemination of information, or the exchange of ideas can attend at the expense of an interested party. To this end, the Commission will propose a modification to N.J.A.C. 19:61-6.4.

COMMENT: Several commenters requested that the Commission allow a limited exception to N.J.A.C. 19:61-6.4 so that attendees could accept a meal at an event sponsored by an interested party when that attendance is necessary to further the agency's mission. One commenter suggested that this limited exception could be controlled so that no abuse results by requiring that such situations be reported to the Commission.

RESPONSE: The Commission feels that an exception for speakers and panel participants sufficiently addresses the State's need to communicate and interact with interested parties. An exception for all attendees is too broad and is not seen as necessary to further an agency's mission, nor is such an exception in accord with the stated purpose of N.J.A.C. 19:61.

COMMENT: One commenter expressed concern that an official of a State agency with numerous divisions having very diverse missions would be subject to the prohibition of N.J.A.C. 19:61-6.4 with respect to entities over which neither the division nor the official has any authority. The commenter recommended that the rule be clarified.

RESPONSE: The Commission recognizes that in the situations described by the commenter, the application of the rule may result in unnecessary and unreasonable restrictions. The Commission has provided a mechanism in N.J.A.C. 19:61-6.3(c) for agencies with numerous divisions having distinct and diverse missions to seek a clarifying determination from the Commission.

COMMENT: One commenter recommended revising N.J.A.C. 19:61-6.4 to allow an exception to prohibiting a State official from accepting a direct or indirect benefit from an interested party if the Department head determines that there will be no reasonable possibility that the State official would be compromised or appear to be compromised in connection with the event.

RESPONSE: The Commission feels that such an exception would be unevenly applied by various State agencies. The Commission will propose an exception, based on the State official's role at the event.

COMMENT: One commenter noted that N.J.A.C. 19:61-6.4(b) does not appear to permit a State employee to accept meals of nominal value or refreshments at events, particularly in the holiday season, that are essentially social and are not intended to influence public employees.

RESPONSE: The rule makes clear that State officials should attend events sponsored by interested parties only when a legitimate State purpose exists or when such attendance is required to further the agency's mission. The Commission has received many complaints in the past that State officials who attend social events sponsored by interested parties are accessible to those entities but not to members of the general public. There have been situations where this social accessibility has created the appearance of impropriety that the Commission wishes to eliminate with the adoption of this rule.

COMMENT: One commenter asked if exceptions to the requirement for prior departmental approval at N.J.A.C. 19:61-6.4 are allowed and how emergency situations such as last-minute invitations or substitutions are handled.

RESPONSE: The Commission does not contemplate exceptions to the prior approval requirement of N.J.A.C. 19:61-6.4. Appropriate handling of last-minute invitations and substitutions are within the discretion of the agency.

COMMENT: Several commenters recommended that the rule be amended to provide a *de minimis* exception (either \$25.00 or \$50.00)

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that would permit State officials to accept meals or refreshments at an event sponsored by an interested party.

RESPONSE: The Commission feels that such a blanket exception could provide a means of circumventing the intent of the rules. In addition, sponsors are not always able to provide realistic cost information, since many facilities charge a per person fee that includes non-meal components such as use of facilities, audiovisual equipment, etc.

N.J.A.C. 19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

COMMENT: Several commenters interpreted events sponsored by an entity other than an interested party at N.J.A.C. 19:61-6.5 as including family and social functions that are totally unrelated to the official duties of the affected State official. These commenters felt that such a broad rule intrudes on employees' personal lives.

RESPONSE: The Commission did not intend to include events such as family birthday parties within the scope of N.J.A.C. 19:61-6.5 and has clarified the definition of "event" at N.J.A.C. 19:61-6.2 to make clear that the events covered by the rule are those to which a State official is invited because of his or her State position.

COMMENT: One commenter questioned why permission is needed to attend an event sponsored by an entity other than an interested party.

RESPONSE: The Commission feels that it is important that State agencies examine the participation of State officials at events sponsored by all non-State government sources to ensure that a conflict of interest or an appearance of a conflict does not occur as a result of such attendance. From the Commission's 22-year history, it is clear that not all conflict situations arise from interactions with interested parties. In addition, the State official or the individual extending the invitation may not be aware that the particular entity contracts with or has a matter pending before the official's agency. Thus, the Commission feels that, to safeguard the public trust, attendance at all events in one's official capacity should be monitored.

COMMENT: One commenter asked that an example of "entertainment collateral to the event" at N.J.A.C. 19:61-6.5 be added to the rule. This commenter also felt that this portion of the rule is unnecessary, since collateral entertainment would not be provided by an interested party.

RESPONSE: For the sake of clarity, the Commission has added an example of collateral entertainment, a golf outing, to N.J.A.C. 19:61-6.5. The Commission feels that this portion of the rule is necessary. State officials attend such events in their official capacities because there is a legitimate State purpose connected with the mission of the agency. Acceptance by the State official of collateral entertainment under such circumstances is not part of the official's duties and could give rise to an appearance of a violation of the public trust.

COMMENT: One commenter asked if a Department of Environmental Protection employee could participate in a seminar sponsored by Cook College or co-sponsored by Cook College and a private entity without having to pay the registration fee. The commenter felt that the government speaker should be able to accept the registration fee or lunch or dinner as thanks for speaking.

RESPONSE: Cook College is a part of Rutgers University which, for the purposes of the Conflicts of Interest Law, is a State agency. This rule applies to non-State government sponsors and would not affect the situation to which the commenter referred. Likewise, a seminar co-sponsored by Cook College and a private entity would be evaluated under the Commission's Guidelines for Joint Ventures and Private Financing of State Activities. The modifications to be made to the rule as a result of the comments include a speaker exception which would cover this commenter's question.

COMMENT: One commenter asked whether a State official's title could be used in relation to a dinner or affair honoring that official, so long as there is no fundraising associated with the event.

RESPONSE: The prohibition against the use of a State official's title, as set forth in N.J.A.C. 19:61-6.5, is only intended to apply to fundraising activities and not to testimonial dinners that do not contain a fundraising purpose.

COMMENT: One commenter felt that the rule should make an exception for attendance at conferences or seminars that are primarily educational, such as those conducted by the Institute for Continuing Legal Education.

RESPONSE: The Commission feels that such a specific exception is unnecessary since such sponsors would rarely be interested parties with respect to State agencies.

COMMENT: One commenter asked by what authority a State official can prevent any entity from using his or her official title for fundraising purposes.

RESPONSE: The Commission is aware that State officials cannot necessarily control the actions of private entities. In order to comply with the rule, a State official would be expected to notify the private entity in writing of the prohibition against the use of the official's title.

COMMENT: Several commenters stated that State officials should not be allowed to receive honoraria for speeches or published works from any event sponsors when the speech or published work is part of the official's duties.

RESPONSE: N.J.S.A. 52:13D-24 permits a State official to accept an honorarium for speeches or published works on matters within his or her official duties. Notwithstanding section 24 of the Conflicts Law, the Commission has historically taken the position that acceptance of an honorarium from an interested party creates the appearance of impropriety.

N.J.A.C. 19:61-6.6 Compensation for published work(s)

COMMENT: Several commenters questioned why N.J.A.C. 19:61-6.6 requires approval for published works prepared by State officials at home, on their own time, not using State resources.

RESPONSE: The Commission requires disclosure of secondary employment, whether compensated or not, at N.J.A.C. 19:61-2.2, under the authority of N.J.S.A. 52:13D-23(e)(5) and (7).

N.J.A.C. 19:61-6.7 Sample approval request form

COMMENT: One commenter stated that the form proposed at N.J.A.C. 19:61-6.7 does not specify the authority of the Department preparing it or the responsibility of the employee who may be required to sign.

RESPONSE: The authority for the Department to prepare the form and the responsibility of the employee who is submitting the form are established by this rule.

COMMENT: One commenter recommended adding questions to the sample form at N.J.A.C. 19:61-6.7 to identify whether the sponsor is a vendor or the State official has dealings with the sponsor.

RESPONSE: The Commission has added a question to the sample form asking if the sponsor is an interested party.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required, because there are no Federal standards applicable to ethical standards for state employees. The rules in this chapter are authorized by, and supplement or further delineate, State law at N.J.S.A. 52:13D-12 et seq.

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

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, AND ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions

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

"Approval" means, for the purposes of N.J.A.C. 19:61-6.4 and 6.5, written permission from the department head to attend and/or participate in an event; to accept an honorarium or fee; and/or to accept direct or indirect benefits in connection with attendance.

"Commission" means the Executive Commission on Ethical Standards.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, ***[refreshments, reasonable subsistence,]** ***meals, accommodation,*** waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State^[.] ***but is**

not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).*

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, ***[and]*** is sponsored or co-sponsored by a non-State government source ***and the invitation for which is extended to the State official because of his or her official position*.**

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, ***[refreshments, reasonable subsistence,]** ***meals, accommodation,*** event fees, or any other costs associated with attending the event for which no reimbursement is made by the State^[.] ***but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).***

"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or ***[oversight]*** ***supervisory*** authority of the State official's agency;

2. Any supplier, or employee, representative or agent thereof;

3. Any organization that advocates or represents the positions of its members to the State official's agency; or

4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Person" means any natural person, association, organization, firm, partnership or corporation.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).

"Supplier" means any private sector person that is providing or ***is seeking to provide or*** may reasonably be expected to provide goods and/or services to the State official's agency, including, but not limited to, consultants, vendors and lessors.

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants ***[permission]*** ***approval*** to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;

2. The purpose of the event;

3. The identity of other expected participants;

4. Whether attendance/participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and

5. The monetary value and character of the costs, benefits and/or honoraria provided by the sponsor, including whether the costs, benefits and/or honoraria are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on a form similar to that provided in N.J.A.C. 19:61-6.7. Such forms shall be ***[maintained]*** ***retained*** by the Department for a period of five years from the date of approval of the form.

***[c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may request that the Commission permit that such divisions rather than the department be treated as agencies for the purposes of this subchapter.]**

ADOPTIONS

The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their separate treatment as agencies.*

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State shall pay the reasonable expenses of the State official associated with attending the event. Neither the State official nor the State shall receive any direct or indirect benefit from any other source. The State official may pay his or her own expenses with his or her personal funds.

(c) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

The Commissioner of Banking is asked, by the New Jersey Bankers Association, to attend their annual meeting in Hilton Head to address members on the subject of the effects of proposed banking regulations in New Jersey. The Association has offered to pay all travel and hotel expenses for the Commissioner. With proper approval, the Commissioner may attend the meeting; however, because the Department of Banking regulates the Association's members, the State or the Commissioner must pay the reasonable expenses of the trip and neither the State nor the Commissioner may accept any reimbursement or direct benefit from any other source. The Commissioner may not accept an honorarium or fee for his speech.

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore a vendor to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

(c) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(d) A State official making a speech or presentation at the event may accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event*, such as a golf outing*, or meals taken other than in a group setting with all attendees, or reimbursement therefor.

Examples

An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500.00 honorarium. With proper approval, the employee may attend the meetings and may accept an honorarium in connection with his speech. In addition, he may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

OTHER AGENCIES

19:61-6.6 Compensation for published work(s)

(a) A State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the Commission's Guidelines for Secondary Employment, any other applicable guidelines or rules of the Commission, any applicable departmental administrative policies, and the following conditions:

1. Compensation shall not be from an interested party;

2. The published work(s) cannot use or disclose information not generally available to the public;

3. The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State*[,]**; and*

4. The State official shall not use his or her official title in any way in soliciting compensation and shall indicate that his or her views do not represent those of the State.

Examples

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered \$500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

19:61-6.7 Sample approval request form

(a) The following form, or one containing substantially similar elements, may be used to request approval to attend events, accept honoraria, and/or accept compensation for published works.

