



# NEW JERSEY REGISTER

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## THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 14  
July 15, 1991 Indexed 23 N.J.R. 2079-2204  
(Includes adopted rules filed through June 21, 1991)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 20, 1991**  
See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE: SUPPLEMENT JUNE 17, 1991**

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

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

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## NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$125 (\$215 by First Class Mail); back issues when available, \$15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

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**EXECUTIVE ORDER****(a)**

**OFFICE OF THE GOVERNOR**  
**Governor James J. Florio**  
**Executive Order No. 34(1991)**

**Recycling by State Agencies and Instrumentalities**

Issued: June 13, 1991.

Effective: June 13, 1991.

Expiration: Indefinite.

WHEREAS, the New Jersey Source Separation and Recycling Act, P.L. 1987, C.102, mandates the recycling of solid waste materials for the purpose of reducing the amount of solid waste requiring disposal, conserving valuable resources and energy, and increasing the supply of reusable waste materials for New Jersey's industries; and

WHEREAS, State solid waste policy calls for the recycling of at least 60 percent of all solid waste generated in New Jersey within five years; and

WHEREAS, attainment of a 60 percent Statewide solid waste recycling rate will depend on the support and cooperation of every sector of the State economy, including State agencies and instrumentalities; and

WHEREAS, State agencies and instrumentalities should serve as models for other public and private entities in the areas of source reduction and recycling so that the reduction of solid waste and recovery of reusable materials will be promoted to the greatest extent possible; and

WHEREAS, State agencies and instrumentalities generate a significant amount of recyclable waste material and have the potential to reduce that waste through source reduction and recycling efforts;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of this State, do hereby Order and Direct that each State agency or instrumentality:

1. Appoint a recycling coordinator who will be responsible for coordinating the implementation of a Source Reduction and Recycling Program for waste materials generated by its agency.

2. Conduct a waste audit, with the assistance of the Department of Environmental Protection (DEP), for the purposes of identifying and implementing practices which can reduce the amount of solid waste generated, and increase the recycling rate for the agency or instrumentality to at least 60 percent within five years of the effective date of this Order. Where an agency or instrumentality determines, based on its analyses, that a 60 percent recycling rate cannot be attained due to the unique nature of its waste stream and specific technical or economic constraints, the agency or instrumentality shall submit to the Governor's Office and the Department of Environmental Protection, written analyses that identify the technical or economic constraints preventing the attainment of the 60 percent recycling rate, and specify the maximum feasible recycling rate to be achieved by the agency or instrumentality within five years.

3. Develop and maintain programs to separate waste materials for recycling, and consider the inclusion, in these programs, of at least the following material types: office paper, corrugated cardboard, newspaper, metal cans, glass bottles, and plastic beverage containers.

4. Where the agency or instrumentality generates scrap metal, motor oil, refrigerants, tires, automobile batteries, anti-freeze, x-rays,

photographic film and chemicals, concrete, asphalt, yard waste or food waste, develop and maintain programs to separate these materials for recycling or, as appropriate, composting.

5. Where the agency or instrumentality has responsibility for maintaining public lands, comply with the Department of Environmental Protection's "Grass: Cut It and Leave It" policy.

6. Where the agency or instrumentality has responsibility for maintaining State recreational areas, provide separate receptacles for the disposition and collection of metal, glass and plastic containers and ensure that those materials are marketed for recycling.

7. Provide for two-sided printing of all publications, documents, and photocopying where feasible. Each office shall have at least one photocopying machine with two-sided features and the capability of utilizing recycled paper.

8. Where feasible, replace disposable products with reusable products, especially in those instances where a class of disposable products accounts for a significant proportion of the solid waste disposed of by the agency or instrumentality.

9. Submit an annual report to the Department of Environmental Protection on the tonnage of material recycled from its facilities by April 1 for the previous calendar year.

10. Submit tonnage information to the municipality in accordance with municipal requirements.

11. Provide for an education program for employees on the State's Source Reduction and Recycling Program.

I further direct that the Department of Environmental Protection:

1. Provide technical assistance to help State agency coordinators develop and implement the programs mandated by this Executive Order; and

2. Assist other agencies and instrumentalities in the development and implementation of educational programs; and

I direct that the Department of Treasury:

1. Ensure that all solid waste contracts written for solid waste collection and disposal include provisions that reflect a reduction in waste generation rates achieved through source reduction and recycling, and provisions that ensure conformance to county and municipal recycling requirements.

2. Require contract vendors to provide tonnage and revenue reports to each agency or instrumentality.

3. Ensure that all contracts for leased and owned buildings under the jurisdiction of the Department of Treasury provide for source separation and recycling programs.

4. Ensure that all janitorial contracts awarded by the State include recycling collection services, where feasible.

5. Establish a revolving fund, consisting of monies derived from the contracted sale of recyclable materials, to be used in supporting State agency recycling programs. It is further ordered that at least ten percent of the total fund be allocated to the Office of Recycling in the Department of Environmental Protection to support educational and technical assistance programs needed to develop and maintain State agency recycling programs. Any revenue derived from the sale of recyclable materials sold as part of a training and education program for the rehabilitation of individuals at State institutions may be used to provide direct support for these programs.

This Order shall take effect immediately.

# RULE PROPOSALS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Special Hearing Rules

#### Council on Affordable Housing Hearings

#### Proposed Readoption with Amendments: N.J.A.C. 1:5

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

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

Proposal Number: PRN 1991-375.

Submit comments by August 14, 1991 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Council on Affordable Housing was established by the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) in 1985 to evaluate municipal plans to meet low and moderate income housing needs. The statute provides that some matters before the Council may be referred to the Office of Administrative Law (OAL) for hearing. Procedural rules for the Council were adopted in 1986 at N.J.A.C. 5:91. The OAL subsequently developed the special hearing rules for Council on Affordable Housing hearings at N.J.A.C. 1:5. The special hearing rules were adopted in October 1986 (18 N.J.R. 2122(a)) and will expire on October 20, 1991 pursuant to Executive Order No. 66(1978).

The OAL has reviewed N.J.A.C. 1:5 and, with one exception, has determined that the rules are necessary, reasonable and proper for the purpose for which they were originally promulgated. In accordance with Executive Order No. 66(1978), the OAL is therefore proposing to re-adopt the rules with amendments. The proposed amendments involves eliminating N.J.A.C. 1:5-20, the subchapter dealing with issue referral from the Council's mediation process, and references to the subchapter. The OAL has found that the issue referral process has not been used by the Council and, in addition, the inclusion of subchapter 20 in N.J.A.C. 1:5 has created confusion.

With the exception of eliminating the rules relating to the issue referral process, and references thereto, N.J.A.C. 1:5 would remain unchanged. The current practice in Council on Affordable Housing hearings at the OAL would therefore continue.

It is noted that the Council's own procedural rules were recently readopted without change (see 22 N.J.R. 3610(b); 23 N.J.R. 688(a)).

#### Social Impact

Readoption of the special hearing rules will enable the OAL to continue to carry out its responsibilities under the Fair Housing Act. Thus, the readopted rules will help achieve the social benefit of the statute, which is to ensure that there will be adequate low and moderate income housing in the State. The proposed amendment will eliminate confusion regarding the issue referral process, which has not been used while the special hearing rules have been in effect.

#### Economic Impact

Readoption of the special hearing rules will have no adverse economic impact. By facilitating implementation of the Fair Housing Act, readoption of the rules will help accomplish the economic benefits of the statute.

#### Regulatory Flexibility Analysis

The rules proposed for readoption continue the provisions of the special hearing rules for the Department of Community Affairs Council on Affordable Housing hearings. The rules impose compliance requirements on those parties (municipalities, developers and nonprofit organizations) involved in COAH cases transmitted to the office of Administrative Law for hearings; some of the non-public entities may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The COAH special hearing rules set forth time frame

and filing requirements for discovery, the filing of motions, the scheduling of prehearing conferences, the filing of expert witness reports (when found to be admissible) and the preparation of transcripts. The rules proposed for readoption are applied consistently to all involved parties, regardless of business size, because the nature of the hearing process requires that all parties submit the same information and follow the same procedures. Therefore, in proposing these rules for readoption, the OAL makes no differentiation based upon business size in their application and has determined that the requirements are not unduly burdensome on the regulated public.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:1.5.

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

#### 1:5-1.1 Applicability

(a) The rules in [subchapters 10, 12, 13 and 18 of] this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-8.1 concerning an objection to a municipality's petition for substantive certification.

[(b)] The rules in subchapter 20 of this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-7.1(d) concerning the adjudication of an issue which may facilitate mediation efforts]

[(c)](b) Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R. these rules shall apply.

#### SUBCHAPTER 20. [ISSUE REFERRAL FROM COUNCIL'S MEDIATION PROCESS] (RESERVED)

#### [1:5-20.1 Referral to the Office of Administrative Law

(a) The Council on Affordable Housing may under N.J.A.C. 5:91-7.1(d) request the Office of Administrative Law to conduct a hearing on any issue which the Council believes may facilitate the mediation process.

(b) The Council's requests shall be granted by the Office of Administrative Law under N.J.S.A. 52:14F-5(o) and the hearing conducted pursuant to this subchapter.

#### 1:5-20.2 Scheduling

Issues transmitted under this subchapter shall be scheduled by the Clerk for a hearing within 20 days of their transmittal to this office.

#### 1:5-20.3 Discovery

(a) At least five days before the scheduled date for the hearing, each party shall exchange with each other party the following:

1. Copies of any documents intended to be introduced at the hearings;

2. The name and addresses of all witnesses intended to be called at the hearing, including the qualifications of any expert witnesses; and

3. A summary of the testimony of each witness.

(b) Upon application of a party, the judge shall exclude any evidence that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(c) No other discovery need be provided.

#### 1:5-20.4 Conduct of hearing

Unless other arrangements are requested by the Council on Affordable Housing and agreed to by the Director of the Office of Administrative Law, hearings under this subsection shall be conducted pursuant to N.J.A.C. 1:1-14.]

**(a)**

**OFFICE OF ADMINISTRATIVE LAW  
Notice of Withdrawal of Proposal  
Special Hearing Rules  
Economic Assistance Cases; Transmission of Cases  
Proposed New Rule: N.J.A.C. 1:10-8.1**

Take notice that the Office of Administrative Law, upon consideration of comments received and further review, has decided to withdraw proposed new rule N.J.A.C. 1:10-8.1, which was proposed on August 20, 1990 at 22 N.J.R. 2389(a) and repropoed on January 7, 1991 at 23 N.J.R. 3(a).

**(b)**

**OFFICE OF ADMINISTRATIVE LAW  
Special Hearing Rules  
Division of Medical Assistance and Health Services  
Applicant/Recipient Hearings  
Proposed Readoption with Amendments: N.J.A.C. 1:10B**

Authorized By: Jaynee LaVecchia, Director,  
Office of Administrative Law.  
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).  
Proposal Number: PRN 1991-362.

Submit comments by August 14, 1991 to:  
Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The special hearing rules at N.J.A.C. 1:10B apply to matters transmitted to the Office of Administrative Law (OAL) by the Department of Human Services, Division of Medical Assistance and Health Services (Division) which involve applicants for or recipients of Medicaid or Medically Needy benefits and services. The rules were adopted in October 1986 (18 N.J.R. 2008(a)) and will expire on October 6, 1991 pursuant to Executive Order No. 66 (1978).

The OAL has reviewed N.J.A.C. 1:10B and has determined that the rules are necessary, reasonable and proper for the purpose for which they were originally promulgated. In accordance with Executive Order No. 66 (1978), the OAL is therefore proposing to readopt the rules with amendments. The proposed amendments would add references to other relevant rules. In N.J.A.C. 1:10B-1.1, it is proposed that a reference to N.J.A.C. 10:6 be added to clarify that the hearings arise from those rules. In N.J.A.C. 1:10B-5.1, it is proposed that a reference to the Federal Fair Hearing Regulations be added to the section on representation, since the representation rule is based on Federal Requirements.

With the exception of adding the two references, N.J.A.C. 1:10B would remain unchanged. The current practice in Medicaid and Medically Needy hearings at the OAL would therefore continue.

The Division participated in the development of the special hearing rules and reviewed the proposed readoption.

**Social Impact**

Readoption of the special hearing rules will have no new or additional social impact because the rules reflect existing procedures. Generally, the benefit of the rules is that they allow for the fair and expeditious conduct of hearings relating to the Medicaid and Medically Needy programs.

**Economic Impact**

Readoption of the special hearing rules will have no adverse economic impact. By continuing to facilitate the conduct of Medicaid and Medically Needy program hearings, readoption of the rules will help accomplish the economic benefits of those programs.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed readoption does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption continues Special Hearing Rules for Division of Medical Assistance and Health Services Applicant/Recipient hearings.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:1.10B.

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

1:10B-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted pursuant to N.J.A.C. 10:6 to the Office of Administrative Law by the Division of Medical Assistance and Health Services involving applicants for or recipients of Medicaid and Medically Needy benefits or services.

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

1:10B-5.1 Representation

An applicant/recipient may appear at a proceeding without representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4. See, 42 C.F.R. 431.206(b)(3).

**(c)**

**OFFICE OF ADMINISTRATIVE LAW  
Special Hearing Rules  
Board of Public Utility Hearings  
Prefiled Testimony; Interlocutory Review  
Repropoed New Rule: N.J.A.C. 1:14-14.1  
Proposed New Rule: N.J.A.C. 1:14-14.4**

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).  
Proposal Number: PRN 1991-376.

Submit comments by August 14, 1991 to:  
Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9, CN 049  
Quakerbridge Road  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

On March 4, 1991, at 23 N.J.R. 640(a), the Office of Administrative Law proposed new special hearing rules for Board of Public Utility cases. With the exception of N.J.A.C. 1:14-14.1, these rules have been adopted, the notice of adoption being published elsewhere in this issue of the Register. N.J.A.C. 1:14-14.1 is now being repropoed. OAL is also proposing a new rule, N.J.A.C. 1:14-14.4, dealing with interlocutory review.

As originally proposed, N.J.A.C. 1:14-14.1 required that all direct written testimony be filed no later than 10 days before the hearing. Problems concerning prefiled direct testimony have resulted in adjournments and delays in the hearing process. By requiring submission of all prefiled testimony prior to the hearing date, OAL hoped to reduce the number and length of these delays.

However, the Department of the Public Advocate, Division of Rate Counsel objected to this proposal. Rate Counsel indicated that it often encounters difficulty obtaining sufficient information, thus making it impossible to adequately prepare prefiled testimony at this stage of the proceedings. Further, the Division does not believe that the usual practice of filing the direct testimony of Rate Counsel witnesses during the course of the hearing contributes to any substantial delays.

The repropoed new rule attempts to balance the parties' need to have an opportunity to prepare and present a case with the need to avoid lengthy delays. The repropoed new rule provides that the judge shall

establish a schedule for filing direct testimony and adjust the discovery schedule to permit the timely filing of direct testimony.

Proposed new rule N.J.A.C. 1:14-14.4 provides that the Board of Public Utilities shall decide whether or not to consider a request for interlocutory review at its next regularly scheduled Board meeting. The Uniform Administrative Procedure Rules provide that an agency head must decide whether to consider a request for interlocutory review within 10 days of the request (see N.J.A.C. 1:1-14.10(c)). Since Board meetings are scheduled every two weeks, there would be instances where the Board might be deprived of the ability to decide whether to accept an interlocutory appeal. The proposed new rule ensures that the Board will have an opportunity to make this decision in an orderly yet reasonably expeditious fashion.

#### Social Impact

The repropoed new rule dealing with prefiled direct written testimony enables the judge to consider the specific needs of the parties in each case. The judge is expected to establish fair and expeditious schedules for prefilng testimony taking into consideration the complexity of the case, the discovery needs of the parties and the importance of a prompt resolution of the issue.

The proposed new rule dealing with interlocutory review ensures that parties will have their requests for interlocutory review considered by the entire Board of Public Utilities during regular Board meetings. It is therefore expected that the decision whether to permit an interlocutory appeal will be made more deliberately than could be expected in some instances if the 10 day requirement of N.J.A.C. 1:1-14.10(c) was not modified.

#### Economic Impact

The repropoed and proposed new rules will have no additional economic impact on the hearing process.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules concern prefiled direct testimony and interlocutory review in Board of Public Utilities cases.

Full text of the proposal follows:

### SUBCHAPTER 14. CONDUCT OF CASES

#### 1:14-14.1 Prefiled testimony

(a) The judge may require that all parties prefile their direct testimony in writing, certified, verified or sworn to under oath. The schedule for the submission of this testimony shall be established by the judge to ensure a fair and expeditious hearing.

(b) The judge shall adjust the discovery schedule to facilitate the timely filing of prefiled direct testimony.

#### 1:14-14.4 Interlocutory review

When a party requests interlocutory review, the BPU shall determine at its next regularly scheduled open meeting whether the order or ruling will be reviewed.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

#### Fire Service Training and Certification Firefighter I Certification

#### Proposed Amendment: N.J.A.C. 5:18C-4.2

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

Authority: N.J.S.A. 52:27D-25d, 198 and 219.

Proposal Number: PRN 1991-361.

Submit written comments by August 14, 1991 to:

Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 5:18C-4.2 provides a mechanism for people currently serving as firefighters to obtain Firefighter I certification issued by the Bureau of Fire Safety. To obtain the certification, an individual shall either have served as an active firefighter for 18 months prior to January 1, 1993 or have completed a training program that the Bureau of Fire Safety finds to be equivalent to the training program required under N.J.A.C. 5:18C-4.3. Verification of the necessary experience or training must be submitted on a form provided by the Bureau. Application must be made prior to January 1, 1994.

#### Social Impact

This proposed amendment would "grandfather" current firefighters by allowing them to obtain certification by meeting minimum requirements, thereby allowing them to continue through the certification program as it develops in the future.

#### Economic Impact

To the extent that certification helps firefighters to advance professionally, the proposed amendment will be of economic benefit to them.

#### Regulatory Flexibility Statement

The proposed amendment affects firefighters who serve fire departments and fire districts. It imposes no requirement on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

#### 5:18C-4.2 Firefighter I Certification

(a) (No change.)

(b) A certification for Firefighter I shall also be granted to any person who shall have met the following requirements prior to January 1, 1993:

1. Serve as an active firefighter in a fire department or fire district for a period of not less than 18 months; or

2. Successful completion of a basic firefighter training program that has been determined by the Bureau to be equivalent to the training required pursuant to N.J.A.C. 5:18C-4.3.

(c) A person applying for certification based on active firefighting experience or training pursuant to (b) above must:

1. Provide verification of such experience or training on a form provided by the Bureau and signed by the fire chief, county training coordinator or local instructor having knowledge of the experience or training; and

2. Make application prior to January 1, 1994.

### (b)

#### NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

#### Substantive Rules

#### Extension of Certification Periods/Judgments of Repose

#### Proposed New Rule: N.J.A.C. 5:92-1.6

Authorized By: New Jersey Council on Affordable Housing,  
Charles Griffiths, Chairman.

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

Proposal Number: PRN 1991-370.

Submit comments by August 14, 1991 to:

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

The agency proposal follows:

**Summary**

The *Mount Laurel II* decision of 1983 reconfirmed the constitutional obligation for each municipality to address its fair share of a regional need for low and moderate income housing. It also established incentives for litigating exclusionary zoning cases. There ensued a flurry of litigation. Some of it settled relatively early and resulted in six year periods of repose and compliance plans for affordable housing.

The litigation prompted a legislative response. In July of 1985, the Fair Housing Act was signed into law and the Council on Affordable Housing (COAH) was established as an alternative to the court. Most of the communities that had not settled in court were transferred to COAH. COAH developed fair share numbers through 1993 for all municipalities in New Jersey and also adopted rules at N.J.A.C. 5:92, addressing the low and moderate income housing need.

In July of 1991, periods of repose will begin to expire for court settled municipalities. Early in 1993, municipalities that received substantive certification will reach the end of their certification period. COAH has sought and received input from various groups suggesting several courses of action. It has been suggested that COAH has not generated any fair share numbers for municipalities that have responded to their original fair share obligation. Therefore, the most practical response would be to provide an interim substantive certification until July of 1993, when new fair share allocations will be available. It has also been suggested that COAH should fashion interim numbers for a 1991-1993 period and develop an interim certification process. In considering this alternative, COAH has considered the practical implications of devising fair share numbers and a certification process that may extend from a few months to two years.

The Council views this issue of periods of repose or certifications that expire prior to July 1, 1993 as part of an overall issue. The Council needs to determine: how to address communities that settled in court early; how to address communities that proceeded through the process of substantive certification; and how to address those communities that chose to address some, all or none of their fair share without a period of repose or substantive certification. This overall policy issue requires a comprehensive approach and should not be addressed on a piecemeal basis.

As COAH addresses these issues and their implications on its methodology for determining fair share, the State Planning Commission is developing the State Development and Redevelopment Plan (SDRP). Since the Supreme Court has indicated that a municipal fair share should be linked to a State plan, COAH does not believe it is prudent to fashion interim fair share allocations before the SDRP is finalized.

Therefore, for a variety of reasons, COAH has decided to provide a period of interim substantive certification until July 1, 1993. This action is predicated on municipal compliance with the terms of the expiring substantive certification or the judgment of repose. COAH is neither rejecting or accepting the advisability of adding an incremental need to the 1993 fair share allocations corresponding to the interim period of substantive certification.

**Social Impact**

The proposed new rule will have a positive social impact because it will allow the Council to develop a policy regarding communities that settled in court early, communities that received substantive certification and communities that addressed little or addressed none of their constitutional obligation. It will also allow the Council to formulate a policy consistent with the developing State Development and Redevelopment Plan. The rule also will have a positive impact because it allows parties a forum to correct components of approved plans that are not being implemented.

**Economic Impact**

The proposed new rule defers the development of fair share numbers and the initiation of a process designed to address those fair share numbers until the Council formulates a comprehensive approach to a series of issues discussed in the Summary. This will result in better planning and less litigation than if the Council developed interim fair share numbers and designed a process for a short-term certification. Thus, the Council believes this rule will have a positive social impact.

**Regulatory Flexibility Statement**

The proposed new rule will not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed rule provides an interim substantive certification for municipalities, provided the municipalities have complied with the terms of substantive certifica-

tion or the judgment of repose. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

**5:92-1.6 Extension of certification periods/judgments of repose**

Any municipality that has a judgment of repose or substantive certification that expires prior to July 1, 1993, shall be considered to have substantive certification until July 1, 1993, provided the municipality has complied with the terms of substantive certification or the judgment of repose. Any objector or litigant may file a motion with the Council pursuant to N.J.A.C. 5:91-13 if the party contends that the municipality has not complied with the terms of substantive certification or the judgment of repose.

**EDUCATION****(a)****STATE BOARD OF EDUCATION****Preventive and Remedial Programs in Reading, Writing and Mathematics****Proposed Amendments: N.J.A.C. 6:8-1.1, 6.1 and 6.2  
Proposed Repeal: N.J.A.C. 6:8-6.3**

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, as supplemented and  
amended by N.J.S.A. 18A:7A-1 et seq.

Proposal Number: PRN 1991-360.

Submit written comments by August 14, 1991 to:

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

The agency proposal follows:

**Summary**

The passage of the Quality Education Act (QEA), P.L. 1990, c.52, and revisions to the QEA, P.L. 1991, c.62, have resulted in some significant changes in the way compensatory basic skills instruction is funded. The QEA eliminated State compensatory education (SCE) funds which provided districts with categorical aid for required remedial programs. SCE funds were allocated based on a count of the number of students below State basic skills standards in reading, writing, and/or mathematics. These funds were then used to pay for supplemental services for students below State basic skills standards.

Under the QEA laws, districts must continue to provide supplemental services to all students below State basic skills standards. However, the new funding mechanism which replaces SCE is based on poverty criteria rather than on educational need criteria. At-risk funds are calculated based on the number of students in the district who are eligible for free lunch or free milk. However, P.L. 1991, c.62 provides that no district's at-risk aid for 1991-92 and 1992-93 shall be less than its SCE aid for 1990-91. Moreover, these at-risk funds are not dedicated for use to fund remedial programs. The remedial program is only one program which addresses the needs of at-risk pupils.

The amendments proposed herein are needed because of the changes brought about by the QEA laws. In general, the proposed additions and deletions will: eliminate reference to SCE; replace the terms "communication and computation" with "reading, writing, and mathematics"; and add definitions for an "at-risk pupil" and a "program for at-risk pupils."

The changes to each section are as follows:

**N.J.A.C. 6:8-1.1 Words and phrases defined**

Two new definitions are being added, three are deleted, and some amendments to others are proposed. "At-risk pupil" has been defined as a pupil in danger of failure or dropping out of school because of specific cognitive, affective, economic, social and/or health needs. A program for at-risk pupils is defined as a program which addresses factors

which put a pupil at risk. The definitions of "maintenance of effort," "communications," and "computation" are deleted since they no longer apply. The terms "communications" and "computation" are replaced by "reading," "writing," and "mathematics." The term "State compensatory education pupil" is replaced by "preventive and remedial pupil," and the definition is modified to reflect changes in the State testing program.

N.J.A.C. 6:8-6.1 Assessment procedures

The amendments to this section define the timelines for screening pupils to determine whether they meet State minimum levels of proficiency in reading, writing, and mathematics. These timelines existed previously in N.J.A.C. 6:8-6.3 which is now being repealed. N.J.A.C. 6:8-6.1(b) is being deleted since it is redundant and limited English proficient students are already assessed based upon the preceding subsection.

N.J.A.C. 6:8-6.2 Required supplemental preventive and remedial programs

This section has been reorganized to include information that existed in N.J.A.C. 6:8-6.3 which is now being repealed. The amended section specifies: the pupils who must receive supplemental services; the supplemental services which must be provided; the process for the development of the Individual Student Improvement Plan (ISIP); the process for applying for approval of the program to provide the required supplemental services; and evaluation requirements.

N.J.A.C. 6:8-6.3 State compensatory education preventive and remedial programs

This section, which described the requirements for State compensatory education programs, has been proposed for repeal. Some parts which are still relevant (for example, evaluation requirements, screening procedures) have been moved to N.J.A.C. 6:8-6.1 and 6.2.

**Social Impact**

The proposed amendments reflect the change made by the QEA laws from categorical State compensatory education funding based on educational criteria to at-risk aid based on economic criteria. The change will affect all public school districts in New Jersey. In the past, districts received funds for supplemental remedial services based on the number of students below State basic skills standards. That funding mechanism had a built-in disincentive since the more successful the remedial program was at improving student performance, the less money the district received. By allocating funds based on economic criteria—the count of students eligible for free lunch or free milk—the disincentive is eliminated. A district which is successful at helping students score above State basic skills standards will not lose funds because of that success.

**Economic Impact**

The QEA laws have caused a change in the way supplemental remedial services are funded in New Jersey. The amendments proposed herein bring the rules into line with the QEA laws and will affect all New Jersey districts. Districts with large numbers of students who meet the economic criteria to be counted for at-risk aid may receive more funds under the amended rules than they received from State compensatory education. However, districts which will get little at-risk aid, that is, which have few students who meet the economic criteria, may still have many students with educational needs. After 1992-93, when "hold harmless" funding for at-risk aid expires pursuant to P.L. 1991, c.62, such districts may need to use local dollars to fund remedial programs which were formerly funded by categorical State dollars.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments and repeal do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact solely upon New Jersey school districts.

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

6:8-1.1 Words and phrases defined

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

...  
**"At-risk pupil"** means a pupil who is in danger of failure or dropping out of school because of specific cognitive, affective, economic, social and/or health needs.

**"Basic Skills Improvement (BSI) Plan"** means a plan submitted by districts to the [department] **Department** which outlines the provisions of services to all pupils in need of assistance in [communications and computation] **reading, writing and mathematics skills.**

...  
 ["Communications" means reading and/or writing]

...  
 ["Computation" means mathematics.]

...  
**"Maintenance of effort"** means that a district's combined fiscal effort per student or aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.]

...  
**"Preventive and remedial program"** means any **supplemental** program which is designed to prevent regression and to improve the level of pupil proficiency in the areas of [communications and computation] **reading, writing, and mathematics or related services. These may be programs offered during the normal school day or programs offered beyond the normal school day or during summer vacation which are integrated and coordinated with programs operated during the regular school day and year** for students below the State minimum levels of proficiency. **A preventive and remedial program is one example of a program for at-risk pupils.**

**"Preventive and remedial pupil"** means a pupil who is enrolled in an approved preventive and/or remedial program, and who:

1. Is in grades K to 2 and does not meet locally established, State-approved standards of proficiency in reading, writing, and/or mathematics; or
2. Is in grades 3 to 12 and does not meet the State minimum levels of pupil proficiency in reading, writing, and/or mathematics.

...  
**"Program for at-risk pupils"** means a program, including early intervention and/or prevention strategies, which addresses the factors which put a pupil at-risk of failure or dropping out of school. Students served by such a program are those in danger of not acquiring the knowledge, skills, behavior and attitudes necessary for school success, school completion, and successful functioning as an adult in society because of specific cognitive, affective, economic, social and/or health needs.

...  
**"State compensatory education pupil"** means a pupil who is enrolled on September 30 in an approved preventive and remedial program, and who:

1. Is in grades K-3 and does not meet locally established, State-approved standards of proficiency in communications and/or computation; or
2. Is in grades 4-9 and does not meet the State minimum levels of pupil proficiency in communications and/or computation; or
3. Is in grades 10-12 and does not pass the ninth grade State test in communications and/or computation.]

...  
**"Supplemental program for State compensatory education"** means instructional or related services provided over and above the regular school program which are funded in whole or in part by State compensatory education funds.]

6:8-6.1 Assessment procedures

[(a)] Each pupil shall be assessed, upon entrance into the educational system and annually thereafter, to identify pupils not meeting [state] **State minimum levels of proficiency in reading, writing, and mathematics. These assessment procedures shall be completed no later than one month after the date of enrollment in a district.** Pupils so identified shall be provided with an individual comprehensive assessment. In instances of pupil transfers, assessment records shall

be forwarded [from the previous school or district to the school or district in which the pupil is newly enrolled] within 10 days in accordance with N.J.A.C. 6:3-2.5(c)9iii.

(b) Limited English proficient students shall be assessed to identify pupils not meeting state proficiency levels.]

**6:8-6.2 [Individual Student Improvement Plans] Required supplemental preventive and remedial programs**

(a) For each pupil in grades K to 2 who does not meet locally established minimum levels of proficiency in reading, writing, and mathematics and who has not been exempted from these requirements in an individualized education program, the district board of education shall provide a supplemental preventive and remedial program.

(b) For each pupil in grades 3 to 12 who does not meet State minimum levels of proficiency in reading, writing, and/or mathematics and who has not been exempted from these requirements in an individualized education program, the district board of education shall provide a supplemental preventive and remedial program.

(c) The preventive and remedial programs required in (a) and (b) above and the budget plan required in (f) below shall be reviewed and approved by the State Board of Education through the Commissioner or his or her designee. These programs shall be supplemental to the regular program and designed to assist students who have academic, social, economic, or environmental needs that prevent them from succeeding in regular school programs.

(d) To meet the supplemental requirement, district boards of education may provide remediation services in reading, writing, and mathematics, or related services. These may be programs offered during the normal school day or programs offered beyond the normal school day or during summer vacation through the use of an instructional method or in an instructional setting they deem appropriate. District boards of education may provide remedial services through a variety of program models (for example, in-class, pull-out, reduced class size, replacement projects or laboratories).

[(a)](e) For [pupils] each pupil performing below [state] State minimum levels of proficiency after completion of three academic years of instruction beyond kindergarten, the district board of education shall [develop procedures for] ensure the development and implementation of an Individual Student Improvement [Plans] Plan. [These procedures shall include but not be limited to] The district board of education shall ensure that:

1. A process for the development of the Individual Student Improvement Plan including those persons responsible for the development and implementation of the plan;

2. Identification of a teaching staff member responsible for monitoring the development, implementation and evaluation of the Individual Student Improvement Plan; and

3. A process for notifying the pupil and the parent(s) or guardian(s) of the need for and content of the Individual Student Improvement Plan in the language or mode of communication which is understood by the pupil and the parent(s) or guardian(s).]

1. A certified staff member is identified as responsible for developing and implementing the plan and monitoring the progress of the student;

2. The pupil and the pupil's parent(s) or guardian(s) are informed of the need for and content of the Individual Student Improvement Plan in the language or mode of communication which is understood by the pupil and the parent(s) or guardian(s) in accordance with N.J.A.C. 6:3-2.2(k); and

3. Ongoing communication shall take place among those responsible for providing services described in the Individual Student Improvement Plan, the regular classroom teacher, and the parent(s) or guardian(s) of the pupil for whom the plan has been developed.

(f) The district board of education shall submit a budget plan for the preventive and remedial programs contained in (a) and (b) above to the county superintendent for approval as part of the supporting documentation for the annual school district budget. This budget plan shall include a description of the services to be

provided including the estimated number of students, the average instructional time and the instructional setting to be used.

(g) The district board of education shall annually evaluate the effectiveness of the preventive and remedial basic skills services, including measuring pupil gains in basic skills proficiency, to ensure that students are meeting State minimum levels of pupil proficiency in reading, writing and mathematics.