Example

REQUEST FOR APPROVAL FOR ATTENDANCE AT EVENT

Department of _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

Event _____

Sponsor _____

Is the sponsor an "interested party"? Yes ____ No ____

Location _____

Date(s) _____

Overnight accommodation required? Yes ____ No ____

Out-of-state travel required? Yes ____ No ____

OTHER AGENCIES

Estimated cost? \$ _____

Agency to pay cost? Yes ____ No ____

Sponsor to pay cost? Yes ____ No ____

Employee to pay cost? Yes ____ No ____

Reason for attendance: _____

Will sponsor offer an honorarium or fee? Yes ____ No ____

ADOPTIONS

Amount of honorarium \$ _____

Employee Signature Date

Attendance approved Yes ____ No ____

Acceptance of honorarium approved Yes ____ No ____

Conditions: _____

Signature Date

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY Notice of Receipt of Petition For Rulemaking Coastal Permit Program Rules N.J.A.C. 7:7-2.1(c)5

Petitioner: Stephen and Linda Gertler, represented by the law firm of Picco Mack Herbert.

Take notice that on January 17, 1995, the Department of Environmental Protection (Department) received a petition for rulemaking concerning an amendment of the Department's regulations governing coastal permit program rules.

The petitioner requests that the Department promulgate reasonable rules and regulations concerning the construction of retaining walls on specified residential developments in the State. N.J.A.C. 7:7-2.1 and N.J.A.C. 7:7-1.1(b)1, 2 and 3 govern activities and define specific areas for which a Coastal Area Facilities Review Act (CAFRA) permit is required. N.J.A.C. 7:7-2.1(c)5iv currently prohibits construction of retaining walls in designated areas without first obtaining a CAFRA permit.

The petitioner requests that the Department amend N.J.A.C. 7:7-2.1(c)5i and 7:7-2.1(c)5vi to indicate that a CAFRA permit is not required for construction of retaining walls located in residential developments that fall within the specified regulated areas.

(b)

OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS Notice of Availability of NJDEP Catalog of Grant and Loan Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Environmental Protection announces the availability of grant and loan funds through the "NJDEP Catalog of Grant and Loan Programs, 1994-1995."

Name of publication: NJDEP Catalog of Grant and Loan Programs, 1994-1995.

Description of publication: This Catalog lists the most up-to-date information about ongoing grant and loan programs within the Department of Environmental Protection. Each program section provides application procedures and identifies pertinent staff, addresses and numbers to contact for more specific information. This version is an update to the "NJDEPE Catalog of Grant & Loan Programs, October, 1993."

Obtaining a copy:

A copy of the Catalog may be requested from:

NJDEP
Office of Environmental Services
CN 402
Trenton, New Jersey 08625
(609) 984-0828

Cost: This publication is free.

(c)

OFFICE OF LAND AND WATER PLANNING Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. This amendment proposal was submitted by the Sussex County Department of Planning and Development. The proposal would amend the Montague Township Wastewater Management Plan to include the entire Montague

Township Elementary School property, Block 41, Lots 3 and 3.01 in the area designated for on-site ground water disposal systems (with design capacities of less than 20,000 gallons per day). The existing school (serving 382 persons) is proposed to be expanded to serve a future school population of 600 persons. A new on-site ground water disposal system, using constructed wetlands technology, is proposed to serve the projected wastewater flow of 9,000 gallons per day. The new on-site ground water disposal system will be owned and operated by the Montague Township Board of Education.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Sussex County Department of Planning and Development at (201) 579-0500 or the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Mr. George Krauss, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders, with respect to the amendment request.

In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

Any interested person may request in writing that the Sussex County Board of Chosen Freeholders hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 working days of this public notice to Mr. George Krauss, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(d)

OFFICE OF LAND AND WATER PLANNING Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan Public Notice

Take notice that on January 23, 1995, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted by the New Jersey Turnpike Authority

(NJTA). The amendment includes a portion of Block 5, Lot 8 of Cranbury Township, on the southbound side of the Turnpike, bounded by Prospect Plains Road on the north and Cranbury Half Acre Road on the south into the Middlesex County Utilities Authority (MCUA) sewer service area. Portions of Lot 8 are presently within the MCUA sewer service area. Wastewater flows from the Molly Pitcher Service Area (Service Area 7S) are presently conveyed to the MCUA sewage treatment plant via discharge into the Monroe Township Municipal Utilities Authority (MTMUA) sanitary system. The NJTA will convey wastewater flows from the New Law Enforcement Communications/Patrol Center to MCUA via the MTMUA system. This proposal amends and updates the MTMUA Wastewater Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that on January 18, 1995, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment was submitted on behalf of Moorestown Township and the Mount Holly Sewerage Authority (MHSA) in Burlington County and modifies the Moorestown Township and MHSA Wastewater Management Plans. This amendment identifies that the proposed Moorestown Creek Road Sewage Treatment Plant (STP) will not be constructed. The previously identified sewer service area of the Creek Road STP has been divided into three different service area designations. One of these areas, designated in the eastern most portion of Moorestown Township is the Laurel Creek sewer service area which includes the following parcels: Laurel Creek Residence and Office, Hatfield, Moorestown Low and Moderate Income Homes, Stevens, Winner, U.S. Navy Combat Systems Engineering Development/Martin Marietta/Aegis (Block 7402, Lot 1 only) and the Moorestown Township Sanitary Landfill site.

The MHSA has assumed wastewater management planning responsibility for the Laurel Creek sewer service area of Moorestown Township and plans to service all of this area, except for the landfill site which has been identified as a less than 2,000 gallons per day (GPD) subsurface sewage disposal service area. An existing 6,000 GPD domestic discharge to ground water at the U.S. Navy Combat Systems Engineering Development/Martin Marietta/Aegis site will be abandoned for connection to the MHSA when service is available, but an existing non-contact cooling water discharge will remain on-site. Approximately 351,164 GPD of wastewater flows from the Laurel Creek sewer service area will be sent to the MHSA STP in Mount Holly Township for treatment. This brings the projected wastewater planning flow need of the MHSA STP to 7.28 million gallons per day (MGD).

Another portion of the former Creek Road STP sewer service area has been designated as a less than 20,000 GPD subsurface sewage disposal service area (Block 7401, Lots 1, 2, 5, 6, 7, and 8, the GE Antenna Farm) while the third area is a proposed expansion to the Moorestown Pine Street STP sewer service area. The proposed Pine Street STP sewer service area expansion includes the following properties: Laurel Corporate Center II, DeMarco, Griffin, Vesper, Wilson, Gravatt, Gross, Re/Max, Commerce Bank, Martin Marietta/Aegis (Block 7402, Lot 2 only) and the Georgokolis site which was not previously proposed for sewer service. The projected wastewater planning flow from these properties is approximately 90,000 GPD which brings the projected wastewater planning flow need of the Pine Street STP to 3.59

MGD. The existing RCA/GE Missile Surface Radar Site pretreatment discharge to the Pine Street STP will continue its discharge there.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Receipt of Petition for Rulemaking N.J.A.C. 10:49-7.3

Petitioner: John L. Tweed, Executive Director, Medical Transportation Association of New Jersey, Inc.

Take notice that on January 13, 1995, the New Jersey Department of Human Services received a Petition for Rulemaking dated January 11, 1995 concerning N.J.A.C. 10:49-7.3, the rules for claims payments as described below.

Petitioner is John L. Tweed, Executive Director, Medical Transportation Association of New Jersey (MTANJ).

Petitioner requests that the Division commence rulemaking activity to require the New Jersey Medicaid Program make full payment of Medicare (Title XVIII) Part B premiums, deductibles, and copayments on behalf of Dual Eligibles (someone with both Medicaid and Medicare coverage) and Qualified Medicare Beneficiaries.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department/Division shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

The specific amendments requested by the petitioner are as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:49-7.3 Third party liability (TPL) benefits

(a) "Third party liability" (TPL) exists when any person, institution, corporation, insurance company, absent parent, Medicare program, public, private, or governmental entity is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the costs of medical assistance payable under this act.

1. It is a violation of section 1902(a)(25)(D) of the Federal Social Security Act to refuse to furnish covered services to any Medicaid recipient because of a third party's potential liability to pay for services.

(b) Medicaid benefits are last-payment benefits. All TPL, for example, health insurance, Medicare, CHAMPUS, prepaid health plans, workers' compensation and auto insurance, shall, if available, be used first and to the fullest extent in meeting the cost of the medical needs of the Medicaid recipient, subject to (h) below.

(c) The New Jersey Medicaid Program will supplement the amount paid by a third party, but the combined total paid to the provider shall not exceed the total amount payable under the Program in the absence of any TPL. The following exceptions should be noted:

1. Medicare **Part A**: The Program will make payment in the full amount of the Medicare deductible and co-insurance for certain inpatient hospital services (see (e)1i(1) below).

2. Medicare **Part B**: The Program will make payment in the full amount of the premium, deductible and co-insurance for Qualified Medicare Beneficiaries ("QMBs" and Dual Eligibles ("DEs"). QMBs are individuals who are eligible for Medicare benefits but who cannot afford Medicare Part B premiums, deductibles and co-payments and are not poor enough to qualify for Medicaid. Dual Eligibles are individuals eligible for both Medicare and Medicaid benefits because they are poor and either aged or disabled.

[2]3. Contracting practitioners: No Program payments shall be made when the third party calls for a contracting or participating practitioner to accept the TPL as payment in full.

(d) Medicaid participating providers are prohibited from billing Medicaid recipients for any amount, except:

1. For services, goods, or supplies not covered or authorized by the New Jersey Medical Assistance and Health Services Act (N.J.S.A. 30:4D-1 et seq.) if the recipient elected to receive the services, goods, or supplies with the knowledge that they were not covered or authorized; or

2. For payments made to the recipient by a third party on claims submitted to the third party by the provider.

(e) When a Medicaid recipient has other health insurance, the Program requires that such benefits be used first and to the fullest extent, subject to the exceptions in (h) below. Supplementation may be made by the Program, but the combined total paid shall not exceed the amount payable under the Program in the absence of other coverage **except for Medicare**. The Program shall not supplement coverage services rendered by a participating or contracting practitioner with any private health coverage program where the private plan calls for the practitioner to accept that plan's payment as payment in full. When other health insurance is involved, supplementation claims shall not be filed with the Program unless accompanied by a statement of payment, Explanation of Benefits (EOB), or denial from the other carrier. Attachment of such information will expedite Medicaid claim processing.

1. Medicare is a health insurance program which covers certain aged and disabled persons. When rendering Medicare-covered services to any Medicaid recipient, providers shall inquire about Medicare eligibility especially if the third digit of the HSP (Medicaid) Case Number is a 1, 2, 5, or 7. Medicaid supplementation of available Medicare benefits shall be as follows:

[i. Medicare (Title XVIII): For any Medicaid recipient who is covered under Medicare, responsibility for payment by the New Jersey Medicaid Program shall be limited to the unsatisfied deductible and/or co-insurance to the extent that the combined total payments does not exceed the maximum allowable under the Medicaid Program in the absence of other coverage. The following exceptions should be noted:

(1) The Program shall pay the full amount of any unsatisfied Medicare deductible and/or co-insurance for inpatient hospital services billable to the Program in accordance with Chapter 83, P.L. 1978 (that is, inpatient hospital services subject to payment by the Program according to the New Jersey DRG reimbursement methodology).]

i. Medicare (Title XVIII): For any Medicaid recipient who is covered under Medicare, the New Jersey Medicaid Program shall be responsible for payment of the entire Medicare Part B premium, as well as 100 percent of the Medicaid recipient's co-payment and deductible, regardless of whether or not the combined total payments exceed the maximum allowable payment under the Medicaid Program.

(f) When a Medicaid recipient has benefits available, such as those described above or from any other liable third party, an approved Medicaid provider shall be authorized to sign an insurance claim form for the Commissioner, based on the third party assignment of rights, in order to receive direct payment from the insurer. This is done pursuant to N.J.S.A. 30:4D-7.1(c). The following language shall be used by the provider when completing insurance claims forms: "(signature of authorized provider), Assignee for the Commissioner, New Jersey Department of Human Services."

(g) When recovery of benefits is sought by the Medicaid Program from a liable third-party, the Commissioner shall authorize the Director or his designee(s) to sign the recovery demand.

(h) TPL may be exhausted, but is not required to be, before a claim is submitted for Medicaid payment in any of the following circumstances:

1. The TPL benefits are deprived from a parent whose obligation to pay support is being enforced by the State Title IV-D agency;

2. The claim is for prenatal care for a pregnant woman or for preventive pediatric services (including EPSDT services) that are covered by the Program;

3. The claim is for labor, deliver, and post-partum care and does not involve hospital costs associated with the inpatient hospital stay; or

4. The claim involves a service for which HCFA has granted a waiver of the TPL cost avoidance requirements in accordance with 42 C.F.R. 433.139(e). Waivers have been granted for:

i. Pharmacy services; and

ii. Services covered by Medicare Part B which are rendered at State and county governmental psychiatric hospitals, State and private ICFs/MR and Vineland Special Hospital.

(i) In those institutions where an insurance payment is received from another payer after Medicaid has been billed and has made payment, the provider must reimburse the Medicaid payment to the Medicaid Program and not the Medicaid recipient. Reimbursement must be made immediately to comply with Federal regulations. To initiate the process, providers must submit an Adjustment/Void Request Form. (See Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

(j) Regardless of the status of a provider's claim and other third parties, all claims for Medicaid reimbursement must be received by the Medicaid Fiscal Agent within the time frames specified in N.J.A.C. 10:49-7.2, Timeliness of claim submission.

(k) Any individual who undertakes to legally represent any Medicaid recipient in an action for damages against any third party when medical expenses have been paid by the Division shall be required to give written notice to the Division within 20 days of filing or commencing the action.

1. The term "legal representative" shall include, but not be limited to, an attorney, administrator/administratrix, executor/executrix, conservator, guardian or guardian ad litem.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds Privatization of the New Jersey Teaching Family and Alternative Care Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of grant program: Privatization of the New Jersey Teaching Family and Alternative Care Programs.

Purpose for which the grant program shall be used: This program is intended to transfer the responsibility for the direct administration and operation of the Teaching Family and Alternative Care Programs from the Division of Youth and Family Services to a private provider. This transfer will reduce the Division's role in the provision of substitute care services to adolescents under agency supervision and enhance the role of the private sector in the provision of direct care treatment services to vulnerable children. The Division will continue to oversee and monitor the program.

Amount of money in the grant program: Funding in the annualized maximum amount of \$2,468,677 is available for this program. This amount consists of \$2,398,677 in Grant-in Aid funds and \$70,000 in Federal Title IV-E Independent Living Services funds. These funds are exclusive of educational costs which will be funded through the sending school district. The contract shall be based on a fixed unit rate per adolescent, with separate rates for the Teaching Family program and Alternative Care program. Matching funds are not required. The selected provider will be required to sign a standard state lease agreement for each of the three State-owned properties.

Organizations eligible to apply for funding: Agencies that are Certified Sponsor Sites of the Teaching Family Association, or other private non-profit or for-profit agencies which demonstrate a commitment for maintaining the New Jersey Teaching Family and Alternative Care Program's Certification status, including identification of a Sponsor Site, are eligible to submit a proposal in response to the Request for Proposals (RFP), provided the Applicant:

1. Demonstrates its willingness to enter into a contract with DYFS and comply with the contracting rules and regulations of the Department of Human Services (as outlined in the Contract Reimbursement Manual and the Contract Policy and Information Manual N.J.A.C. 10:3);

2. Provides services to emotionally disturbed and delinquent youth, in accordance with the standards of the Division of Youth and Family Services and of the Teaching Family Association;

3. Meets all applicable requirements of the Manual of Requirements for Children's Group Homes (N.J.A.C. 10:128); and

4. Does not discriminate in providing services to eligible clients based on age, race, creed, national origin, sex, handicap, or financial status.

Application selection criteria: Applications for funds will be evaluated and scored in accordance with the criteria listed below. The maximum

score for all criteria is 100 points and shall be computed based on the following guidelines:

15—The strength, comprehensiveness, and clarity of the applicant's history as a Certified Sponsor Site or the Applicant's plan and timetable for acquiring sponsorship and maintaining certification with the Teaching Family Association.

15—The demonstration of a service provision history to the identified population of families and children and in accordance with the elements of the Teaching Family Model.

20—The comprehensiveness and completeness of the Applicant agency's plan for providing and delivering all services and supports, including linkages with DYFS offices and other community agencies.

10—The strength of the Applicant's justification for concluding that the compatibility of the applicant's goals, objectives, performance outcomes and treatment philosophy are most closely aligned with the goals and objectives of the program and services solicited in the RFP.

20—The reasonableness of the budget proposal, rates and documentation.

10—The clarity of the process for and description of how the New Jersey Teaching Family Program will be incorporated into the Applicant's existing organizational structure.

5—The feasibility of the timetable to implement the Applicant's plan.

5—The impact on the families and children served and/or the Division, if any, by any proposed program innovations or cost saving measures.

Procedures for eligible applicants to apply: Agencies and organizations interested in applying for these funds may obtain a copy of the Request for Proposals by contacting Alisha Griffin, Assistant Administrator, DYFS Office of Statewide Operations and Support, Capital Center, 50 East State Street—7th Floor, CN 717, Trenton, New Jersey 08625-0717, Telephone (609) 292-0590.

A Mandatory Bidders' Conference is scheduled for:

Date: Wednesday, March 8, 1995

Time: 10:00 A.M.

Place: Department of Personnel—Human Resource Development Institute

Address: 3131 Princeton Pike, Room L

Lawrenceville, NJ

Contact: Alisha Griffin

DYFS Office of Statewide Operations and Support
(609) 292-0590

Inclement weather will not result in the cancellation of the mandatory bidder's conference unless it is of a severity sufficient to cause the official closing or delayed opening of State offices on the above date. In the event of the closure or delayed opening of State offices, the Bidder's Conference will be **canceled** and then held on the following alternate date:

Date: Thursday, March 9, 1995

Time: 10:00 A.M.

Place: Department of Personnel—Human Resource Development Institute

Address: 3131 Princeton Pike, Room G

Lawrenceville, N.J.

NOTE: Announcements concerning the closure or delayed opening of State Offices are broadcast on radio stations throughout the State.

Attendance at the Bidders' Conference is mandatory. Proposals received from applicants who did not attend the conference will be disqualified.

Mandatory site review: All applicants will be required to visit each of the three State owned facilities prior to submitting a proposal. A schedule of the date and time for each site will be open for visitors and will be distributed at the Bidders' Conference.

Submission of proposals: Agencies and organizations interested in applying for these funds shall submit one signed original and 10 copies of this proposal and all requirements to:

New Jersey Division of Youth and Family Services
Office of Statewide Operations and Support

Capital Center

50 East State Street—7th Floor

CN 717

Trenton, New Jersey 08625-0717

Attention: Alisha Griffin, Assistant Administrator

All proposals must be received at the above address by 5:00 P.M. on April 7, 1995. Proposals may be mailed or hand-delivered. No late or incomplete proposals will be considered for funding.

Anticipated content award date: May 13, 1995.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds

Privatization of Cedar Grove Residential Treatment Center

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of grant program: Privatization of Cedar Grove Residential Treatment Center.

Purpose for which the grant program shall be used: This program is intended to transfer the responsibility for the administration and operation of the Cedar Grove Residential Treatment Center from the Division of Youth and Family Services to a private provider. This transfer will reduce the Division's role in the provision of direct residential care services to adolescents under agency supervision and enhance the role of the private sector in the provision of direct care treatment services to vulnerable children at a residential treatment center. The Department reserves the right to offer or not offer the buildings and property at Cedar Grove for the provision of residential treatment. Applicants have the option of submitting an application considering use of the Cedar Grove site and/or one considering another site.

Amount of money in the grant program: Funding in the amount not to exceed \$1,315,000 in Federal funds under Medicaid Title XIX and Grant-in-Aid (State Aid) is available for this program. These funds are exclusive of educational costs which will be funded through the sending school district. The contract shall be based on a negotiated unit rate per adolescent. There is no match requirement. If the physical site of the Cedar Grove Residential Treatment Center shall be leased by the State of New Jersey, it would be at an annual cost of one dollar and the selected provider will be required to sign a state lease agreement.

Organizations eligible to apply for funding: Private non-profit or for-profit agencies that meet the following requirements will be eligible to apply for funding under this program:

1. The applicant must be willing to enter into a contract with DYFS and comply with the contracting rules and regulations of the Department of Human Services (that is, the Standard Contract Language, the Contract Reimbursement Manual and the Contract Policy and Information Manual, N.J.A.C. 10:3).

2. The applicant must be willing to adhere specifically to the program requirements contained in the Request for Proposals (RFP) and comply with DYFS monitoring and evaluation procedures.

3. The applicant must not discriminate in providing services to clients based on age, race, creed, national origin, sex, handicap or financial status.

4. The applicant must adhere to all reporting and licensing requirements specified in the RFP.

Application selection criteria: Applications for funds will be selected on the basis of demonstrated need and shall be evaluated and scored on the basis of the criteria listed below.

The maximum score for all criteria is 100 points and shall be computed in accordance with the following:

- The demonstration by the applicant of expertise and experience in the operation and delivery of a full range of therapeutic services to youth in the milieu of a residential treatment setting. (Max. 15 points);

- The completeness of the application and clarity of statements within the proposal, including the availability and accuracy of all supporting documentation, the logic and consistency of the proposal, the attainability of the description of the agency's plan for implementation and an assurance of compliance with contract requirements (Max. 15 points);

- The need justification which incorporates a description of the nature of the program, citing existing services, indicating the agency's capability to provide services and presenting relevant statistics (Max. 10 points);

- The compatibility of the applicant's goals, objectives, performance outcomes and treatment philosophy with the goals of the program and services solicited (Max. 10 points);

- The program approach, including: the definition of services to be provided, capacity to effectively treat more seriously emotionally disturbed clients, client eligibility requirements, description of the activities/methods used to achieve objectives, listing and number of staff, qualifications and skills needed, description of monitoring plan and evaluation of quality of services (Max. 25 points);

- The reasonableness of the proposed rate considering the anticipated results and the appropriateness of the ratio of general and administrative costs to total costs (Max. 10 points);
- The applicant's stability, performance and strength, both program-matically and fiscally (Max. 10 points); and
- The feasibility of the timetable to implement the proposed services (Max. 5 points).

In addition to the above, it should be noted that the maintenance of the Joint Commission on Accreditation of Health Care Organizations (JCAHO) status will be of primary consideration in all relevant criteria.

Procedures for eligible applicants to apply: Agencies and organizations interested in applying for these funds may obtain a copy of the Request for Proposals by contacting Joseph Makowski, Regional Planner, DYFS Metropolitan Regional Office, 153 Halsey Street—2nd Floor, Newark, N.J. 07101, telephone (201) 648-4100.

A Bidders' Conference is scheduled for:

Date: Tuesday, March 14, 1995

Time: 10:00 A.M.

Location: DYFS Metropolitan Regional Office
Community Conference Room—3rd Floor
153 Halsey Street
Newark, New Jersey

An alternate bad weather date (only if State offices are closed) will be March 16, 1995 at 2:00 P.M. at the same location.

In addition to the bidder's conference, a **site visit** to the Cedar Grove Residential Treatment Center shall be made on:

Thursday, March 23, 1995, 10:00 A.M.-1:00 P.M.

or

Friday, March 24, 1995, 10:00 A.M.-1:00 P.M.

Attendance at the Bidder's Conference **and** the site visit at the Cedar Grove Residential Treatment Center is **mandatory**. Proposals received from applicants who did not attend both will be disqualified.