**6:8-6.3 [State compensatory education preventive and remedial programs] (Reserved)**

(a) State compensatory education preventive and remedial programs, supplemental to the regular school programs, shall be established by the district board of education. Application for and approval of these State compensatory education programs shall be based upon the following:

1. Enrollment in appropriate preventive and remedial programs of all pupils who have academic needs that prevent them from succeeding in the regular school programs, and who are:

i. In grades K-3 and do not meet locally established, State-approved standards of proficiency in communications and/or computation; or

ii. Are in grades 4-9 and do not meet the State minimum levels of pupil proficiency in communications and/or computation; or

iii. Are in grades 10-12 and do not pass the State mandated High School Proficiency Test in communications and/or computation.

2. Procedures for the screening of currently and newly enrolled pupils to determine whether they should be enrolled in preventive and remedial programs. Screening procedures shall be completed within one month of the date of enrollment. These procedures should include those diagnostic measures which are used to predict the relevant learning difficulties and needs;

3. Instructional and related activities and services which are supplemental to the regular school program and based upon identified priority pupil needs and designed to meet the academic, social, economic and environmental needs of enrolled pupils.

4. Procedures to provide ongoing communications between teaching staff members and parents or guardians of pupils who are participating in State compensatory education preventive and remedial programs;

5. Evaluation procedures which measure pupil gains in basic skills proficiency which are related to preventive and remedial program objectives and to State minimum levels of pupil proficiency in communications and computation;

6. Evaluation of the effectiveness of State compensatory education preventive and remedial programs in terms of pupil gains in basic skills proficiency and other relevant indicators;

7. A detailed budget for administration, instructional personnel, paraprofessional and clerical personnel, instructional materials and supplies, equipment, staff training, health and community services;

8. Assurance of maintenance of effort in the provision of the regular school program.

(b) The commissioner shall determine annually, on or before August 15, which applications for compensatory education programs are approved and so notify each district board of education.

(c) State compensatory education funds shall be calculated and distributed on the basis of actual enrollment in approved programs as of the last school day of September.

(d) The Department of Education shall conduct studies and evaluate findings annually after the effective date of this chapter in order to report the status of progress toward the attainment of State minimum levels of pupil proficiency in communications and computation skills.]

## HEALTH

(a)

## EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Food Equipment and Utensils; Toilet Facilities  
Community Residences and Bed and Breakfast Retail  
Food Establishments

## Proposed Amendments: N.J.A.C. 8:24-13.9 and 13.11

Authorized By: the Public Health Council, Louise C. Chut,

Ph.D., M.P.H., Chairwoman.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1991-367.

A public hearing concerning this proposal will be held on: August 12, 1991 at 1:00 P.M. to 3:00 P.M. at:

New Jersey Department of Health  
Health and Agriculture Building  
Room 106 (Auditorium)  
John Fitch Plaza  
Trenton, New Jersey 08625

Submit written comments by August 14, 1991 to:

William N. Manley  
Coordinator, Health Projects  
Retail Food Project  
Food and Milk Program  
CN 364  
Trenton, NJ 08625-0364

The agency proposal follows:

## Summary

On January 22, 1991, the Public Health Council proposed amendments to Chapter XII of the State Sanitary Code pertaining to retail food establishments. The final adoption of these proposed amendments appears elsewhere in this issue of the New Jersey Register.

During the comment period, several comments were received requesting changes which required additional notice and comment. The suggested changes were evaluated by the Department and are covered in this proposal.

A new subchapter, N.J.A.C. 8:24-13, establishing specific requirements for the operations of community residences and bed and breakfast establishments has been adopted, along with a number of other changes summarized in the January 22, 1991 proposal, elsewhere in this issue of the New Jersey Register. The new requirements for community residences and bed and breakfast establishments were proposed in order to be tolerant of the structural limitations of these facilities, which generally operate from a home setting. The new rules relax the requirement for sanitizing food service equipment as provided in N.J.A.C. 8:24-5.5, particularly the requirements pertaining to the installation of a three compartment sink or commercial dishwasher. The Department received four comments recommending that N.J.A.C. 8:24-13.9, Food equipment and utensils, be amended to require sanitization of food service equipment and utensils. Commenters, which included local health department officials, believed that a one compartment sink in bed and breakfast and community residences is not sufficient for the washing and sanitization of equipment and utensils. The commenters made specific recommendations as to the equipment that should be required to implement sanitization procedures, with one commenter stating that these facilities should be required to install a three compartment sink.

The Department agrees, in general, with the commenters and is proposing to further amend N.J.A.C. 8:24-13.9 and other portions of the chapter. The Department believes that the requirement to sanitize equipment and utensils has become increasingly critical due to the recent increase of *Salmonella enteritidis* associated with shell eggs, a food item that would be handled at these facilities. Sanitization is necessary as an added measure of protection to kill these pathogens on utensils and equipment. In order to carry out proper sanitization, certain basic washing equipment is necessary. However, the Department also recognizes that there are acceptable methods of manually sanitizing equipment without the use of a three compartment sink. Therefore, the Department is proposing to modify the requirements for these facilities and require that each establishment which manually washes and sanitizes equipment

provide a minimum of a two compartment sink and a portable basin, as suggested by one of the commenters. Also, either this basin or a sink compartment could be utilized for the manual sanitization of equipment and utensils in situations when automatic dishwashers are used which do not have the capability of reaching the required rinse temperature to achieve sanitization.

Additionally, the Department has found that the requirement for handwashing facilities in toilet facilities of bed and breakfast establishments and community residences was inadvertently omitted. The Department believes that this requirement is necessary in order to insure that proper handwashing is done after food handlers use the toilet facilities. This is a basic provision required of all retail food establishments under N.J.A.C. 8:24-6.9, and is added as an amendment to N.J.A.C. 8:24-13.11.

## Social Impact

The amended rules will provide a higher standard, particularly as the standard relates to mitigating food borne illness potentially associated with bed and breakfast and community residences. The requirement to provide proper sanitizing and handwashing facilities will help maintain that foods are prepared and served in a safe manner. The rules will also provide a reasonable standard for bed and breakfast and community residences to follow. The adoption of these revisions will enable the Department and local health departments to enforce adequate standards to ensure safe handling of foods served in these home style settings. The public benefits which would be derived are the prevention of food borne illness and clean and sanitary retail food establishments.

## Economic Impact

Illness and outbreaks of food borne disease cause economic losses and problems for patients and their families, for the establishments preparing the food, and for the governmental agencies responsible for food protection and disease surveillance. For example, the national economic impact of food borne salmonellosis alone has been estimated to be as high as \$2,000,000,000 annually. The promulgation of these amendments requiring the installation of sanitizing equipment for bed and breakfast and community residences could help to reduce the number of food borne outbreaks.

The Department has modified the sanitizing requirements in order to help the industry avoid costly equipment purchases. The Department believes that the additional costs incurred to comply with the sanitizing requirements could cost no more than several hundred dollars. The Department believes that this additional expense would not create an economic burden upon this industry and is worth the added public health protection that will be provided to occupants of community residences and those frequenting bed and breakfast establishments. The Department does not believe that the addition of a handwashing facility requirement for bed and breakfast and community residences will pose any economic burden because the vast majority of all homes already have handwashing sinks installed as a functional part of the bathroom or toilet room.

## Regulatory Flexibility Analysis

The majority of bed and breakfast and community residences operating in the State are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. These rules impose compliance requirements for both large and small businesses. The operators of retail food establishments are responsible for maintaining their establishments in a sanitary condition regardless of whether their facilities are considered large or small businesses. Also, both large and small firms falling within the purview of these rules have the same responsibility to prevent illnesses related to food processed or handled on the retail level; therefore, the Department has determined that there should be no differentiation in the requirements based solely on the size of the business. The rules are tolerant of the limitation of facilities provided for the operation of a bed and breakfast and community residences, which, for the most part, are small businesses as defined under the Act. The Department believes that the proposed rule revisions will not place an undue burden upon the industry.

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

8:24-13.9 Food equipment and utensils

(a) (No change.)

(b) After each usage, all tableware, kitchenware and food contact surfaces of equipment shall be thoroughly cleaned to sight and touch by manual or machine washing to include the following sequence of steps:

1. (No change.)
2. Equipment and utensils shall be thoroughly washed with a detergent solution and clean warm water; [and]
3. Equipment and utensils shall be rinsed of detergent and other residues with clean water[.];
4. Manual sanitization shall be accomplished in accordance with N.J.A.C. 8:24-5.5(c)1 through 6; and
5. Any mechanical dishwasher used shall be capable of sanitizing either by hot water with a minimum final rinse water temperature of 160 degrees Fahrenheit measured at the plate; or by chemical sanitization in accordance with the provisions of N.J.A.C. 8:24-5.5(d)7.

(c) When manual washing, rinsing and sanitizing methods are employed, at least a [one] two compartment sink supplied with hot and cold potable water under pressure shall be provided, with a smooth, impervious and suitably sized basin for sanitizing all equipment and utensils.

(d) Equipment and utensils washed in mechanical dishwashers which cannot achieve sanitization requirements as specified in N.J.A.C. 8:24-13.9(b)5 shall be manually sanitized using methods in accordance with N.J.A.C. 8:24-5.5(c)1 through 6.

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

#### 8:24-13.11 Toilet facilities

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

(e) Handwashing facilities shall be provided and located within or immediately adjacent to all toilet rooms.

1. Each handwashing facility shall be provided with hot and cold or tempered water (90 degrees Fahrenheit to 105 degrees Fahrenheit).

## (a)

### DIVISION OF AIDS PREVENTION AND CONTROL

#### State Sanitary Code

#### Acquired Immunodeficiency Syndrome; Reporting of Acquired Immunodeficiency Syndrome and Infection with Human Immunodeficiency Virus

#### Proposed Amendments: N.J.A.C. 8:57-2.2, 2.4, 2.6 and 2.7

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

Authority: N.J.S.A. 26:1A-7 and 26:2-104.

Proposal Number: PRN 1991-368.

A public hearing will be held on Monday, August 12, 1991 from 1:00 P.M. to 5:00 P.M. at:

Multipurpose Room  
Department of Transportation  
1035 Parkway Ave.  
Trenton, N.J. 08625

Submit written comments by August 14, 1991 to:

Ronald Altman, M.D.  
Medical Director  
Division of AIDS Prevention and Control  
New Jersey Department of Health  
CN 363  
Trenton, NJ 08625-0363

The agency proposal follows:

#### Summary

When N.J.A.C. 8:57-2 was first proposed, P.L.1989, c. 303 (N.J.S.A. 26:5C-5 et seq.) had not yet been passed by the Legislature. Even though P.L. 1989, c.303 was adopted by the Legislature and signed into law by the Governor in the interim between proposal and promulgation of N.J.A.C. 8:57-2, the rules were essentially adopted as originally proposed.

N.J.A.C. 8:57-2 kept the requirement that acquired immunodeficiency syndrome (AIDS) be reported to the State Department of Health, and added the requirement that newly diagnosed infections with human immunodeficiency virus (HIV) should also be reported to the Department. Both physicians and institutions caring for individuals with these

conditions were required to report. AIDS was reportable with personal identifiers (such as name and address), while HIV infection was to be reported without identifiers. The rules also required laboratories to report aggregate data every three months concerning the number of tests they performed to determine HIV infection and the number of positive results obtained, again without any patient identifiers. The rules stated that physicians and institutions could only order HIV testing of individuals for whom they have identifying information, but allowed the State Commissioner of Health to designate facilities where an individual could be tested anonymously. The rules continued the statement that AIDS or HIV infection was not to be considered a communicable disease for purposes of admission to, attendance in, or transportation in the following: nursing homes and other health care facilities; rooming and boarding homes, and shelters for the homeless; ambulances and other public conveyances; and educational facilities. Provision was made for confidentiality of the data and penalties were specified for failure to report.

N.J.S.A. 26:5C-5 et seq. requires that both AIDS and HIV infection be reported with identifiers. It is the purpose of these proposed amendments to bring the reporting requirements into conformity with the law. It is also the position of the Department that both the health of HIV-infected persons and prevention of transmission of HIV can best be served by having HIV infection reported to the Department with identifiers.

The proposed amendments to N.J.A.C. 8:57-2 requires that newly diagnosed HIV infections be reported to the State Department of Health by physicians and institutions with the name and address of the infected person. Prohibitions in the rules against the Department requiring individual identifying information have been removed. The proposed amendments also contain the following technical changes:

1. N.J.A.C. 8:57-2.2 contained statements that physicians, institutions and laboratories would be notified when HIV reporting would begin. These statements are now superfluous and have been removed. It is anticipated that the proposed amendments will go into effect upon promulgation.

2. N.J.A.C. 8:57-2.2 contained a statement giving examples of institutions required to report newly diagnosed HIV infection, which was confusing because some laboratories felt that they were considered special facilities for HIV testing. That statement has been changed to indicate that it refers to facilities for HIV counseling and testing.

3. The wording of the sentence in N.J.A.C. 8:57-2.4 permitting the Commissioner to designate facilities where HIV testing can be done anonymously has been changed to conform to the new reporting requirements.

4. In the section on the confidentiality of data in N.J.A.C. 8:57-2.6, reference is added to the confidentiality requirements of N.J.S.A. 26:5C-5 et seq.

5. N.J.A.C. 8:57-2.7 subjected laboratories to penalties for failure to submit required specimens. Since under these rules laboratories are not required to submit any specimens, this phrase is superfluous, and it has been removed.

#### Social Impact

There are both possible benefits and possible adverse consequences from reporting with personal identifiers of individuals diagnosed with HIV infection. Since many individuals with HIV infection are outside a system of easy access to medical and social services, HIV reporting with identifiers allows public health agencies to assist in this access. In the opinion of the Department, this benefit outweighs the disadvantages of reporting with identifiers. The advantages of HIV reporting with identifiers are as follows:

1. Public health agencies will be better able to assist and insure that HIV-infected people obtain adequate counseling and case management, which will both diminish HIV transmission by behavioral change and better provide services to HIV-infected persons.

2. Public health agencies will be able to better assist and insure that HIV-infected people obtain necessary medical services, which could significantly delay the onset of serious symptoms from HIV infection and prolong the life of HIV-infected persons.

3. Partner notification activities will be enhanced, thus bringing partners of infected persons, a very high-risk category for HIV infection, to counseling and testing, as well as possibly diminishing HIV transmission by behavioral change.

4. Better data will be obtained regarding of the extent of HIV infection in New Jersey and the characteristics of those infected than would be

the case without identifiers, as duplicate reports can be eliminated and completeness of reporting can be assured to a greater level.

5. Better data on the natural history of HIV infection, including the effect of therapeutic agents, can be obtained with reporting with identifiers.

The disadvantages of HIV reporting with identifiers are as follows:

1. Because of reporting with identifiers, people may refrain from being tested for HIV, thus negating any benefits that might be obtained from testing.

2. If information related to individuals were used or released improperly, various discriminatory activities could result against HIV-infected individuals, although it should be noted that some of the discriminatory activities are prohibited by law.

3. The resources to accomplish all the advantages listed above are not currently available, so that all the benefits of HIV reporting with identifiers noted above cannot be immediately realized.

4. Due to self-selection biases in the group of individuals who voluntarily undergo HIV testing, HIV reporting is not a substitute for HIV seroprevalence studies. Seroprevalence studies are superior to HIV reporting for determining the extent of HIV infection in the population, or in subgroups of interest.

#### Economic Impact

These proposed amendments should not have any significant economic impact on those persons and institutions required to report newly diagnosed HIV infections. The number of reports that must be submitted to the State Department of Health remains unchanged. The only change is that the name and address of the individual with HIV infection will have to be reported, which should not have any significant economic impact on the physicians and institutions doing the reporting.

If the information reported to the State Department of Health is used as planned, namely, as an assistance in the provision of services to HIV-infected individuals, services which might extend the life and well-being of such individuals, then those amendments will have a beneficial economic impact on HIV-infected persons. If the information is misused, particularly if the confidentiality of the data is breached, then discrimination against HIV-infected persons could result in areas of housing, employment, and other social interactions. Although prohibited by law in some cases, such discrimination could have a serious economic impact on the HIV-infected individual.

#### Regulatory Flexibility Analysis

The proposed amendments will be applicable to the Department of Health, hospitals, sanitariums, nursing homes, penal institutions, and clinical laboratories. As such, the rules will affect organizations having well over 100 employees. However, the proposed amendments will also apply to physicians, small clinical laboratories and other small health provider practices, some of which can be considered to be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The amendments only add a small amount of information to that already required to be reported to the State Department of Health. Due to the minimal new requirements imposed, and their mandatory nature under P.L. 1989, c.303, no exemption or lesser requirements are provided small businesses.

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

#### 8:57-2.2 Reporting HIV infection

Every physician attending a person found to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the [municipality of residence] **name, address, gender, race and birth date** of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, and such other information[,] as may be required by the State Department of Health[, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health]. A physician shall not report a person infected with HIV if the physician is aware that the person having control or supervision of an institution named in (b) below is reporting that person as being infected with HIV, or if the physician is aware that the person has previously

been reported to the State Department of Health as being infected with HIV. [Physicians will be notified by the State Department of Health of the date on which reporting of persons infected with HIV should begin.]

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, clinic, blood bank, or [special] facility for **HIV counseling and testing** [for HIV] in which any person is determined to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall state the [municipality of residence] **name, address, gender, race, and birth date** of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health[, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health]. The person having control or supervision of the institution shall not report a person infected with HIV if it is known that a physician is reporting the person or that the person has previously been reported to the State Department of Health as being infected with HIV. The person having control or supervision of the institution may delegate this reporting activity to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate reporting responsibility. [Institutions will be notified by the State Department of Health of the date that reporting of persons infected with HIV should begin.]

(c) Every clinical laboratory shall report every three months to the State Department of Health the number of specimens tested for HIV, components of HIV and antibodies to HIV that are sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey, as well as the number of such tests indicating infection with HIV and such other information as may be required by the State Department of Health[, except that the name, address or telephone number of the patient shall not be required to be reported to the State Department of Health]. The manner of reporting shall be determined by the State Department of Health. The report shall be sent within 30 days of the close of each three-month reporting period. [Laboratories will be notified by the State Department of Health of the date that reporting of persons infected with HIV should begin.]

#### 8:57-2.4 Testing procedures

No physician or institution may direct a person be tested for HIV, a component of HIV, or antibodies to HIV, unless the name and address of the person whose specimen is being tested is known and recorded by the physician or institution, except that the State Commissioner of Health may designate facilities which are permitted to test for antibodies to HIV without obtaining the name and address of the person being tested. The name and address of [the] a person [being tested] **requesting testing without giving his or her name and address at such a designated facility** are not required to be reported to the State Department of Health.

#### 8:57-2.6 Access to information

As provided by N.J.S.A. 26:4-2 and **26:5C-5 through 14**, the information reported to the Department shall not be subject to public inspection, but [is] **shall** be subject to access only by the State Department of Health for public health purposes.

#### 8:57-2.7 Failure to comply with Reporting Requirements

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

(c) Laboratory supervisors failing to fulfill the aforementioned reporting [and specimen submission] obligations may receive written notification of this failure. Supervisors failing to meet these requirements, despite warning, shall be subject to fines as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the State Clinical Laboratory Improvement Services.

**HUMAN SERVICES**

(a)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Independent Clinic Services Manual  
HCPCS Codes—Personal Care Assistant Services  
Proposed Amendments: N.J.A.C. 10:66-3**

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

Authority: N.J.S.A. 30:4D-6(b)(3)(17); 30:4D-7,7a, b and c; 30:4D-12; 42CFR 440.170(f).

Proposal Number: PRN 1991-366.

Submit comments by August 14, 1991 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

These proposed amendments concern personal care assistant (PCA) services provided by mental health agencies in an independent clinic setting. The proposed amendment lists six procedure codes, their current maximum fee allowances, and the proposed increase in the maximum fee allowance. The procedure codes, which appear in the text below, pertain to individual and group reimbursement at the hourly rate (Z1600-Z1 and Z1605) individual and group reimbursement at the half-hour rate (Z1611-Z1 and Z1612-Z1). There is also an increase in both the initial nursing assessment visit (Z1610-Z1) and the nursing reassessment visit (Z1613-Z1).

The proposed rate increase will enable the providers to receive additional reimbursement and allow the State to draw down more Federal dollars for PCA services.

**Social Impact**

The proposed amendments impact on Medicaid recipients who receive PCA services in a community setting. The availability of PCA services enables recipients with mental illness to receive treatment in a community setting and is an alternative to institutionalization.

The proposed amendments will impact on providers but the impact is more economic than social. There are approximately 24 mental health providers of PCA services currently enrolled in the Medicaid program.

**Economic Impact**

There is no economic impact on Medicaid recipients, who are not required to pay for PCA services.

The maximum fee allowance for clinic providers of PCA services will increase when the amendments are adopted.

The Division of Medical Assistance and Health Services spent approximately 2.8 million dollars (Federal-State combined) in calendar year 1990. It is anticipated that these amendments will increase Federal Medicaid funding by an additional \$250,000-\$300,000 annually.

**Regulatory Flexibility Analysis**

These proposed amendments impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, these being clinic providers of PCA services. There are no new reporting, record-keeping or other compliance requirements associated with these amendments, which increase maximum fee allowances.

Providers are already required to maintain sufficient records to indicate the name of the patient who received the services, dates of services, nature of services, etc. (See N.J.S.A. 30:4D-12). With respect to the specific procedure codes listed below, providers must keep sufficient records to indicate the length of the services (half-hour or hours) and whether the nursing visit was an initial visit or a reassessment visit. Federal regulations require that when PCA services are rendered in a recipient's home, they must be prescribed by a physician and supervised by a registered nurse (42 CFR 440.170(f)). This Federal requirement could be interpreted broadly to include clinic services as being provided in the "home" and/or "community." Because of the Federal requirement, providers might have to hire physicians and/or nurses to meet the Federal

requirements. However, the PCA provider does not have to hire either a physician or a nurse so long as there is a prescription on file and supervision by a registered nurse.

The proposed amendments do not require PCA providers to hire other professional staff, such as accountants, to maintain records, submit claims, etc. although the providers may choose to do so if they wish. There are no capital costs associated with this proposal.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: As indicated in the New Jersey Administrative Code at N.J.A.C. 10:66-3, the HCPCS coding system is not published in the Code but may be obtained from the Administrative Practice Officer, Division of Medical Assistance and Health Services, CN-712, Trenton, N.J. 08625.

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS Code	Description	Maximum Fee Allowance
Z1600 ZI	Individual Reimbursement Rate, P/Hour	[8.34] 10.23
Z1605 ZI	Group Reimbursement Rate, P/Hour	[6.76] 7.44
Z1610 ZI	Initial Nursing Assessment Visit, P/Visit	[28.00] 35.00
Z1611 ZI	Individual Reimbursement Rate, P/Half Hour	[4.17] 5.12
Z1612 ZI	Group Reimbursement Rate, P/Half Hour	[3.38] 3.72
Z1613 ZI	Nursing Reassessment Visit, P/Visit	[20.00] 35.00

(b)

**DIVISION OF YOUTH AND FAMILY SERVICES**

**Personal Attendant Services Program  
Reproposed New Rules: N.J.A.C. 10:123A**

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

Authority: N.J.S.A. 30:4G-21.

Proposal Number: PRN 1991-369.

Public hearings concerning this proposal will be held on:

Tuesday, July 16, 1991 at 10:00 A.M. at:  
Community Services Building  
327 Ridgewood Avenue  
Paramus, New Jersey

Tuesday, July 23, 1991 at 10:00 A.M. at:  
Department of Human Services Training Center  
3131 Princeton Pike, Building 6  
Lawrenceville, New Jersey

Wednesday, July 31, 1991 at 10:00 A.M. at:  
Gloucester County Board of Social Services  
400 Hollydell Drive  
Sewell, New Jersey

Submit written comments by August 14, 1991 to:

Kathryn A. Clark  
Administrative Practice Officer  
Division of Youth and Family Services  
CN 717  
Trenton, New Jersey 08625-0717

The agency proposal follows:

**Summary**

N.J.S.A. 30:4G-21 (L.1987, c.350, §9) requires the Commissioner of the Department of Human Services to promulgate rules to effectuate the purposes of the Personal Attendant Services Act. These reproposed rules will implement this law.

Proposed rules were previously published on February 6, 1989 at 21 N.J.R. 273(b). As a result of the comments received, and the Division of Youth and Family Services' (Division's) own internal and continuing review, the Division developed reproposed rules that incorporated significant changes, primarily in the sliding fee scale and the provider fees. This reproposal was published on May 21, 1990, at 22 N.J.R. 1527(a). Due to the interest expressed by the public, the comment period on this reproposal was extended to October 1, 1990 (22 N.J.R. 2082(a)).

Additionally, a request for a public hearing on the repropoed new rules was made by Public Advocate Wilfredo Caraballo.

The Division commenced a thorough review of the Personal Attendant Services Program, and so advised the Public Advocate. The internal Division review resulted in the formation of a Personal Attendant Services Task Force, comprised of 21 members representing consumers, personal attendants, advocates for the disabled, independent living centers, county offices on the handicapped, and departmental and divisional staff, as well as the Public Advocate's Division of Advocacy for the Developmentally Disabled.

The members of the Personal Attendant Services Task Force are:

**County Office Representatives:**

**Northern Region:**

Sally Tannenbaum, Director  
Passaic County Handicapped Services  
Lucille Kent, Coordinator  
Bergen County Office on the Disabled

**Central Region:**

Thomas Shaw, Director  
Mercer County Office for the Disabled  
Kevin Hoagland, Coordinator  
Middlesex County Personal Attendant Services Program

**Southern Region:**

Jacquelyn M. Love, Director  
Gloucester County Office for the Disabled  
Linda Szczesniewski, Coordinator  
Camden County Personal Attendant Services Program  
Lucille McGlynn, Coordinator  
Atlantic County Division of Aging and Disabled  
(Alternate)  
Joanne Behrens, Director  
Salem County Office for the Disabled  
(Alternate)

**Advocate Representatives:**

Colleen Frazier  
United Cerebral Palsy  
Sarah Wiggins Mitchell, Director  
Division of Advocacy for the Developmentally Disabled  
Department of the Public Advocate  
Melvyn R. Tanzman, Director of Social Services  
Eastern Paralyzed Veterans Association

**Independent Living Center Representatives:**

Ann Ciavaglia, Executive Director  
DIAL Inc.  
Rhonda Bell  
Alliance for the Disabled In Action  
Norman A. Smith, Associate Director  
Project Freedom, Inc.

**Personal Attendant Services Advisory Council Representatives:**

Thomas J. Parsons, Co-Chairperson  
Stanley Obritski, Jr., Co-Chairperson  
Alice Merryfield  
Ginger Peters  
Robert Young

**Personal Attendants**

Catherine Mary Hoagland, Personal Attendant  
Laura Silvani, Personal Attendant

**Division of Youth and Family Services Representatives:**

Richard O'Grady, Administrator  
Office of Adult and County Social Services  
Terence P. Duffy, Assistant Regional Administrator, Co-Chairperson  
Statewide Operations

**State Representative:**

William Ditto  
Division of Medical Assistance and Health Services

**Staff:**

Michael Nuskey  
Sr. Standards and Procedures Technician  
Division of Youth and Family Services

Kathryn A. Clark  
Administrative Practice Officer  
Division of Youth and Family Services

The Personal Attendant Services Task Force has met at least monthly since October, 1990, and has produced the rules now being proposed.

In compliance with the request of the Public Advocate, and as the Division wishes to allow the fullest possible opportunity for public comment on these rules, public hearings have been scheduled, as noted above.

The Department of Human Services (Department) again proposes to promulgate a new chapter at N.J.A.C. 10:123A in order to implement the Personal Attendant Services Program. Based on the provisions of P.L.1987, c.350, the Program provides between 10 and 40 hours per week of personal attendant services to persons from the age of 18 through the age of 65 with chronic physical disabilities and is administered by designated county agencies approved by the Commissioner of the Department of Human Services. Personal attendant services include routine, non-medical tasks that are directly related to maintaining the eligible individual's health and independence, in order to enable these individuals to remain in their homes and communities and to be employed or receive training or education related to employment, or to avoid institutionalization.

The repropoed new rules set forth requirements regarding the purchase of and contracts for the provision of personal attendant services. The rules include rates of reimbursement to providers for personal attendant services provided to eligible individuals, and a consumer sliding fee scale for payments by eligible individuals for services received.

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

Proposed N.J.A.C. 10:123A-1.1 is a statement of the purpose of the chapter—to provide services to individuals with chronic physical disabilities through the Personal Attendant Services Program.

Proposed N.J.A.C. 10:123A-1.2 sets forth the scope of the rules.

Proposed N.J.A.C. 10:123A-1.3 sets the standards for the Personal Attendant Services Program, and is the "Client Bill of Rights."

Proposed N.J.A.C. 10:123A-1.4 contains definitions.

Proposed N.J.A.C. 10:123A-1.5 sets forth the target population and priority for services.

Proposed N.J.A.C. 10:123A-2.1 outlines the eligibility standards for receipt of services and makes allowances for the presence of a relative or informal caregiver under certain circumstances.

Proposed N.J.A.C. 10:123A-2.2 sets the standards for granting exceptions to the eligibility standards.

Proposed N.J.A.C. 10:123A-2.3 gives the procedure for requesting and granting of exceptions.

Proposed N.J.A.C. 10:123A-3.1 details the screening procedure.

Proposed N.J.A.C. 10:123A-3.2 gives the assessment process and time lines.

Proposed N.J.A.C. 10:123A-3.3 sets forth the requirements of the individual personal attendant services plan.

Proposed N.J.A.C. 10:123A-3.4 states the contents of the written notification given an applicant upon acceptance or denial of the application, and also gives the procedure for placement on a waiting list.

Proposed N.J.A.C. 10:123A-3.5 requires non-duplication of services and sets standards for service provision.

Proposed N.J.A.C. 10:123A-3.6 allows for exceptions to the service standards set by N.J.A.C. 10:123A-3.5(a).

Proposed N.J.A.C. 10:123A-3.7 gives the procedure for requesting and granting exceptions to service standards.

Proposed N.J.A.C. 10:123A-3.8 details situations under which services may or shall be terminated and procedures to be followed in terminating services.

Proposed N.J.A.C. 10:123A-3.9 provides procedures for review of denial, reduction or termination of services or failure to act upon a request for services within a reasonable time.

Proposed N.J.A.C. 10:123A-3.10 sets forth the method and time frame for requesting a hearing.

Proposed N.J.A.C. 10:123A-3.11 provides guarantees of confidentiality and restricts disclosure of information, except under certain circumstances.

Proposed N.J.A.C. 10:123A-4.1 sets forth standards for county agencies in contracting for services with other service providers.

Proposed N.J.A.C. 10:123A-4.2 gives the fees to be paid to contracting service providers or contracting individual attendants.

Proposed N.J.A.C. 10:123A-4.3 details the consumer sliding fee scale for personal attendant services.

Proposed N.J.A.C. 10:123A-4.4 sets the standards for adjustments in consumer fees.

Proposed N.J.A.C. 10:123A-4.5 gives the procedures for requesting adjustments in consumer fees.

Proposed N.J.A.C. 10:123A-5.1 details the requirements for personal attendants.

Subchapter 6 is reserved, for the present time. A training component is being developed and will be added as an amendment shortly.

Proposed N.J.A.C. 10:123A-7.1 covers the requirements of the designated county agency.

Proposed N.J.A.C. 10:123A-7.2 gives the duties of the designated county agency.

Proposed N.J.A.C. 10:123A-7.3 outlines the duties of the Advisory Council.

Proposed N.J.A.C. 10:123A-7.4 gives the procedures for disqualification of a designated county agency.

Proposed N.J.A.C. 10:123A-7.5 states the disqualification appeal process.

#### Social Impact

The proposed new rules will provide a positive social impact on the lives of individuals in New Jersey with chronic physical disabilities. The program will provide a means by which individuals with physical disabilities can enhance their independence and self sufficiency through their direction of personal attendant. Such services will enable the individual with a disability to become employed, prepare for employment, remain employed, pursue an education, or to remain independent and allow participation in their community.

The proposed new rules will establish the procedure for the delivery of services to eligible individuals with physical disabilities between the ages of 18 and 65 in all 21 counties in the State of New Jersey. Such services will also enable persons with disabilities to be employed or prepare for employment in order to become self-sufficient; therefore, the social benefit for people with disabilities is of great significance. For the general public, the benefit of fuller integration of people with disabilities will provide for a more representative society. The full participation, integration, and productivity of those served by this program in all aspects of community life, will advance civil liberties to the benefit of society as a whole.

#### Economic Impact

No adverse economic impact is anticipated from the proposed new rules. The full cost of the Personal Attendant Services Program has been appropriated through the enabling legislation. \$5,300,000 has been appropriated to administer this program with \$2,300,000 from general revenues and \$3,000,000 from casino revenues. A maximum of 15 percent of this amount has been designated for administrative expenses.

The economic impact on the target population of physically disabled individuals is expected to be very positive. These individuals will be able to remain employed or will be able to prepare for employment, thus gaining the skills necessary for future economic self-sufficiency.

#### Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis as they do not impose any report or recordkeeping requirements on small businesses, as that term is defined in N.J.S.A. 52:14B-1 et seq. The providers under this program will all be entities of county government, such as County Offices on the Handicapped, Boards of Social Services, or components of the county departments of human services.

Full text of the proposed new rule follows:

### CHAPTER 123A

### PERSONAL ATTENDANT SERVICES PROGRAM

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:123A-1.1 Purpose

Pursuant to the provisions of N.J.S.A. 30:4G-13 et seq., the Department of Human Services intends to provide support to individuals with chronic physical disabilities in meeting their daily

needs for personal care and assistance with activities of daily living in order to live independently and assure quality of service. The Personal Attendant Services Program has been created to make a wide range of service options available so that choices among these options may be made on the basis of an individual's needs and desires, since people vary widely in their abilities and circumstances.

##### 10:123A-1.2 Scope

These rules apply to all activities and persons participating in the Personal Attendant Services Program, including, but not limited to, the designated State contracting agency, applicants, recipients, personal attendants, and county agencies administering the program, and subcontracted provider agencies.

##### 10:123A-1.3 Standards

(a) Each consumer, and, as appropriate, each applicant, is:

1. To be treated with courtesy, respect, and full recognition of one's dignity, individuality, and right to control one's own household and lifestyle, including the identification and determination of one's own needs, schedules and the services necessary to meet these needs;
2. To be served by personal attendants who are properly trained and competent to perform their duties;
3. To receive services in compliance with all State laws and regulations without discrimination based on race, religion, gender, age, creed or disability in the provision or quality of services;
4. To be free from mental and physical abuse, neglect and exploitation, and to be free from chemical and physical restraints;
5. To be accorded privacy while receiving services, in communications and in all daily activities;
6. To be accorded respect for one's property rights;
7. To have one's personal, financial and medical records treated as confidential;
8. To be free to fully exercise one's civil and due process rights and to be assisted by a personal attendant as appropriate and necessary;
9. To receive in a timely manner all decisions regarding eligibility and amount and kind of services and the reasons therefore in writing and, if appropriate, orally, along with the administrative hearings and appeals procedure;
10. To have access to a fair appeals process through which disputes can be resolved;
11. To receive written information regarding consumer standards and responsibilities in the Personal Attendant Services Program and to have them verbally explained as needed;
12. To have as few personal attendants entering one's home as possible;
13. To have the right to interview, screen and select one's personal attendant; and
14. To terminate those personal attendants that do not respect consumer rights.

##### 10:123A-1.4 Definitions

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

"Advisory Council" means the Advisory Council on Personal Attendant Services, created by N.J.S.A. 30:4G-20.

"Applicant" means a person who applies for services under the Personal Attendant Services Program.

"Assessor" means a person with a master's of social work degree, or a person with a bachelor's degree and three years of experience in rehabilitation services, or a registered nurse with a bachelor of science degree in nursing.

"Available" means physically present, willing, able, and appropriate, as determined with full consideration of the consumer's personal values.

"Chore service" means light housekeeping activities. This service does not include inside or outside maintenance of the dwelling or property.

"Chronic physical disability" means a severe impairment of a permanent nature which so restricts a person's ability to perform essential activities of daily living that the person needs assistance to maintain the person's independence and health.

“Consumer” means an individual who meets the standards of N.J.A.C. 10:123A-2.1, or has received an exemption under N.J.A.C. 10:123A-2.2, and is receiving services.

“Commissioner” means the Commissioner of the Department of Human Services.

“Department” means the Department of Human Services.

“Designated county agency” means a county office on the handicapped or other county agency designated by the county government, subject to approval by the Commissioner, to administer in that county the Personal Attendant Services Program. Approval by the Commissioner is based on the agency’s experience in working with the disabled population and the capacity to comply with program requirements, provide information and referral services to disabled individuals, recruit and train personal care attendants and subcontract with provider agencies.

“Designated State agency” means a division or bureau of State government, designated by the Commissioner of the Department of Human Services. The program is currently administered by the Division of Youth and Family Services, Office of Adult and County Social Services.

“Eligible individual” means a person who meets the standards of N.J.A.C. 10:123A-2.1, or who has received an exemption under N.J.A.C. 10:123A-2.2.

“Employment” means full time employment; part time employment; the practice of a profession; volunteer work; self-employment; homemaking; farm work home-based employment; or other gainful work, and includes work for which payment is in kind rather than cash.

“Informal caregiver” means an individual who is 18 years of age or older residing in the household for other than the purpose of sharing expenses.

“Personal attendant” means a person who meets the qualifications with regard to training, equivalent work experience or certification established in these rules (see N.J.A.C. 10:123A-5) and who provides personal attendant services to a person who is eligible for the Personal Attendant Services Program.

“Personal attendant service” includes, but is not limited to, personal care, daily living and chore service.

“Program” means the Personal Attendant Services Program.

“Program administrator” means the professional employee of the designated State agency charged with the administration of the Personal Attendant Services Program.

“Relative” means a person residing in the household, who is 18 years of age or older and is related to the eligible individual by blood or by law.

“Resident” means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

“Self-directing” means a person’s ability to make decisions and accept the consequences of his or her own decisions regarding daily activities as well as major life decisions.

“Statement of understanding” means a document which sets forth the terms and conditions of the program and the responsibilities of the consumer under these rules, and the consumer’s acceptance of the same.

“Values of the applicant or consumer” means the applicant’s or consumer’s choices in achieving and maintaining an independent life style.

**10:123A-1.5 Target population and priority for services**

(a) For the purposes of the Personal Attendant Services Program, the target population is composed of those residents of the State of New Jersey from the age of 18 through the age of 65, who have a chronic physical disability.

(b) Prioritization for service delivery shall be determined by the designated county agency.

**SUBCHAPTER 2. ELIGIBILITY**

**10:123A-2.1 Eligibility standards**

(a) For the purposes of the Personal Attendant Services Program, an eligible individual shall meet the following standards:

1. An eligible individual shall be from the age of 18 through the age of 65 and shall have a chronic physical disability;
2. An eligible individual shall be a resident of the State of New Jersey;
3. An eligible individual shall be in need of personal attendant services pursuant to a written personal attendant services plan, prepared by the applicant or consumer, and approved by the staff of the designated county agency;
4. An eligible individual shall be one who is capable of managing and supervising his or her personal attendant services, as determined by an assessment conducted by an assessor;
5. A relative or other informal caregiver shall not be available to provide the services that the eligible individual needs;
6. An eligible individual shall live in a private house or apartment, educational facility, rooming or boarding house, or residential health care facility, and the personal attendant services that the eligible individual receives are supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house or residential health care facility pursuant to licensure requirements;
7. The attending physician for the eligible individual shall confirm in writing that the eligible individual is self-directed and requires no assistance in the coordination of therapeutic regimes, and that the personal attendant services will be adequate and appropriate to meet the eligible individual’s needs; and
8. The eligible individual shall require no less than 10 and no more than 40 hours per week of personal attendant services from the program.

**10:123A-2.2 Exceptions to eligibility standards**

(a) Exceptions to the eligibility standard in N.J.A.C. 10:123A-2.1(a)8 above shall be:

1. Initiated by the applicant or consumer;
2. Reviewed on a case-by-case basis by the designated county agency; and
3. Determined by the designated county agency, with notification to the State Program Administrator.

(b) The designated county agency shall:

1. Give consideration to the values of the applicant or consumer, in making determinations on exception requests;
2. Require a showing of unusual or emergent circumstances before granting an exception request;
3. Make the determination based on funding available;
4. Make the determination based upon other services received by the client or applicant through other funding sources; and
5. Make the determination based upon a review of the facts presented on a case-by-case basis.

**10:123A-2.3 Procedures for requesting and granting exceptions to eligibility standards**

(a) Eligible individuals or consumers requesting exceptions shall follow the following procedures:

1. Requests for exceptions pursuant to N.J.A.C. 10:123A-2.2(b) shall be made in writing.
2. The written request for an exception shall be made to the director of the designated county agency and shall indicate the specific exception requested and provide justification.

(b) The Director of the designated county agency shall review the request and respond to the request within 30 days.

**SUBCHAPTER 3. SCREENING, SERVICES AND APPEALS**

**10:123A-3.1 Screening**

(a) Upon applicant inquiry to the designated county agency regarding the Personal Attendant Services Program, county agency staff shall elicit information necessary to conduct pre-application screening and shall complete the screening within five working days of applicant inquiry.

(b) The applicant shall be notified in writing within five working days after completion of the county screening as to the results of the applicant’s inquiry regarding participation in the Personal Attendant Services Program.

1. If the applicant is determined to be ineligible, the applicant shall be informed in writing of this determination and the right to appeal (see N.J.A.C. 10:120).

2. If the applicant appears eligible as a result of the screening, staff from the designated county agency shall inform the applicant in writing of this determination and enclose all documents necessary to process the application. The disposition letter shall also advise the applicant that application does not guarantee services under this program.

**10:123A-3.2 Assessment**

(a) A member of the staff of the designated county agency shall perform an assessment within 30 days upon notification from the applicant to the designated county agency of completion of the application package which includes the following:

1. An Application and Statement of Understanding;
2. An Income Declaration with proof of income;
3. A Physician's Certification; and
4. A Consumer Plan of Service.

(b) Within 30 days of notification from the applicant of the completion of the application package, the county designated assessor shall perform a social evaluation of the applicant to determine if the applicant meets the eligibility criteria.

(c) Within 30 days of notification from the applicant of the completion of the application package, a member of the staff of the designated county agency shall perform a financial evaluation to determine the ability of the person or the person's spouse to pay for personal attendant services according to the sliding fee scale established pursuant to N.J.A.C. 10:123A-4.3.

**10:123A-3.3 Individual personal attendant services plan**

(a) The services plan shall be designed by the consumer to meet his or her specific needs for personal attendant services and negotiated and approved by the consumer and designated county agency.

(b) A personal attendant services plan shall include both of the following:

1. A list of the personal attendant services to be provided; and
2. An estimate of the time needed and frequency of personal attendant services.

(c) The consumer and the designated county agency shall review the plan within 90 days after start-up of services and revise the plan upon request of the consumer or the designated county agency.

(d) The designated county agency shall perform a social and financial evaluation and revise the consumer's cost share responsibilities at 12-month intervals, commencing with the date of eligibility.

**10:123A-3.4 Disposition of application**

(a) The designated county agency shall notify the applicant in writing within 15 days from the date of completion of the assessment regarding the findings of the social and financial evaluations performed pursuant to N.J.A.C. 10:123A-3.2(a), (b) and (c) and the applicant's right to appeal.

(b) If an applicant is determined eligible, in addition to (a) above the notification shall include the following:

1. An approved plan of service listing the services to be provided including an estimate of the time needed and frequency of personal attendant services;
2. An estimate of the total cost of the personal attendant services; and
3. If applicable, an estimate of the amount of money that the eligible individual or that individual's spouse is required to pay toward personal attendant services.

(c) In the event an applicant is determined eligible for the personal attendant services program and funding prohibits the start-up of services within 30 days from the date of the county agency notification to the applicant regarding the results of the social and financial evaluation performed pursuant to N.J.A.C. 10:133-3.1(a) and (b), such applicant shall be placed on a waiting list for services. An applicant's position on a waiting list shall be determined by the designated county agency.

**10:123A-3.5 Services**

(a) Services provided to eligible individuals shall be supplemental to and not duplicative of services available through relatives, other informal caregivers or other service programs.

(b) For the purposes of the Personal Attendant Services Program, the following service standards shall be met:

1. Program funds shall not be used for medically related services, including the supervision of registered nurses. It is not the responsibility of the Personal Attendant Services Program to arrange for or provide skilled nursing, therapy, or related medical care and treatment services which the eligible individual may need.

2. Using an attendant as a personal driver may be allowed. In no instance shall any person serving as an attendant under the Personal Attendant Services Program provide driving or transportation services using his or her own vehicle. In addition, the eligible individual's motor vehicle insurance policy must show that the attendant is a fully covered driver under that insurance policy.

3. Personal attendant services provided for the purpose of receiving training or education shall not replace those services provided by an educational institution as mandated by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

**10:123A-3.6 Exceptions to service standards**

(a) Exceptions to the services standards in N.J.A.C. 10:123A-3.5(a) shall be:

1. Initiated by the applicant or consumer;
2. Reviewed on a case-by-case basis by the designated county agency; and
3. Determined by the designated county agency, with notification to the State Program Administrator.

(b) The designated county agency shall:

1. Give consideration to the values of the applicant or consumer, in making determinations on exception requests;
2. Require a showing of unusual or emergent circumstances before granting an exception request;
3. Make the determination based on funding available;
4. Make the determination based upon other services received by the client or applicant through other funding sources; and
5. Make the determination based upon a review of the facts presented on a case-by-case basis.

**10:123A-3.7 Procedures for requesting and granting exceptions to service standards**

(a) Eligible individuals or consumers requesting exceptions shall follow the procedures listed below:

1. Requests for exceptions to N.J.A.C. 10:123A-3.5(a) shall be made in writing.
2. The written request for an exception shall be made to the director of the designated county agency and shall indicate the specific exception requested and provide justification.

(b) The director of the designated county agency shall review the request and respond to the request within 30 days.

**10:123A-3.8 Termination of service**

(a) Termination of service may be either voluntary or involuntary. Voluntary terminations involve verifiable situations in which eligible individuals agree to cessation of services. All other terminations are considered to be involuntary.

(b) Persons terminated from services shall receive written notice from the designated county agency prior to termination.

(c) Involuntary terminations shall be a result of non-compliance with program regulations and procedures which include, but are not limited to:

1. Failure to submit information necessary to determine or reaffirm social and financial program eligibility in a timely fashion;
2. Failure to comply with N.J.A.C. 10:123A-4.3(b) and (g);
3. Verifiable abuse or misuse of personal attendant services;
4. Continued non-acceptance and/or dismissal of personal attendants without proper justification; or
5. Aging out of program eligibility requirements.

**10:123A-3.9 Adverse agency actions**

(a) An applicant or consumer may request an administrative review of an agency denial, reduction or termination of services, denial

of a request for an exemption, or a failure to act upon a request for services within a reasonable time.

(b) If services received or requested are to be denied, reduced or terminated, the county office shall provide written notice and, if appropriate, oral notice to the applicant or consumer at least 30 days prior to such an action.

(c) The written notice shall indicate the reason(s) for the action to be taken, citing the basis for the decision.

(d) In addition, all written notices shall contain the following statement:

“An applicant to or recipient of the Personal Attendant Services Program, who is dissatisfied with any decision regarding an eligibility determination or other matters pertaining to participation in the Personal Attendant Services Program, may file a request for an administrative review of that decision.

A request for an administrative review must be made within thirty (30) days of the date of written notice of an adverse agency action.

Requests for an administrative review may be made to the:

Administrative Hearings Coordinator  
 Division of Youth and Family Services  
 CN 717  
 Trenton, New Jersey 08625-0717  
 (609) 292-8715”

(e) A request for a review will operate as a stay of any adverse agency action pending the outcome of the administrative review or any subsequent appeal.

(f) Upon completion of the administrative review, the applicant or consumer shall receive a copy of the written decision within 30 days from the date the written request for an administrative review was received by the Administrative Hearings Coordinator.

(g) Applicants or consumers who disagree with the decision of the administrative review may request a hearing before an Administrative Law Judge pursuant to N.J.A.C. 10:123A-3.10. Instructions for such requests shall be incorporated into the written results noted in (d) above.

**10:123A-3.10 Hearings and appeals**

(a) Hearings under this chapter shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A hearing may be requested by calling or writing to the:

Administrative Hearings Coordinator  
 Division of Youth and Family Services  
 CN 717  
 50 East State Street  
 Trenton, New Jersey 08625  
 (609) 292-8715

(c) In all cases, a hearing must be requested within 30 days of receiving the adverse agency decision noted in N.J.A.C. 10:123A-3.9.

**10:123A-3.11 Confidentiality and disclosure of information**

(a) All personally identifiable information regarding applicants or consumers under this program obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or consumer or their authorized agent except as noted in (b) and (c) below. In the case of applicants or consumers who have AIDS or are HIV positive, release of any information shall also be subject to the provisions of N.J.S.A. 26:5C-5 et seq.

(b) Disclosure of information without the consent of the applicant, consumer, or his or her authorized agent shall be limited to purposes directly connected with the program pursuant to State law and regulations.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or consumers cannot be identified;

2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, consumer or his or her authorized agent challenging the program’s statutory or regulatory authority or a determination made pursuant thereto; or

3. The release of information or files to the State Treasurer or to his or her duly authorized representatives for an audit, review of expenditures, or similar activity authorized by law.

**SUBCHAPTER 4. CONTRACTING AND FEES**

**10:123A-4.1 Contracting for services**

(a) The designated county agency shall either:

1. Contract with other service providers, including, but not limited to, private individuals, for the provision of personal attendant services; or

2. Employ individuals as personal attendants where appropriate and shall develop employment policies consistent with N.J.A.C. 10:123A-5 for individuals working as personal attendants.

**10:123A-4.2 Provider fees**

(a) Fees for services under the Personal Attendant Services Program shall be based on an hourly rate to be paid to the contracting service provider or contracting individual attendant for each hour of personal attendant service provided under this program.

(b) The reimbursement for personal attendant services shall not exceed \$11.00 per hour on weekdays and \$14.00 per hour on weekends and holidays.

(c) The fee for assessments of eligible individuals shall be \$70.00 for each initial assessment authorized by the designated county agency; \$35.00 for annual re-assessments; and \$20.00 for each follow-up assessment authorized by the designated county agency.

**10:123A-4.3 Consumer fees**

(a) The consumer fee for personal attendant services shall be based on the ability of the consumer and/or the consumer’s spouse to pay for these services. The consumer fee shall apply only to a consumer and that consumer’s spouse whose combined annual gross income exceeds the State’s applicable income eligibility limit for social services established pursuant to the Social Services Block Grant Act (P.L. 97-35, 42 U.S.C. 1397 et seq.) and set forth at (d) below.

(b) Consumer failure to pay the appropriate consumer fee within 60 days of the date of billing pursuant to the consumer sliding fee scale at (d) below, without good cause, shall be grounds for termination or suspension from the Personal Attendant Services Program.

(c) The consumer sliding fee scale schedule at (d) below shall be applied to eligible individuals and their spouses. The percentage column indicated on the fee scale denotes the percentage of the total cost of the service to be paid by the consumer.

(d) The consumer sliding fee scale is as follows:

**CLIENT SLIDING FEE SCALE**

<u>Single (One Person)</u>	<u>Family (Size 2)</u>	<u>Family (Size 3)</u>	<u>Family (Size 4)</u>	<u>Family (Size 5)</u>	<u>Percentage</u>
0-15,162	0-19,827	0-24,493	0-29,158	0- 33,823	0%
15,163-18,163	19,828-22,828	24,494-27,494	29,159-32,159	33,824- 36,824	1%
18,164-21,164	22,829-25,829	27,495-30,495	32,160-35,160	36,825- 39,825	2%
21,165-24,165	25,830-28,830	30,496-33,496	35,161-38,161	39,826- 42,826	3%
24,166-27,166	28,831-31,831	33,497-36,497	38,162-41,162	42,827- 45,827	4%
27,167-29,167	31,832-33,832	36,498-38,498	41,163-43,163	45,828- 47,828	5%
29,168-31,168	33,833-35,833	38,499-40,499	43,164-45,164	47,829- 49,829	6%
31,169-33,169	35,834-37,834	40,500-42,500	45,165-47,165	49,830- 51,830	7%

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

33,170-35,170	37,835-39,835	42,501-44,501	47,166-49,166	51,831- 53,831	8%
35,171-36,171	39,836-40,836	44,502-45,502	49,167-50,167	53,832- 54,832	9%
36,172-37,172	40,837-41,837	45,503-46,503	50,168-51,168	54,833- 55,833	10%
37,173-38,173	41,838-42,838	46,504-47,504	51,169-52,169	55,834- 56,834	11%
38,174-39,174	42,839-43,839	47,505-48,505	52,170-53,170	56,835- 57,835	12%
39,175-39,675	43,840-44,340	48,506-49,006	53,171-53,671	57,836- 58,336	13%
39,676-40,176	44,341-44,841	49,007-49,507	53,672-54,172	58,337- 58,837	14%
40,177-40,677	44,842-45,342	49,508-50,008	54,173-54,673	58,838- 59,338	15%
40,678-41,178	45,343-45,843	50,009-50,509	54,674-55,174	59,339- 59,839	16%
41,179-41,679	45,844-46,344	50,510-51,010	55,175-55,675	59,840- 60,340	17%
41,680-42,180	46,345-46,845	51,011-51,511	55,676-56,176	60,341- 60,841	18%
42,181-42,681	46,846-47,346	51,512-52,012	56,177-56,677	60,842- 61,342	19%
42,682-43,182	47,347-47,847	52,013-52,513	56,678-57,178	61,343- 61,843	20%
43,183-43,683	47,848-48,348	52,514-53,014	57,179-57,679	61,844- 62,344	21%
43,684-44,184	48,349-48,849	53,015-53,515	57,680-58,180	62,345- 62,845	22%
44,185-44,685	48,850-49,350	53,516-54,016	58,181-58,681	62,846- 63,346	23%
44,686-45,186	49,351-49,851	54,017-54,517	58,682-59,182	63,347- 63,847	24%
45,187-45,687	49,852-50,352	54,518-55,018	59,183-59,683	63,848- 64,348	25%
45,688-46,188	50,353-50,853	55,019-55,519	59,684-60,184	64,349- 64,849	26%
46,189-46,689	50,854-51,354	55,520-56,020	60,185-60,685	64,850- 65,350	27%
46,690-47,190	51,355-51,855	56,021-56,521	60,686-61,186	65,351- 65,851	28%
47,191-47,691	51,856-52,356	56,522-57,022	61,187-61,687	65,852- 66,352	29%
47,692-48,192	52,357-52,857	57,023-57,523	61,688-62,188	66,353- 66,853	30%
48,193-48,693	52,858-53,358	57,524-58,024	62,189-62,689	66,854- 67,354	31%
48,694-49,194	53,359-53,859	58,025-58,525	62,690-63,190	67,355- 67,855	32%
49,195-49,695	53,860-54,360	58,526-59,026	63,191-63,691	67,856- 68,356	33%
49,696-50,196	54,361-54,861	59,027-59,527	63,692-64,192	68,357- 68,857	34%
50,197-50,697	54,862-55,362	59,528-60,028	64,193-64,693	68,858- 69,358	35%
50,698-51,198	55,363-55,863	60,029-60,529	64,694-65,194	69,359- 69,859	36%
51,199-51,699	55,864-56,364	60,530-61,030	65,195-65,695	69,860- 70,360	37%
51,700-52,200	56,365-56,865	61,031-61,531	65,696-66,196	70,361- 70,861	38%
52,201-52,701	56,866-57,366	61,532-62,032	66,197-66,697	70,862- 71,362	39%
52,702-53,202	57,367-57,867	62,033-62,533	66,698-67,198	71,363- 71,863	40%
53,203-53,703	57,868-58,368	62,534-63,034	67,199-67,699	71,864- 72,364	41%
53,704-54,204	58,369-58,869	63,035-63,535	67,700-68,200	72,365- 72,865	42%
54,205-54,705	58,870-59,370	63,536-64,036	68,201-68,701	72,866- 73,366	43%
54,706-55,206	59,371-59,871	64,037-64,537	68,702-69,202	73,367- 73,867	44%
55,207-55,707	59,872-60,372	64,538-65,038	69,203-69,703	73,868- 74,368	45%
55,708-56,208	60,373-60,873	65,039-65,539	69,704-70,204	74,369- 74,869	46%
56,209-56,709	60,874-61,374	65,540-66,040	70,205-70,705	74,870- 75,370	47%
56,710-57,210	61,375-61,875	66,041-66,541	70,706-71,206	75,371- 75,871	48%
57,211-57,711	61,876-62,376	66,542-67,042	71,207-71,707	75,872- 76,372	49%
57,712-58,212	62,377-62,877	67,043-67,543	71,708-72,208	76,373- 76,873	50%
58,213-58,713	62,878-63,378	67,544-68,044	72,209-72,709	76,874- 77,374	51%
58,714-59,214	63,379-63,879	68,045-68,545	72,710-73,210	77,375- 77,875	52%
59,215-59,715	63,880-64,380	68,546-69,046	73,211-73,711	77,876- 78,376	53%
59,716-60,216	64,381-64,881	69,047-69,547	73,712-74,212	78,377- 78,877	54%
60,217-60,717	64,882-65,382	69,548-70,048	74,213-74,713	78,878- 79,378	55%
60,718-61,218	65,383-65,883	70,049-70,549	74,714-75,214	79,379- 79,879	56%
61,219-61,719	65,884-66,384	70,550-71,050	75,215-75,715	79,880- 80,380	57%
61,720-62,220	66,385-66,885	71,051-71,551	75,716-76,216	80,381- 80,881	58%
62,221-62,721	66,886-67,386	71,552-72,052	76,217-76,717	80,882- 81,382	59%
62,722-63,222	67,387-67,887	72,053-72,553	76,718-77,218	81,383- 81,883	60%
63,223-63,723	67,888-68,388	72,554-73,054	77,219-77,719	81,884- 82,384	61%
63,724-64,224	68,389-68,889	73,055-73,555	77,720-78,220	82,385- 82,885	62%
64,225-64,725	68,890-69,390	73,556-74,056	78,221-78,721	82,886- 83,386	63%
64,726-65,226	69,391-69,891	74,057-74,557	78,722-79,222	83,387- 83,887	64%
65,227-65,727	69-892-70,392	74,558-75,058	79,223-79,723	83,888- 84,388	65%
65,728-66,228	70,393-70,893	75,059-75,559	79,724-80,224	84,389- 84,889	66%
66,229-66,729	70,894-71,394	75,560-76,060	80,225-80,725	84,890- 85,390	67%
66,730-67,230	71,395-71,895	76,061-76,561	80,726-81,226	85,391- 85,891	68%
67,231-67,731	71,896-72,396	76,562-77,062	81,227-81,727	85,892- 86,392	69%
67,732-68,232	72,397-72,897	77,063-77,563	81,728-82,228	86,393- 86,893	70%
68,233-68,733	72,898-73,398	77,564-78,064	82,229-82,729	86,894- 87,394	71%
68,734-69,234	73,399-73,899	78,065-78,565	82,730-83,230	87,395- 87,895	72%
69,235-69,735	73,900-74,400	78,566-79,066	83,231-83,731	87,896- 88,396	73%
69,736-70,236	74,401-74,901	79,067-79,567	83,732-84,232	88,397- 88,897	74%
70,237-70,737	74,902-75,402	79,568-80,068	84,233-84,733	88,898- 89,398	75%
70,738-71,238	75,403-75,903	80,069-80,569	84,734-85,234	89,399- 89,899	76%
71,239-71,739	75,904-76,404	80,570-81,070	85,235-85,735	89,900- 90,400	77%
71,740-72,240	76,405-76,905	81,071-81,571	85,736-86,236	90,401- 90,901	78%

**HUMAN SERVICES**

**PROPOSALS**

72,241-72,741	76,906-77,406	81,572-82,072	86,237-86,737	90,902- 91,402	79%
72,742-73,242	77,407-77,907	82,073-82,573	86,738-87,238	91,403- 91,903	80%
73,243-73,743	77,908-78,408	82,574-83,074	87,239-87,739	91,904- 92,404	81%
73,744-74,244	78,409-78,909	83,075-83,575	87,740-88,240	92,405- 92,905	82%
74,245-74,745	78,910-79,410	83,576-84,076	88,241-88,741	92,906- 93,406	83%
74,746-75,246	79,411-79,911	84,077-84,577	88,742-89,242	93,407- 93,907	84%
75,247-75,747	79,912-80,412	84,578-85,078	89,243-89,743	93,908- 94,408	85%
75,748-76,248	80,413-80,913	85,079-85,579	89,744-90,244	94,409- 94,909	86%
76,249-76,749	80,914-81,414	85,580-86,080	90,245-90,745	94,910- 95,410	87%
76,750-77,250	81,415-81,915	86,081-86,581	90,746-91,246	95,411- 95,911	88%
77,251-77,751	81,916-82,416	86,582-87,082	91,247-91,747	95,912- 96,412	89%
77,752-78,252	82,417-82,917	87,083-87,583	91,748-92,248	96,413- 96,913	90%
78,253-78,753	82,918-83,418	87,584-88,084	92,249-92,749	96,914- 97,414	91%
78,754-79,254	83,419-83,919	88,085-88,585	92,750-93,250	97,415- 97,915	92%
79,255-79,755	83,920-84,420	88,586-89,086	93,251-93,751	97,916- 98,416	93%
79,756-80,256	84,421-84,921	89,087-89,587	93,752-94,252	98,417- 98,917	94%
80,257-80,757	84,922-85,422	89,588-90,088	94,253-94,753	98,918- 99,418	95%
80,758-81,258	85,423-85,923	90,089-90,589	94,754-95,254	99,419- 99,919	96%
81,259-81,759	85,924-86,424	90,590-91,090	95,255-95,755	99,920-100,420	97%
81,760-82,260	86,425-86,925	91,091-91,591	95,756-96,256	100,421-100,921	98%
82,261-82,761	86,926-87,426	91,592-92,092	96,257-96,757	100,922-101,422	99%
82,762-83,762	87,427-87,927	92,093-92,593	96,758-97,258	101,423-101,923	100%

(e) Each consumer and that consumer's spouse shall provide verification of his or her income for determination of applicable fees upon application to the Personal Attendant Services Program and annually thereafter.

1. Acceptable verification includes, but is not limited to, pay stubs, W-2 forms or photostatic copies of the actual 1040 form filed with the Internal Revenue Service, business records, pension statements and/or correspondence from employers or agencies (for example, Social Security Administration, State employment agencies).

(f) If the costs of an eligible individual's personal attendant services are covered in whole or in part by another State or Federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Personal Attendant Services Program shall be the secondary payer.

(g) The consumer receiving personal attendant services shall sign weekly vouchers attesting to the hours of service rendered, and the personal attendant or provider agency shall then be paid by the designated county agency.

**10:123A-4.4 Standards for adjustments in consumer fees**

(a) Adjustments in consumer fees shall be based on verifiable increased or decreased expenses which result from the consumer's disability which may include, but are not limited to, items such as:

1. Unreimbursed or unreimbursable medical expenses;
2. Transportation expenses;
3. Adaptations to home or vehicle; or
4. Unreimbursed or unreimbursable additional hours of personal attendant services over and above those hours authorized to the consumer by this program, if certified as necessary by the designated county agency.

(b) Adjustments in consumer fees may also be considered when the following verifiable expenses are increased or decreased:

1. College tuition;
2. Alimony/child support; or
3. Emergency home repair expenses.

(c) Adjustments in consumer fees shall be re-evaluated annually or more frequently if necessary.

**10:123A-4.5 Procedures for requesting adjustments in consumer fees**

(a) A consumer requesting adjustments in consumer fees shall submit a written request and justification to the designated county agency.

(b) Upon receipt of a written request and justification for a consumer fee adjustment, the designated county agency shall review the request and submit to the State Program Administrator materials pertaining to the request along with a recommendation regarding the appropriateness of the request and the amount of the adjustment.

(c) Upon receipt of the information described in N.J.A.C. 10:123A-4.5(b), the State Program Administrator shall review the request and recommendation and render a decision based on the facts presented.

(d) Upon receipt of a decision by the designated county agency from the State Program Administrator, the consumer shall be provided written notice regarding the disposition of the request for an adjustment in consumer fee.

(e) Adjustments in consumer fee which are approved shall be effective as of the first day of the calendar month succeeding the month in which the written request is received by the designated county agency.

**SUBCHAPTER 5. PERSONAL ATTENDANTS**

**10:123A-5.1 Requirements for personal attendants**

(a) All persons desiring to serve as personal attendants under the Personal Attendant Services Program shall be at least 18 years of age and shall meet at least one of the following requirements:

1. The personal attendant shall complete an approved training course authorized by the State Board of Nursing as a homemaker/home health aide, or a long-term facility nurse aide course authorized by the Department of Health;
2. The personal attendant shall complete a certified training program in a hospital, rehabilitation facility, or a long-term care facility as an aide or personal attendant;
3. The personal attendant shall complete a training course offered by the Department of Human Services for personal attendants; or
4. The personal attendant shall have at least one year of experience in the provision of personal attendant services for adults.

(b) Personal attendants who have not completed the training program described in (a)3 above shall be required to complete a training session on the philosophy of the personal attendant service program.

(c) Personal attendants shall have a current liability policy which covers personal injury and/or property damage, prior to employment. This liability policy shall be paid for by the attendant, when he or she is under an independent vendor contract with the county, or by the provider agency, when the attendant is an agency employee.

**SUBCHAPTER 6. TRAINING (RESERVED)**

**SUBCHAPTER 7. COMPLIANCE WITH LAWS**

**10:123A-7.1 Requirements of designated county agency**

(a) All designated county agencies shall abide by all laws and regulations concerning employment of persons hired to administer or work in the Personal Attendant Services Program including, but not limited to, the Rehabilitated Convicted Offenders Act, N.J.S.A.

2A:168A-1 et seq., and the Immigration Reform and Control Act of 1986 (P.L. 99-603).

(b) All designated county agencies shall conduct a check, or form an agreement with providers with whom they contract to conduct a check, that satisfies them as to the appropriateness of each personal attendant.

(c) All designated county agencies shall establish a separate accounting regarding receipt and use of cost share monies collected to ensure that cost share monies are used to expand or enhance program services in that county. These funds shall not supplant any existing allocation. This separate accounting and supporting documentation shall be made available to the designated State agency.

**10:123A-7.2 Duties of designated county agency**

(a) Under the direction of the designated State agency, the designated county agency shall perform the following duties:

1. Ensure that the operation and performance of the county's personal attendant service program is in compliance with law and rules as specified by the Division;
2. Provide information and outreach for the personal attendant services program;
3. Complete the necessary forms to determine eligibility of applicants and provide appropriate assistance to applicants and consumers in completing all necessary forms;
4. Determine cost share amount when applicable;
5. Maintain and up-date individual consumer files;
6. Designate a staff person to serve as primary contact person for applicants, eligible individuals, consumers and attendants involved in the program and document such contacts;
7. At the request of eligible individuals or consumers, arrange for attendant services and upon request of the consumer, provide individual assistance in arranging for back-up attendant services. The back-up plan shall be coordinated and mutually agreed upon by the consumer and the designated county agency;
8. Refer persons to other agencies, programs and services for which they may be eligible;
9. Maintain fiscal records for the program or provide data for others to do so;
10. Prepare monthly reports for timely submission to the designated State agency;
11. Serve as liaison to the designated State agency for the program; and
12. Oversee the local program including verification of weekly vouchers signed by eligible individuals and attendants attesting to hours of services rendered.

**10:123A-7.3 Duties of Advisory Council**

(a) The Advisory Council shall:

1. Serve as a resource to the Commissioner on matters pertaining to personal attendant services, and the development, implementation and evaluation of such services;
2. Advise the designated State agency on issues relevant to the development, implementation and evaluation of the Personal Attendant Services Program;
3. Evaluate the effectiveness of the personal attendant services program in meeting its objectives and share that evaluation with the Commissioner; and
4. Implement the above through utilization of stenographic and clerical staff, administrative assistants, and other such professional staff as provided by the Department.

**10:123A-7.4 Designated county agency disqualification**

(a) A designated county agency may be disqualified from participation in Personal Attendant Service Program funding for good cause including, but not limited to, the following:

1. Failure or refusal to comply with program rules and/or contract requirements; or
2. Refusal to furnish the designated State agency with required reports, or to make available for review such files and records as required.

(b) The designated State agency shall provide a 60-day written notice to the designated county agency if it intends to pursue dis-

qualification. The notice shall specify the designated State agency's reasons for such action, and shall specify corrective actions required. A copy of this notice shall also be sent to the Advisory Council.

(c) The process of designated county agency disqualification should not result in loss or interruption of services to those eligible individuals currently receiving services.

**10:123A-7.5 Disqualification appeal process**

If the designated State agency seeks to disqualify a designated county agency for failure to comply with N.J.A.C. 10:123A-6.3(a)1 and 2, said designated county agency shall be afforded an opportunity to request an administrative 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.

**(a)**

**DIVISION OF YOUTH AND FAMILY SERVICES**

**Court Actions and Procedures**

**Proposed Readoption: N.J.A.C. 10:132**

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

Authority: N.J.S.A. 30:1A-1, 30:4C-4(c) and (h), and 4C-4.1 and 4.2.

Proposal Number: PRN 1991-359.

Submit comments by August 14, 1991 to:

Kathryn A. Clark  
 Administrative Practice Officer  
 Division of Youth and Family Services  
 CN 717  
 Trenton, New Jersey 08625-0717

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:132 is scheduled to expire on January 5, 1992. The Division of Youth and Family Services has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Division of Youth and Family Services proposes to readopt the Court Actions and Procedures rules, which effectuate two statutory provisions, N.J.S.A. 30:4C-4.1 and N.J.S.A. 30:4C-4.2. The first of these, N.J.S.A. 30:4C-4.1, requires the consent and approval of the Commissioner as a precondition to the commencement of any Division action or proceeding in any court. The second, N.J.S.A. 30:4C-4.2, permits the granting of the consent and approval of the Commissioner by rule.

Failure to readopt the rules in this chapter would result in the administratively burdensome necessity of securing the Commissioner's specific consent and approval on a case-by-case basis for all actions commenced by the Attorney General's Office on behalf of the Division of Youth and Family Services.

The Commissioner of the Department of Human Services has chosen to grant the required consent and approval generally, as permitted by N.J.S.A. 30:4C-4.2, in reliance on the determinations of the Division of Youth and Family Services, in consultation with the official legal counsel for the Division, the Attorney General of the State of New Jersey.

These rules were first promulgated in 1981, in order to effectuate the above-cited provisions in New Jersey law which require that the Commissioner of the Department of Human Services grant consent and approval to all legal actions in any court brought by or for the Division of Youth and Family Services. The Division makes litigation decisions in consultation with the Office of the Attorney General, which is, pursuant to statute, the official legal representative of the Division. By means of these rules, the Commissioner grants his continued concurrence with and approval of this system.

**Social Impact**

This proposed readoption will continue in effect the current system in which the determination to commence or maintain legal actions in any court brought by or for the Division of Youth and Family Services is made by the Division, in consultation with the official legal counsel for the Division, the Attorney General of the State of New Jersey. The

proposed readoption will have the beneficial effect of assuring that all necessary legal actions are instituted promptly. To require the Commissioner's individual consent and approval of all of the legal actions brought by the Attorney General's Office on behalf of the Division would be administratively impractical.

#### Economic Impact

There is no economic impact from these rules, in which the Commissioner gives his consent and approval to legal actions brought by or on behalf of the Division.

#### Regulatory Flexibility Statement

The proposed readoption does not impose any reporting, record keeping, or other compliance requirements on small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The proposed readoption is intended to fulfill the requirements of two provisions of New Jersey law, N.J.S.A. 30:4C-4.1 and N.J.S.A. 30:4C-4.2, that the Commissioner of the Department of Human Services give consent and approval to all actions brought by or on behalf of the Division of Youth and Family Services, and that such consent and approval may be given by rule.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:132.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE BOARD OF CHIROPRACTIC EXAMINERS

##### Scope of Practice

##### Proposed New Rule: N.J.A.C. 13:44E-1.1

Authorized By: State Board of Chiropractic Examiners,

Jay Church, Executive Director.

Authority: N.J.S.A. 45:9-41.23(h).

Proposal Number: PRN 1991-371.

Submit written comments by August 14, 1991 to:

Jay Church, Executive Director  
State Board of Chiropractic Examiners  
P.O. Box 45004  
Newark, NJ 07101

The agency proposal follows:

#### Summary

The State Board of Chiropractic Examiners, created under the new Chiropractic Board Act that became effective in February of 1990, has assumed responsibility for the practice of chiropractic in New Jersey. Previously, the profession was under the jurisdiction of the Board of Medical Examiners.

The Board has approved for proposal a new rule concerning scope of practice, an area previously addressed in N.J.A.C. 13:35-7.1, promulgated by the Board of Medical Examiners. The new rule differs from the latter as follows:

1. The proposed rule incorporates language contained in N.J.S.A. 45:9-41.27 permitting chiropractic analysis which identifies the existence of a subluxation as the only basis for chiropractic care. Previously, pursuant to N.J.A.C. 13:35-7.1(a), a finding of subluxation alone did not warrant chiropractic treatment.

2. The proposed new rule contains more specific information in regard to the type of diagnostic procedures which may be employed by a chiropractor. The specific tests mentioned are meant to be set forth for the purpose of example only and not by way of limitation. In view of the fact that the Board receives many inquiries in regard to whether or not specific tests are within the scope of chiropractic practice, the Board determined that naming some specific tests would provide useful information to licensees and also provide some basis by which a licensee may determine whether or not other diagnostic or analytical tests are consistent with chiropractic practice.

3. The proposed rule omits any reference to patient records because the new Board intends to propose a separate rule which will deal solely with proper patient records and progress notes.

4. The new rule simplifies the authority of a chiropractor in regard to administering physical modalities. It authorizes the licensee to order and/or administer physical modalities so long as they are in conjunction with a spinal adjustment.

#### Social Impact

The Chiropractic Board Act of 1989 establishes a separate regulatory and licensing mechanism for this profession, with the general aim of ensuring high standards of competency and integrity in the practice of chiropractic. A detailed regulatory structure which implements the statute is obviously vital to the work of the newly-created Board, and in proposing this new rule the Board is fulfilling one of its statutory duties to promulgate rules and regulations necessary to effectuate the purposes of the Act. The Board believes that the proposed rule will have a beneficial impact on licensees by clarifying the scope of practice and in particular by providing specific examples of diagnostic procedures that may be undertaken.

#### Economic Impact

No economic impact on any group or person is anticipated as a result of this new rule, which merely provides guidance to chiropractic licensees as to scope of practice and billing procedure.

#### Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., chiropractors are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed new rule relates to the scope of practice of New Jersey chiropractors. There are no reporting or recording requirements and the services of other professionals are not required in order to comply. Since the proposed rule concerns the scope of professional practice of all chiropractic licensees in this State, they must be uniformly applicable without differentiation as to size of practice.

Full text of the proposed new rule follows:

#### CHAPTER 44E

#### STATE BOARD OF CHIROPRACTIC EXAMINERS

#### SUBCHAPTER 1. SCOPE OF PRACTICE

##### 13:44E-1.1 Scope of practice

(a) The practice of chiropractic is that patient health care discipline whose methodology is the adjustment and/or manipulation of the articulations of the spine and related structures. During the initial consultation and before commencing chiropractic care, a licensee shall identify a clinical condition warranting chiropractic treatment. Nothing herein contained shall be deemed to prohibit a licensee from caring for chiropractic subluxation as determined by chiropractic analytical procedures. Chiropractic analysis which identifies the existence of a subluxation may be the basis for chiropractic care even in the absence of a subjective complaint or other objective findings.

(b) A chiropractic diagnosis or analysis shall be based upon a chiropractic examination appropriate to the presenting patient. Should the evaluation indicate abnormality not generally recognized as amenable to chiropractic treatment, a licensee shall refer the patient to an appropriate health care provider. Nothing herein contained shall preclude a licensee from rendering concurrent and/or supportive chiropractic care to any patient so referred.

(c) The following diagnostic and analytical procedures are within the scope of practice of a licensee:

1. The taking and ordering of X-rays limited to the osseous system;
2. The ordering, but not performing, of bioanalytical laboratory tests consistent with chiropractic practice;
3. The ordering or performing of reagent strip tests (dipstick urinalysis);
4. The ordering, but not performing, of such other diagnostic or analytical tests consistent with chiropractic practice including, by way of example and not by way of limitation, computerized axial tomography (CT), magnetic resonance imaging (MRI), bone scan and invasive electromyography (EMG); and
5. The ordering or performing of such other diagnostic or analytical tests consistent with chiropractic practice including, by way of example and not by way of limitation, neurocalometer, thermography, and non-invasive muscle testing.

(d) A licensee may offer general nutritional advice to a patient when such advice is incidental to the chiropractic care being provided. A licensee shall not offer nutritional advice as treatment for a specific disease, defect, or deformity. A licensee shall not, incidental to chiropractic care, sell, dispense or derive any financial benefit from the sale of vitamins, food products or nutritional supplements. A licensee shall not represent himself or herself as a nutritional consultant.

(e) A licensee may order and/or administer physical modalities, where indicated, in conjunction with a spinal adjustment.

## TRANSPORTATION

### (a)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

##### Restricted Stopping and Parking Route U.S. 40 in Atlantic County

##### Proposed Amendment: N.J.A.C. 16:28A-1.28

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-183.1.

Proposal Number: PRN 1991-363.

Submit oral or written comments by August 14, 1991, to:

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

The agency proposal follows:

##### Summary

The proposed amendment will establish a revised "no stopping or standing" zone along Route U.S. 40 in Hamilton Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs, in the interest of safety, and as part of a review of current conditions, conducted a traffic investigation. The investigation proved that the establishment of the revised "no stopping or standing" zone along Route U.S. 40 in Hamilton Township, Atlantic County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.28 based upon the traffic investigation.

##### Social Impact

The proposed amendment will establish a revised "no stopping or standing" zone along Route U.S. 40 in Hamilton Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

##### Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone 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.

##### Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-4. (No change.)

5. No stopping or standing in Hamilton Township, Atlantic County:

i. Along both sides:

(1) (No change.)

(2) Beginning at the easterly side of Old Harding Highway and extending 1,500 feet [west] east therefrom.

ii. (No change.)

6.-8. (No change.)

(b) (No change.)

### (b)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

##### Restricted Stopping and Parking Route N.J. 77 in Cumberland County

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

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-183.1.

Proposal Number: PRN 1991-364.

Submit oral or written comments by August 14, 1991, to:

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

The agency proposal follows:

##### Summary

The proposed amendment will establish revised "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs, in the interest of safety and as part of a review of current conditions, conducted a traffic investigation. The investigation proved that the establishment of the revised "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County, was warranted.

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

##### Social Impact

The proposed amendment will establish revised "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

##### Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone 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.

**Regulatory Flexibility Statement**

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.41 Route 77

(a) The certain parts of State [Highway] **highway** Route 77 described in this section are designated and established as "no stopping or standing" zones.

1. No stopping or standing in Cumberland County:

i. In the City of Bridgeton:

(1) Southbound on the westerly side.

(A)-(I) (No change.)

(J) Beginning at the southerly curblin of Myrtle Street to a point 50 feet [north] **south** therefrom.

(K)-(M) (No change.)

(N) Beginning at the northerly curblin of [Cumberland Avenue] **East Commerce Street** to a point 50 feet north therefrom.

(O)-(P) (No change.)

(2) (No change.)

2.-5. (No change.)

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

**(a)**

**DIVISION OF TRANSPORTATION ASSISTANCE**

**Transportation of Hazardous Materials  
Appendix to the Regulations regarding the  
Transportation of Hazardous Materials  
Qualification and Disqualification of Drivers**

**Proposed Amendment: N.J.A.C. 16:49—Appendix**

Authorized By: Robert A. Innocenzi, Deputy Commissioner  
(State Transportation Engineer), Department of  
Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25, Hazardous  
Materials Transportation Act, P.L. 93-633, and 49 CFR 391  
et seq.

Proposal Number: PRN 1991-365.

Submit oral or written comments by August 14, 1991 to:

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

The agency proposal follows:

**Summary**

The New Jersey Department of Transportation is proposing to amend the Appendix of N.J.A.C. 16:49 to be consistent with 49 CFR §§ 100 through 199 (the Federal Hazardous Materials regulations) and 49 CFR §§ 390 through 397 (the Federal Motor Carrier Safety regulations). The Department previously proposed and adopted amendments to the Appendix of N.J.A.C. 16:49, which incorporates 49 CFR 391.49(a), providing exceptions to the requirements, and authorizing drivers not physically qualified to drive under the requirements of 49 CFR 391.41(b) to drive, if the driver is in possession of a valid New Jersey driver's license issued prior to January 1, 1991 or a waiver granted under the provisions of 49 CFR. (See 22 N.J.R. 2676(a), 22 N.J.R. 3500(c)). The Department, after careful consideration and analysis, is proposing to amend these requirements to incorporate the provisions of 49 CFR 391.41(b)(1) and (2).

The Department is proposing to amend Subpart E of the Appendix to clarify that the exception provided applies only to drivers who have

been granted a waiver pursuant to 49 CFR 391.49. The Department is also proposing to amend Subpart G of the Appendix to clarify that drivers of trucks carrying combustible liquids who were regularly employed by a motor carrier as of January 1, 1991 and are otherwise qualified to drive a motor vehicle may continue to drive, provided the driver is in possession of a valid New Jersey driver's license and continues in the regular employment of that motor carrier.

**Social Impact**

The proposed amendment will promote safety by making the State codification of the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations consistent with their current Federal counterparts. The proposed amendment will achieve this goal by imposing similar requirements regarding physical qualifications on inter and intrastate drivers of combustible liquids licensed and/or hired subsequent to January 1, 1991.

**Economic Impact**

The proposed amendment will enable all intrastate drivers of combustible liquids who are not physically qualified to drive pursuant to 49 CFR 391.41(b), but who are otherwise qualified to drive pursuant to N.J.S.A. 39:3-10 or 49 CFR 391.49, to continue to do so. The economic impact of imposing these physical requirements will be mitigated by "grandfathering" those drivers who would not be qualified to drive by virtue of physical impairment. It is the position of the New Jersey Department of Transportation that greater uniformity between Federal regulations and State rules, and accompanying improvements in public safety, outweigh the minimal economic impacts of compliance.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment clarifies current State requirements applicable to individuals who drive vehicles which transport hazardous materials.

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

CHAPTER 49

TRANSPORTATION OF HAZARDOUS MATERIALS

APPENDIX TO THE REGULATIONS REGARDING THE  
TRANSPORTATION OF HAZARDOUS MATERIALS

SUBCHAPTER C.—HAZARDOUS MATERIALS  
REGULATIONS

PART 171—PART 177 (No change.)

MOTOR CARRIER SAFETY REGULATIONS

PART 390 (No change.)

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—Subpart D (No change.)

Subpart E—Physical Qualifications and Examinations.

Section 391.41—Section 391.47 (No change.)

Section 391.49—Waiver of certain physical defects.

(Section 391.49(a) is revised to state the following:)

(a) A person who is not physically qualified to drive under Section 391.41(b) (1) or (2), [but who has been a regularly employed driver, as defined in Section 390.5, as of January 1, 1991,] and who is otherwise qualified [under N.J.S.A. 39:3-10] to drive a motor vehicle, may [continue to] drive a motor vehicle, [provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, or] **if that person** has been granted a waiver pursuant to Title 49, Code of Federal Regulations, Section 391.49.

Subpart F—(No change.)

Subpart G—Limited Exemptions

Section 391.61—Section 391.67 (No change.)

Section 391.71 Intrastate drivers of vehicles transporting combustible liquids (Section 391.71(a) and (b) are revised to state the following:)

(a) (No change.)

(b) [In addition to the exemptions provided in paragraph (a) of this section, the provisions of Section 391.41(b)(10) relating to minimum visual requirements], do not apply to a driver who was

a regularly employed driver (as defined in Section 390.5 of this Subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a vehicle that:] In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver as defined in Section 390.5 as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

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

Subpart H—PART 180 (No change.)

## TREASURY-GENERAL

(a)

### STATE INVESTMENT COUNCIL

#### Common Pension Fund B

#### Date of Valuation

#### Proposed Amendment: N.J.A.C. 17:16-63.6

Authorized By: State Investment Council, Roland M. Machold,  
Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-373.

Submit comments by August 14, 1991 to:

Roland M. Machold  
Administrative Practice Officer  
Division of Investment  
CN 290  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Division's general policy has been to base the market price and accruals on the previous day's close. The proposed amendment to N.J.A.C. 17:16-63.6 of the Division's rules pertaining to Common Pension Fund B codifies that policy, making the rules more specific and accurate.

#### Social Impact

The proposed amendment is intended to conform the rule to the format of other rules of the State Investment Council and to clarify the language for the general public.

#### Economic Impact

Basing the market prices and accruals on the previous day's close is a currently accepted policy for other State funds and imposes no economic impact to the State or its taxpayers.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The rule regulates the operations of the Division of Investment.

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

17:16-63.6 Date of valuation

The valuation shall be **determined** at the opening of business on the first business day of each month, **and shall be based on market prices and accruals as of the close of the previous day.**

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF PARKS AND FORESTRY

#### Procedures Concerning the New Jersey Register of Historic Places

#### Proposed New Rules: N.J.A.C. 7:4

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 13:1B-15.128 et seq.

DEP Docket Number: 025-91-06.

Proposal Number: PRN 1991-372.

Submit written comments by September 13, 1991 to:

Samuel A. Wolfe, Esq.  
Administrative Practice Officer  
Department of Environmental Protection  
Office of Legal Affairs  
401 East State Street  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

#### Summary

The Department proposes new rules establishing procedures for the listing of historic properties in the New Jersey Register of Historic Places (the "New Jersey Register") and protection of those historic properties from encroachment by undertakings of State, county and municipal governments or any agency or instrumentality thereof. The proposed new rules also establish criteria for evaluating the eligibility of historic properties for listing in as well as removal from the New Jersey Register, criteria and procedures for boundary redelineation and relocation, and criteria for evaluating the impact of public undertakings on historic properties listed in the New Jersey Register.

The proposed new rules provide as follows:

N.J.A.C. 7:4-1 establishes the purpose of the chapter and sets forth the definition of various words and phrases used in the proposed new rules.

N.J.A.C. 7:4-2 establishes the procedure for nomination and the criteria for evaluation of property nominated for listing in the New Jersey Register. The process for nomination to the New Jersey Register is incorporated with the National Register of Historic Places Program administered by the National Park Service. Both registers use the same nomination criteria, application forms, State administrative agency (Office of New Jersey Heritage) and professional review board and both require that the Commissioner of the Department of Environmental Protection, as the State Historic Preservation Officer, make the State's final determination for registration. If the Commissioner approves the nomination, the Commissioner will sign the nomination thereby placing the historic property on the New Jersey Register and simultaneously recommending the historic property for National Register designation by the National Park Service. This process is designed to avoid duplication of steps for nomination to the National Register since the two programs complement each other. The dual process ends after the Commissioner signs the nomination onto the New Jersey Register. The historic property is then protected by the "New Jersey Register of Historic Places Act".

N.J.A.C. 7:4-3 establishes the procedures and criteria for the redelineation and/or relocation of properties listed in the New Jersey Register.

N.J.A.C. 7:4-4 establishes the grounds and procedure for the removal of property from the New Jersey Register.

N.J.A.C. 7:4-5 establishes the application procedure and criteria for issuance of a certification of eligibility for listing in the New Jersey Register.

N.J.A.C. 7:4-6 provides that only properties listed in the New Jersey Register shall receive State funding for acquisition, preservation, restoration, and maintenance as historic properties in accordance with the New Jersey Register of Historic Places Act, N.J.S.A. 13:15-128 et seq.

N.J.A.C. 7:4-7 establishes the procedures for application by a State, county or municipal government or any agency or instrumentality thereof for an encroachment authorization for any undertaking that could result in an adverse physical effect on a property listed in the New Jersey Register. Subchapter 7 also sets forth the procedure for review of an

application for project authorization and the criteria for determining whether an undertaking constitutes an encroachment or will damage or destroy the historic property. In the event that the Department determines that an undertaking constitutes an encroachment or will damage or destroy the historic property, N.J.A.C. 7:4-7 establishes the procedure for the Historic Sites Council's review of the application for project authorization, the Council's recommendations to the Commissioner, and the Commissioner's actions in accordance with N.J.S.A. 13:1B-15.131.

#### Social Impact

The proposed new rules provide a positive social impact by affording a means for the Department to continue to encourage the protection, restoration and preservation of historic property significant in American history, architecture, archaeology, engineering and culture.

#### Economic Impact

Under the proposed new rules, applicants seeking to nominate property for listing in the New Jersey Register will incur costs in connection with the nomination, if they retain professional consultants to prepare the application for nomination. In addition, State, county and municipal governments, and their agencies and instrumentalities, will incur costs to obtain project authorization for any undertaking that constitutes an encroachment upon or that will damage or destroy a property listed in the New Jersey Register. These costs are described below.

There is no application fee for nominating a property for listing in the New Jersey Register of Historic Places. An applicant sponsoring a nomination can prepare an application without professional help. However, if the applicant retains a professional consultant to prepare the nomination, the Department expects that the cost of the consultant's services would range from \$750.00 to \$3,000, depending upon the complexity of the application. For a Historic District nomination, the Department expects that the cost of the consultant's services would range from \$7,500 to \$15,000, depending upon the complexity of the application.

The application for project authorization for any undertaking that constitutes an encroachment upon or that will damage or destroy a property listed in the New Jersey Register is straightforward, and is not complicated to complete. The Department estimates that for most undertakings, the application can be completed by a project manager for a State, county or municipal agency in about one-half of a working day, without professional assistance. Required attachments (plans, maps, photographs) are usually already available; hence, costs are primarily for reproduction and postage. Under such circumstances, an application might cost between \$25.00 and \$100.00 to prepare. If the attachments must be prepared, the Department estimates that it will cost approximately \$75.00 to \$200.00 to prepare the application.

For large or complex undertakings, the applying public agency may find it more efficient to have an architect, engineer or historic preservationist prepare the application, and make a brief presentation and answer questions at the Historic Sites Council meeting. For such professionally assisted applications, the Department estimates that the cost to the applicant would range from approximately \$200 to \$300.

Though public hearings on applications are rare, if such a hearing were called by the Commissioner the applicant would incur costs of approximately \$300.00 to \$400.00 for transcription and public notice.

It is rare for an applicant to retain an outside attorney in connection with the application, and accordingly the Department does not expect that most applicants will incur costs for legal services.

#### Environmental Impact

The proposed new rules will provide a positive environmental impact by providing a means for the Department to continue to encourage the protection of historic properties, individually or as a district, against destruction and loss of integrity through insensitive alterations or inappropriate demolition.

#### Regulatory Flexibility Statement

The proposed new rules will apply to any public or private applicant nominating a historic property for inclusion in the New Jersey Register of Historic Places. It is estimated that of the 42 nominations reviewed by the Department in 1990, approximately two were submitted by "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and will be impacted. In order to comply with these rules, the small businesses will have to satisfy the requirements set forth in the "Summary" above. In so doing, it is likely that the small businesses will need the services of professionals in the disciplines of architecture, architectural history, prehistoric archaeology or historic archaeology. It is expected that the initial capital costs and the annual

cost of compliance for each business will be minimal. In developing these rules, the Department has balanced the need to protect and preserve historic properties against the economic impact of the proposed rules and has determined that to minimize the impact of the rules would endanger the protection and preservation of historic properties, and therefore, no exemption from coverage for small businesses is provided. The procedures for review of an undertaking by a State, county, municipal government, or any agency or instrumentality thereof will have no effect on small businesses.

Full text of the proposed new rules follows:

### CHAPTER 4

## PROCEDURES CONCERNING THE NEW JERSEY REGISTER OF HISTORIC PLACES

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 7:4-1.1 Purpose

This chapter shall constitute the rules of the Department of Environmental Protection concerning the preservation of the State's historic, architectural, archaeological, engineering, and cultural heritage in accordance with the New Jersey Register of Historic Places Act, N.J.S.A. 13:1B-15.128 et seq.

#### 7:4-1.2 Severability

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

#### 7:4-1.3 Definitions

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

"Acquisition" means the act or process of acquiring fee title or interest other than fee title of real property (including the acquisition of development rights or remainder interest).

"Act" means the "New Jersey Register of Historic Places Act", P.L. 1970, c.268, N.J.S.A. 13:1B-15.128, et seq., or subsequent amendments thereto.

"Area" means a building, a site, or a district as defined in this section.

"Area of undertaking's potential impact" means that geographical area within which direct and indirect effects generated by the undertaking as defined in this section, could reasonably be expected to occur.

"Building" means a single construction such as a house, barn, courthouse, city hall, social hall, commercial building, library, factory, mill, train depot, fort, residence, hotel, theater, school, store, or church, or a small group of buildings consisting of a main building and subsidiary buildings that are functionally and historically related such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, or farm house and related out buildings, created to shelter any form of human activity. If one or more of the buildings comprising a functionally and historically related group does not contribute to the significance of the property or has lost its historic integrity or if the group also includes any objects, sites or structures, the property must be classified as a district in order to distinguish between contributing and noncontributing resources.

"Certified Local Government" means a local government certified by the Department and the National Park Service to participate in Federal and State historic preservation programs pursuant to the National Historic Preservation Act of 1966 as amended.

"Chief elected local official" means the mayor, county executive or other titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Contributing property" means a building, site, structure, or object that adds to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because:

1. It was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period; or

2. It independently meets the New Jersey Register criteria set forth in N.J.A.C. 7:4-2.3.

"Cyclic maintenance" means that type of maintenance that is performed less frequently than annually and involves replacement or major mending of the fabric of a historic property, an example of which would be a complete re-roofing of a building.

"Damage" means partial physical harm or demolition of a historic property.

"Department" means the Department of Environmental Protection, Division of Parks and Forestry, Office of New Jersey Heritage.

"District" means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements that although linked by association or function were separated geographically during the period of significance, as a district of discontinuous archaeological sites or a canal system where manmade segments are interconnected by natural bodies of water. The concept of a discontinuous district applies only where visual continuity is not necessary to convey the historic interrelationship of a group of related resources. Examples include, but are not limited to, college campuses; central business districts; residential areas; commercial areas; industrial complexes; civic centers; rural villages; canal systems; collections of habitation and limited activity sites; irrigation systems; large estates, farms, ranches, or plantations; transportation networks; and large landscape parks.

"Emergency" means a situation in which the condition of a property is so damaged by an event such as, but not limited to, a natural disaster, major fire, serious accident or structural collapse, that it constitutes an immediate, direct, demonstrable, and severe hazard to the public safety. The poor condition of a property caused by long term deterioration shall not be considered an emergency.

"Encroachment" means the adverse effect upon any district, site, building, structure or object included in the New Jersey Register resulting from the undertaking of a project by the State, a county, municipality or an agency or instrumentality thereof, as determined by application of the Criteria for Determining Whether an Undertaking Constitutes an Encroachment set forth in N.J.A.C. 7:4-5.4 and the Standards for Historic Preservation Projects and Guidelines for Applying the Standards (36 C.F.R. 1207) or subsequent amendments thereto adopted by the Secretary of the United States Department of the Interior.

"Historic Preservation Review Commission" means the commission created by an ordinance adopted by the local governing body and approved by the Department and the National Park Service.

"Historic property" means any district, site, building, structure or object significant in American history, architecture, archaeology, engineering and culture.

"Historic Sites Council" means the body within the Division of Parks and Forestry, Department of Environmental Protection established by P.L. 1967, c.124, N.J.S.A. 13:1B-15.108 et seq., and amended by P.L. 1984, c.562, N.J.S.A. 13:1B-15.111 et seq., for the purpose of recommending policies to the Commissioner for the following actions: the acquisition, development, use, improvement and extension of historic sites (including archaeological sites); the development of a broad historic sites preservation program on a Statewide and local basis; the identification, authentication, protection, preservation, conservation, restoration, and management of all historic sites within the State; and the provision of advice on encroachments by the undertakings of State, county or municipal governments or any agency or instrumentality thereof on properties listed in the New Jersey Register.

"Housekeeping" means light cleaning performed at short term intervals.

"Local government" means a city, borough, town, municipality, county or other general purpose political subdivision of the State.

"Maintenance" means treatment that includes housekeeping, routine, and cyclic work scheduled to mitigate wear and deterioration of a historic property.

"Major revisions" means alteration of the boundaries of a property or important substantive changes to the nomination which could be expected to change the ultimate determination as to whether or not the property is listed in the New Jersey or National Registers.

"National Register" means the National Register of Historic Places, which consists of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering and culture, and which the Secretary of the United States Department of the Interior is authorized to expand and maintain pursuant to The National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq.

"National Register Nomination Form" means the legal document and reference for historical, architectural and archaeological data upon which the registration of properties is founded. Said document is the National Park Services Form NPS 10-900, with accompanying continuation sheets (where necessary) or Form NPS 10-306 with continuation sheets (where necessary) now in use by the National Park Service and as may be subsequently modified, changed or amended.

"New Jersey and National Register Manual" means the document entitled "The New Jersey and National Register Process: A Manual for Completing the National Register of Historic Places Registration Form and the Multiple Property Documentation Form" published by the Office of New Jersey Heritage, Division of Parks and Forestry, Department of Environmental Protection."

"New Jersey Register" means the New Jersey Register of Historic Places, consisting of areas, sites, structures and objects within the State determined to have significant historical, archaeological, architectural, or cultural value, which the Commissioner is authorized to expand and maintain pursuant to the Act.

"Nominate" means to propose that a district, site, building, structure or object be listed in the New Jersey and National Registers by preparing a nomination application with accompanying maps and photographs, which clearly documents the significance of the property and is technically and professionally correct and sufficient in accordance with the procedure set forth in N.J.A.C. 7:4-2.2.

"Noncontributing property" means a building, site, structure, or object that does not add to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because:

1. It was not present during the period of significance;
2. Due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or
3. It does not independently meet the New Jersey Register criteria set forth in N.J.A.C. 7:4-2.3.

"Object(s)" means a construction that is primarily artistic in nature or is relatively small in scale and simply constructed, as distinguished from a building or a structure. Although it may be movable, by nature or design, an object is associated with a specific setting or environment, such as statuary in a designed landscape. Objects should be located in a setting appropriate to their significant historic use, roles, or character. Examples include, but are not limited to, sculpture, monuments, mileposts, boundary markers, statuary, and fountains. (Objects relocated in a museum setting are generally considered inappropriate for listing in the New Jersey Register.)

"Preservation" means the act or process of applying measures to sustain the existing form, integrity and material of a building or structure or the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

"Project" means a planned undertaking.

"Protection" means the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment. In the case of archaeological sites, the protective measure may be temporary or permanent.

"Reconstruction" means the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

"Rehabilitation" means the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

"Restoration" means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

"Routine maintenance" means minor repairs such as in-kind replacement of a broken window pane or in-kind patching of a few roof shingles.