Submission of proposals: Agencies and organizations interested in applying for these funds shall submit one signed original and 10 copies of their proposal and all required attachments to:

New Jersey Division of Youth and Family Services
Metropolitan Regional Office
153 Halsey Street
Newark, New Jersey 07101
Attention: Joseph Makowski

All proposals must be received at the above address by 4:00 P.M. on April 19, 1995. Proposals may be mailed or hand-delivered. No late or incomplete proposals will be considered for funding.

Date by which applicants will be notified of acceptance or rejection: May 22, 1995.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF OPTOMETRISTS

Notice of Receipt of Petitions for Rulemaking and Action Thereon

(1) N.J.A.C. 13:38-2.1

(2) N.J.A.C. 13:38-3.11

Petitioner: New Jersey Optometric Association.

Take notice that, by letters dated January 12, 1995 and January 17, 1995, the law firm Schragger, Lavine & Nagy, acting on behalf of the New Jersey Optometric Association (NJOA) filed the following two petitions for rulemaking with the Board of Optometrists.

I. Petition to amend N.J.A.C. 13:38-2.1 (by letter dated January 12, 1995)

NJOA petitioned the Board to amend N.J.A.C. 13:38-2.1 to permit optometrists to delegate certain duties to non-optometrists in their practice. In support of this petition, NJOA argues that:

1. Certain functions in an optometry practice do not require the special knowledge, training, experience or judgment of a licensed optometrist. The proposed amendment to N.J.A.C. 13:38-2.1 will permit a licensed optometrist to delegate duties so that optometrists may render services to their patient and to the public more efficiently.

2. The rulemaking suggested herein, in addition to defining delegable functions, requires that an optometrist be on the premises whenever delegated functions are performed; that ancillary personnel be trained appropriately to the delegated functions; and that a record of all training both as to nature and date(s) rendered by the optometrists be made and maintained for a period of seven years.

II. Petition to amend N.J.A.C. 13:38-3.11 (by letter dated January 17, 1995)

NJOA petitioned the Board to amend N.J.A.C. 13:38-3.11 to require all applicants for examination to be certified by the Board to use pharmaceutical agents as defined and limited in P.L. 1991, Chapter 385. NJOA argues that:

1. Currently, all graduates sitting for examination under N.J.A.C. 13:38-3 fulfill the education requirements in ocular pharmacology set forth in N.J.A.C. 13:38-4.3. In addition, each applicant must take the examination for TPA certification set forth in N.J.A.C. 13:38-4.4.

2. As such, in order to receive TPA certification, an applicant must merely complete an application form and submit the requisite fee set forth in N.J.A.C. 13:38-5.1.

3. The safety, protection and welfare of the public would be promoted by adopting a regulation requiring all applicants for examination by the Board pursuant to N.J.S.A. 45:12-5 to become certified pursuant to N.J.S.A. 45:12-9.10, as follows: (a) this will insure that all recent graduates obtain the highest certification currently available to practice Optometry; (b) over time, there will be uniformity of practice of Optometry in New Jersey in that all newly admitted Optometrists may practice the full scope of optometric practice; and (c) movement to one class of licensure will, over time, simplify administration by the Board.

4. In addition, the majority of Managed Care organizations are currently requiring their participating optometrist providers to obtain and maintain TPA certification. By adopting this proposed regulation, the Board will help insure that future licensees have the opportunity to participate in HMOs, PPOs and other Managed Care Organizations operating in the State of New Jersey.

Take further notice that, upon consideration of these petitions at its January 18, 1995 meeting, the Board determined that additional time was needed to study and evaluate the issues raised by NJOA. Accordingly, the Board referred the petitions to a subcommittee for further analysis and consideration. The Board anticipates that the subcommittee will conclude its deliberations and make recommendations to the Board by June 21, 1995.

A copy of this notice has been sent to the petitioner, as required by N.J.A.C. 1:30-3.6.

(b)

DIVISION OF CRIMINAL JUSTICE STATE OFFICE OF VICTIM-WITNESS ADVOCACY

Annual Notice of Availability of Applications and Due Date for Receipt of Applications for Determination of Eligibility to Apply for Grant Funds

Victim and Witness Advocacy Fund, Qualified Public Entities and Qualified Not-For-Profit Organizations, Due Date for Receipt of Application for Eligibility

Take notice that, in compliance with P.L. 1991, c.329, §20, which supplements N.J.S.A. 2C:43-3.1 and N.J.A.C. 13:78-2.5, the Division of Criminal Justice, State Office of Victim-Witness Advocacy announces the following availability of applications for qualified public entities and qualified not-for-profit organizations, determined to be eligible, to apply for eligibility to apply for awards, pursuant to N.J.S.A. 52:4B-43.1 for State Fiscal Year 1995-1996 and establishes a due date for receipt of such applications.

A. Name of the program: Victim and Witness Advocacy Fund, established pursuant to N.J.S.A. 2C:43-3.1, and administered pursuant to N.J.S.A. 52:4B-43.1 and N.J.A.C. 13:78 et seq.

B. Purpose of the program: Pursuant to N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1 and N.J.A.C. 13:78, in order to support the development and provision of services to victims and witnesses of crimes and for related administrative costs, qualified public entities and qualified not-for-profit organizations that provide direct services to victims and witnesses of crimes, including but not limited to such services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis

response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; or (9) financial services, shall be permitted to apply for eligibility to apply for an award from the Victim and Witness Advocacy Fund.

C. Amount of money in the program: The amount of moneys available for awards for Fiscal Year 1995-1996 is dependent upon the amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution. N.J.S.A. 13:78-4.1.

D. Groups or entities which may apply for eligibility to apply for an award under the program: Qualified public entities and qualified not-for-profit organizations providing direct services to victims and witnesses of crimes as described in B above may apply, no later than the date established in H below, to the Director of the Division of Criminal Justice for a determination of eligibility.

E. Qualification of an applicant to be considered for the program: In order to apply pursuant to N.J.A.C. 13:78-3 for an award of moneys from the Victim and Witness Advocacy Fund, qualified public entities and qualified not-for-profit organizations, including qualified not-for-profit organizations listed at N.J.S.A. 52:4B-43.1d, must submit an application, by the due date established in H below, to determine eligibility to the Director of the Division of Criminal Justice. Eligibility of a qualified public entity or qualified not-for-profit organization shall be determined based upon the submission of qualifying criteria to the Director of the Division of Criminal Justice. The burden of demonstrating eligibility shall be on the public entity or not-for-profit organization making the application. Public entity includes any public corporation or political subdivision of this State or agency of local government of this State providing direct services to victims or witnesses of crimes. Not-for-profit organization includes any corporation or other organization organized under Title 15A of the New Jersey Revised Statutes or otherwise qualified for non-profit tax exemption providing direct services to victims or witnesses of crimes.

F. Procedure for a qualified public entity or a qualified not-for-profit organization to apply for eligibility to apply for an award: To be eligible a qualified public entity or qualified not-for-profit organization must submit an eligibility application, by the due date established in H below, on forms prescribed by the Director, with supporting documentation.

Eligibility applications may be requested by writing to:

Gail E. Locane, Chief
Office of Victim-Witness Advocacy
Division of Criminal Justice
Richard J. Hughes Justice Complex
CN 085
Trenton, N.J. 08625-0085
or by telephone:
609-984-3880

G. Address of Division, office or official receiving the application: Same as F above.

H. Due date by which eligibility applications pursuant to N.J.A.C. 13:78-2.1 must be submitted to the office: Eligibility applications must be received at the State Office of Victim-Witness Advocacy, on or before 5:00 P.M., Friday, April 28, 1995.

I. Date by which a qualified public entity or a qualified not-for-profit organization shall be notified of eligibility to apply for an award: Pursuant to N.J.A.C. 13:78-2.2, a qualified public entity or a qualified not-for-profit organization shall be notified of its eligibility status no later than Friday, May 19, 1995. A qualified public entity or a qualified not-for-profit organization determined to be eligible shall receive an application to apply for an award along with the notification of eligibility.

Note: This public notice is only the first step in a two step process. N.J.A.C. 13:78-2.1. A determination of eligibility under this first step, N.J.A.C. 13:78-2.2, does not constitute an award of funds. Awards are determined as part of the second step of this process. N.J.A.C. 13:78-3. This is for the purpose of determining eligibility only. It should not be construed to imply or guarantee the availability of funds for implementation of a Fiscal Year 1995-1996 grant program.

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, 1995 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1995 d.1 means the first rule filed for 1995.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 19, 1994

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1995

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
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
26 N.J.R. 2167 and 2510	June 6, 1994	26 N.J.R. 4857 and 5138	December 19, 1994
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995
26 N.J.R. 2693 and 2828	July 5, 1994	27 N.J.R. 263 and 410	January 17, 1995
26 N.J.R. 2829 and 3102	July 18, 1994	27 N.J.R. 411 and 606	February 6, 1995
26 N.J.R. 3103 and 3230	August 1, 1994	27 N.J.R. 607 and 790	February 21, 1995

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:6A	Special Education Program
1:7A	Department of Environmental Protection cases
1:7A-1.1, 8.1	Department of Environmental Protection Cases: public hearing and extension of comment period
1:30-1.2, 3.1, 4.1	Agency rulemaking: Federal standards
1:30-1.9	Agency rulemaking: document copying fees

PROPOSAL NOTICE (N.J.R. CITATION)

27 N.J.R. 4(a)
26 N.J.R. 4124(a)
26 N.J.R. 4863(a)
27 N.J.R. 414(a)
27 N.J.R. 416(a)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

Most recent update to Title 1: TRANSMITTAL 1994-5 (supplement September 19, 1994)

AGRICULTURE—TITLE 2

2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biological products for diagnostic or therapeutic purposes	26 N.J.R. 3784(a)	R.1995 d.83	27 N.J.R. 481(a)
2:24	Diseases of bees	27 N.J.R. 5(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)	Expired	
2:34	Equine Advisory Board rules	26 N.J.R. 3919(a)	R.1995 d.7	27 N.J.R. 89(a)
2:76-3.3, 3.5, 3.6, 3.9, 3.10, 3.12	Creation of farmland preservation programs	27 N.J.R. 8(a)		
2:76-4.3, 4.5, 4.6, 4.9, 4.11	Creation of municipally approved farmland preservation programs	27 N.J.R. 10(a)		
2:76-6.2, 6.5, 6.6, 6.7, 6.9-6.18B	Acquisition of development easements	27 N.J.R. 13(a)		

Most recent update to Title 2: TRANSMITTAL 1994-6 (supplement September 19, 1994)

BANKING—TITLE 3

3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-6.7	Failure to pay license fees and examination charges	27 N.J.R. 20(b)		
3:3-2, 3	Department of Banking organization: nonpublic records; grievance procedure pursuant to ADA	27 N.J.R. 20(a)		
3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12	Secondary Mortgage Loan Act rules	26 N.J.R. 3920(a)	R.1995 d.14	27 N.J.R. 89(b)
3:18-10.5	Failure to pay license fees and examination charges	27 N.J.R. 20(b)		
3:23-2.1	Check cashing businesses	26 N.J.R. 4863(b)		
3:24	Check cashing businesses	26 N.J.R. 4863(b)		
3:38-1.6	Failure to pay license fees and examination charges	27 N.J.R. 20(b)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)	Expired	
3:40-1.9	New Jersey Cemetery Board: organizational meetings	26 N.J.R. 4475(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)	Expired	

Most recent update to Title 3: TRANSMITTAL 1994-8 (supplement December 19, 1994)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

PERSONNEL—TITLE 4A

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4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)	Expired
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)	
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)	Expired

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:3-4.6	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)	Expired	
4A:4-2.15, 5.2	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)	Expired	
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:8	Layoffs	26 N.J.R. 3518(a)	R.1995 d.55	27 N.J.R. 482(a)
4A:8	Layoffs	27 N.J.R. 482(a)		
4A:8-2.4	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)

Most recent update to Title 4A: TRANSMITTAL 1994-7 (supplement December 19, 1994)

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5:12	Homelessness Prevention Program	26 N.J.R. 4248(a)	R.1995 d.56	27 N.J.R. 483(a)
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
5:18	Uniform Fire Code	26 N.J.R. 4258(a)		
5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13	Uniform Fire Code requirements	26 N.J.R. 4249(a)		
5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)		
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)		
5:18B	High Level Alarms	26 N.J.R. 4258(a)		
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)		
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)		
5:23-2.9, 2.34–2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-3.4, 3.18	Uniform Construction Code: energy subcode	26 N.J.R. 4872(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-3.15	Uniform Construction Code: abandonment of septic systems	26 N.J.R. 4874(a)		
5:23-3.20	Uniform Construction Code: mechanical subcode	26 N.J.R. 4874(b)		
5:23-9.4	Uniform Construction Code: seismic zones	26 N.J.R. 4875(a)		
5:23-12.6	Uniform Construction Code: administrative correction regarding test and inspection fees	_____	_____	27 N.J.R. 321(a)
5:26-8.2	Planned real estate developments: community association meeting location	26 N.J.R. 4277(a)	R.1995 d.17	27 N.J.R. 91(b)
5:31	Local authorities	26 N.J.R. 4128(a)	R.1995 d.27	27 N.J.R. 91(a)
5:34-7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 4724(a)		
5:52	Volunteer Coaches' Safety Orientation and Training Skills Programs	27 N.J.R. 21(a)		
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)	R.1995 d.20	27 N.J.R. 321(b)

Most recent update to Title 5: TRANSMITTAL 1994-11 (supplement December 19, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

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6:28-2.10, 4.2	Special Education: least restrictive environment; program options	27 N.J.R. 416(c)		
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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
7:1H	County Environmental Health Act rules: postponement of new rules proposal	27 N.J.R. 22(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:2-17.1, 17.4	Berth and launch ramp use fees at State marinas: administrative change	_____	_____	27 N.J.R. 92(a)
7:5C	Endangered Plant Species Program	26 N.J.R. 3790(a)	R.1995 d.45	27 N.J.R. 322(a)

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7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:7E	Coastal zone management	27 N.J.R. 417(a)		
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)		
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)		
7:12-1.2, 2.1, 3.2, 4.1, 4.2, 9.1	Shellfish growing water classifications	26 N.J.R. 4475(b)	R.1995 d.81	27 N.J.R. 484(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)	R.1995 d.46	27 N.J.R. 324(a)
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14-8.1, 8.3, 8.4, 8.15	Water supply allocation	26 N.J.R. 4912(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19	Water supply allocation	26 N.J.R. 4912(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:19A	Water supply allocation	26 N.J.R. 4912(a)		
7:19B	Water supply allocation	26 N.J.R. 4912(a)		
7:22A	Sewage Infrastructure Improvement Act grants	26 N.J.R. 3793(a)	R.1995 d.47	27 N.J.R. 324(b)
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)	R.1995 d.48	27 N.J.R. 329(a)
7:25-6.9	1995-96 Fish Code: administrative correction			26 N.J.R. 3258(a)
7:25-18.1, 18.4, 18.5, 18.13-18.15	Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster	26 N.J.R. 4277(b)	R.1995 d.82	27 N.J.R. 487(a)
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-22.1, 22.31	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-26	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)	R.1995 d.5	27 N.J.R. 93(a)
7:27A	Air administrative procedures and penalties: administrative correction			27 N.J.R. 498(a)
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		

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7:28	Radiation protection	26 N.J.R. 4942(a)		
7:28-3.12	Ionizing radiation-producing machines: application and annual registration renewal fees	26 N.J.R. 3797(a)	R.1995 d.49	27 N.J.R. 336(a)
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)	R.1995 d.6	27 N.J.R. 99(a)
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:28-48.7	Registration fees for non-ionizing radiation producing sources: administrative correction	27 N.J.R. 498(b)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:60-1.2, 1.3, 1.4, 1.6	Assessment of generators for cost of siting and developing low-level radioactive waste disposal facility	26 N.J.R. 4946(a)		

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:7-1.11–1.18	Licensure of persons for public health positions	27 N.J.R. 267(a)		
8:8-8.3, 8.5, 8.8	Collection of human blood	26 N.J.R. 3141(b)	R.1995 d.25	27 N.J.R. 343(a)
8:20	Birth Defects Registry	27 N.J.R. 269(a)		
8:23	Veterinary public health	26 N.J.R. 4129(a)	R.1995 d.24	27 N.J.R. 343(b)
8:23A	Veterinary public health	26 N.J.R. 4129(a)	R.1995 d.24	27 N.J.R. 343(b)
8:31	Health facilities construction plan review fee	26 N.J.R. 4135(a)	R.1995 d.38	27 N.J.R. 351(a)
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)	Expired	
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)	Expired	
8:33I	Megavoltage radiation oncology services: certificate of need	26 N.J.R. 4875(b)		
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)		
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)		
8:43F	Adult day health care facilities: standards for licensure	26 N.J.R. 4532(a)		
8:43G	Hospital licensing standards	26 N.J.R. 4537(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:45	Clinical laboratory services	27 N.J.R. 32(a)		
8:57	Communicable diseases	27 N.J.R. 420(a)		
8:57-4	Immunization of children attending schools and preschool facilities	27 N.J.R. 270(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:57-6	Hepatitis Inoculation Fund	27 N.J.R. 28(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)		
8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)	R.1995 d.92	27 N.J.R. 671(a)
8:66	Repeal (see 8:66A)	27 N.J.R. 274(a)		
8:66A	Intoxicated Driving Program	27 N.J.R. 274(a)		
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a))	26 N.J.R. 1190(b)	R.1995 d.31	27 N.J.R. 355(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a))	26 N.J.R. 1821(a)	R.1995 d.33	27 N.J.R. 357(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b))	26 N.J.R. 1822(a)	R.1995 d.32	27 N.J.R. 355(b)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a), 4386(a))	26 N.J.R. 2723(a)	R.1995 d.35	27 N.J.R. 359(a)
8:71	Interchangeable drug products (see 26 N.J.R. 4390(a))	26 N.J.R. 3583(a)	R.1995 d.34	27 N.J.R. 357(b)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)	R.1995 d.39	27 N.J.R. 351(b)
8:71	Interchangeable drug products	26 N.J.R. 4293(a)	R.1995 d.30	27 N.J.R. 354(a)
8:71	Interchangeable drug products	26 N.J.R. 4294(a)	R.1995 d.29	27 N.J.R. 351(c)
8:71	Interchangeable drug products	27 N.J.R. 30(a)		

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:17	Recodification (see 9A:14)	26 N.J.R. 4878(a)	R.1995 d.113	27 N.J.R. 682(a)

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9:18	Recodification (see 9A:15)	26 N.J.R. 4879(a)	R.1995 d.114	27 N.J.R. 683(a)
9A:14	Implementation of Higher Education Equipment Leasing Fund Act	26 N.J.R. 4878(a)	R.1995 d.113	27 N.J.R. 682(a)
9A:15	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 4879(a)	R.1995 d.114	27 N.J.R. 683(a)

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10:11	Department instructional staff: tenure status	26 N.J.R. 4297(a)	R.1995 d.86	27 N.J.R. 499(a)
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:37-5.28-5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46-5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)	R.1995 d.1	27 N.J.R. 147(a)
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46B	Division of Developmental Disabilities: placement of eligible persons	26 N.J.R. 3611(a)	R.1995 d.44	27 N.J.R. 360(a)
10:46B-5.1	Division of Developmental Disabilities: administrative correction regarding placement appeals	_____	_____	27 N.J.R. 499(b)
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E	Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing	26 N.J.R. 4136(a)	R.1995 d.104	27 N.J.R. 684(a)
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Manual for Hospital Services	26 N.J.R. 4551(a)		
10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12-5.15, 5.17, 5.18, 5.20, 6.13, 7.2, 9.1	Manual of Hospital Services: inpatient reimbursement methodology	27 N.J.R. 34(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)	R.1995 d.13	27 N.J.R. 152(a)
10:55	Medicaid program: Prosthetic and Orthotic Services Manual	26 N.J.R. 4979(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.1, 1.2, 1.4, 1.13, 4.2	Home Care Services: EPSDT private duty nursing services	27 N.J.R. 279(a)		
10:60-5.1	Traumatic Brain Injury Program: administrative change	_____	_____	27 N.J.R. 686(a)
10:63	Long-Term Care Services	26 N.J.R. 3614(a)	R.1994 d.624	27 N.J.R. 156(a)
10:63-3, 4	Long-Term Care Services: nursing facility reimbursement	27 N.J.R. 281(a)		
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:69A-5.3, 5.6, 6.2, 6.12	Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria	26 N.J.R. 3142(a)	R.1995 d.10	27 N.J.R. 242(a)
10:81-11.9	Public Assistance Manual: \$50 disregarded child support payment	26 N.J.R. 1937(a)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-2.31	Food Stamp Program: applications in pending status	26 N.J.R. 4298(a)		
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)		
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1-9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)	R.1995 d.87	27 N.J.R. 499(c)
10:125	Division of Youth and Family Services: capital funding program for community-based facilities	27 N.J.R. 431(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial response	26 N.J.R. 3355(a)		

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10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:2	Fiscal management of inmate accounts, welfare funds, claims, and other financial matters	26 N.J.R. 4299(a)	R.1995 d.21	27 N.J.R. 118(a)
10A:4-4.1	Inmate prohibited acts: refusal to register as sex offender	27 N.J.R. 436(a)		
10A:12-2	Inmate liaison committees	26 N.J.R. 4881(a)		
10A:22-2.10	Release of juvenile records	27 N.J.R. 436(b)		
10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)	R.1995 d.85	27 N.J.R. 550(a)
10A:71	State Parole Board rules	26 N.J.R. 4150(a)	R.1995 d.109	27 N.J.R. 686(b)
10A:71-3.21	State Parole Board: future parole eligibility terms	27 N.J.R. 288(a)		

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11:2-1	Admission requirements for foreign and alien life and health insurers	26 N.J.R. 4586(a)	R.1995 d.80	27 N.J.R. 559(a)
11:2-41	Windstorm Market Assistance Program for voluntary market homeowners' coverage	26 N.J.R. 4304(a)	R.1995 d.53	27 N.J.R. 364(a)
11:3-2B	Market Transition Facility of New Jersey: payment prioritization and claims payment deferral	26 N.J.R. 4590(a)	R.1995 d.50	27 N.J.R. 368(a)
11:3-10.3	Automobile physical damage claims	27 N.J.R. 437(a)		
11:3-16.4, 16.5, 31, App.	Private passenger automobile insurers: examination of financial experience	27 N.J.R. 41(a)		
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-28.13, 28.16	Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims)	26 N.J.R. 4595(a)		
11:3-45	Private passenger automobile insurance: annual premium survey	27 N.J.R. 289(a)		
11:4-25	Funeral insurance policies	26 N.J.R. 4727(a)		
11:4-38	HMO informational rate filing requirements	27 N.J.R. 291(a)		
11:5-1.2, 1.4, 1.5, 1.19, 1.29	Real Estate Commission: licensing requirements	26 N.J.R. 3111(a)	R.1995 d.23	27 N.J.R. 370(a)
11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
11:5-1.43	Real Estate Commission: consumer information statement	26 N.J.R. 3113(a)	R.1995 d.110	27 N.J.R. 697(a)
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:16-5	Insurer's health fraud prevention/detection plan	26 N.J.R. 4882(a)		
11:17A	Insurance producers and limited insurance representatives: marketing conduct standards	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:17B	Insurance producers and limited insurance representatives: commissions and fees	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:17C	Insurance producer standards of conduct: management of funds	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:17D	Insurance producers and limited insurance representatives: administrative procedures and penalties	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)	R.1995 d.26	27 N.J.R. 371(a)
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)	R.1995 d.112	27 N.J.R. 709(a)
11:20-1.2	Individual Health Coverage Program: conversion and individual health benefits plans	27 N.J.R. 41(b)	R.1995 d.37	27 N.J.R. 371(b)
11:20-3.2, 4.1, 12.3, 12.5, Exh. A-G, Q	Individual Health Coverage Program: standard policy forms	26 N.J.R. 4884(a)	R.1995 d.51	27 N.J.R. 565(a)
11:21-2.1, 2.5	Small Employer Health Benefits Program: Board membership	26 N.J.R. 4310(a)	R.1995 d.65	27 N.J.R. 585(a)
11:21-2.5	Small Employer Health Benefits Program: public hearing regarding Board membership	26 N.J.R. 4311(a)		
11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)		