"Site(s)" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historic or archaeological value regardless of the value of any existing structure. Examples include, but are not limited to, habitation sites, funerary sites, rock shelters, village sites, hunting and fishing sites, ceremonial sites, petroglyphs, rock carvings, battlefields, ruins of historic buildings and structures, campsites, ruins of industrial works, sites of treaty signings, trails, shipwrecks, cemeteries, designed landscapes, and natural features, and such as springs, rock formations, and landscapes which have cultural significance.

"Stabilization" means the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

"State Historic Preservation Officer" means the Commissioner of the Department of Environmental Protection, who is designated by the Governor to administer the State Historic Preservation Program, including the identification and nomination of eligible properties to the National Register. The Commissioner is also authorized by the Act to establish criteria for receiving and processing nominations and approval of areas, sites, structures and objects, both publicly and privately owned, for inclusion in the New Jersey Register.

"State Historic Preservation Program" means the program established by the Department and approved by the Secretary of the United States Department of the Interior for the purposes of carrying out the provisions of the National Historic Preservation of 1966, as amended, and related laws and regulations.

"State Review Board" means a body whose members represent the professional fields of American history, architectural history, prehistoric and historic archaeology, and other professional disciplines appointed by the State Historic Preservation Officer as part of the State Historic Preservation Program for the purpose of reviewing and recommending to the State Historic Preservation Officer whether to approve New Jersey and National Register nominations based on whether or not they meet the criteria for evaluation in N.J.A.C. 7:4-2.3.

"Structure(s)" is a term used to distinguish from buildings those functional constructions made usually for purposes other than creating shelter. Examples include, but are not limited to, gold dredges, firetowers, canals, turbines, dams, power plants, tunnels, corncribs, silos, highways, shot towers, windmills, grain elevators, kilns, mounds, cairns, palisade fortifications, earthworks, railroad grades, systems of roadways and paths, boats and ships, railroad locomotives and cars, telescopes, carousels, and aircrafts.

"Undertaking" means an action by the State, a county, municipality, or an agency or instrumentality thereof, which has the potential to result in direct or indirect effects on any district, site, building, structure or object listed in the New Jersey Register. An action shall be considered to have an effect whenever any condition of the action causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to meet the criteria for evaluation (N.J.A.C. 7:4-2.3) for the New Jersey Register. For the purpose of determining effect, alteration of features of the property's

location, setting or use may be considered relevant depending on a property's significant characteristics. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same place and time. Indirect effects include those caused by the undertaking that are farther removed in distance or later in time, but are still reasonably foreseeable. Such indirect effects may include changes in the pattern of land use, population density or growth rate that may affect the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to be listed in the New Jersey Register. Consistent with the above language, the following are examples of what shall be considered undertakings: acquisitions, sales, leases, transfers of deed, easements, an agreement or other form of permission allowing use of a registered property, cyclic maintenance, and alterations or relocation of a registered property. The following are examples of actions that shall not be considered as undertakings:

1. Changes in local zoning ordinances;
2. Issuance of building or demolition permits to private individuals or corporations;
3. Granting of zoning variances to private individuals or corporations; and
4. Housekeeping and routine maintenance.

## SUBCHAPTER 2. REGISTRATION PROCEDURES AND CRITERIA

### 7:4-2.1 Integration of New Jersey and National Register of Historic Places Programs

(a) The procedures for registration in the New Jersey Register are integrated with the National Register of Historic Places Program administered by the Department and the National Park Service. The New Jersey and National Registers both use the same nomination criteria, nomination forms, State administrative agency (Office of New Jersey Heritage), and State Review Board. Both require that the Commissioner sign the nomination; in the case of the National Register, as the State Historic Preservation Officer. This integrated process is designed to avoid duplication of steps since the two programs parallel and complement each other. The dual process ends after the Commissioner signs a historic property's nomination form, which action lists the historic property in the New Jersey Register. The property is then registered and protected by the Act. Once signed by the State Historic Preservation Officer, the historic property's nomination form is then forwarded to the National Park Service in care of the Keeper of the National Register for consideration for inclusion in the National Register.

(b) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the New Jersey and National Registers and establishing Statewide priorities for preparation and submittal of nominations to the New Jersey and National Registers in accordance with the State Historic Preservation Plan.

(c) The New Jersey Register is administered and maintained by the Department.

(d) The Commissioner, as the State Historic Preservation Officer, or the Commissioner's designee, shall make the final determination for New Jersey registration. If favorable, the Commissioner shall sign the nomination, thereby placing the historic property on the New Jersey Register and simultaneously recommending the historic property for National Register designation by the National Park Service.

### 7:4-2.2 Procedure for the nomination of properties for inclusion in the New Jersey and National Registers

(a) All applications for nomination to the New Jersey and National Registers shall be made under the supervision of the Department, on standard National Register Nomination Forms. Guidance in the completion of the forms is provided in the "New Jersey and National Register Manual," National Park Service publication "Guidelines for Completing National Register of Historic Places Forms" (National Register Bulletin Number 16) or subsequent amendments thereto and other guidelines issued by the Office of New Jersey Heritage or the National Park Service for nominations to the National Register. The forms, publication, and guidelines are

available from the Department at the Office of New Jersey Heritage, CN 404, Trenton, New Jersey 08625.

(b) Applications for nomination to the New Jersey Register may be initiated by private individuals, any organization, or government agency.

(c) The procedure for the nomination of property for inclusion in the New Jersey and National Registers is as follows:

1. The applicant obtains a preliminary questionnaire and an individual building or district survey form from the Department.

2. The applicant submits the following to the Department for a preliminary determination by the Department whether the property is potentially eligible for listing in the New Jersey and National Registers under the criteria for evaluation set forth in N.J.A.C. 7:4-2.3:

i. The completed preliminary questionnaire and the individual or district survey form obtained under (c)1 above; and

ii. Clear photographs that show the property in complete exterior and interior views. In the case of a district, the photographs shall show representative views of the district;

3. Within 45 days of receiving a complete submittal for preliminary determination under (c)2 above, the Department shall:

i. Make a preliminary determination of the property's potential eligibility for the New Jersey and National Registers; and

ii. Notify the applicant in writing whether or not the Department determines that the property is potentially eligible for the New Jersey and National Registers.

(1) If the Department determines that the property potentially is eligible for the New Jersey and National Registers, the Department shall send a National Register Nomination Form to the applicant.

(2) If the Department determines that the property does not appear to be potentially eligible for the New Jersey and National Registers, the Department shall give the applicant a written explanation of the Department's preliminary determination that the property does not appear to meet the Criteria for Evaluation in N.J.A.C. 7:4-2.3. If the applicant intends to proceed with the application, the applicant shall notify the Department in writing of his intent to proceed within 90 days of the Department's issuance of a preliminary determination that the property does not appear to meet the Criteria for Evaluation. If a response from the applicant is not received within 90 days, the Department shall return the preliminary submittal to the applicant. If a response from the applicant is received within 90 days, the Department shall forward a National Register Nomination Form to the applicant. If the applicant resubmits a request for a preliminary determination, it shall be treated as a new preliminary submittal.

4. The applicant shall, as part of an adequately documented and technically and professionally correct and sufficient National Register Nomination Form, submit to the Department a complete list of all owners of the nominated property as of the date of the National Register Nomination Form's submission. The list of property owners shall be the list of property owners named in official municipal tax records and shall be notarized by the appropriate municipal official. If the property is not scheduled for consideration by the State Review Board under this subchapter within 90 days after the Department receives an adequately documented and technically and professionally correct and sufficient National Register Nomination Form, the Department may require that the applicant submit an updated list of property owners (notarized by the appropriate municipal official) which the applicant shall provide to the Department within 30 days of the issuance of the Department's written request.

5. Within 60 days of receiving a completed National Register Nomination Form, the Department shall notify the applicant in writing as to:

i. Whether or not the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient;

ii. Whether or not the property appears to meet the criteria for evaluation in N.J.A.C. 7:4-2.3; and

iii. If the Department determines that the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient and that the property appears to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department shall schedule the nomination for consideration at the earliest possible State Review Board meeting, consistent with the Department's established priorities for processing nominations. These priorities shall be consistent with implementation of the State Historic Preservation Plan and shall be established by the Department in consultation with the State Review Board. The Department shall notify the applicant in writing of the property's position in accordance with the Department's priorities for processing nominations under the State Historic Preservation Plan and of the approximate date the applicant can expect the nomination of the property to be considered by the State Review Board under this subchapter. If the nomination can be considered by the State Review Board at least 30 days but not more than 75 days after notification, the notice may specify a date when the nomination will be considered by the State Review Board; or

iv. If the Department determines that the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient or that the property does not appear to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department shall provide the applicant with a written explanation of the reasons for that determination.

6. If the Department determines that the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient, the applicant shall have 90 days from the date of issuance of the written notice under (c)4iv above to submit to the Department the additional documentation or information necessary to correct the deficiencies identified in the notice. If the Department does not receive the additional documentation or information necessary to correct the deficiencies identified in the notice within 90 days as above provided, the Department shall return the nomination to the applicant. If the Department determines that the additional documentation or information submitted by the applicant to correct the deficiencies identified on the notice substantially revises the original National Register Nomination Form, the Department may reprocess the nomination as a new submittal under this section.

7. If the Department determines that the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient, but that the property does not appear to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department need not process the nomination further unless the Department receives a written request to do so from the Keeper of the National Register under 36 CFR Part 60, Section 60.12 referenced in N.J.A.C. (c)2 below, in which case the Department shall proceed with processing the nomination for the National Register but shall not be required to process the nomination for the New Jersey Register.

8. When a National Register Nomination Form for a property within the jurisdiction of a Certified Local Government is received by the Department, the Department shall:

i. Forward a copy of the nomination to the Certified Local Government's historic preservation commission for the commission's review and comment;

ii. Within 30 days of its receipt of the nomination, forward to the Certified Local Government's historic preservation commission a written determination on whether or not the nomination is adequately documented and technically and professionally correct and sufficient and whether the nominated property appears to meet the criteria for evaluation under N.J.A.C. 7:4-2.3;

iii. Allow the Certified Local Government 60 days from the date of issuance of the notice of adequate documentation and eligibility for the Chief Elected Local Official of the Certified Local Government to transmit to the Department a report by the historic preservation commission as to whether or not in its opinion the nominated property meets the criteria for evaluation in N.J.A.C. 7:4-2.3 and the recommendation of the chief elected local official;

iv. If the report by the Certified Local Government's historic preservation commission and the recommendations of its chief elected local official are not received by the Department within 60 days as provided in (c)8ii above, the Department shall proceed with processing the nomination pursuant to this chapter; and

v. If both the Certified Local Government's historic preservation commission and its chief elected local official recommend under (c)8ii above that a property not be listed in the National Register, the Department shall not proceed with processing the nomination for the National Register pursuant to this chapter unless, within 30 days of the receipt of the recommendation by the Department, the State Historic Preservation Officer receives a written request from any citizen or organization to proceed with the nomination. The report by the Certified Local Government's historic preservation commission and the recommendations of its chief elected local official shall be included by the Department with any nomination processed by the Department under this chapter and submitted by the State Historic Preservation Officer to the Keeper of the National Register.

9. As part of the nomination process, the Department shall notify the applicant and the owner(s) of the nominated property or the owner(s) of property within a nominated historic district in writing of the Department's intent to bring the nomination before the State Review Board on a specific date. The Department shall be responsible for notifying only those property owners named in the National Register Nomination Form in accordance with (c)4 above. Where more than one owner is named, each separate owner shall be notified. The Department shall send the written notification at least 30 but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered. In addition to informing the applicant and owner(s) that the property is being considered for nomination to the New Jersey Register, the notice shall solicit written comments on the significance of the property and whether or not it meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, inform the owners what registration of the property will mean to the owner, and explain the benefits and responsibilities of property registration. The property owner(s) shall have at least 30 days but not more than 75 days from the date of issuance of written notification to submit written comments to the Department and to concur in or object to the nomination of such property. For a nomination with more than 50 property owners, the Department may publish a public notice to property owners concerning the Department's intent to nominate instead of individually notifying all property owners. Such public notice shall be published at least 30 days but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered.

10. At least 30 but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered, the Department shall send the applicable chief elected local official of the county and municipality in which the property is located written notice of the Department's intent to bring the nomination before the State Review Board. In addition to informing the chief elected local official that the property is being considered for nomination to the New Jersey Register, the notice shall solicit written comments on the significance of the property and whether or not it meets the criteria for evaluation in N.J.A.C. 7:4-2.3. The chief elected local official shall have 30 but not more than 75 days from the date of issuance of written notification to submit written comments on the nomination to the Department.

11. The complete National Register Nomination Form shall be on file with the Department during the comment period in (c)9 and 10 above and a copy shall be made available by mail when requested by the public or made available at a location to which all affected property owners have reasonable access, such as a local library, municipal building, courthouse, or other public place so that written comments regarding the nomination can be prepared.

12. In the case of a nomination of an historic district including 50 or more property owners the Department shall conduct a public hearing in the municipality in which the property is located prior to consideration of the application by the State Review Board. In the event of an archaeological nomination, the public hearing may

be waived by the Department. The Department shall send written notice of the hearing to property owners within the proposed historic district at least 30 days prior to the date of the hearing. The Department shall be responsible for notifying only those property owners within the proposed historic district named in the National Register Nomination Form in accordance with (c)4 above. The notification shall provide the following: a description of the proposed historic district, the benefits and responsibilities of historic district registration, the place that the nomination document can be examined prior to the hearing, and the date, time and place that the hearing will be held. Alternative methods of notification for the hearing, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic district exceeds 50.

13. Upon notification under (c)9 above, any owner or owners of a private property who objects to the nomination to the National Register shall submit to the Department a notarized statement certifying that the objector is the sole or partial owner of the private property and objects to the nomination. Upon receipt of notarized objections respecting a district or single private property with multiple owners, the Department shall ascertain how many owners have objected. If an owner whose name did not appear on the ownership list submits a written notarized statement from the municipality that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the Department in determining how many owners have objected. Each owner of private property in a district shall be considered only once regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of district. Owner objections shall be considered by the State Historic Preservation Officer only with regard to submission of the nomination to the Keeper of the National Register of Historic Places.

14. Completed National Register Nomination Forms, Department recommendations, and public comments concerning the significance of a property and its eligibility for the New Jersey and National Registers shall be submitted by the Department to the State Review Board. The State Review Board shall review the nomination forms and comments concerning the property's significance and eligibility for the New Jersey Register. The State Review Board shall evaluate whether or not the property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3 and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination. The State Review Board may request that the applicant submit additional information before making a recommendation to the State Historic Preservation Officer. If a nomination is not recommended for approval by the State Review Board, the Board shall explain at the meeting the reasons for its determination that the property does not satisfy the criteria for evaluation set forth in N.J.A.C. 7:4-2.3. The Board's explanation shall be made a part of the minutes of the meeting.

15. Nominations approved by the State Review Board, along with any comments received, shall be reviewed by the State Historic Preservation Officer. If the State Historic Preservation Officer determines that a nomination is adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer shall, within 90 days of the State Review Board meeting, sign the National Register Nomination Form and thereby place the property on the New Jersey Register and simultaneously recommend the nomination to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by the Department and notarized statements of objection to listing received by the Department shall be submitted to the National Park Service along with the nomination. Historic properties placed on the New Jersey Register shall remain on the New Jersey Register regardless of the response of the National Park Service to the nomination to the National Register. The State Historic Preservation Officer's signature certifies that:

i. All procedural requirements set forth in this section have been met;

ii. The National Register Nomination Form is adequately documented;

iii. The National Register Nomination Form is technically and professionally correct and sufficient; and

iv. In the opinion of the State Historic Preservation Officer, the property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3.

16. If the State Historic Preservation Officer determines that the nominated property does not meet the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer shall, within 45 days of the State Review Board meeting, advise the applicant in writing of the reasons for the determination. In the event that the State Historic Preservation Officer determines that the nominated property does not meet the criteria for evaluation, the State Historic Preservation Officer need not sign the National Register Nomination Form.

17. If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer, if he or she chooses, may submit the nomination, with an opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board, to the Keeper of the National Register for a final decision on the listing of the property in the National Register. The State Historic Preservation Officer shall submit such disputed nominations to the Keeper within 45 days after the recommendation by the State Review Board if so requested by the State Review Board, the chief elected official of the municipality in which the property is located, or by the Keeper of the National Register pursuant to federal rules for appeals under the National Register Program set forth in 36 CFR Part 60, Section 60.12 or subsequent amendments thereto.

18. If the owner of a nominated private property or the majority of such owners of a nominated historic district or single property with multiple owners has objected to the nomination to the National Register by notarized statements before the State Historic Preservation Officer submits the nomination to the Keeper, the State Historic Preservation Officer shall sign the National Register Nomination Form, but shall submit the nomination to the Keeper only for a determination of whether the property or historic district is eligible for the National Register pursuant to the federal rules for the National Register Program set forth in 36 CFR Part 60, section 60.6(n) and (s) or subsequent amendments thereto.

19. Nominations will be included in the National Register within 45 days of receipt by the Keeper of a completed National Register Nomination Form from the State Historic Preservation Officer unless:

i. The Keeper returns the nomination to the State Historic Preservation Officer because the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient;

ii. The Keeper returns the nomination to the State Historic Preservation Officer because the Keeper has determined that the nominated property or historic district does not meet the criteria for listing in the National Register set forth in 36 CFR Part 60, section 60.4 or subsequent amendments thereto;

iii. An appeal is filed with the Keeper as provided in (c)22 below; or

iv. The owner of the nominated private property or the majority of the owners of property in a nominated historic district or single property with multiple owners objects by notarized statements received by the Keeper before the property or historic area is listed on the National Register.

20. When a nomination is returned to the State Historic Preservation Officer as provided in (c)19i and ii above, the State Historic Preservation Officer shall notify the applicant that the nomination has been returned. The notification shall include an explanation of the reasons for the return of the nomination. Upon receipt by the State Historic Preservation Officer of sufficient additional information from the applicant addressing the reasons for the return of the nomination, the State Historic Preservation Officer shall resubmit the nomination to the Keeper.

21. Any person or organization which supports or opposes the nomination of a property by the State Historic Preservation Officer for listing in the National Register may, during the review of the nomination by the National Park Service, petition the Keeper to accept or reject a nomination pursuant to the federal rules for appeals under the National Register Program, 36 CFR Part 60, Section 60.6(t) or subsequent amendments thereto. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of the property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed. Decisions by the Keeper on such petitions shall not affect a property's listing in the New Jersey Register.

22. If the Department determines to not nominate a property for inclusion in the National Register or the State Historic Preservation Officer does not nominate a property recommended by the State Review Board for inclusion in the National Register, any person or local government may appeal to the Keeper the failure or refusal of the State Historic Preservation Officer to nominate a property to the National Register that the person or local government considers to meet the criteria for listing in the National Register set forth in 36 CFR Part 60, Section 60.4 or subsequent amendments thereto. Such appeals shall be made in accordance with Federal rules for appeals under the National Register Program (36 CFR Part 60, section 60.12) or subsequent amendments thereto. Regardless of the decision by the Keeper, the State Historic Preservation Officer is not obligated to place the property on the New Jersey Register.

23. If subsequent to nomination of a property for listing in the New Jersey Register and National Registers, major revisions are made to the nomination or a property previously rejected by the Department or Keeper is renominated, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the county and municipality in which the property is located of the revisions or renomination in the same manner as the original notification for the nomination under (c)9 and 10 above. In the case of major revisions, the Department may resubmit the nomination to the State Review Board or treat it as a new nomination to be processed in accordance with this section. Comments received and notarized statements of objection shall be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer shall also certify by the resubmittal that the affected property owner(s) and the chief elected local officials have been renotified.

#### 7:4-2.3 Criteria for evaluation of a property nominated for listing in the New Jersey Register

(a) The criteria for evaluation listed below shall be used by the Department, State Review Board, and State Historic Preservation Officer to determine the eligibility of a property for listing in the New Jersey Register. The Criteria for Evaluation are also used by the National Park Service for determining eligibility of properties for the National Register (36 CFR, Part 60, Section 60.4) or subsequent amendments thereto. These criteria are worded to apply to a wide diversity of properties. The criteria for evaluation are listed by letter as published in the Federal rules and as commonly utilized.

1. Criteria for Evaluation: The quality of significance in American history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

i. (Criterion A) That are associated with events that have made a significant contribution to the broad patterns of our history; or

ii. (Criterion B) That are associated with the lives of persons significant in our past; or

iii. (Criterion C) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

iv. (Criterion D) That have yielded, or may be likely to yield, information important in prehistory or history.

2. Criteria considerations: Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years are generally not considered eligible for the New Jersey Register. However, such properties may qualify if they are integral parts of areas that do meet the criteria or if they fall within the following categories:

i. A religious property deriving primary significance from architectural or artistic distinction or historic importance;

ii. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event;

iii. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

iv. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

v. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

vi. A property achieving significance within the past 50 years if it is of exceptional importance.

(b) The criteria for evaluation set forth in (a) above shall be applied in accordance with the "New Jersey and National Register Manual" published by the Department and guidelines issued by the National Park Service from time to time in the following or similar documents: "How to Apply the National Register Criteria for Evaluation", and "Guidelines for Completing National Register of Historic Places Forms" (National Register Bulletin Number 16) or subsequent amendments thereto, incorporated herein by reference and available from the Office of New Jersey Heritage, CN 404, Trenton, New Jersey 08625.

#### 7:4-2.4 Notification of registration and National Park Service determinations of eligibility

(a) Upon approval by the State Historic Preservation Officer of a property for listing in the New Jersey Register, all property owners named in the National Register Nomination Form in accordance with N.J.A.C. 7:4-2.2(c)4 shall receive from the Department written notification of the registration including the date of approval. Notification shall also be sent to the chief elected local official of the county and municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50.

(b) Upon approval by the Keeper of a property for listing in the National Register, the State Historic Preservation Officer shall send written notification of the registration to the property owners and the chief elected local official of the county and the municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50.

(c) In the case of nominations where the owner of private property or the majority of such owners for an area or a single property with multiple owners has objected to listing in the National Register and the Keeper has determined the property or area to be eligible for the National Register, the State Historic Preservation Officer shall send written notification of the determination of eligibility to the property owners and the chief elected local official of the county

and the municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50.

#### 7:4-2.5 Listed property file

Documentation of properties approved for listing in the New Jersey Register shall be on file and, subject to the provisions of N.J.A.C. 7:4-2.7, shall be available for public inspection at the Department.

#### 7:4-2.6 Distribution of New Jersey Register and National Register

The Department shall regularly update and publish the New Jersey Register and National Register. After each publication, the Department shall send a copy of the New Jersey Register and National Register to the clerk of each county and municipality and to all New Jersey State Government departments.

#### 7:4-2.7 Disclosure of nomination

The State Historic Preservation Officer need not make available to any person or entity except a Federal or State agency planning a project, the property owner, the chief elected local official of the county or municipality in which the property or district is located and the local Historic Preservation Commission for Certified Local Governments of the municipality in which the property is located, specific information relating to the location of properties proposed to be registered.

### SUBCHAPTER 3. BOUNDARY REDELINEATION AND RELOCATION OF PROPERTIES LISTED IN THE NEW JERSEY REGISTER

#### 7:4-3.1 Redelineation of the boundary of property listed in the New Jersey Register

(a) The boundary of a property listed in the New Jersey Register may be redelineated only if:

1. Property that meets the criteria for evaluation in N.J.A.C. 7:4-2.3 was not included in the registered property or property that does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3 was included in the registered property as the result of professional error in the original nomination of the registered property for listing in the New Jersey Register;

2. Property comprising part of registered property no longer meets the criteria for evaluation in N.J.A.C. 7:4-2.3 because the integrity of the qualities that caused the property to be listed in the New Jersey Register has been lost;

3. The property possesses additional, previously unrecognized significance in American history, architecture, archaeology, engineering or culture which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3; or

4. Additional research documents that a larger or smaller area of the registered property should be listed.

(b) The redelineation of the boundary of property listed in the New Jersey Register shall be considered a new nomination of a property to the New Jersey Register. A new National Register Nomination Form shall be prepared and submitted to the Department and processed by the Department in accordance with the procedure for the nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2. Any proposal to alter a boundary shall be documented in detail, including photographs of the historic resources located between the existing boundary and the proposed boundary. In the case of a proposed enlargement of the boundary of a registered property, only those property owners in the new area proposed to be included as part of a registered property shall be notified and counted in determining whether a majority of private property owners object to National Register listing as provided in N.J.A.C. 7:4-2.2(c)13. In the case of a proposed diminution of a boundary of a registered property, all owners of the registered property shall be notified and counted in determining whether a majority of private property owners object to the removal of part of a registered property from the National

Register as provided in N.J.A.C. 7:4-2.2(c)13. If the State Historic Preservation Officer signs the National Register Nomination Form in accordance with N.J.A.C. 7:4-2.2(c)14, the revised boundaries of the registered property shall thereby be listed in the New Jersey Register and simultaneously recommended to the Keeper of the National Register. If the National Register Nomination Form is not signed by the State Historic Preservation Officer, the boundaries of the registered property shall not be changed.

#### 7:4-3.2 Relocation of properties listed in the New Jersey Register

(a) Properties listed in the New Jersey Register shall be relocated only when relocation is the only feasible means for preservation of the registered property. When a registered property is relocated every effort shall be made to reestablish its historic orientation, immediate setting, and general environment.

(b) If the State, a county, municipality or any agency or instrumentality thereof proposes to relocate a property listed in the New Jersey Register, the State, county, municipality or agency or instrumentality thereof shall submit an application to the Department for project authorization for projects encroaching upon property listed in the New Jersey Register. The application shall be prepared, submitted and reviewed in accordance with the review procedures for projects encroaching upon property listed in the New Jersey Register set forth in N.J.A.C. 7:4-7.

(c) In order for a property listed in the New Jersey Register to be relocated and remain listed in the New Jersey Register during and after the relocation, the applicant shall submit documentation to the Department and obtain the approval thereof by the State Historic Preservation Officer prior to the relocation. The documentation shall set forth in detail:

1. The reasons for the relocation;
2. The effect of the relocation on the registered property's historical integrity which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3;
3. The description of the new setting and general environment of the proposed site, including evidence that:
  - i. The proposed site does not possess historical or archaeological significance that would be adversely affected by the proposed relocation; and
  - ii. The proposed site will, to the maximum extent possible, contribute to reestablishing the registered property's previous historic orientation, immediate setting, and general environment; and
4. Photographs showing the proposed location.

(d) Documentation submitted to the Department under (c) above shall be processed by the Department in accordance with the procedure for the nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2.

(e) If the State Historic Preservation Officer approves continued listing of the property despite its relocation, the property shall remain in the New Jersey Register during and after the relocation unless the historic integrity which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3 is in some unforeseen manner destroyed during or as a result of the relocation. Within 90 days after the registered property has been relocated, an applicant shall submit to the Department:

1. A letter notifying the State Historic Preservation Officer of the date that the registered property was relocated;
2. Photographs of the registered property on its new site;
3. A revised map of the new site including a United States Geological Survey map; and
4. The acreage and a verbal boundary description of the new site.

(f) The State Historic Preservation Officer shall respond to a complete and properly documented submittal under (e) above within 45 days of receipt with a final determination on whether the relocation has destroyed the historic integrity of the registered property which caused the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3. If the State Historic Preservation Officer makes such a determination, the property shall be deleted from the New Jersey Register as of the date of the relocation of the property. In cases of properties removed from the New Jersey Register, if the applicant has neglected to obtain prior approval for the move or has evidence that previously unrecognized significance exists, or has

accrued, the applicant may submit a new National Register Nomination Form for the property.

(g) If a registered property is relocated without first obtaining approval for continued listing from the State Historic Preservation Officer as provided in (e) above, the property shall, as of the date of relocation, be deleted from the New Jersey Register. However, a property which is subject to the encroachment review process set forth in N.J.A.C. 7:4-7 shall not be automatically deleted from the New Jersey Register until said review process is completed. If a registered property is relocated without first obtaining the approval required under (b) or (e) above, it is the responsibility of the property owner or applicant to notify the Department.

(h) If a property is deleted from the New Jersey Register under (g) above, in order for the property to be reentered in the New Jersey Register, a new National Register Nomination Form shall be prepared and submitted to the Department and processed by the Department in accordance with the procedure for nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2. In addition to the information required as part of a complete National Register Nomination Form under N.J.A.C. 7:4-2.2, the nomination form shall set forth in detail:

1. The reasons for the relocation;
2. The effect of the relocation on the property's historical integrity which caused the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3;
3. The new setting and general environment, including evidence that the new site does not possess historical or archaeological significance that would be affected by intrusion of the property;
4. Photographs showing the new site;
5. A United States Geological Survey Map showing the property at the new site; and
6. The acreage and a verbal boundary description of the new site.

#### 7:4-3.3 Properties relocated in accordance with the recommendations of the Advisory Council on Historic Preservation

Properties relocated in accordance with the recommendations of the Advisory Council on Historic Preservation under 36 CFR, Part 800, are exempt from N.J.A.C. 7:4-3.2(c) through (h). An applicant shall notify the Department of the new site after the property has been relocated. The notice shall include the information and documentation required in N.J.A.C. 7:4-3.2(e).

#### 7:4-3.4 Relocation by the State, a county or municipality of property listed in the New Jersey Register

(a) When the relocation by the State, a county, municipality or agency or instrumentality thereof of property listed in the New Jersey Register is authorized by the Commissioner in accordance with the procedures in N.J.A.C. 7:4-7 for project authorization of projects encroaching upon property listed in the New Jersey Register, the authorization exempts the registered property from N.J.A.C. 7:4-3.2(c) through (h).

(b) When the relocation by the State, a county, municipality or agency or instrumentality thereof of property listed in the New Jersey Register is authorized by the Commissioner in accordance with the provisions in N.J.A.C. 7:4-7 for project authorization for projects encroaching upon property listed in the New Jersey Register, the authorization does not exempt the registered property from N.J.A.C. 7:4-3.2(c) through (h) for the purpose of the property remaining in the National Register. In order for the property to remain in the National Register, an applicant shall comply with the procedures and obtain the determination required under N.J.A.C. 7:4-3.2(c) through (h).

(c) Under (a) and (b) above, an applicant shall notify the Department of the new site after the relocation. The notice shall include the information and documentation required under N.J.A.C. 7:4-3.2(e).

## SUBCHAPTER 4. REMOVAL OF PROPERTY FROM THE NEW JERSEY REGISTER

## 7:4-4.1 Grounds for removal of property from the New Jersey Register

(a) A property listed in the New Jersey Register may be removed from the New Jersey Register only when the State Historic Preservation Officer determines that a petition for removal filed under (d) below establishes any of the following grounds:

1. The property has ceased to meet the criteria for evaluation in N.J.A.C. 7:4-2.3 because the qualities which caused the property to be listed in the New Jersey Register have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing in the New Jersey Register;

2. Additional information establishes that the property does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3;

3. Any error in professional judgment occurred in determining that the property meets the criteria for evaluation in N.J.A.C. 7:4-2.3; or

4. Prejudicial procedural error occurred in the nomination or listing process.

(b) Property removed from the New Jersey Register on the grounds set forth in (a)4 above shall be reconsidered for listing by the State Historic Preservation Officer after correction of the procedural error or errors by the applicant or Department, as appropriate. The reconsideration shall be conducted in accordance with N.J.A.C. 7:4-2.2, 2.3 and 2.5. Any property removed from the New Jersey Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the New Jersey Register.

(c) Property listed in the New Jersey Register five years prior to the effective date of the proposed rule shall only be removed from the New Jersey Register on the grounds set forth in (a)1 above.

(d) Any person, organization or governmental agency may petition the Department in writing for removal of a property from the New Jersey Register. The petition shall be made on a National Register Nomination Form with appendices, as appropriate. The petition shall fully describe and explain the reasons why the petitioner believes that the property should be removed from the New Jersey Register for any of the grounds set forth in (a) above. If the petition is based on the grounds set forth in (a)1 above, the petition shall include:

1. A copy of the original nomination indicating by number the significant elements that have lost integrity;

2. A narrative description and analysis clearly demonstrating loss of integrity and the reasons for that loss such as vandalism, demolition, destruction, relocation and alterations. In the case of a district, the description shall specifically identify properties affected by loss of integrity; and

3. Photographs showing existing conditions and keyed to a map and the nomination form.

(e) The State Historic Preservation Officer shall respond to the petitioner in writing within 45 days of receipt of the petition for removal of a property from the New Jersey Register. The response shall advise the petitioner of the State Historic Preservation Officer's views on the petition. A petitioner desiring to pursue his or her removal request shall notify the State Historic Preservation Officer in writing within 45 days of receipt of the written views on the petition. A property shall be considered for removal according to the nomination application procedure in N.J.A.C. 7:4-2.2 except that:

1. The procedures in N.J.A.C. 4-2.2(c)4, 14, 15 and 16 shall be completed in 15 days; and

2. The State Historic Preservation Officer shall forward the removal petition to the Keeper of the National Register within 15 days of the date of the meeting at which the State Review Board considered the petition.