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11:21-3.2	Small Employer Health Benefits Program: optional benefit riders	26 N.J.R. 4729(a)	R.1995 d.51	27 N.J.R. 565(a)
11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)		
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LABOR—TITLE 12

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12:16-23	Services excluded from coverage by the Unemployment Compensation Law	26 N.J.R. 4730(a)	R.1995 d.84	27 N.J.R. 501(a)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:40	Worker Adjustment and Retraining Notification (WARN) procedures	26 N.J.R. 4311(b)	R.1995 d.42	27 N.J.R. 373(a)
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)	Expired	
12:100-10.10	Safety and health standards for public employees: respiratory protection devices	26 N.J.R. 4313(a)	R.1995 d.43	27 N.J.R. 373(b)
12:120	Asbestos licenses and permits	27 N.J.R. 71(a)		
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		

Most recent update to Title 12: TRANSMITTAL 1994-8 (supplement December 19, 1994)

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12A:10	Goods and Services Contracts for Small Businesses, Minority Businesses, and Female Businesses	25 N.J.R. 4889	R.1994 d.309	27 N.J.R. 129(a)
12A:10	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)		
12A:10A	Minority and Female Contractor and Subcontractor Participation in State Construction Contracts	25 N.J.R. 4461(b)	R.1994 d.310	27 N.J.R. 135(a)
12A:10A	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)		

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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 4951(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-1.5-1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:25	Division of Motor Vehicles: motorized bicycles	27 N.J.R. 440(a)		
13:27	Board of Architects rules	26 N.J.R. 4952(a)	R.1995 d.101	27 N.J.R. 716(a)
13:30	Board of Dentistry rules	27 N.J.R. 293(a)		
13:33	Board of Ophthalmic Dispensers and Ophthalmic Technicians: professional practice standards	27 N.J.R. 298(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)	R.1995 d.8	27 N.J.R. 120(a)
13:37	Board of Nursing rules	26 N.J.R. 4731(a)	R.1995 d.88	27 N.J.R. 728(a)
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-11.3, 11.16	Board of Pharmacy: sterile admixture services in retail pharmacies	27 N.J.R. 43(a)		
13:40-6.1, 11	Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors	26 N.J.R. 4314(a)		
13:42-1.2, 1.3, 1.5, 2.1, 4.5, 7.1, 7.2A, 7.3, 7.5, 7.6, 9.9, 10.16	Board of Psychological Examiners: unlicensed practitioners	26 N.J.R. 4738(a)		

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13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)	R.1995 d.9	27 N.J.R. 125(a)
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification	26 N.J.R. 4964(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-14.4	Office of Weights and Measures: unit pricing of infant formula	27 N.J.R. 302(a)		
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
13:45B-1.2, 2, 3.1, 4, 5, 6.4, 6.6, 7.1, 8.2, 9, 10.1, 11.1, 12.1, 14, 15	Health care service firms: registration requirements and standards for placement of health care practitioners	26 N.J.R. 4316(a)	R.1995 d.106	27 N.J.R. 732(a)
13:47-1-4, 6-9, 13-16	Legalized games of chance	26 N.J.R. 4326(a)	R.1995 d.41	27 N.J.R. 374(a)
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: extension of comment period concerning rules of practice	26 N.J.R. 4337(a)		
13:47A-3.1, 3.3, 3.4, 4.3, 12	Bureau of Securities: limited securities offerings	27 N.J.R. 303(a)		
13:47B-1.5	Weighing and measuring devices: type approval	26 N.J.R. 4966(a)		
13:47F	Weighing and measuring devices: fees for registration, inspection and testing	26 N.J.R. 4966(a)		
13:49-1.1, 1.5	State Medical Examiner: death investigations and potential organ donations	26 N.J.R. 4447(a)	R.1995 d.36	27 N.J.R. 380(a)
13:54-1.15	Division of State Police: confidentiality of firearms permits, ID cards, licenses, and background investigations	27 N.J.R. 305(a)		
13:62	Division of State Police: motor vehicle race track rules	27 N.J.R. 445(a)		
13:70	Thoroughbred racing rules	26 N.J.R. 4742(a)	R.1995 d.102	27 N.J.R. 733(a)
13:70-4.22	Thoroughbred racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(a)		
13:70-6.5, 6.58	Thoroughbred racing: coupled horses; limitation of entries by trainers	27 N.J.R. 464(a)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-29.50	Thoroughbred racing: Daily Triple	27 N.J.R. 306(a)		
13:71	Harness racing rules	26 N.J.R. 4744(a)	R.1995 d.103	27 N.J.R. 733(b)
13:71-3.3	Harness racing: State Steward and Board of Judges decisions	26 N.J.R. 4969(a)		
13:71-7.37	Harness racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(b)		
13:71-16.5, 16.12	Harness racing: entries; limitations of entries by trainers	27 N.J.R. 466(a)		
13:71-19.6	Harness racing: safety vests	26 N.J.R. 4482(b)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:71-27.54	Harness racing: Daily Triple	27 N.J.R. 306(b)		
13:72-9.1, 9.3-9.6	Casino simulcasting: supervisors of mutuels and verifiers at hub facilities	27 N.J.R. 45(a)		
13:75-1.5	Violent Crimes Compensation Board: victim counseling referral	27 N.J.R. 307(a)		
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	27 N.J.R. 307(b)		
13:75-1.27	Violent Crimes Compensation Board: award of additional counseling sessions	27 N.J.R. 467(a)		
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14:17-6.17	Office of Cable Television: scheduling hearings for public comment	27 N.J.R. 46(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)	Expired	

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14:31	Business Energy Improvement Program	26 N.J.R. 4482(c)		
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
14:34	Periodic reporting of energy information by energy industries	26 N.J.R. 4484(b)		
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14A:6	Business Energy Improvement Program: recodify as 14:31	26 N.J.R. 4482(c)	R.1995 d.68	27 N.J.R. 503(a)
14A:8	Energy Facility Review Board: recodify as 14:33	26 N.J.R. 4484(a)	R.1995 d.69	27 N.J.R. 503(b)
14A:11	Periodic reporting by energy industries: recodify as 14:34	26 N.J.R. 4484(b)	R.1995 d.70	27 N.J.R. 504(a)
Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)				
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Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)				
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16:20A	Federal Aid Urban System Substitution Program: county and municipal aid	26 N.J.R. 4485(a)	R.1995 d.71	27 N.J.R. 504(b)
16:20B	Transportation Trust Fund Authority Act: municipal fund for road and bridge improvement projects	26 N.J.R. 4486(a)	R.1995 d.72	27 N.J.R. 504(c)
16:24	Public utility rearrangement agreements	26 N.J.R. 4160(a)	R.1995 d.15	27 N.J.R. 126(a)
16:28-1.61	Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County	26 N.J.R. 4337(b)	R.1995 d.95	27 N.J.R. 733(c)
16:28-1.62	Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County	27 N.J.R. 46(b)		
16:28-1.64	Speed limit zone along Grove Street-Haddonfield Road-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(a)		
16:28-1.65	Speed limit zone along Penn Avenue-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(b)		
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206, in East Windsor	27 N.J.R. 47(a)		
16:28-1.71	Speed limit zone along Park Boulevard-Route 70 connector ramp in Cherry Hill	27 N.J.R. 469(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.96	Speed limit zones along Route 45 in Harrison Township	26 N.J.R. 4970(a)	R.1995 d.97	27 N.J.R. 734(a)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 4745(a)	R.1995 d.98	27 N.J.R. 734(b)
16:28-1.158	Speed limit zones along Route 179 in West Amwell Township	26 N.J.R. 4486(b)	R.1995 d.62	27 N.J.R. 505(a)
16:28A-1.21	No stopping or standing zones along U.S. 30 in Oaklyn Borough	26 N.J.R. 4971(a)	R.1995 d.93	27 N.J.R. 734(c)
16:28A-1.33	No stopping or standing zone on Route 47 in Millville	27 N.J.R. 309(a)		
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	26 N.J.R. 4160(b)	R.1995 d.67	27 N.J.R. 505(b)
16:28A-1.37	No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken	26 N.J.R. 4338(a)	R.1995 d.94	27 N.J.R. 735(a)
16:28A-1.38	No stopping or standing along Route 71 in Bradley Beach Borough	26 N.J.R. 4161(a)	R.1995 d.66	27 N.J.R. 505(c)
16:28A-1.38	Parking restrictions along Route 71 in Asbury Park	27 N.J.R. 48(a)		
16:28A-1.41	Bus stops along Route 77 in Bridgeton	27 N.J.R. 49(a)		
16:28A-1.52	No stopping or standing zones along Route 173 in Town of Clinton	26 N.J.R. 4971(b)	R.1995 d.96	27 N.J.R. 735(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)	R.1995 d.54	27 N.J.R. 506(a)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.58	Parking restrictions along U.S. 206-94 in Newton	27 N.J.R. 49(b)		
16:30-1.4	One-way access along U.S. 202 in Bernardsville	27 N.J.R. 50(a)		
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-3.13	Left turns along U.S. 9 in Middle Township, Cape May	26 N.J.R. 4746(a)	R.1995 d.99	27 N.J.R. 736(a)
16:30-3.14	Left turn lane along Route 154 in Cherry Hill	27 N.J.R. 51(a)		
16:30-3.15	Left turn lane along Route 34 in Old Bridge	27 N.J.R. 51(b)		
16:30-7.4	Interstate highways: classes of traffic	26 N.J.R. 4162(b)	R.1995 d.16	27 N.J.R. 126(b)
16:30-9.23	Drawbridge usage along Route 152 in Atlantic County	26 N.J.R. 4487(b)	R.1995 d.63	27 N.J.R. 506(b)

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16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)	R.1994 d.607	27 N.J.R. 506(c)
16:31-1.26	Left turn prohibitions along Route 27 in Metuchen and Highland Park	26 N.J.R. 4488(a)	R.1995 d.100	27 N.J.R. 736(b)
16:32	Truck operations within State	26 N.J.R. 4163(a)	R.1995 d.73	27 N.J.R. 507(a)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)	R.1995 d.107	27 N.J.R. 736(c)
16:49	Transportation of hazardous materials	26 N.J.R. 4488(b)	R.1995 d.74	27 N.J.R. 509(a)
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)	R.1995 d.75	27 N.J.R. 521(a)
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:62	Air safety and hazardous zoning	26 N.J.R. 4502(a)	R.1995 d.76	27 N.J.R. 525(a)
16:77	Use or occupancy of NJ TRANSIT-owned property	26 N.J.R. 4972(a)	R.1995 d.111	27 N.J.R. 750(a)

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17:1-2.10, 2.11, 2.12	Alternate Benefit Program: enrollment eligibility; transfers from another State retirement system	27 N.J.R. 469(b)		
17:2	Public Employees' Retirement System	26 N.J.R. 4747(a)	R.1995 d.91	27 N.J.R. 754(a)
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)	R.1995 d.61	27 N.J.R. 754(b)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)	R.1995 d.89	27 N.J.R. 754(c)
17:4-1.4	Police and Firemen's Retirement System: election of member-trustee	26 N.J.R. 3938(b)	R.1995 d.2	27 N.J.R. 127(a)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)	Expired	
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)	R.1995 d.3	27 N.J.R. 128(a)
17:12	Purchase Bureau	26 N.J.R. 3248(a)	R.1995 d.18	27 N.J.R. 128(b)
17:12	Purchase Bureau rules: extension of comment period	26 N.J.R. 4166(a)		
17:13	Goods and services contracts for small businesses, minority businesses and female businesses	25 N.J.R. 4889(a)	R.1994 d.309	27 N.J.R. 129(a)
17:13	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(a)	R.1994 d.310	27 N.J.R. 135(a)
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)		
17:19	Division of Building and Construction: classification and qualification of bidders	26 N.J.R. 4747(b)	R.1995 d.90	27 N.J.R. 755(a)
17:25	Collection of debts owed to NJHEAA by public employees	27 N.J.R. 309(b)		

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18:1-2.4	Issuance of warrants by Division of Taxation	26 N.J.R. 4975(a)		
18:7-1.9	Corporation Business Tax: doing business in New Jersey	27 N.J.R. 471(a)		
18:7-3.6	Corporation Business Tax rates	27 N.J.R. 57(a)		
18:7-3.18, 3.20	Corporation Business Tax: priority of tax credits	27 N.J.R. 472(a)		
18:7-3.19	Corporation Business Tax: employer trip reduction program tax credit	26 N.J.R. 4976(a)		
18:18	Motor fuels taxes	26 N.J.R. 4512(a)	R.1995 d.79	27 N.J.R. 535(a)
18:19-1.1, 2.1, 2.2, 2.7, 3.1, 3.2, 4.1, 4.2, 5.5, 5.6, 5.1	Retail sales of motor fuels	26 N.J.R. 4512(a)	R.1995 d.79	27 N.J.R. 535(a)
18:22-5.5, 11.12, 14	Public Utility Tax: expression of tax rates; Municipal Purposes Tax Assistance Fund	27 N.J.R. 473(a)		
18:24-9.13	Sales and Use Tax: student organization purchases	26 N.J.R. 4977(a)		
18:24-10.6	Sales and Use Tax: sales for resale	27 N.J.R. 474(a)		
18:35-1.14, 1.25	Gross Income Tax: partners and partnerships	27 N.J.R. 475(a)		

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18:35-1.28	Gross income tax: commuter transportation benefits reporting by employer	26 N.J.R. 4173(a)	R.1995 d.19	27 N.J.R. 143(a)
18:36	Savings Institution Tax Act rules	27 N.J.R. 479(a)		
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19:25-1.7, 9.2, 9.3, 10, 11	ELEC: candidacy contribution reporting and limits	27 N.J.R. 312(a)		
19:25-1.7, 9.2, 9.3, 10, 11	Candidacy contribution reporting and limits: change of public hearing date	27 N.J.R. 480(a)		
19:25-20.19	Annual registration and filing fee of legislative agents	26 N.J.R. 4978(a)		
19:61-6	Executive Commission on Ethical Standards: State officials and employees and attendance at events, acceptance of honoraria, and compensation for published works	26 N.J.R. 4757(a)	R.1995 d.108	27 N.J.R. 763(a)
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19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.1, 1.1A, 1.2, 1.2A, 1.3, 1.6, 1.8	Casino employee licensure and registration	26 N.J.R. 4338(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-6.1-6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.1A, 7.7, 14.3	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)		
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:43-2.7A	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)		
19:43-11.2	Contents of renewal application: administrative correction	_____	_____	27 N.J.R. 382(a)
19:44	Gaming schools	26 N.J.R. 4174(b)		
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1	Definitions: administrative correction	_____	_____	27 N.J.R. 382(a)
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46-1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.26, 1.26A	Substitution and redemption of patron checks	26 N.J.R. 3825(a)	R.1995 d.40	27 N.J.R. 382(b)
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.9	Cash compliments based upon patron's actual loss	26 N.J.R. 4173(b)	R.1995 d.77	27 N.J.R. 549(a)
19:45-1.12	Supervision of gaming tables	26 N.J.R. 4174(a)	R.1995 d.11	27 N.J.R. 144(a)
19:45-1.12	Casino employee licensure and registration	26 N.J.R. 4338(a)		
19:45-1.15-1.19	Super Pan 9: temporary adoption of gaming rules	_____	_____	27 N.J.R. 549(b)
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.44	Computer recordation and monitoring of slot machines: administration correction	_____	_____	27 N.J.R. 382(a)
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.7	Roulette	27 N.J.R. 57(b)		
19:46-1.12A	Super Pan 9: temporary adoption of gaming rules	_____	_____	27 N.J.R. 549(b)
19:46-1.13B	Additional wager in pai gow poker	26 N.J.R. 4343(a)	R.1995 d.78	27 N.J.R. 549(c)
19:46-1.13H, 1.17, 1.18, 1.19	Let It Ride: temporary adoption of gaming rules	_____	_____	27 N.J.R. 386(a)
19:47-1.6	Supplemental wagers in craps	26 N.J.R. 4978(b)		
19:47-5.1-5.4	Roulette	27 N.J.R. 57(b)		
19:47-11.8, 11.8A, 11.8B, 11.13	Additional wager in pai gow poker	26 N.J.R. 4343(a)	R.1995 d.78	27 N.J.R. 549(c)
19:47-13	Super Pan 9: temporary adoption of gaming rules	_____	_____	27 N.J.R. 549(b)
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-18	Let It Ride: temporary adoption of gaming rules	_____	_____	27 N.J.R. 386(a)
19:50-2.2	New Year's Eve combination sales by CHAB licensees	27 N.J.R. 60(a)		
19:51-1.1, 1.2	Gaming-related casino service industry licensure	26 N.J.R. 4344(a)		

**N.J.A.C.
CITATION**

19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers
19:54	Gross revenue tax rules
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions
19:55-9.1, 9.3-9.6	Casino simulcasting; supervisors of mutuels and verifiers at hub facilities
19:65-2.5	Approval criteria for hotel development projects

**PROPOSAL NOTICE
(N.J.R. CITATION)**

26 N.J.R. 785(a)

26 N.J.R. 4181(a)
26 N.J.R. 1994(a)

27 N.J.R. 60(b)

**DOCUMENT
NUMBER**

R.1995 d.28

R.1995 d.4

**ADOPTION NOTICE
(N.J.R. CITATION)**

27 N.J.R. 387(a)

27 N.J.R. 144(b)

Most recent update to Title 19K: TRANSMITTAL 1994-12 (supplement December 19, 1994)

EMERGENCY ADOPTION

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Vehicular Fuels

Adopted Emergency and Concurrently Proposed Amendments: N.J.A.C. 7:27-25.1, 25.3, 25.4 and 25.8

Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: February 7, 1995 by Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B(c)): February 7, 1995.

Emergency Amendments Filed: February 8, 1995 as R.1995 d.129.

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

DEP Docket Number: 05-95-02/518.

Proposal Number: PRN 1995-155.

Emergency Adoption Effective Date: February 8, 1995.

Emergency Adoption Expiration Date: April 9, 1995.

A public hearing concerning this proposal will be held on:
Friday, March 17, 1995, at 10:00 A.M.
First Floor Hearing Room
Department of Environmental Protection
State of New Jersey
401 East State Street
Trenton, New Jersey

Submit written comments identified by the DEP docket number given above by March 23, 1995, to:

Janis Hoagland, Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels (Subchapter 25), set forth herein. Subchapter 25 governs standards for the oxygenation and volatility of gasoline.

These emergency adopted and concurrently proposed amendments would reduce the length of the oxygen program control period for the northern oxygen program control area, to make it the same length as the oxygen program control period established for the southern oxygen program control area, thereby creating a uniform four-month control period throughout the State. In addition, these amendments would exempt wholesale purchaser-consumers and gasoline retailers from the State's Reid vapor pressure (RVP) standards which in May, for wholesale

purchaser-consumers and retailers, are inconsistent with the RVP standards established in the Federal reformulated gasoline (RFG) program.

On October 5, 1992, the Department adopted amendments to N.J.A.C. 7:27-25 which established the oxygenated fuels program as mandated by the Clean Air Act (CAA), specifically, 42 U.S.C.A. §7545(m) (Section 22(m)). The purpose of the oxygenated fuels program was to reduce emissions of carbon monoxide (CO) from motor vehicles. Section 211(m)(2) of the CAA assigns the United States Environmental Protection Agency (EPA) responsibility for establishing control periods based on the portion of the year in which an area is "prone" to high ambient concentrations of CO. In accordance with EPA guidance (see 57 FR 47855, October 20, 1992), the Department established a seven-month control period for the northern oxygen program control area, which includes those portions of New Jersey included in the New York-New Jersey-Connecticut Consolidated Metropolitan Statistical Area (New York-Northern New Jersey-Long Island CMSA), and a four-month control period for those portions of New Jersey included in the Pennsylvania-New Jersey-Delaware-Maryland CMSA (Philadelphia-Wilmington-Trenton CMSA).

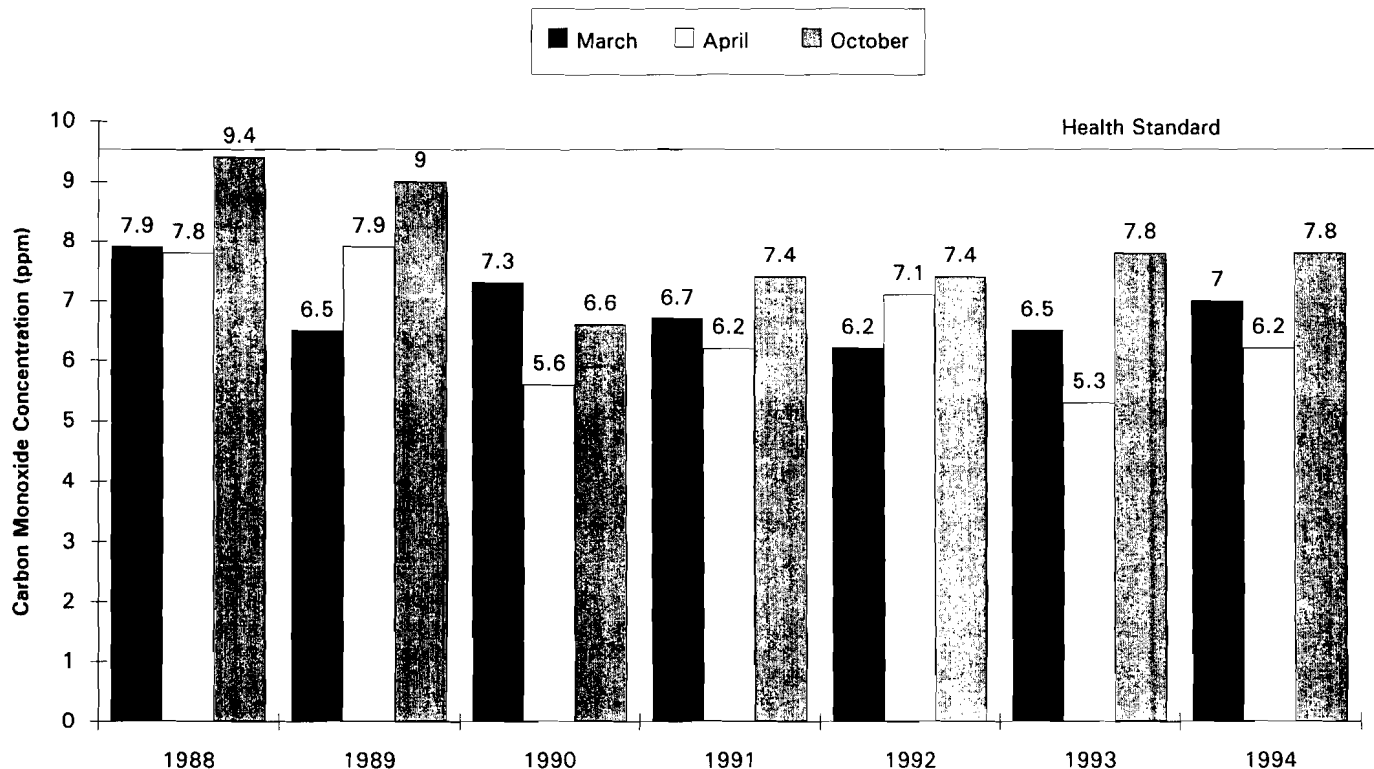
Section 211(m)(2) of the CAA also allows a state to request, with respect to any area designated as nonattainment for CO, a reduced control period for the oxygenated gasoline program, if the State can demonstrate that because of meteorological conditions, a reduced control period will assure that there will be no exceedances of the National Ambient Air Quality Standard (NAAQS) for CO outside of the reduced control period. On February 1, 1995, New Jersey submitted such a request to the EPA. Specifically, New Jersey asked that the EPA authorize the shortening of the oxygen program control period for northern New Jersey from seven months (October 1 through April 30) to four months (November 1 through the last day of February). New Jersey based this request on meteorological data which shows that there have been no exceedances of the NAAQS for CO during the months of October, March and April in northern New Jersey since 1988. (See Table 1 on next page.)