## SUBCHAPTER 5. CERTIFICATION OF ELIGIBILITY FOR LISTING IN THE NEW JERSEY REGISTER

## 7:4-5.1 Certification of eligibility for listing in the New Jersey Register

(a) If the property for which a historic preservation grant is

requested under the New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987, P.L. 1987, c.265, is not listed on the New Jersey Register, the applicant shall, prior to submission of a historic preservation grant application under N.J.A.C. 7:4A, obtain from the State Historic Preservation Officer a certification of eligibility stating that the property for which a grant is requested is eligible for listing in the New Jersey Register. An applicant for an historic preservation grant for property within a registered district which is not categorized on the National Register Nomination Form as either contributing or noncontributing to the character of the district shall apply to the Department for a certification of eligibility.

## 7:4-5.2 Criteria for issuance of a certification of eligibility

In determining whether to issue a certification of eligibility, the Department shall apply the criteria of evaluation set forth in N.J.A.C. 7:4-2.3.

## 7:4-5.3 Application for certification of eligibility

(a) To apply for a certification of eligibility for listing in the New Jersey Register, the applicant for an historic preservation grant shall:

1. Obtain a preliminary questionnaire and individual survey form from the Department;

2. Submit the following to the Department for a determination by the State Historic Preservation Officer whether the property is eligible for listing in the New Jersey Register.

i. The completed preliminary questionnaire and individual survey form;

ii. Clear photographs that show the property in complete exterior and interior views; and

iii. A letter signed by the chief elected local official of the applying county or municipality, a letter signed by the chief executive officer of the applying nonprofit organization, or a letter signed by the head of the applying State agency confirming the intent of the State, county, municipality, or nonprofit organization to apply for a historic preservation grant for the property.

3. If a property within a district listed in the New Jersey Register is not described on the National Register Nomination Form as being contributing or noncontributing to the character of the district, the application shall describe on the individual survey form how the property contributes to the character of the district.

4. If, based on its review of the preliminary questionnaire, individual survey form and photographs submitted under (a)2 above, the Department determines that a property may be eligible for listing in the New Jersey Register as part of a district, the Department shall provide the applicant with a district survey form. The applicant shall complete the district survey form within 90 days of the Department's issuance of the form and submit it to the Department with photographs that show representative views of the district.

(b) Within 45 days after receipt by the Department of a complete application for a certification of eligibility under (a) above, the State Historic Preservation Officer shall:

1. Determine whether the property is eligible for listing in the New Jersey Register under the Criteria for Evaluation set forth in N.J.A.C. 7:4-2.3; and

2. Notify the applicant in writing whether or not the State Historic Preservation Officer has determined that the property is eligible for listing in the New Jersey Register.

i. If the State Historic Preservation Officer has determined that the property is eligible for listing in the New Jersey Register, the State Historic Preservation Officer shall send a certification of eligibility, which shall specify how the property meets the criteria for eligibility set forth in N.J.A.C. 7:4-2.3 to the applicant.

ii. If the State Historic Preservation Officer has determined that the property is not eligible for listing in the New Jersey State Register, the State Historic Preservation Officer shall give the applicant a written explanation of the State Historic Preservation Officer's determination that the property does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3.

(c) If the State Historic Preservation Officer has determined that the property is not eligible for listing in the New Jersey Register, the applicant may apply for nomination of the property for listing

in the New Jersey and National Registers under N.J.A.C. 7:4-2.2. The State Historic Preservation Officer's determination on the application for certification of eligibility shall be submitted with the National Register Nomination Form.

#### SUBCHAPTER 6. STATE FUNDS

##### 7:4-6.1 Expenditure of State funds for historic preservation

(a) The Act requires that only properties on the New Jersey Register shall receive State funding for acquisition, preservation, restoration, and maintenance as historic properties.

(b) It is the responsibility of all State agencies considering funding a property for use as an historic place or site to apply for listing on the New Jersey Register as early as possible in their planning process. State agencies shall contact the Department for help and advice as to the eligibility of a property under their jurisdiction for listing in the New Jersey Register.

(c) Historic properties owned and maintained by the State of New Jersey, Department of Environmental Protection, before November 30, 1979, are exempt from this subchapter.

#### SUBCHAPTER 7. REVIEW PROCEDURES FOR PROJECTS ENCROACHING UPON NEW JERSEY REGISTER PROPERTIES

##### 7:4-7.1 Application procedure for encroachment authorization

(a) During the earliest stage of planning for any undertaking and before taking any action that could result in a physical effect on a property listed in the New Jersey Register, the State, a county, municipality or an agency or instrumentality thereof shall:

1. Consult with the Department for the purpose of defining the boundaries of the area of the undertaking's potential impact;

2. Consult the latest edition of the New Jersey Register to determine if there are any registered properties within the area of the undertaking's potential impact; and

3. Contact the Department and determine if other properties within the area of the undertaking's potential impact have been nominated to the New Jersey Register since the most recently published list. Public projects or actions for which acquisition or construction contracts have been let prior to listing on the New Jersey Register shall not require review and approval.

(b) If there is no property on the New Jersey Register in the area of the undertaking's potential impact, the undertaking may commence without further review and approval by the Department pursuant to the Act and this chapter.

(c) If there is property on the New Jersey Register in the area of the undertaking's potential impact, the State, a county, municipality or an agency or instrumentality thereof shall submit an application to the Department for project authorization.

(d) The application shall be prepared by the State, county, municipality or agency or instrumentality thereof planning the undertaking or its authorized representative on forms available from the Department and shall include: maps, photographs, plans specifications, and proposed agreements sufficient to completely describe the planned undertaking. In addition, the application shall include a complete list of owners of registered properties that would be directly affected by the undertaking and a complete list of local historical societies and historic preservation commissions in the area of the undertaking's potential impact. The list of property owners shall be the list of property owners named in official municipal tax records as of the date of the application's submission and shall be notarized by the appropriate municipal official. An application for relocating a property on the New Jersey Register shall also include the information and documentation required in N.J.A.C. 7:4-3.2(c).

##### 7:4-7.2 Review of an application for project authorization

(a) Within 30 days of receipt of an application for project authorization, the Department shall review the application for technical and professional completeness and sufficiency and shall notify the applicant in writing as to whether or not the application is complete and sufficient. If the application or material is not complete and sufficient, the Department shall notify the applicant in writing of what information is needed.

(b) Pursuant to N.J.S.A. 13:1B-15.131, the Department shall have 120 days to review an application for project authorization. The 120 day review period shall commence on the date that the Department issues notice to the applicant that the application is technically and professionally complete and sufficient. In the event that the Department does not authorize, consent to, conditionally authorize or consent to, deny, or temporarily deny an application within the 120 day period, the application shall be deemed to have been approved.

(c) Upon determination by the Department that an application for project authorization is technically and professionally complete and sufficient, the Department shall:

1. Conduct a review to determine if the undertaking for which the application is submitted constitutes an encroachment or will damage or destroy the historic property under the criteria set forth in N.J.A.C. 7:4-7.4 and the Standards for Historic Preservation Projects and Guidelines for Applying the Standards, 36 CFR Part 1207 or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior, now in effect and as may subsequently be modified, changed or amended, incorporated herein by reference; and

2. Within 45 days after the Department's issuance of notice to the applicant that an application is technically and professionally complete and sufficient, notify the applicant in writing whether or not the undertaking constitutes an encroachment or will damage or destroy the historic property. The notification shall include an explanation of the reasons for the Department's determination.

(d) If the Department determines that the undertaking does not constitute an encroachment or will not damage or destroy the historic property, the applicant may proceed with the project upon receipt of the Department's written notice under (c)2 above.

(e) If the Department determines that an undertaking constitutes an encroachment or will damage or destroy the historic property:

1. The application for project authorization shall be scheduled to be reviewed by the Historic Sites Council at a regularly scheduled meeting. At least 21 days before the scheduled meeting date, the Department shall determine the agenda for the Council meeting and consistent with the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq. send written notification of the meeting to:

- i. The applicant;
- ii. The chief elected local official of the municipality in which the proposed undertaking would occur;
- iii. A major circulation newspaper in the area of the municipality in which the proposed undertaking would occur;
- iv. Local historical societies and historic preservation commissions, as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);
- v. Owners of registered properties that would be directly affected by the undertaking, as listed by the applicant in the application for project authorization, pursuant to N.J.A.C. 7:4-7.1(d). For an application where more than 25 owners would be directly affected by the undertaking, the Department may publish a public notice to property owners concerning the Council's meeting instead of individually notifying all property owners. Such public notice shall be published 21 days before the scheduled meeting date; and
- vi. Interested parties who have advised the Department in writing of their interest in the application.

2. The Historic Sites Council shall meet to review the application for project authorization and evaluate the encroachment using the criteria set forth in N.J.A.C. 7:4-5.4 and the Standards for Historic Preservation Projects and Guidelines for Applying the Standards, 36 CFR Part 1207 or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior, now in effect and as may subsequently be modified, changed or amended, incorporated herein by reference. The Council shall also consider the following:

- i. The public benefit of the proposed undertaking;
- ii. Whether or not feasible and prudent alternatives to the encroachment exist; and
- iii. Whether or not sufficient measures could be taken to avoid, reduce or mitigate the encroachment.

3. The Historic Sites Council shall submit written recommendations to the Commissioner.

4. In addition to considering the recommendations of the Historic Sites Council, the Commissioner may direct the conduct of a public hearing on the application prior to granting or denying authorization of the encroachment.

5. Within the 120 day review period under (b) above, the Commissioner shall transmit to the applicant a written decision with specific reasons therefor which shall either:

i. Authorize or consent to the encroachment as described in the application;

ii. Authorize or consent to the encroachment with conditions. The conditions may include, but are not limited to placement of a preservation covenant in the deed for the property in the event of the conveyance of any interest in the property; marketing of the historic property over a reasonable period of time; recordation of the historic property to the standards and approval of the Historic American Buildings Survey or Historic American Engineering Record (HABS/HAER) through photographs, drawings and written narrative; archaeological survey or data recovery; salvage of significant architectural features; and revisions to the architectural plans or other conditions that would enable the project to meet the Standards for Historic Preservation Projects, 36 CFR Part 1207 or subsequent amendments thereto, or otherwise avoid, reduce or mitigate the encroachment.

(1) The applicant shall respond to the conditions within 60 days of the issuance of the Commissioner's decision. If the applicant agrees in writing that all the conditions are acceptable and will be met, the undertaking may proceed. If the applicant does not respond within 60 days or does not agree with all the conditions, the Commissioner shall deny the application for project authorization. Prior to the undertaking, the applicant shall submit to the Department written and photographic documentation or revised final architectural plans and specifications to show how the conditions of the approval have been or will be satisfied. Upon completion of the undertaking, the applicant shall document to the satisfaction of the Department that the applicant has complied with all the conditions;

iii. Deny the application for project authorization temporarily based on such factors as need for additional information, exploration of additional alternatives for avoidance or mitigation of the encroachment, damage, destruction or other adverse effects. The applicant shall respond to the Department within 60 days from the date of issuance of a temporary denial. In the event that no response is received by the Department within 60 days, the Commissioner shall deny the application. If the applicant submits a complete response including all information requested by the Department, the Department shall make a final determination within 60 days after receipt of the response; or

iv. Deny the application for project authorization with specific reasons therefor.

#### 7:4-7.3 Emergency undertakings

(a) In the case of an emergency undertaking which needs to be implemented by the State, a county or municipality or an agency or instrumentality thereof, within 30 days of an emergency, the State, county or municipality or agency or instrumentality thereof, in lieu of the application procedure in N.J.A.C. 7:4-7.1, shall notify the Department by telephone and in writing as soon as possible. Said notification shall include: the name and address of the property listed in the New Jersey Register, a written description of the scope of the emergency undertaking, photographs documenting the condition of the registered property, a statement from an appropriate expert demonstrating how the condition of the property constitutes an immediate, direct, demonstrable and severe hazard to the safety of the public, and a statement as to how the undertaking will encroach upon the registered property. If demolition of all or a substantial portion of a property is proposed, the notification shall include a structural assessment and an evaluation of whether the property could be reasonably repaired, to be prepared by an architect or engineer with demonstrated experience with historic properties.

(b) The Department shall respond within seven calendar days after receipt by the Department of the complete notification as

described in (a) above. If the Department determines that the condition of the property constitutes an immediate direct, demonstrable, and severe hazard to the safety of the public, Historic Sites Council review is not required and the Department shall respond in accordance with N.J.A.C. 7:4-7.2(e)5. Until the Department authorizes the emergency undertaking, the State, county or municipality or agency or instrumentality thereof conducting the emergency undertaking shall only take measures necessary to stabilize or isolate the affected property to prevent danger to the public. The Department may determine that the situation does not constitute an emergency and require that the applicant follow the application procedure in N.J.A.C. 7:4-7.2.

#### 7:4-7.4 Criteria for determining whether an undertaking constitutes an encroachment or will damage or destroy the historic property

(a) An undertaking will have an adverse effect and therefore constitute an encroachment when the effect of the undertaking on a property listed in the New Jersey Register may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Encroachments include, but are not limited to:

1. Physical destruction, damage, or alteration of all or part of the registered property;

2. Isolation of the registered property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the New Jersey Register;

3. Introduction of visual, audible, or atmospheric elements that are out of character with the registered property or alter its setting; and

4. Acquisition, transfer, sale, lease, easement on, or an agreement or other permission allowing use of a registered property.

(b) An undertaking that would otherwise be found to constitute an encroachment pursuant to (a) above may be considered by the Department as not being an encroachment when:

1. The registered property is of value only for its potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

2. The undertaking is limited to the rehabilitation, restoration, stabilization, or protection of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Standards for Historic Preservation Projects and Guidelines for Applying the Standards 36 CFR Part 1207 or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior; or

3. The undertaking is limited to the acquisition, transfer, sale, lease, easement on, or an agreement or other permission allowing use of a registered property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE****Fish and Game Council****1992-93 Fish Code****Proposed Amendments: N.J.A.C. 7:25-6**

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.

Authority: N.J.S.A. 13:1B-29 et seq.

DEP Docket Number: 026-91-06.

Proposal Number: PRN 1991-374.

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

August 13, 1991 at 7:30 P.M.  
Assunpink Wildlife Conservation Center  
Eldridge Road  
Assunpink Wildlife Management Area  
Robbinsville, New Jersey 08691

Submit written comments by August 14, 1991 to:

Samuel A. Wolfe  
Office of Legal Affairs  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Fish Code (Code), N.J.A.C. 7:25-6, states when, by what means, at which location, in what numbers and at what sizes, fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 for the 1992-93 fishing season are as follows:

1. Opening day of the 1992-93 trout season has been set for April 11, 1992. All of the dates, throughout the Code, which are dependent on this date have been adjusted accordingly.

2. Big Brooks, in Monmouth County, has been deleted from the list of trout stocked waters because of habitat deterioration and a lack of public access. Lower Blue Mountain Lake in Sussex County has been added to the list. It should also be noted that the inclusion of Beaver Run Brook in Sussex County to the list as published herein corrects an omission from the rule during the printing of the 12-17-90 update to the New Jersey Administrative Code.

3. Scent enhancer and scent enhanced baits have been prohibited in streams and stretches of streams designated by the Code as Wild Trout Streams, Trout Conservation Areas, fly-fishing only and No-kill Areas to minimize the mortality of hooked and released trout.

4. A 1.2 mile stretch of the Pequannock River, extending from the Route 23 bridge at Smoke Rise downstream to the Route 23 bridge at Smith Mills has been designated as a "Seasonal Trout Conservation Area."

5. Indian Grove Brook and the Passaic River, upstream of the Route 202 bridge at Bernardsville, have been designated as "Wild Trout Streams."

6. The minimize size limit on brook trout and rainbow trout in the Van Campens Brook and Pequannock River Wild Trout Streams has been reduced from 12 inches to seven inches. The minimum size limit for brown trout will remain at 12 inches.

7. The Toms River Trout Conservation Area has been extended one half mile downstream and now includes the portion of the river from the downstream end of Riverwood Park in Dover Township, as defined by markers, downstream to the Route 571 bridge, a distance of approximately one mile.

8. Merrill Creek Reservoir has been designated as a "Trophy Trout Lake." The minimum size limit for rainbow trout will be 13 inches and the daily creel limit will be two. Regulations for lake trout remain the same as they were before it was so designated.

9. A minimum size limit of 12 inches has been established for channel catfish with a daily creel limit of five.

10. A minimum size limit of eight inches has been established for black crappie and white crappie. The daily creel limit for both species, in total, shall be 10.

11. A minimum size limit of 16 inches and a daily creel limit of two have been established for hybrid striped bass in the Delaware River.

It should be noted that the inclusion of Beaver Run Brook in N.J.A.C. 7:25-6.3(d)19 as published herein corrects an omission from the rule during the printing of the 12-17-90 update to the New Jersey Administrative Code.

**Social Impact**

There are a number of proposed changes in the 1992-93 Fish Code, as compared to the existing 1991-92 Fish Code, which have potential for social impacts. These are as follows:

1. Opening day of the trout season has been proposed for the second Saturday in April. For the last several years the trout season has opened on the first Saturday in April. While many anglers favor the earlier opening, the later date is proposed so that the loss of pre-season stocked trout would be minimized. These losses are directly related to high stream flows existing earlier in April. Generally, more favorable low flow conditions exist at the later date. The unpredictability of meteorological conditions, a year in advance, introduces a certain degree of error in this assumption and in any given year this assumption could prove false. This fact is not lost by the proponents of the earlier opening, but for the long term management of the fishery the later opening date is the more prudent course of action.

2. The proposal to ban scent enhancer and scent enhanced baits on Wild Trout Streams and Trout Conservation Areas has been widely misunderstood. The ban is not based on the relative effectiveness of this type of bait in catching trout. However, it is based on the relatively high degree of hooking mortality that is attendant to their use. In the areas for which the ban is proposed, management objectives are based on the survival of hooked and released trout. Therefore, the continued use of those baits is a contradiction to the area's management objectives.

3. The establishment of a new Trout Conservation Area on the Pequannock River and the extension of the Trout Conservation Area on the Toms River can be expected to be opposed by those that habitually fish these areas for the purpose of taking trout for consumption. However, the limited catch associated with the proposal will enable these stretches of stream to maintain numbers of trout commensurate with an extended year-round fishery.

4. The establishment of size limits and possession limits for crappie and channel catfish may be opposed by those anglers that habitually take unlimited numbers of these species for consumption. It may also be opposed by those that feel that this represents the over-protection of these species and could result in a general decline in a lake's fishery as a result of an over-population of crappie using up the available forage to the detriment of the lake's bass population. It is the Fish and Game Council's contention that evidence exists to suggest that the intense angling effort exerted on most of New Jersey's public waters has resulted in an effective cropping off of the larger size classes and with each succeeding year the average size of the population grows smaller and with younger fish dominating the catch. There is also a segment of the angling population that feel the proposal does not go far enough in establishing size and possession limits for crappie and channel catfish, as well as affording additional protection to other species.

**Economic Impact**

No specific, significant economic impact or detriment is expected to arise from the proposed amendments since they are primarily a continuation, after annual review, of the existing freshwater fisheries program.

**Environmental Impact**

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of the resource. The annual revisions to the Fish Code help to preserve and maintain the resource based upon the most recent changes in the resource and its user population.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, recordkeeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-6.

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

## SUBCHAPTER 6. [1991-92] 1992-1993 FISH CODE

## 7:25-6.2 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

... "Baitfish" means the following species:

1. Alewife *Alosa pseudoharengus*;  
(anadromous and landlocked forms)

2. Blueback herring *Alosa aestivalis*;  
Recodify existing 2.-13. as 3.-14. (No change in text.)

## 7:25-6.3 Trout Season and Angling in Trout-Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19, and (i) below[;], the trout season for [1991] 1992 shall commence 12:01 A.M. January 1, [1991] 1992 and extend to midnight March [17, 1991] 22, 1992. The trout season shall re-open at 8:00 A.M. Saturday, April [6, 1991] 11, 1992 and extend to include March [16, 1992] 21, 1993.

(b) Except as provided in N.J.A.C. 7:25-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight [of the 17th of] March 22, 1992 to 8:00 A.M. on April [6, 1991] 11, 1992 in ponds, lakes or those portions of streams that are listed herein for stocking during [1991] 1992.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [12, 19, 26] 17, 24; May [3, 10, 17, 24] 1, 8, 15, 22, 29.

2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April [11, 18, 25] 16, 23, 30; May [2, 9, 16, 23] 7, 14, 21, 28.

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [12, 19, 26] 17, 24; May [3, 10, 17, 24] 1, 8, 15, 22, 29.

7. Paulinskill River and E. Br. and W. Br.—County Route 648 Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April [11, 18, 25] 16, 23, 30; May [2, 9, 16, 23] 7, 14, 21, 28.

8. Pequest River—Source to Delaware River—April [12, 19, 26] 17, 24; May [3, 10, 17, 24] 1, 8, 15, 22, 29.

9. Pohatcong Creek—Route 31 to Delaware River—April [9, 16, 23, 30] 14, 21, 28; May [7, 14, 21] 5, 12, 19, 26.

10. Ramapo River—State line to Pompton Lake—April [11, 18, 25] 16, 23, 30; May [2, 9, 16] 7, 14, 21, 28.

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [10, 17, 24] 15, 22, 29; May [1, 8, 15, 22] 6, 13, 20, 27.

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [9, 16, 23, 30] 14, 21, 28; May [7, 14, 21] 5, 12, 19, 26.

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

15. Walkkill River—W. Mt. Road to Route 23, Hamburg—April [8, 15, 22, 29] 13, 20, 27; May [6, 13, 20] 4, 11, 18, 25.

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April [12, 19, 26] 17, 24; May [3, 10, 17, 24] 1, 8, 15, 22, 29.

(e) Except as provided in N.J.A.C. 7:25-[6.6 to 6.8] 6.7, no person shall catch, take, kill or possess trout during the closed period (5:00 [a.m.] A.M. to 5:00 [p.m.] P.M. on any of the waters listed for in-season closures.

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parentheses indicates the anticipated number of stockings to be carried out from April [8] 13 through May 31, provided that, in the event of emergency conditions, the Division may suspend stocking of any or all of the following:

1. (No change.)
2. Bergen County  
Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)

Hohokus Brook—Forest Road to Whites Pond—(4)

Indian Lake—Little Ferry—(4)

Mill Pond—Park Ridge—(3)

Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)

Saddle River—State Line to [Grove Street, Ridgewood] Dunkerhook Road, Fairlawn—(5)

Tienekill Creek—Closter, entire length—(3)

Whites Pond—Waldwick (4)

3.-12. (No change.)

13. Monmouth County

[Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)]

Englishtown Mill Pond—Englishtown—(3)

Garvey's Pond—Navesink—(3)

Hockhocks Brook—Hockhocks Road to Garden State Parkway bridge (northbound)—(5)

Holmdel Park Pond—Holmdel—(5)

Manasquan Reservoir—Howell Township—(3)

Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(5)

Mohawk Pond—Red Bank—(4)

Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocks Brook—(2)

Shark River—Hamilton, Route 33 to Remsen Mill Road—(5)

Spring Lake—Spring Lake—(3)

Takanassee Lake—Long Branch—(4)

Topenemus Lake—Freehold—(3)

Yellow Brook—Heyers Mill Road to Muhlenbrink Road, Colts Neck Township—(2)

14.-16. (No change.)

17. Salem County

Harrisonville Lake—Harrisonville—(3)

Maurice River—Willow Grove Lake Dam to Sherman Avenue, Vineland—(4)

Schadler's Sand Wash Pond—Penns[grove] Grove—(3)

18. (No change.)

19. Sussex County

Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)

Andover Junction Brook—Andover, entire length—(2)

Beaver Run Brook—Beaver Run, entire length—(1)

Bier's Kill—Shaytown, entire length—(2)

Big Flat Brook, Upper—Saw Mill Lake, High Point State Park, to 100 feet above Steam Mill Bridge on Crigger Road—(4)

Canistear Reservoir—Newark Watershed—(3)

Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(5)

Cranberry Lake—Byram Township—(3)

Culver's Lake Brook—Frankford Township, entire length—(2)

**PROPOSALS**

Interested Persons see Inside Front Cover

**ENVIRONMENTAL PROTECTION**

- Dry Brook—Branchville, entire length—(3)
- Franklin Pond Creek—Hamburg Mt. Wildlife Management Area, entire length—(5)
- Glenwood Brook—Lake Glenwood to State line—(2)
- Iliff Lake—Andover Township—(3)
- Kymer's Brook—Andover, entire length—(2)
- Lake Musconetcong—Netcong—(2)
- Lake Hopatcong—Lake Hopatcong—(3)
- Lake Ocquittunk—Stokes State Forest—(3)
- Little Flat Brook—Sandyston Township, entire length—(5)
- Little Swartswood Lake—Swartswood—(3)
- Lower Blue Mountain Lake—Delaware Water Gap National Recreation Area—(3)**
- Lubbers Run—Byram Township, entire length—(5)
- Neldon Brook—Swartswood, entire length—(2)
- Papakating Creek—Plains Road bridge to Route 565, Lewisburg—(2)
- Papakating Creek, W. Br.—Libertyville, entire length—(2)
- Pond Brook—Middleville, entire length—(5)
- Roy Spring Brook—Stillwater, entire length—(1)
- Saw Mill Lake—High Point State Park—(3)
- Shimers Brook—Montague Township, entire length—(2)
- Stony Lake—Stokes State Forest—(3)
- Swartswood Lake—Swartswood—(3)
- Trout Brook—Middleville, entire length—(2)
- Tuttles Corner Brook—Tuttles Corner, entire length—(2)
- Wawayanda Lake—Vernon—(3)

20-21. (No change.)  
(g) (No change.)

(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April [6, 1991] 11, 1992 until midnight May 31, [1991] 1992 or more than [4] four of these species during the periods of January 1, [1991] 1992 to midnight March [17, 1991] 22, 1992 and June 1, [1991] 1992 through midnight March [16, 1992] 21, 1993 except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir in Hunterdon County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [17, 1991] 22, 1992 and extending to 8:00 A.M., April [6, 1991] 11, 1992 must be returned to the water immediately and unharmed.

**7:25-6.4 Special Regulation Trout Fishing Areas—Fly-Fishing Waters**

(a) From 5:00 A.M. on Monday, April [15, 1991] 20, 1992 to and including November 30, [1991] 1992 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, [1991] 1992 to midnight March [17, 1991] 22, 1992 and from 8:00 A.M. on April [6, 1991] 11, 1992 to midnight March [16, 1992] 21, 1993 the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than [6] six trout may be killed daily during the April [6] 11 through May 31 portion of the season; at other times the limit is four. Trout in excess of the creel limit may be caught provided such trout are immediately returned to the water unharmed.

3. (No change.)

4. [Also expecting] Expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel.

5. (No change.)

6. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait.

**7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas**

(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May 25, 1992 through March 21, 1993.

[(a) The following stretch of the] 1. Pequest River [is designated as a Seasonal Trout Conservation Area:]—An approximate 1.0 mile portion [of the Pequest River], within the Pequest Wildlife Management Area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to the Conrail Railroad Bridge upstream of the Pequest Trout Hatchery Access Road.

2. Pequannock River—An approximate 1.2 mile stretch of river extending from the Route 23 bridge at Smith Mills upstream to the Route 23 bridge at Smoke Rise.

[(b) During the period of May 20, 1991 through March 16, 1992 the following regulations shall apply to the above designated Pequest River Trout Conservation Area:]

(b) The following shall apply to the Seasonal Trout Conservation Areas designated at (a) above:

1.-2. (No change.)

3. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait.

Recodify existing 3.-5. as 4.-6. (No change in text.)

**7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams**

(a) The following streams, or portions thereof, are designated as Wild Trout Streams. Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation.

1.-10. (No change.)

11. Indian Grove Brook (Bernardsville);

Recodify existing 11.-17. as 12.-18. (No change in text.)

19. Passaic River (Source to Rt. 202, Bernardsville);

Recodify existing 18.-29. as 20.-31. (No change in text.)

(b) The following shall apply to the Wild Trout Streams designated in (a) above:

1.-2. (No change.)

3. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait;

[3.]4. A person shall not kill or have in possession, while fishing the portions of the Pequannock River and Van Campens Brook designated as Wild Trout Streams, any brown trout less than 12 inches in total length. For all other designated Wild Trout Streams, and for brook and rainbow trout in the Wild Trout Stream designated portions of the Pequannock River and Van Campens Brook, the minimum length for trout shall be seven inches in total length.

[4.]5. During the period extending from 8:00 A.M. April [6, 1991] 11, 1992 to September 15, [1991] 1992, a person shall not have in possession while fishing any more than two legally sized dead, creel or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed; and

Recodify 5. as 6. (No change in text.)

**7:25-6.7 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas**

(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the provision at (b) below governing these areas on a year-round basis:

1. Toms River, Ocean County—a [one-half] one mile stretch of river [at] from the downstream end of Riverwood Park in Dover Township, defined by markers, downstream to the Route 571 bridge; and

2. East Branch of Paulinskill River, Sussex County—from the [County Route 648 Bridge] Limecrest Railroad Spur Bridge,]

downstream to its confluence with the West Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles.

(b) The following shall apply to the Year-round Trout Conservation Areas designated at (a) above:

1.-3. (No change.)

4. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait; Recodify existing 4.-5. as 5.-6. (No change in text.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) The following [lake is] lakes are designated as [a] Trophy Trout Lakes:

- 1. Round Valley Reservoir; and
- 2. Merrill Creek Reservoir.

(b) The following rules apply to the Trophy Trout Lakes designated at (a) above:

1. [The] In Round Valley Reservoir the minimum size of brown trout and rainbow trout shall be 15 inches and in Merrill Creek Reservoir the minimum size of rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be two in total;

2.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M., January 1, [1991] 1992 to midnight, September 15, [1991] 1992 and from December 1, [1991] 1992 to midnight, September 15, [1992] 1993.

5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Major Trout Stocked Lakes

(a) The following lakes are designated as Major Trout Stocked Lakes:

1.-3. (No change.)

[4. Merrill Creek Reservoir;]

Recodify 5.-7. as 4.-6. (No change in text.)

(b) The following apply to the Major Trout Stocked Lakes designated at (a) above:

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day, more than [6] six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April [6] 11, [1991] 1992 until May 31, [1991] 1992 or more than [4] four of these species during the periods of January 1, [1991] 1992 to midnight March [17, 1991] 22, 1992 and June 1, [1991] 1992 through midnight March [16, 1992] 21, 1993. Trout, if taken during the period commencing at midnight, March [17, 1991] 22, 1992 and extending to 8:00 A.M., April [6, 1991] 11, 1992 must be returned to the water immediately and unharmed.

[4. In Merrill Creek Reservoir, the minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one.

5. In Merrill Creek Reservoir, the season for lake trout shall extend from 12:01 A.M. January 1, 1991 to midnight, September 15, 1991 and from December 1, 1991 to midnight September 15, 1992.]

7:25-6.10 Baitfish

(a) (No change.)

(b) In waters listed in N.J.A.C. 7:25-6.3 to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March [17] 22 to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and [4] four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than [2] two inches in diameter or an umbrella net no greater than 3.5 feet square.

(c) In Deal Lake, up to 35 per day of [anadromous] alewife or blueback herring, in the aggregate, may be taken per person with a dip net not more than 24 inches in diameter, or as otherwise provided for in (d) below. Possession limit is one day's limit.

(d) (No change.)

7:25-6.13 Warmwater [Fish] fish

(a) (No change.)

(b) Except as provided in N.J.A.C. 7:25-6.18, the size limits prescribed for rock bass, [black crappie, white crappie,] redbfin pickerel and chain pickerel are hereby eliminated in all waters except in Lake Hopatcong and Swartswood Lake (Sussex County) and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel.

(c)-(h) (No change.)

(i) The minimum length prescribed for northern pike shall be 24 inches, and 30 inches for the muskellunge and tiger muskie. The daily bag and possession limit for these species shall be two in aggregate.

(j)-(n) (No change.)

(o) The minimum length for channel catfish shall be 12 inches. The daily creel and possession limit shall be five.

(p) The minimum length for black crappie and white crappie shall be eight inches. The daily creel and possession limit for these species shall be 10 in aggregate.

7:25-6.19 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, except as provided in N.J.A.C. 7:25-6.13(e) to (n), the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Daily Bag Limit
Trout	April [6]11-Sept. 30	No minimum	5
Largemouth bass and smallmouth bass	No closed season	12 inch minimum	5 in total
Walleye	No closed season	18 inch minimum	3
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
Striped bass x white bass hybrid	No closed season	16 inch minimum	2
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

(a)

**DIVISION OF ENVIRONMENTAL QUALITY  
 Notice of Administrative Correction  
 Control and Prohibition of Air Pollution by Volatile  
 Organic Substances  
 Proposed Amendments: N.J.A.C. 7:27-16.5 and  
 7:27B-3.10**

Take notice that the Department of Environmental Protection has discovered errors in the addresses for the inspection of copies of the notice of proposal published in the June 17, 1991 New Jersey Register at 23 N.J.R. 1858(b), and in the text of N.J.A.C. 7:27-16.5(a)3iii and 7:27B-3.10(d)2v(3) proposed therein.

The corrected addresses for inspection of copies of the proposal are for the Atlantic County Health Department, the Middlesex County Air Pollution Control Program and the Warren County Health Department, as follows:

- Atlantic County Health Department  
 301 South Shore Road  
 Northfield, New Jersey 08225
- Middlesex County Air Pollution Control Program  
 County Annex Building  
 841 Georges Road  
 North Brunswick, New Jersey 08902
- Warren County Health Department  
 319 West Washington Avenue  
 Washington, New Jersey 07852

At N.J.A.C. 7:27-16.5(a)3iii, the calculation for actual daily omissions is missing a minus sign (-) between "1" and "NcNd," and the use of capital Roman "N's" is in error—the engineering symbol represented by the lower case Greek letter Eta ( $\eta$ ) should appear instead.

At N.J.A.C. 7:27-3.10(d)2v(3), the parenthesis after "P" in the numerator, and the minus sign (-) in the denominator, in the calculation should have been in boldface as proposed additions.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposed amendments follows, with text appearing as it should have appeared in the published proposal (proposed additions indicated in boldface thus; proposed deletions indicated in brackets [thus]):

7:27-16.5 Surface coating and graphic arts operations

(a) [General provisions for surface coating operations are as follows:]

[1.] No person shall cause, suffer, allow, or permit [VOS emissions from a surface coating operation to exceed the maximum allowable hourly emission rate as determined by multiplying the maximum allowable emissions per volume of coating, minus water, as set forth in Tables 3A, 3B, 3C or 3E of this section, times the volume of coating, minus water, applied per hour.] **the use of any surface coating operation unless:**

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

**3. If the surface coating operation is served by VOC control apparatus:**

i.-ii. (No change from proposal.)

**iii. For a surface coating operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into**

**the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:**

$$\text{Actual Daily Emissions} = (1 - \eta_c \eta_d) (\text{VOC}_a) (V)$$

- where:  $\text{VOC}_a$  = daily mean VOC content of the surface coating formulations as calculated by 2 above;
- $V$  = total daily volume of the surface coating formulations, as applied;
- $\eta_c$  = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and
- $\eta_d$  = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by the method approved by the Department and EPA; and

$$\text{Allowable daily emissions} = (1 - \text{VOC}_d/d) (V) (x)/(1-x/d)$$

- where:  $x$  = maximum allowable VOC content per volume of coating (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 3A, 3B, 3C, 3D, or 3E of this section;
- $d$  = density of the VOC of the applied surface coating formulations in pounds per gallon (lb/gal) or kilograms per liter (kg/l);
- $V$  = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and
- $\text{VOC}_d$  = daily mean VOC content of the applied surface coating formulations as calculated by 2 above; or

- 4. (No change from proposal.)
- (b) (No change.)
- (c)-(m) (No change from proposal.)

7:27B-3.10 Procedures for the determination of volatile organic [substances] **compounds** in surface coating formulations

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

(d) The coating samples shall be analyzed as follows:

1. (No change from proposal.)

2. Class II surface coating shall be analyzed as follows:

i.-iv. (No change from proposal.)

v. Sources included in a mathematical combination shall be analyzed as follows:

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

(3) Calculate the density of the [VOS] VOC in gm/ml.

$$D([\text{VOS}]\text{VOC}) \text{ gm/ml} = \frac{(1-P) w(\text{mix}) D(w) D(\text{mix})}{D(w) W(\text{mix}) - P W(\text{mix}) D(\text{mix})}$$

Where:

- $P$  = percentage of water (%)
- $W(\text{mix})$  = weight of the volatile fraction (gm)
- $D(\text{mix})$  = density of the volatile fraction (gm/ml)
- $D(w)$  = density of water (gm/ml)

(4) (No change.)

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

(a)

### OFFICE OF ADMINISTRATIVE LAW

#### Special Hearing Rules

#### Board of Public Utility Hearings

#### Adopted New Rules: N.J.A.C. 1:14

Proposed: March 4, 1991 at 23 N.J.R. 640(a).

Adopted: June 20, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: June 20, 1991 as R.1991 d.361, **with substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3), **and with N.J.A.C. 1:14-14.1 not adopted.**

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

Effective Date: July 15, 1991.

Expiration Date: July 15, 1996.

#### Summary of Public Comments and Agency Responses:

The Office of Administrative Law received comments from Jersey Central Power and Light Company; Public Service Electric and Gas Company; an attorney, Joseph Rosa Jr.; and the Department of the Public Advocate, Division of Rate Counsel.

**COMMENT:** Three commenters raised concerns about N.J.A.C. 1:14-9.2, which as proposed required public hearings to be conducted during the evening hours or at some other time convenient to interested persons. Since the rules did not define public hearings, two commenters felt that this provision could be misconstrued to require the scheduling of contested evidentiary hearings during the evening. It was further suggested that the OAL should restrict the entire chapter to public hearings as distinguished from evidentiary hearings.

**RESPONSE:** The OAL agrees that the term public hearing should be defined to avoid any confusion. Consequently, upon adoption of N.J.A.C. 1:14-2.1, the OAL clarified that a public hearing is not an evidentiary or plenary hearing, but rather is a hearing to which the public is invited to attend and to express views, comments or objections. In this way, the OAL reaffirms that with the exception of N.J.A.C. 1:14-9.2, dealing with public hearings, chapter 14 is intended to establish the procedure for contested case evidentiary hearings in Board of Public Utility Cases.

After further consideration, the OAL also clarified N.J.A.C. 1:14-9.2(d) to reflect the reality that persons testifying at public hearings may oppose or support the petitions or tariff schedules under consideration.

**COMMENT:** One commenter suggested that for cases involving commercial customers, scheduling public hearings during business hours is preferable. He suggested that the rule provide for public hearings at a time "most convenient to those persons most interested."

**RESPONSE:** The OAL responds that under the adopted rule, public hearings may be conducted in the evening or at some other time convenient to interested persons. The OAL believes that the rule therefore provides sufficient flexibility so that all public hearings will be properly scheduled.

**COMMENT:** One comment suggested that N.J.A.C. 1:14-14.3(a) was inequitable because it could require an innocent respondent in a case initiated by the BPU to pay for a transcript.

**RESPONSE:** The OAL does not believe that any change to this provision is necessary. Since the judge may waive or modify this rule for good cause under N.J.A.C. 1:14-14.3(c), there is sufficient flexibility to avoid inequities.

**COMMENT:** Finally, the Division of Rate Counsel objected to the prohibition of cross-examination primarily for discovery and to the requirement that all prefiled direct testimony be submitted no later than 10 days prior to the hearing.

**RESPONSE:** The OAL has decided to repropose N.J.A.C. 1:14-14.1 without the 10 day requirement (see notice of reproposal published elsewhere in this issue of the Register). The repropose rule provides

that the ALJ shall establish a schedule for submission of all prefiled testimony. Thus, an ALJ can balance, on a case-by-case basis, the need for expedition and the parties' legitimate needs to obtain and review information and prepare expert reports.

Since the OAL remains committed to an expeditious yet fair process, it adopts N.J.A.C. 1:14-14.3 empowering ALJs to restrict cross-examination which purpose appears to be primarily for discovery. It is anticipated that this provision will encourage the parties to engage in full discovery early in the process and to make it possible to prefile testimony expeditiously and proceed with the hearing without undue delay. When information which has been previously provided is modified or updated by a witness at the hearing, some limited cross-examination or further discovery relating to those modifications or updates may be permitted.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

### CHAPTER 14

#### BOARD OF PUBLIC UTILITY HEARINGS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 1:14-1.1 Applicability

The special rules in this chapter shall apply to contested case hearings arising before the Board of Public Utilities (BPU). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these special rules are inconsistent with the U.A.P.R., these rules shall apply.

#### SUBCHAPTER 2. DEFINITIONS

##### 1:14-2.1 Definitions

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

"Judge" means an administrative law judge, the BPU or a single Commissioner of the BPU who presides over a contested case under N.J.S.A. 48:2-32.

**\*"Public hearing" means a hearing conducted pursuant to N.J.S.A. 52:14B-4(g) because the law requires the hearing in conjunction with the contested case. It is not an "evidentiary hearing" or "plenary hearing" as defined in N.J.A.C. 1:1-2.1. It is a hearing to which the public is specifically invited to attend and to express views, to provide comments or to raise objections to the subject matter being considered.\***

#### SUBCHAPTERS 3 through 4. (RESERVED)

#### SUBCHAPTER 5. REPRESENTATION

##### 1:14-5.1 Appearance by the BPU

The BPU may be represented by a deputy attorney general or a non-lawyer agency employee pursuant to N.J.A.C. 1:1-5.4(a).

#### SUBCHAPTERS 6 through 7. (RESERVED)

#### SUBCHAPTER 8. TRANSMISSION OF CONTESTED CASES TO THE OFFICE OF ADMINISTRATIVE LAW

##### 1:14-8.1 Transmittal to the OAL

In the transmittal form, as required by N.J.A.C. 1:1-8.2, the BPU shall indicate whether it will be a party to the proceeding and whether it will be represented by an agency employee pursuant to N.J.A.C. 1:1-5.4(a) or a deputy attorney general.

#### SUBCHAPTER 9. SCHEDULING; NOTICES

##### 1:14-9.1 Notice of hearing

(a) Upon receiving notice of the time, date and place of hearing from the Clerk, in accordance with N.J.S.A. 48:3-17.7 a petitioner

## ADOPTIONS

who has filed for authority to exercise the power of eminent domain shall give each respondent whose name and address is known at least 20 days notice of the hearing. At least five days prior to the hearing date, the petitioner shall file with the judge proof of such notice pursuant to N.J.A.C. 1:1-7.2.

(b) In any proceeding, the judge may require a party to give notice of the hearing and its scope to persons who may be affected by the proceeding, which may include publication and posting of notice of hearing, at such party's expense, in such manner and for such time and in such newspapers as the judge may designate.

### 1:14-9.2 Public hearings

(a) Whenever a public hearing is required by statute or rule the judge may instruct the utility to secure an appropriate location for the hearing and to accomplish whatever public notice may be required by statute or rule.

(b) Unless a statute requires otherwise or the judge directs otherwise for good cause shown, public hearings shall be conducted during the evening after regular business hours or at some other time which would be convenient to those persons interested in the subject matter of the public hearing.

(c) The Clerk shall notify the parties to the proceeding of any public hearing and shall ensure that the proceeding is stenographically transcribed.

(d) Persons opposing **\*or supporting\*** petitions or tariff schedules may testify at public hearings. The judge may permit the utility or other parties to cross-examine these **\*[objectors]\* \*persons\***. **\*[Objectors]\* \*Persons who testify at public hearings\*** shall not be entitled to notice of any subsequent proceedings unless they qualify as a participant or intervenor under N.J.A.C. 1:1-16.

## SUBCHAPTERS 10 through 13. (RESERVED)

## SUBCHAPTER 14. CONDUCT OF CASES

### 1:14-14.1 **\*[Prefiled testimony]\* \*(Reserved)\***

**\*[(a) The judge may require that all parties prefile their direct testimony in writing, certified, verified or sworn to under oath, not later than 10 days prior to commencement of the hearing. The schedule for the submission of this testimony shall be discretionary with the judge.**

(b) The judge shall adjust the discovery schedule to facilitate the timely filing of prefiled direct testimony.]\*

### 1:14-14.2 Cross-examination

The judge may restrict any cross-examination whose purpose appears to be primarily for discovery.

### 1:14-14.3 Transcripts

(a) In cases involving an order to show cause or an investigative order initiated by the BPU, respondents shall purchase an original and one copy of the transcript and shall provide the judge with a copy of the hearing transcript within 15 working days of the date of hearing. In all other cases, the petitioner shall provide the judge with a copy of the hearing transcript within 15 days of the hearing date.

(b) The party responsible for providing the judge with a copy of the transcript is responsible for the cost of the original and one copy of the transcript, the daily appearance fee of the court reporter and, when applicable, any costs associated with complying with N.J.A.C. 1:1-14.11(j).

(c) The judge may waive or modify the application of this rule at any time for good cause shown.

## SUBCHAPTER 15. EVIDENCE RULES

### 1:14-15.1 Witnesses and prefiled testimony

(a) Sworn, certified or verified written prefiled testimony of a witness may be admitted by the judge. Unless the parties consent to the admissibility of this written testimony without the necessity of an appearance, the witness shall appear at the hearing and be available for cross-examination on the prefiled written testimony.

(b) The judge may preclude any witness from testifying in a party's direct case when the witnesses' written testimony has not been filed

in accordance with a schedule for such submissions established by the judge.

## SUBCHAPTERS 16 through 21. (RESERVED)

## BANKING

### (a)

## OFFICE OF REGULATORY AFFAIRS

### Consumer Loan Act Regulations

#### Readoption with Amendments: N.J.A.C. 3:17

Proposed: May 6, 1991 at 23 N.J.R. 1234(a).

Adopted: June 13, 1991 by Jeff Connor, Commissioner,  
Department of Banking.

Filed: June 13, 1991 as R.1991 d.354, **without change**.

Authority: N.J.S.A. 17:10-23.

Effective Date: June 13, 1991, Readoption.

July 15, 1991, Amendments.

Expiration Date: June 13, 1996.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:17.**

**Full text of the adopted amendments follows:**

#### 3:17-1.1 Availability of advertising copy

Advertising copy and radio and television commercials shall be available to the Commissioner upon request at any time within two years from the date of use.

#### 3:17-3.8 (Reserved)

#### 3:17-5.11 Unlocatable borrowers

After a reasonable time not exceeding six months, if a licensee is unable to locate a borrower who is due a rebate of unearned credit life or health or disability insurance premiums when an account is repaid in full or a beneficiary named in a policy under a claim, any excess moneys are to be returned to the insurer, stating the reason therefor and the file of the borrower so noted.

#### 3:17-6.10 Payment on installment loans

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

(c) For the purpose of computing interest, a licensee shall apply all installment payments on the date of receipt, and shall charge interest for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

#### 3:17-7.1 Permissible other businesses

(a) (No change.)

(b) Upon obtaining any necessary license or authorization, a licensee may engage in the following other types of businesses;

1.-11. (No change.)

12. Such other business as the Commissioner may deem appropriate and for which specific approval is obtained pursuant to N.J.A.C. 3:17-7.3.

#### 3:17-7.2 Separation of books and records

The books, accounts and records which pertain to each of the business activities specified in N.J.A.C. 3:17-7.1 conducted by a licensee shall be maintained so as to be readily separated and distinguished from the books, accounts and records associated with the licensee's consumer loan business.

(a)

**DIVISION OF EXAMINATION****Licensees****Records****Adopted Amendments: N.J.A.C. 3:17-3.4, 3:18-2.1 and 3:38-2.1**

Proposed: March 18, 1991 at 23 N.J.R. 803(a).

Adopted: June 18, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: June 21, 1991 as R.1991 d.362, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:11A-54(a) and 17:10-23.

Effective Date: July 15, 1991.

Expiration Dates: June 13, 1996, N.J.A.C. 3:17  
January 19, 1993, N.J.A.C. 3:18  
October 5, 1992, N.J.A.C. 3:38**Summary of Public Comments and Agency Responses:**

The Department received one comment from JoAnn Brown, Esq. for Household Finance.

**COMMENT:** The commenter suggested the Department amend N.J.A.C. 3:18-2.1 to allow licensees to discard records from lines of credit two years following the last entry to the account.

**RESPONSE:** This suggestion is not within the scope of the proposal, therefore, the Department will not incorporate it at this point. However, the Department recognizes the merit of the suggestion and will consider proposing it in the future.

**Full text of the adoption follows:****3:17-3.4 Maintenance of general ledger**

(a) Companies operating more than one licensed office may maintain the general ledger at their home office providing the trial balance or balance sheet and profit and loss statement of the licensed office are available to the examiner at the licensed office upon request.

(b) A licensee may keep its consumer loan records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing keeping records at the site. The provisions of the agreement shall include, but shall not be limited to the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

**3:18-2.1 Preservation of records**

(a) Every licensee shall preserve the books, accounts and records for at least two years after making the final entry on any second mortgage loan.

(b) A licensee may keep its secondary mortgage loan records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at such a site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

**3:38-2.1 Methods and accounting**

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

(e) A licensee may keep its mortgage banker or broker records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if

the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provision of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

**COMMUNITY AFFAIRS**

(b)

**DIVISION OF HOUSING AND DEVELOPMENT****Uniform Fire Code; Fire Code Enforcement  
Fire Official and Fire Inspector Certification****Adopted Amendments: N.J.A.C. 5:18-1.5; 5:18A-1.4, 2.3, 3.3, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9 and 4.10**

Proposed: May 6, 1991 at 23 N.J.R. 1235(a).

Adopted: June 11, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: June 17, 1991 as R.1991 d.359, **without change.**

Authority: N.J.S.A. 52:27D-203.

Effective Date: July 15, 1991.

Expiration Date: January 4, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.****5:18-1.5 Definitions**

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

“Fire Inspector” means a person working under the direction of the fire official who is certified by the Commissioner of the Department of Community Affairs and appointed or designated to enforce the Code by the appointing authority of a local enforcing agency.

“Fire Official” means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency.

...

**5:18A-1.4 Definitions**

As used in this chapter:

...

“Fire Inspector” means a person working under the direction of the fire official who is certified by the Commissioner of the Department of Community Affairs and appointed or designated to enforce the Code by the appointing authority of a local enforcing agency.

“Fire official” means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency.

...

**5:18A-2.3 Local enforcing agencies; establishment**

(a) (No change.)

(b) An ordinance creating one or more local enforcing agencies shall include at least the following provisions:

1. (No change.)

2. Provisions governing the appointment of a fire official to serve as the chief administrator of the local enforcing agency and such fire inspectors as may be necessary to enforce the Code. The or-

## ADOPTIONS

## COMMUNITY AFFAIRS

dinance must contain a provision specifying who makes the appointment. Such provision must be acceptable to the fire department or fire district.

3.-4. (No change.)

5. A designation of the agency that will be responsible for the periodic inspection of life hazard uses. This agency may be the local enforcing agency, the county enforcing agency, or the Department. The ordinance shall not designate any agency that does not have at least one paid fire official and such paid fire inspectors as may be necessary to enforce the Code.

6.-11. (No change.)

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

### 5:18A-3.3 Duties of fire officials and fire inspectors

(a) The fire official shall enforce the Code and the regulations and shall:

1. Maintain certification with the Bureau pursuant to N.J.A.C. 5:18A-4;

2.-16. (No change.)

17. Supervise the work of any assigned inspectors or enforcement personnel to ensure compliance with the Code, completeness and accuracy;

18.-25. (No change.)

(b) (No change.)

(c) The fire inspector shall enforce the Code and the regulations under the direction of the fire official and shall:

1. Maintain certification with the Bureau pursuant to N.J.A.C. 5:18A-4;

2. Conduct field surveys to identify and register life hazard uses;

3. Conduct fire inspections to ensure compliance with the Code;

4. Where authorized to do so by the fire official, prepare violation notices and orders to abate and serve to the public;

5. Witness the testing of installed detection and protection systems as required by the Code;

6. Read, interpret and apply codes, standards and regulations, including issuing permits;

7. Meet with owner and occupants to explain violations and hazards; and

8. Carry out such other functions as are necessary and appropriate to the position of fire inspector.

### 5:18A-4.3 Certification required

(a) No person shall carry out the duties of fire official or fire inspector unless that person is certified pursuant to this subchapter. The term "carry out the duties" shall mean and include representing oneself as authorized to carry out inspection of life hazard uses on behalf of the Commissioner, issuing orders pursuant to the Act, and assessing or imposing any of the penalties provided for by the Act.

(b) No local enforcing agency shall employ any person to enforce the provisions of the Uniform Fire Code at a life hazard use, unless that person shall be certified in accordance with the provisions of this subchapter.

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

### 5:18A-4.4 Requirements for certification

(a) (No change.)

(b) Certification as a "fire inspector" shall be issued to any applicant who has successfully completed an educational program approved by the Bureau pursuant to N.J.A.C. 5:18A-4.9.

(c) Certification as a "fire official" shall be issued to any applicant who holds a valid certification as a fire inspector issued by the Bureau pursuant to N.J.A.C. 5:18A-4.4 and has successfully completed an educational program approved by the Bureau pursuant to N.J.A.C. 5:18A-4.9.

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

### 5:18A-4.5 Renewal of certification

(a) Every two years, any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Fire Code Enforcement Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Bureau shall renew, for a term of two years, the certification previously

issued. The expiration date of the certification shall be January 31 or July 31.

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

(c) Continuing education requirements, as follows, must be met for renewal of certification. The requirements are based upon the type(s) of certification(s) held and not upon employment position held. Continuing education units (CEU's) shall be approved by the Bureau for technical and administrative courses (one CEU equals 10 contact hours).

1. Fire inspector certification—1.5 CEU's (technical);

2. Fire official certification—2.0 CEU's (1.5 technical and .5 administrative).

(d) Where the holder of a certification has allowed the certification to lapse by failing to renew the certification as provided for in (a) above, a new application and certification shall be required.

1. If such application is made within six months of the certification having lapsed, then application may be made in the same manner as a renewal, but the application shall be accompanied by the fee for a new application.

2. Upon a finding that a certification was previously held and that any applicable continuing education requirements have been satisfied, the certification shall be issued.

3. Where the former certification has lapsed for a period exceeding six months, a new application shall be required in accordance with N.J.A.C. 5:18A-4.4.

(e) (No change.)

### 5:18A-4.6 Revocation of certifications and alternative sanctions

(a) (No change.)

(b) The Bureau, in addition, or as an alternative to revoking or suspending a certification, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct that, in the judgment of the Bureau, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

(c) Conviction of a crime, or an offense in connection with exercising the duties of a certified fire official or inspector, shall result in revocation of certification.

(d) Any sanctions imposed by the Construction Code Enforcement Element pursuant to N.J.S.A. 52:27D-119 et seq. shall constitute grounds for imposition of sanctions under this section.

(e) (No change.)

### 5:18A-4.7 Fees

(a) No application for a certification shall be acted upon unless the application is accompanied by a fee as follows:

1. The initial application fee shall be \$30.00.

2. The two-year renewal application fee shall be \$30.00.

### 5:18A-4.9 Organizational, administrative, and operational functions of the fire code enforcement educational programs

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

(f) The course of study for fire inspector certification shall consist of a planned pattern of instruction and experiences designed to meet the following standards. The course shall provide at least 45 contact hours of instruction not including examination and support time, and it shall ensure by examination technical competence in the following subject areas:

1. (No change.)

2. Enforcement of fire codes;

3.-5. (No change.)

(g) The course of study for fire official certification shall consist of a planned pattern of instruction and experiences designed to meet the following standards. The course shall provide at least 30 contact hours of instruction not including examination and support time. The course shall also ensure, by examination, technical competence in the following subject areas:

1. Administration: Fire Code administration, purpose, place in local government structure and relation to Fire Code administration programs at other levels of government; basic principles of supervision, and personnel management including personnel records, budgeting and disciplinary actions; the preparation of records, re-

ports, local enforcing agency budget, recordkeeping requirements as contained in the Uniform Fire Code, including permits, appeals, variances, applications, and violation files and records; and the method of establishing and maintaining proper review and approval procedures for permit applications to ensure compliance with the Fire code and applicable laws and ordinances;

2. Legal methods of code enforcement: Purpose and fundamentals of notices of violation, notices of penalties and court action; powers and procedures available to deal with hazardous conditions and emergency situations; preparation of case records; situations requiring a search warrant and the process of obtaining and issuing the warrant; the administrative hearing process under the State Uniform Fire Code Act; and legal responsibilities of inspection personnel, including legal processes and rules of evidence;

3. Legal rights of landlords and tenants under Federal, State and local laws, and Relationship of Fire Code maintenance provisions as required by State and local agencies; and

4. Local enforcing agency organization and duties of the fire official; and coordination with construction officials, fire subcode officials and other Federal, state, county or local agencies.

#### 5:18A-4.10 Procedure for applying for approval of educational programs

(a) Any eligible institution or organization may submit any course for approval as an educational program required by N.J.A.C. 5:18A-4.8. The application shall be in letter form, be submitted at least 60 days prior to the first class session of the course and contain all the information specified below.

1. A course that provides content and contact hours required by N.J.A.C. 5:18A-4.9(f) or (g) will be acceptable even if it is part of a longer course of study that covers additional material.

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

## HEALTH

### (a)

#### EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

#### Sanitation in Retail Food Establishments and Food and Beverage Vending Machines

##### Adopted Amendments: N.J.A.C. 8:24

Proposed: January 22, 1991 at 23 N.J.R. 168(b).

Adopted: June 10, 1991 by the Public Health Council,

Louise C. Chut, Ph.D., M.P.H., Chairwoman.

Filed: June 14, 1991 as R.1991 d.357, 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. 26:1A-7.

Effective Date: July 15, 1991.

Operative Date: November 1, 1991.

Expiration Date: May 2, 1993.

#### Summary of Public Comments and Agency Responses:

The proposed amendments were published in the New Jersey Register on January 22, 1991. During the comment period, 79 comments were received from representatives of the retail food industry and local health departments charged with the primary enforcement responsibility for the rules.

The following individuals provided comments to the proposed amendments:

Gregory Nagy, Red Bank Health Department  
 Kimberly Derzsak, Summit Regional Health Department  
 John O. Grun, Edison Department of Health & Human Services  
 Donald G. Robasser, Princeton University  
 James Budd, Alpha Health & Medical Group, P.C.  
 Gene S. Osias, Vernon Township Health Department  
 Staff, Princeton Regional Health Department  
 Betty F. Greitzer, Supermarkets General Corp.  
 Robert M. Pickus, Trump Castle

Walter Trommelen, Burlington County Health Department  
 Howard L. Schatz, Foodservice Administrator  
 Karen Confoy, Hannotch Weisman, representing Trump Casinos  
 Joseph Przywara, Ocean County Health Department  
 Gary Moore, King's Supermarket

A public hearing in this matter was held on February 11, 1991 and all of the comments received at the public hearing were subsequently submitted to the Department as written comments. The hearing officer, Mr. James Blumenstock, recommended that all comments be evaluated by the Department's Food and Milk Program and he stated that each comment would receive due consideration. The oral comments have been responded to, along with the written comments, in this document.

The Department and the Public Health Council considered all of the comments offered and have modified the rules in a number of areas to accommodate the concerns raised during the public comment period.

The oral and written comments and the Department's responses follow:

COMMENT: N.J.A.C. 8:24-1.3 Definitions—"Bed and breakfast":

A comment was received stating that the definition of bed and breakfast establishments was confusing and that the provision limiting the stay of guests to a maximum of 30 days is difficult to ascertain. The commenter stated that the burden of determining the length of the resident's stay falls on the local health department. What action should the establishment be subject to if the period is exceeded? In addition, the commenter also inquired as to the Department's lack of a definition for "dwelling unit."

RESPONSE: The Department concurs with the commenter, that in order to properly enforce this section, the health authority may need to determine that the length of the resident's stay does not exceed 30 consecutive days. If this period is exceeded, then the establishment would no longer be classified as a bed and breakfast establishment pursuant to N.J.A.C. 8:24-13, and would be required to comply with the other provisions of N.J.A.C. 8:24. The definition of bed and breakfast establishment was derived from the State Department of Community Affairs (DCA) definition as stated in the "Hotel and Multiple Dwelling Law." The definition of community residence was derived from the Division of Developmental Disabilities' definition, as defined under N.J.A.C. 10:44A, Community Residence. The commenter did not propose an alternative definition and the Department believes that the definitions adopted by the other departments are the most appropriate definitions available.

In answer to the commenter's inquiry regarding the definition of "dwelling unit," the Department finds that the term is defined under the Hotel and Multiple Dwelling Act, N.J.S.A. 55:13A-1 et seq., as follows:

"Dwelling unit—to be any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof, or any of his servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy thereof."

The Department believes that this definition may be useful in identifying a dwelling unit in a bed and breakfast establishment, and therefore will incorporate this statutory definition under N.J.A.C. 8:24-1.3, Definitions, "Bed and breakfast."

COMMENT: N.J.A.C. 8:24-1.3 Definitions—"Health authority":

A commenter suggested that the Department include a new definition for "local health authority" based upon the commenter's belief that the term "local health authority" and "health authority" are used interchangeably in the rules.

RESPONSE: A review of the rules does not indicate that the term "local health authority" is used and the Department believes that the definition of "health authority" is satisfactory, based upon the statutory provisions for enforcement of the rule provided for under the State Sanitary Code.

COMMENT: N.J.A.C. 8:24-1.3 Definitions—"Safe temperatures":

Three comments were received regarding the proposed changes for the temperature requirements for frozen foods under the definition of "safe temperatures." One commenter inquired why the definition of safe temperatures for frozen foods was changed from 0 degrees Fahrenheit to a non-specific temperature and replaced with the statement "for frozen foods means such temperatures at which the foods remain completely frozen." Each of the commenters recommended that the definition should be maintained to include a 0 degree Fahrenheit holding requirement for frozen foods. The commenters stated that the proposed

wording is confusing and that the lack of a specific temperature requirement for these foods creates problems for the enforcement of these provisions and will subject the regulating authority to criticism if action is taken against a food which the inspector deems to be out of compliance.

RESPONSE: It is the Department's opinion that the requirement that frozen foods shall be maintained at 0 degrees Fahrenheit is overly restrictive. The safety of foods stored or held above 0 degrees Fahrenheit would not be adversely affected, as long as the foods are maintained in a frozen state. This opinion is consistent with the United States Food and Drug Administration's Model Food Service Code, which does not require frozen foods to be maintained at a specific temperature. However, the Department also recognizes, as suggested by the commenters, that the wording of the amended definition may be confusing because the term "at such temperatures as to remain completely frozen" is not a specific measurable temperature and the frozen state varies from one food product to another. A review of the definition reveals that there is no need to include a specific temperature requirement for frozen foods because cold foods maintained below 45 degrees Fahrenheit are considered to be "safe." Therefore, the definition has been further amended to delete any reference to the temperature requirements for frozen foods.

COMMENT: N.J.A.C. 8:24-2.5(b) Eggs:

The Department received a general comment suggesting that it should check with California before taking action to prohibit the use of centrifugal egg breaking machines.

RESPONSE: The Department's amendment under N.J.A.C. 8:24-2.5(b) prohibits the use of centrifugal egg breaking machines. While the Department understands that a manufacturer of this type of equipment is located in California, the decision to prohibit this practice was based upon a careful review of this method of egg breaking, which comingles shell fragments with the liquid content of eggs. The method does not provide for the inspection of individual egg contents and may allow for the contamination of the resulting product with unwholesome eggs. Additionally, the Department believes that this egg breaking process increases the potential that the liquid eggs may become contaminated with *Salmonella* bacteria because the egg shells, which may harbor the organism, are comingled with the liquid portion of the eggs before final separation of the egg shells.

COMMENT: N.J.A.C. 8:24-2.5(c) Eggs:

Two comments were received requesting clarification of the term "immediate cooking" as applied to pooled eggs in this section. The commenters inquired whether there was a specific acceptable time period in which pooled eggs can be held prior to cooking. Another inquiry was also received regarding whether the same container or bowl could be used multiple times for the pooling of eggs without washing.

RESPONSE: The Department's intention in adding this subsection is to establish parameters by which shell eggs may be cracked and pooled for certain foods, provided that they are handled in a manner that minimizes the opportunity for the growth of *Salmonella enteritidis* bacteria. Recent studies estimate that perhaps one egg per 10,000 is contaminated with *S. enteritidis*. Therefore, additional controls are required to prevent the opportunity for the growth of the bacteria if one or more of the eggs in the pooled batch is contaminated. This section was developed and patterned after the U.S. Food and Drug Administration's (FDA) Interpretation entitled "Potentially Hazardous Food-Shell Eggs" and is consistent with that interpretation. The Department referred this question to the FDA and has been advised by them that eggs may be cracked and pooled at the point of cooking such as at the grill or oven for a specific recipe, such as an omelet or scrambled eggs, which are cooked at that time.

In answer to the commenter's question regarding the reuse of bowls and used for pooling eggs without washing, the Department's opinion is that such bowls used for raw eggs which will receive the required cooking temperatures specified under N.J.A.C. 8:24-3.3(d) may be reused immediately during the serving period without washing.

COMMENT: N.J.A.C. 8:24-3.1 General protection of foods:

The Department received a general comment requesting that a new section should be added to the rules establishing specific provisions for the vacuum packaging of foods in retail food establishments.

RESPONSE: The Department did consider including provisions in these rule amendments for vacuum packaging of foods at retail food establishments, but decided to wait for the final recommendations now being deliberated by the U.S. Food and Drug Administration before proposing specific rules governing this technology. In the interim, the

Department has been requesting that local health agencies and the retail food industry utilize the Association of Food and Drug Officials' (AFDO), Retail Guidelines for Refrigerated Foods in Reduced Oxygen Packages when considering the installation or review of such equipment.

COMMENT: N.J.A.C. 8:24-3.2(b) Food temperatures:

One comment was received questioning the Department's authority to require the refrigeration of shell eggs in retail food establishments. The commenter suggested that the Department consult with the U.S. Department of Agriculture (USDA) before making such a requirement.