The United States Environmental Protection Agency (EPA) has indicated to the Department that it has no objection to a proposed reduction in the control period for these northern New Jersey counties, in light of the Department's meteorological data and the use in the State, starting on January 1, 1995, of federal reformulated gasoline which by EPA requirement is oxygenated.

The RVP program was originally established in 1989 as part of the State's efforts to control ground level ozone pollution by regulating the vapor pressure of gasoline. The State's RVP standards currently require that from May 1 through and including September 15 of each year, gasoline sold in New Jersey shall not have a RVP greater than 9.0 pounds per square inch. The Federal RFG program differs from New Jersey's program in that the more stringent Federal RVP limits apply at the refinery and importer level on May 1 but do not apply at the retail level until June 1; whereas the New Jersey limits would apply May 1 at the retail level. The amendments to the RVP program requirements contained herein are intended to have the effect of ensuring that Federal reformulated gasoline specifications will determine the volatility of summer gasoline in New Jersey.

The State has concluded that compliance with the RVP standards set forth in the Federal RFG program will adequately address New Jersey's need to limit the emission of ozone precursors. Even though in May the RVP requirements of the RFG program fall only on refineries, importers, and distributors (unlike the New Jersey RVP standard which is applied to all parties in the fuel distribution system, including wholesale

TABLE 1
Carbon Monoxide
Northern New Jersey
Maximum 8 Hour Averages



purchaser-consumers and retail gasoline stations), the RVP standard of the RFG program is more stringent than the New Jersey standard (8.0 as opposed to 9.0 pounds per square inch). This action to alleviate the burden of State RVP requirements that are inconsistent with Federal provisions is not expected to adversely affect New Jersey's efforts to attain and maintain attainment of the NAAQS for ozone.

The specific revisions to the rules which the Department proposes to make are described below.

N.J.A.C. 7:27-25.3 General provisions

The proposed amendment to N.J.A.C. 7:27-25.3(c) establishes a uniform four-month oxygen program control period Statewide. Consistent with this modification, the Department proposed amending N.J.A.C. 7:27-25.3(f)1i to delete the references to northern and southern oxygen program control areas which are being replaced with the new definition, as explained below.

The Department proposes to amend N.J.A.C. 7:27-25.3(h) to exempt wholesale purchaser-consumers and gasoline retailers in May from RVP standards that differ from applicable RVP standards established by the EPA in its final RFG rule.

N.J.A.C. 7:27-25.1, 25.4 and 25.8 Miscellaneous changes

N.J.A.C. 7:27-25.3(c) currently establishes a northern oxygen program control period of October 1 through April 30 and a southern oxygen program control period of November 1 through the last day of February. The proposed amendments to N.J.A.C. 7:27-25.3(c) will establish a uniform four-month control period Statewide, thereby shortening the oxygen program control period in the northern oxygen program control area to four months, November 1 through the last day in February. As a result of this proposed amendment, the Department is proposing several related amendments necessitated by a uniform four-month control period Statewide. Specifically, the Department proposes to delete the definition of "northern oxygen program control area" and "southern oxygen program control area" set forth at N.J.A.C. 7:27-25.1 and instead proposes a new definition of "oxygen program control area" which specifies that there will be one control area for the entire geographic area of the State. In a related fashion, the Department proposes to

amend slightly the definition of "oxygen program control period" to indicate that it would also be uniform throughout the State. Additional related amendments are proposed at N.J.A.C. 7:27-25.4, Recordkeeping and compliance determinations, and N.J.A.C. 7:27-25.8, Labeling, to modify language that referred to the two oxygen program control periods which will be replaced by the single, Statewide oxygen program control period.

Social Impact

The proposed amendments will have a positive social impact on the State.

The proposed amendments to the oxygenated fuels program will relieve the burden on gasoline suppliers of providing a different fuel in March, April and October in northern New Jersey than that required in southern New Jersey. At the same time, reduction of the control period will allow motorists in the State to experience a uniform fuel program throughout the State.

The proposed reduction in the oxygenated gasoline control period for the northern control area in New Jersey will also assist gasoline suppliers in meeting both the oxygen content requirements and the volatility standards for gasoline established by the federal RFG program by providing adequate transition time from fuel that meets wintertime standards to fuel that meets summertime standards.

In particular, gasoline suppliers using alcohol blends such as ethanol to meet the oxygenated fuels requirements have found it difficult to be in compliance with New Jersey's RVP standards of 9.0 pounds per square inch by May 1, as the use of ethanol as an oxygenate in gasoline tends to increase the RVP of the gasoline. The transition time provided by the reduction of the northern oxygen program control period to four months would allow fuel suppliers to more readily meet both the oxygenated fuels requirements and the RVP standards.

These proposed amendments will also relieve the burden on fuel providers of ensuring in May that wholesale purchaser-consumers and gasoline retailers have fuel that meets more stringent State RVP standards earlier than is mandated under the Federal RFG program. The Federal RFG rule establishes a "high ozone season," defined to be June 1 through September 15, during which time the gasoline provided to

wholesale purchaser-consumers and sold at retail service stations must comply with RFG volatility control requirements. The Federal rule allows fuel providers the month of May to ensure complying fuel is available at the service stations during the high ozone season. By exempting the petroleum industry from State RVP standards which differ from the Federal RFG volatility standards, this proposed rulemaking will allow May to be a transition period and ease the burden on the petroleum industry of complying with the State's Federally-inconsistent RVP requirement.

Economic Impact

The proposed amendments modifying the oxygenation and volatility requirements will have a positive economic impact. The amendments will provide greater flexibility to the regulated industry while providing a significant cost savings to the public.

Under the current regulation, the oxygenated fuels program requires the use of gasoline oxygenated to a minimum standard of 2.7 percent for seven months in the northern oxygen program control area and for four months in the southern oxygen program control area. The Department estimates the cost of producing gasoline oxygenated to a minimum standard of 2.7 percent to be around \$0.02 per gallon more than the cost of producing gasoline oxygenated to the Federal RFG oxygenation standard of an average minimum of 2.0 percent. Based on the Department's 1994 sales figures for motor gasoline, the Department estimates that the cost savings to New Jersey motorists will be approximately \$12.5 million if the northern oxygen program control period is reduced from seven months to four months.

In addition, making New Jersey's RVP requirements consistent with those established by the Federal RFG program will ease compliance burdens on providers of gasoline to be sold in this State. By removing the discrepancies between the two sets of standards for fuel to be supplied in May, the Department expects that operating costs borne by the petroleum industry will be reduced and that this cost savings will be passed on to the consumer.

Environmental Impact

Overall, the proposed amendments will not have an adverse environmental impact on the State.

The proposed shortening of the northern oxygen program control period should not result in exceedances of the NAAQS for CO. Prior to the commencement of the oxygenated gasoline program, in the years from 1989 to 1991, no exceedances of the NAAQS for CO were recorded in New Jersey in March, April and October. (See Table 1 above.) Furthermore, two other Federally-mandated programs that limit CO emissions are now coming into effect. These are the reformulated gasoline (RFG) program, which began in New Jersey on January 1, 1995 and the enhanced inspection and maintenance (I/M) program which is being proposed by the Department, in conjunction with the Department of Law and Public Safety, Division of Motor Vehicles (DMV), to be phased in starting in 1995. Each of these programs will add a further margin of safety to ensure that there will be no exceedances of the NAAQS for CO in October, March or April.

In the same manner, the proposal to exempt wholesale purchaser-consumers and gasoline retailers from the State's Federally inconsistent RVP standards will not significantly affect the environmental benefits gained to date by the implementation of the State's RVP standards. Although the Department recognizes that some emissions reductions will be lost by relieving wholesale users and retailers from volatility compliance requirements during the month of May, the Department believes that these losses will be minimized as lower RVP fuels are brought to the wholesale sites and retail outlets in May, to ensure that full compliance is achieved by June 1. Furthermore, the Federal RFG's volatility standard for the "high ozone season" of June, July and August is more stringent than the State's (a Federal standard of 8.1 or 8.0 pounds per square inch, depending on whether averaging is employed, as opposed to a State standard of 9.0 pounds per square inch). This more stringent Federal RVP standard will ensure that greater reductions in gasoline evaporation will be realized during the period when exceedances of the ozone standard is most apt to occur.

Comparison with Federal Law

The amendments set forth herein do not impose standards that exceed those contained in Federal rules under the Clean Air Act. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose additional reporting or recordkeeping requirements on small businesses, nor would they impose additional compliance requirements on small business.

In fact, the proposed amendments to the oxygenated fuels requirements would relieve northern New Jersey gasoline distributors and suppliers which are small businesses from certain testing and recordkeeping requirements for the three months which would no longer be part of the northern oxygen control period, that is, October, March and April. It would also eliminate for those months certain labelling requirements to which gasoline retailers are subject.

Furthermore, by exempting downstream gasoline suppliers and retailers from compliance with volatility requirements that differ from those established under the Federal RFG program, the proposed amendments would relieve the petroleum industry from any duplicative recordkeeping that compliance with two sets of requirements might entail.

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

7:27-25.1 Definitions

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

["Northern oxygen program control area" means the control area which includes the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren.]

...

"Oxygen program control area" means the entire geographic area within the State of New Jersey.

"Oxygen program control period" means [a] the control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27-25.3 are applicable to gasoline.

...

["Southern oxygen program control area" means the control area which includes the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem.]

...

7:27-25.3 General provisions

(a) Except as provided for use in (b) and (h) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) (No change.)

(c) Except as provided for at N.J.A.C. 7:27-25.9, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent[;

i. For the Northern oxygen program control area, from October 1 through and including the following April 30;

ii. For the Southern oxygen program control area,] from November 1 through and including the last day of the following February; and

2. (No change.)

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

(f) Notwithstanding the provisions of (c) above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:

1. The gasoline is destined for one of the following uses:

i. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a facility located outside the [northern oxygen

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program control area and the southern] oxygen program control area;

ii.-iv. (No change.)

2.-3. (No change.)

(g) (No change.)

(h) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.

7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. (No change.)

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during [any applicable] the oxygen [content] **program** control period, the gasoline conforms with the oxygen content requirements of this subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i.-ii. (No change.)

3. (No change.)

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

EMERGENCY ADOPTION

7:27-25.8 Labeling

(a) During any oxygen [content] **program** control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in trade at a facility owned or operated by any retailer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

(b) The label shall, except as provided in (c) below, contain the text given below. This statement shall not be altered and no additional language shall be inserted within the text. However, a phrase indicating the dates of the [applicable] **oxygen program** control period may be added before or after this text. If a label does not contain the dates of the [applicable] **oxygen program** control period then that label shall be removed from the fuel pump or other gasoline dispensing device at the end of the [applicable] **oxygen program** control period. This label shall state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

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