RESPONSE: Although the USDA is the agency having regulatory responsibility for shell eggs at the farms, at egg production facilities, and at egg pasteurization plants, the requirements for the handling of shell eggs in retail food establishments is under the jurisdiction of the State and local health agencies. Therefore, considering the Department's decision to reclassify shell eggs as a potentially hazardous food, the Department believes that the refrigeration of shell eggs in retail food establishments is consistent with the temperature constraints required of all potentially hazardous foods.

COMMENT: N.J.A.C. 8:24-3.2(b) and (f) Food temperatures and 3.6 (a) Food transportation:

Several comments were received suggesting that the specific temperature requirement of 0 degrees Fahrenheit for frozen foods should not be deleted. The commenters believe that the lack of a specific measurable temperature such as 0 degrees Fahrenheit will create confusion among regulatory agencies. Another commenter stated that replacing the term "shall be displayed" at an air temperature of 0 degrees Fahrenheit to "should be displayed" in N.J.A.C. 8:24-3.2(f) is too vague and does not provide the health authority with an adequate standard to take enforcement action if such foods are not maintained frozen.

RESPONSE: The Department disagrees with the commenters for the reasons stated under the comments discussing the definition of "safe temperatures" under N.J.A.C. 8:24-1.3. The regulatory test is that frozen foods are kept frozen, and the Department does not believe that an absolute temperature standard requirement is necessary for enforcement purposes. The Department's amendments to this section are in conformance with the U.S. Food and Drug Administration's (FDA) Model Food Service code which only recommends that the freezer temperature be maintained at zero degrees Fahrenheit. In order to clarify these provisions, the Department has further amended all references to frozen foods in these rules to be consistent with the FDA Model Food Service code.

COMMENT: N.J.A.C. 8:24-3.2(c) Food temperatures:

A comment was received requesting clarification of the specific temperature range for the four hour cooling requirements for cooked potentially hazardous foods. The commenter questioned "at what temperature does the four hour cooling period begin: 120 F, 130 F, or 140 F. Also, does the temperature vary for rare roast beef, which is required to be cooked to a minimum temperature of 130 degrees Fahrenheit, as compared with other foods which require different minimum cooking temperatures."

RESPONSE: The Department has reviewed this section and agrees with the commenter that the wording of this section may create misinterpretations regarding the specific time and/or temperature requirements for the cooling of cooked potentially hazardous foods. The section requires that cooked foods be rapidly cooled to below 45 degrees Fahrenheit within four hours using approved cooling methods. The rules also include another time and/or temperature requirement that the foods be cooled from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours. However, this section could be misinterpreted as requiring that these foods must be cooled from 120 degrees Fahrenheit to 45 degrees Fahrenheit within four hours. Therefore, the Department has revised this section in order to clarify the intent of this new requirement.

COMMENT: N.J.A.C. 8:24-3.2(c) Food temperatures:

A comment was received requesting that the provisions establishing requirements for cooling potentially hazardous foods be amended to include a statement that whole muscle meats, such as roast beef, should only be subject to "proper" cooling on the exterior of the products because it was indicated that the interior of the roast would not be subject to significant contamination. Also, a comment was received requesting that the rule should be amended to require thawing of frozen eggs in a refrigerator.

RESPONSE: While the Department recognizes that interior of a whole meat roast is less likely to be contaminated with pathogenic microorganisms than the exterior surfaces, it does not believe it would be prudent to relax the cooling requirement for this type of potentially

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hazardous food. A beef roast is subject to puncture and abrasion which could allow contamination of the interior to occur. Also, it should be noted that the model food service sanitation code adopted by the U.S. Food and Drug Administration does not provide for an exemption or relaxation of the cooling requirement in the case of whole meat roasts.

In response to the comment concerning the thawing of frozen eggs, the rules under N.J.A.C. 8:24-3.2(f) already prohibit the thawing of all potentially hazardous foods at room temperature and include a provision for thawing frozen eggs under refrigeration, since this food product is considered a potentially hazardous food.

COMMENT: N.J.A.C. 8:24-3.2(c) Food temperatures:

A commenter stated that the inclusion of the statement "not tightly covered" as it applies to protecting foods from contamination while cooling implies that potentially hazardous foods should be covered in some fashion during the cooling phase. The commenter suggested that covering foods while being cooled impedes rapid chilling and may serve to create favorable temperature conditions for the growth of pathogenic microorganisms in the food.

RESPONSE: The Department agrees with the commenter that requiring potentially hazardous foods to be covered during cooling would impede the rapid chilling of these foods. The statement "shall not be tightly covered," as used in this section, may be misinterpreted to imply that all foods must be covered, even if only loosely, while being cooled. Studies have shown that covering cooked foods impedes the cooling process. In addition, the loose covering of these foods does not provide any real measure of protection from outside contamination sources such as dripping liquids from raw meat products and other sources of contamination. Therefore, the Department has modified the wording of this section to recommend that cooling potentially hazardous foods be stored uncovered until cooled to a temperature of 45 degrees Fahrenheit or below, and that precautions should be taken to protect the foods from contamination while they are cooling. The Department recognizes that quick chill equipment may be employed that could allow the complete covering of cooling foods and the section was worded to account for these cooling methods.

COMMENT: N.J.A.C. 8:24-3.3(b) Food preparation, 3.5(d) Food display and service, and 13.5(b) Preparation of food:

A comment was received suggesting that these subsections be rewritten to prohibit the direct manual contact of foods in order to further minimize the potential for transmission of foodborne illness. The commenter proposed the following: "Hand contact of food is prohibited; instead, single service gloves, liners, or sanitized tongs, spatulas, spoons or like utensils are required in the preparation and service of foods to the public."

RESPONSE: The Department agrees that minimizing the direct manual contact of ready to eat foods is an integral part of the controls needed to protect foods from contamination and mitigates the spread of food borne illness. However, the Department believes that the commenter's proposed text is too restrictive and is impractical for the preparation and service of all foods. The rules already require that the direct manual contact of potentially hazardous ready to eat foods be minimized and the Department believes that the current wording is satisfactory. Therefore, no changes have been made to this subsection.

COMMENT: N.J.A.C. 8:24-3.3(d)1 Food preparation:

A commenter requested that the pre-stuffing of raw poultry having a weight greater than two pounds should be permitted, as long as labeling is provided by the retailer giving proper cooking instructions for the product. Another commenter wanted to know whether the two pound weight restriction included the weight of the stuffing and also why the restriction did not apply to stuffed lobster and other stuffed fish products. Finally, in a related matter, a commenter believed that because of the hazard posed by raw eggs and uncooked vegetables used in some stuffings, the rule should provide specific directions for handling these products.

RESPONSE: The Department does not agree with the suggestion that the rule should be amended to permit the pre-stuffing of poultry with a weight greater than two pounds as long as the product is labeled to provide proper cooking instructions. In principle, the suggested amendment appears to have merit, but in practice presents a number of problems. Poultry greater than two pounds, including chickens, capons and turkeys have larger cavities for receiving stuffing and the stuffing adds significantly to the time needed to reach the required internal cooking temperature of 165 degrees Fahrenheit for poultry products under N.J.A.C. 8:24-3.3(d)1. The stuffing is subject to contamination from being in contact with the raw poultry, particularly of concern is

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*Salmonella* contamination. It is difficult to monitor the temperature in the center of the cavity, and temperature sensing devices embedded in some poultry by processors to let the consumer know when the product is cooked measure the meat temperature, not the stuffing. Also, in order for a retailer to be able to insure proper cooking time/temperatures instructions, heat penetration studies would need to be conducted by the retailer based upon the size of the poultry, the consistency and the amount of stuffing. The commenter did not provide the Department with data supporting a specific cooking protocol, nor has the commenter indicated that such heat penetration studies have been conducted supporting the suggested amendment. Therefore, based upon the hazards posed by this practice and lack of supporting data provided, the Department has retained this provision.

In answer to the comment of whether the two pound weight limit for pre-stuffing poultry includes the weight of the stuffing, the Department's intent was to base the restriction on the weight of the poultry and it believes that the wording adequately reflects that intention. In order to further clarify the provision, the Department has removed the term "poultry product" and has added examples of the types of poultry that the restriction applies.

In answer to the question of why the Department did not include the pre-stuffing restriction for fishery products, the Department does not have information that pre-stuffing these products presents the same degree of hazard as is posed by pre-stuffing of raw poultry, because of the smaller mass of food being heated. The commenter did not provide the Department with data supporting his request. Finally, in regard to the comment concerning the establishment of specific directions for handling stuffing that contain eggs or vegetables, the Department believes that the provisions for handling potentially hazardous foods contained in N.J.A.C. 8:24-3.3 adequately address this issue and that it is not necessary to establish specific handling procedures for these ingredients in the preparation of stuffing. Also, the commenter did not offer any specific guidance or suggested procedures for handling these ingredients.

COMMENT: N.J.A.C. 8:24-3.3(e) Food preparation:

Two comments were received suggesting that a specific time period should be established as it applies to the term "reheated rapidly." This amendment would establish a maximum acceptable time in which previously cooked and then refrigerated potentially hazardous foods could reach the required minimum reheating temperature of 165 degrees Fahrenheit.

RESPONSE: The Department agrees with the commenters that a specific time requirement for rapid reheating would be beneficial to both the food service industry and the health authority. The Department has reviewed this proposal with the U.S. Food and Drug Administration's (FDA) Food Protection Branch. The FDA is proposing to establish a rapid reheating time of less than two hours under its revised Model Food Service rules, which is entitled Food Protection Unicode. The FDA has indicated that no adverse comments from either the food service industry nor regulatory agencies were received regarding the two hour limit for rapid reheating being proposed. Therefore, the Department has modified this section to require a maximum time limit of two hours for rapidly reheating these foods to 165 degrees Fahrenheit.

COMMENT: N.J.A.C. 8:24-3.4(b) Food storage:

Several comments were received regarding the location and specifications of white inspection strips in food storage areas. One commenter inquired whether the requirement for white inspection strips applied to walk-in refrigerators and freezers. Another commenter inquired whether the inspection strip is required in all existing establishments or only in newly constructed facilities. Another inquiry was received requesting how wide the white inspection strip should be in these areas.

RESPONSE: In response to the question regarding whether white inspection strips are required in refrigerated food storage areas, the Department has reviewed this section and has determined that the requirement for white inspection strips applies only to dry food storage areas. Refrigerated areas are classified as equipment, not storage rooms. Therefore, inspection strips are not required in refrigerated food storage areas. The Department recognizes that the amendments to this section may have not clearly delineated storage requirements, particularly as they relate to the white inspection strip for foods in bulk storage. Also, the comments indicate that this section needs further clarification. The Department has amended this section in order to better delineate the storage requirements and to differentiate between normal food storage and bulk food storage requirements.

In response to the inquiry regarding whether white inspection strips are required only in newly constructed retail food establishments or if

they are also required in existing establishments, it is the Department's position that the requirement for a white inspection strip in bulk food storage rooms has been in effect since the rules were last revised in 1983. Because this requirement has been in effect for several years, there is no reason for this requirement to be limited to only newly constructed facilities and all establishments, including existing retail food establishments, are required to comply with these provisions.

In answer to the inquiry as to the required width of the white inspection strip, the required minimum width of the inspection strip is not specified. Previously, the determination of the width of the strip has been left to the discretion of the operator and the health authority. However, the Department agrees that such a determination should be incorporated into the rules to provide guidance to the retail food operator. Therefore, this section has been amended to recommend that the inspection strip should have a width of at least six inches. The Department is basing this recommendation on information received from the U.S. Centers for Disease Control's *Control of Domestic Rats and Mice*.

COMMENT: N.J.A.C. 8:24-3.4(b) Food storage:

Several comments were received from the same commenter regarding this section. First, the commenter recommended that all raw food ingredients which are removed from the original package be required to be labeled with the name of the food and the date of purchase. The commenter also pointed out that some bulk foods may be transferred to smaller containers which are not sterilized and recommended that only food grade plastic or metal containers be permitted for use in food storage. The commenter also recommended that all foods be required to be stored at least 12 inches above the floor, as is required by the USDA regulations.

RESPONSE: In response to the recommendation to label ingredients, the Department disagrees. While it may be a recommended practice for the purposes of quality control and proper stock rotation that retail food operators label all ingredients with the date of purchase and the product name, the labeling of bulk food ingredients does not provide any real measure to ensure the safety of the food. The Department believes that the primary concern is to ensure that toxic substances such as cleaning powders or insecticides are not mistakenly used in place of raw food ingredients and that this concern is satisfactorily addressed under N.J.A.C. 8:24-3.7(b), Poisonous and toxic material, which requires that all toxic materials be prominently and distinctively marked.

In response to the commenter's suggestion that only food grade plastic or metal containers be permitted for food storage and that some foods may be transferred into containers which are not sterilized, the Department believes that these matters are satisfactorily addressed under N.J.A.C. 8:24-5.1, Design, construction and materials, and N.J.A.C. 8:24-5.4(b), Equipment and utensil sanitation.

In response to the suggestion that the foods be required to be stored at least 12 inches from the floor, the Department has reviewed this section and has determined that the commenter's suggestion is restrictive and is not practical in many establishments. However, it was also determined that the current wording of the text requires that foods be stored at least four inches to six inches from the floor. The Department recognizes that this wording may be subject to misinterpretation, and therefore has modified the section to require that containers of food be stored "a minimum of six inches above the floor and that large quantities of food containers be stored on skids, pallets or similar equipment."

COMMENT: N.J.A.C. 8:24-4.2 Hygiene practices:

A comment was received which recommended that nail polish be included in those items which are not permitted to be worn by food handlers.

RESPONSE: The Department disagrees with this recommendation. The Department does not have evidence that wearing nail polish by a foodhandler presents a food adulteration hazard. Lacking such documentation, the Department does not believe that restricting the use of nail polish by foodhandlers is warranted. The commenter did not provide the Department with evidence that this practice poses a public health hazard. Therefore, no changes were made to this section.

COMMENT: N.J.A.C. 8:24-4.3 Handwashing: A comment was received recommending that food handlers should be prohibited from touching food after handling money without first washing their hands. The commenter stated that disease-causing microorganisms may be transmitted to food when food handlers touch money, such as paper currency or metal coins, and then handle food without first washing their hands.

RESPONSE: The Department disagrees with the commenter's recommendation. There is no evidence indicating that pathogenic

microorganisms are transmitted through the handling of money. In addition, requiring employees to wash their hands each time that they touch money, before they handle food, is impractical. As a reference, the Department cites the most recent FDA interpretation regarding this subject entitled "Coins and Currency as Potential Fomites," which states that neither paper currency nor metal coins are considered to be fomites, that is, objects which may serve to transmit disease causing microorganisms. Therefore, this section has not been changed.

COMMENT: N.J.A.C. 8:24-5.5(d)2 Methods and facilities for washing and sanitizing: A comment was received inquiring whether the section requires that the retail food establishment operator provide a gauge in addition to the gauge cock on automatic dishwashers, in order to monitor the flow pressure of the water if desired by the health authority. Also, a comment was received questioning the ability of the health authority or operator to monitor the actual temperature of the "plate" in a dishwasher as indicated by the current wording of this section which reads "the plate temperature shall be 160 degrees Fahrenheit." The commenter indicated that the section should read "water temperature at the plate."

RESPONSE: The Department has reviewed the rules, and in response to the commenter's inquiry, has determined that the retail operator is responsible for providing only a gauge cock on the automatic dishwasher. It is the responsibility of the health authority to provide the gauge to monitor the water flow pressure.

The Department agrees with the commenter's recommendation concerning the monitoring of dishwasher final rinse temperatures. The intent of the requirement is to provide for 160 degrees Fahrenheit rinse water at the surface of the utensil, not the actual temperature that the utensil reaches. Therefore, this section has been amended to reflect this recommendation.

COMMENT: N.J.A.C. 8:24-6.7 Drains: Three comments were received which suggested that the provision requiring indirect connections for drains for enclosed equipment should not be expanded to include open equipment, such as utensil washing and food preparation sinks.

RESPONSE: The Department agrees that the conversion of all open sinks that are directly connected to the sewage system would be burdensome. The potential for contamination resulting from a backflow of sewage could be readily identified through visual observation in open sinks, therefore mitigating the potential health hazard. Further, the U.S. Food and Drug Administration, 1979 Food Service Sanitation Manual provides an exemption for open sinks. Therefore, the Department has removed the requirement for indirect connections for open sinks and has limited the requirement to enclosed equipment. Additionally, the Department has clarified the requirements for ice storage or production to include ice machines.

COMMENT: N.J.A.C. 8:24-6.8(a) Toilet facilities: Although only minor technical amendments have been proposed for this section, a comment was received during inquiring whether the current wording of this section required that hot dog wagons provide toilet facilities. Also, a comment was received recommending that toilets be prohibited from being located directly in food preparation areas. The commenter further recommended that the rules be amended to require vestibules to be installed in all restrooms.

RESPONSE: The Department has reviewed the rules and agrees that the wording of this section only exempts mobile units from which only prewrapped food or beverages are served from the requirement of providing a toilet. This specific exemption implies that other mobile food units, such as hot dog wagons, would be required to provide toilet facilities. The Department believes that the provision for toilet facilities on mobile food units is unnecessary, and is not practical in most cases. In addition, the Department believes that it is not necessary to formally exempt mobile units which serve only prepackaged foods. Therefore, to clarify this issue, this section has been modified to delete the specific reference to the exemption for mobile food units which only serve prewrapped food or beverages to provide toilet facilities.

The Department disagrees with the commenter's suggestion that a specific provision be included prohibiting toilets to be located in food preparation areas. The Department does not believe that such a provision is necessary.

In response to the commenter's recommendation that each toilet be required to be provided with a vestibule, the Department notes that this matter is already addressed under the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

COMMENT: N.J.A.C. 8:24-6.9(e) Handwashing facilities and 13.8(b) Personal health and hygiene: Although no changes were proposed for the former subsection, a comment was received recommending that bar

soap be prohibited for use at handwashing facilities and that liquid or powdered dry cleanser be required. The commenter recommended this change because of a study which had indicated that pathogenic bacteria may grow on bar soap left standing in moist conditions for long periods of time.

**RESPONSE:** The Department disagrees with this recommendation, and no changes have been made to these sections. The Department bases its position on the Food and Drug Administration's interpretation, "Bar Soaps as Fomites," which states that bar soap has not been shown to act as a fomite, an object which may spread disease carrying microorganisms, and that bar soap is acceptable for food handlers to use for handwashing.

**COMMENT:** N.J.A.C. 8:24-7.1 Other facilities and operations: Although no changes were proposed to this section, a comment was received suggesting that a separate section be added to provide specific requirements for the use of basements as food preparation areas. Also, a comment was received inquiring whether this section was being deleted from the rules. The commenter also recommended that a statement be added to this section prohibiting the placement of overhead pipes and drains above food preparation and storage areas. Further, a comment was received recommending that lights in retail food establishments be shielded against breakage in order to protect food from contamination.

**RESPONSE:** In response to the recommendation for a separate section for basement preparation areas, the Department disagrees with this suggestion. The requirements for the construction of all food preparation areas, including those in a basement, are satisfactorily addressed under the current provisions of N.J.A.C. 8:24-7.1 through 7.4.

In response to the commenter's recommendation that a specific section be added to prohibit the placement of overhead pipes and drains above food preparation and storage areas, the Department has reviewed the rules and has determined that this issue is satisfactorily addressed under N.J.A.C. 8:24-3.1, General protection of foods, and N.J.A.C. 8:24-7.1(k), Floors, walls and ceilings.

In regard to the comment concerning light shields, the Department has reviewed the rules and has determined that this subject is adequately addressed under N.J.A.C. 8:24-7.1(n).

**COMMENT:** N.J.A.C. 8:24-7.2 Lighting: A comment was received indicating that the amendments upgrading the lighting requirement for walk-in refrigerators from 10 foot candles to 20 foot candles would create an undue hardship because walk-in refrigerators are not designed to meet a 20 foot candle level of lighting.

**RESPONSE:** The Department has reviewed this provision and agrees that the 20 foot candle lighting requirement for refrigerators may be unduly restrictive, based upon the design of walk-in refrigerators. After a careful review of the entire section, the Department has decided to retain the 10 foot candle level of lighting for refrigerators, food storage areas, and dining rooms during cleaning operations. This level of lighting is in conformance with the recommendation of the U.S. Food and Drug Administration contained in the 1976 Food Service Sanitation Manual.

**COMMENT:** N.J.A.C. 8:24-7.5 Live birds and animals: A comment was received inquiring whether this section was deleted from the rules.

**RESPONSE:** This section was not deleted. Because there were no proposed changes in this section, the full text was not published with the proposed amendments.

**COMMENT:** N.J.A.C. 8:24-8.1 through 8.15 Mobile Food Establishments: A comment was received inquiring whether subchapter 8 was deleted from the rules.

**RESPONSE:** This subchapter was not deleted. Because there were no proposed changes in this section, the full text was not published with the proposed amendments.

**COMMENT:** N.J.A.C. 8:24-8.1 through 8.15 Mobile Food Establishments: Although no amendments have been proposed for this subchapter, a comment was received stating that this subchapter, which addresses mobile and temporary retail food establishments, does not require sanitization of equipment and utensils.

**RESPONSE:** The Department has reviewed the rules and agrees that there is no specific provision for equipment sanitization in this subchapter. However, all mobile retail food establishments which prepare potentially hazardous foods must provide a base of operations which conforms with the requirements of N.J.A.C. 8:24. Facilities are required for washing and sanitizing equipment at the base of operation facility in accordance with N.J.A.C. 8:24-5.5(a) through (d). Therefore, the Department believes that no additional sanitization requirements for Mobile Retail Food Establishments are necessary.

**COMMENT:** N.J.A.C. 8:24-10.1 Submission of plans: Two comments were received questioning the merits of the proposed amendments that

would require submission of plans whenever a food establishment is altered with regard to structure, layout or operation. A commenter felt that the change in wording is overly broad and vague and that a strict interpretation of this provision would require plan submission for minor alterations and could be very costly to the food service industry. A commenter suggested that either the phrase "extensively remodeled" should be defined or the provision modified to require that plans need only be submitted whenever a construction permit is required by the construction code official. Also, a commenter wanted to know whether adding a piece of equipment would trigger submitting plans to the local health authority under the "altered with regard to structure, layout or operation" provision. Finally, a commenter believed that a menu need not be submitted with the plans because they are subject to change and modification.

**RESPONSE:** This section of the rule was amended in order to address concerns raised by members of the rule revision committee concerning the phrase "extensively remodeled." The committee believed that the word remodeled reflected situations which did not warrant formal plan submission to the health authority which resulted in the amendments to this section to clarify this phrase. The Department agrees with the commenters that the amendments as proposed could result in local health authorities requesting plan submissions for minor alterations which is not the Department's intent. While it agrees that this section needs to be modified to be less restrictive, the Department does not agree with a commenter's suggestion that the triggering mechanism for plan submission to the health authority should be the construction permit issued by the construction code official. This mechanism may not provide the health authority with the flexibility to determine when plans need to be submitted and the construction permits required under the Uniform Construction Code may not be applicable to the provisions of these rules in all cases. As an example, minor electrical work may be done by a restaurant to add decorative fixtures, which would require a permit from the construction code official, but plans may not need to be submitted to the health authority. In regard to the comment questioning the need to submit a "menu" with a plan submission, the Department agrees that many circumstances could arise which would make it impractical or unnecessary to submit a menu with a plan submission. The Department's intent is to enable the health authority to determine the types of foods which will be prepared. This information is needed to determine the type and design of equipment and the facilities that need to be provided in order to comply with the provisions of the rules. A menu would aid the health authority in conducting the plan review. The Department has amended this section to clarify this point and, in the case of a restaurant, the rule states that a menu should be provided.

Based upon the comments received, the Department has revised this section, in order to better reflect the circumstances that would trigger submitting plans to the health authority. The Department recognizes that circumstances will arise that cannot be reflected in the rules and that detailed questions concerning specific issues related to the submission of plans could be handled through requests for interpretation, as provided by N.J.A.C. 8:24-9.12.

**COMMENT:** N.J.A.C. 8:24-10.3 Food manager certification: A comment was received from a local health department official requesting that this section be amended to require that managers or other supervisors of a retail food establishment attend a course in food safety and sanitation as a prerequisite for issuance of a food handler license. Also, a commenter suggested that supervisory personnel should attend a course of instruction that includes Hazard Analysis Critical Control Point (HACCP) inspection principles and that every retail food establishment with a seating capacity of more than 200 people, including institutions, catering kitchens, commissaries and community residences, be required to submit a HACCP food safety plan to the health authority.

**RESPONSE:** While amendments were not proposed to this section, the Department is providing the following response to the comments received. The rule currently recommends that supervisory personnel should be certified in food safety and sanitation but this provision is not mandatory. Mandatory Food Manager Certification (FMC) was extensively discussed and debated by the rule revision committee and the Public Health Council prior to publication of the proposed revised rules. While the Department and those involved in the review process believe that such a requirement may have merit, a number of important issues have not been resolved, such as training logistics, the cost of the training, manner of certification, and the high turnover of food managers. These issues present a formidable challenge to the implementation of a Statewide mandatory FMC program. The rule does provide a local health department with the framework to establish a locally based FMC

program and N.J.S.A. 26:1A-9 provides the authority to local boards of health to mandate, through passage of a local ordinance, requirements that are stricter than those provided in the State Sanitary Code. A number of local health jurisdictions in the State have established mandatory FMC requirements by local ordinance. The Department will continue to study this issue and will provide the Public Health Council with recommendations relative to the feasibility of Statewide mandatory FMC prior to the expiration of the rules in May 1993, pursuant to the requirements and criteria established under Executive Order 66(1978). Therefore, the Department will hold in abeyance any further action on this issue until that time.

In regard to the commenter's request that the Department include an HACCP based program in the Food Manager Certification (FMC), the Department believes that this type of course is far above the level of training provided under the FMC program. The Department also believes that the request is beyond the scope of this rule revision, particularly since the Department has yet to propose mandatory FMC training. The Department believes that HACCP is an effective tool for identifying hazardous conditions and we will continue to encourage that food managers who complete FMC training also learn HACCP-based principles through support of cooperative HACCP training courses cosponsored by the Department and Rutgers University.

COMMENT: N.J.A.C. 8:24-11.1 Definitions—"Sanitary Requirements for the Vending of Food and Beverages": The Department received a comment indicating that a number of definitions that describe terms used in subchapter 11, Sanitary Requirements for the Vending of Food and Beverages, were deleted and should be included in the definitions listed under N.J.A.C. 8:24-1.3. The commenter suggested that the definition for the terms "controlled location vending machines," "packaged," "readily accessible," and "vending machine" should have been retained.

RESPONSE: N.J.A.C. 8:24-11.1 contained a separate list of definitions under this subchapter that established the provisions for vending machines and many of the definitions contained in this section were duplicated in N.J.A.C. 8:24-1.3. The Department inadvertently deleted several terms that directly apply to vending machines and has corrected the oversight that was pointed out by the commenter by including the definitions of these terms under N.J.A.C. 8:24-1.3.

COMMENT: N.J.A.C. 8:24-11.2(b) Food protection: Two comments were received recommending that the reference to the required temperatures for frozen foods in this section be amended to be consistent with the requirements of N.J.A.C. 8:24-3.2(b).

RESPONSE: The Department agrees with the commenters that the requirements for frozen foods in this section should be amended to be consistent with the temperature requirements of frozen foods as stated in other sections of the rules, and therefore the section has been amended to be consistent with N.J.A.C. 8:24-3.2(b), as recommended by the commenters.

COMMENT: N.J.A.C. 8:24-13.2 Community Residence and Bed and Breakfast Retail Food Establishments—General provisions

A comment was received recommending that the exemption for bed and breakfast establishments which serve only pre-packaged, non-potentially hazardous foods should be deleted because the establishment may be subject to other problems of public health significance, such as rodent activity, insect activity and sewage back ups.

RESPONSE: The Department disagrees with this recommendation. Considering the types of foods served (prepackaged and non-potentially hazardous) and the small numbers of patrons which are served at this breakfast meal, the Department believes that the exemption of these types of facilities from the rules will have no significant impact on the health of the public. If situations occur, such as sewage back-ups or other conditions that pose a public health hazard, the local health authority has the discretion under the provisions of Title 26, such as N.J.S.A. 26:1A-28, to declare the operation a public health nuisance. Also, a local board of health has the discretion, under N.J.S.A. 26:1A-9, to adopt an ordinance which is more restrictive than these rules.

COMMENT: N.J.A.C. 8:24-13.4(c)3 Community Residence and Bed and Breakfast Retail Food Establishments—Food protection and temperatures:

A comment was received stating that the time/temperature requirements for the cooling of cooked potentially hazardous foods referenced in this section should be changed to also include the two hour cool down period in order to be consistent with the requirements of N.J.A.C. 8:24-3.2(c).

RESPONSE: The Department agrees that the time/temperature requirement of this section should be consistent with the requirements of

N.J.A.C. 8:24-3.2(c) as the commenter suggested. Therefore, this section has been amended.

COMMENT: N.J.A.C. 8:24-13.9(b) Community Residence and Bed and Breakfast Retail Food Establishments—Food equipment and utensils:

Four comments were received recommending that this subchapter be required to include provisions for the sanitization of food service equipment and utensils. One commenter also suggested that reference be made to N.J.A.C. 8:24-5.5(c), to specify the Department's recognized methods for manual equipment sanitization.

RESPONSE: The Department agrees that both bed and breakfast establishments and community residences should be required to sanitize food service equipment and utensils. This requirement has become increasingly critical due to the recent increase in outbreaks of *Salmonella enteritidis* associated with shell eggs. Sanitization is required as an added measure of protection to kill these pathogens on utensils and equipment. The Department agrees also with the commenters that the methods for both manual and mechanical equipment sanitizing must be specified. N.J.A.C. 8:24-5.5(c) specifies the Department's approved methods for equipment sanitization practices. Therefore, the Department has proposed an amendment elsewhere in this issue of the New Jersey Register adding a requirement for equipment sanitization, when necessary, and will reference the appropriate section for manual sanitization requirements, as suggested by the commenter. In addition, while reviewing the rules, it was determined that there were no specific provisions for the sanitization of equipment in mechanical dishwashers. Therefore, the Department has proposed a new N.J.A.C. 8:24-13.9(d), which will specify the requirements for mechanical dishwasher sanitization applicable to Community Residences and Bed and Breakfast retail food establishments. In forming this determination, the Department has consulted with representatives of the bed and breakfast industry.

COMMENT: N.J.A.C. 8:24-13.9(b)3 Community Residence and Bed and Breakfast Retail Food Establishments—Food equipment and Utensils:

A comment was received recommending that this section be amended to include the word "utensil," in order to be consistent with N.J.A.C. 8:24-5.5(b)iii, to read as follows:

"Equipment and utensils shall be rinsed of detergent and other residues with clean water."

RESPONSE: The Department has reviewed the rules, agrees with the commenter's recommendation, and has amended this section as suggested.

COMMENT: N.J.A.C. 8:24-13.9(c) Community Residence and Bed and Breakfast Retail Food Establishments—Food equipment and utensils:

Several comments were received stating that the proposed requirement for a one compartment sink in bed and breakfast and community residences is not sufficient for the washing and sanitization of equipment and utensils. Two commenters suggested that a minimum of a two compartment sink with a portable tub or basin for sanitizing should be required in these establishments. One commenter recommended that, as a minimum, a three compartment sink should be required in these establishments for the washing, rinsing and sanitization of food service equipment and utensils.

RESPONSE: The Department agrees that in order to properly wash and sanitize equipment and utensils, it is necessary that both bed and breakfast and community residences be provided with certain basic washing equipment. However, the Department also recognizes that there are acceptable methods for manually sanitizing equipment without the use of a three compartment sink and that requiring the installation of a three compartment sink in these "home-style" facilities may create an undue hardship to the industry. Therefore, the Department has proposed amendments to this section elsewhere in this issue of the New Jersey Register, adding a requirement for sanitization equipment. The Department believes it is appropriate to require each establishment which manually washes and sanitizes equipment to provide a minimum of a two compartment sink and portable basin as suggested by one of the commenters.

COMMENT: N.J.A.C. 8:24-13.10 Community Residences and Bed and Breakfast Food Establishments—Water and sewage:

A comment was received stating that the reference for the Standards for Individual Subsurface Sewage Disposal Systems was incorrect and that the proper reference should be N.J.A.C. 7:9A.

RESPONSE: The Department has consulted with representatives of the New Jersey Department of Environmental Protection and has veri-

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fied that the citation provided by the commenter is correct. Therefore, the proper citation will be referenced as recommended by the commenter.

COMMENT: N.J.A.C. 8:24-13.11 Community Residences and Bed and Breakfast Food Establishments—Toilet facilities:

A comment was received suggesting that a specific section be added to this subchapter requiring handwashing facilities to be in close proximity to toilet facilities as required for other retail food establishments and referenced under N.J.A.C. 8:24-6.9.

RESPONSE: The Department agrees with the commenter's suggestion and will be adding a separate section, in a proposal published elsewhere in this issue of the New Jersey Register, which will specify the location requirements of handwashing facilities in relation to toilet for community residences and bed and breakfast establishments in order to be consistent with the requirements established for other retail food establishments.

Handwashing facilities need to be located in or adjacent to the toilet facilities in order to facilitate proper handwashing and this provision was inadvertently deleted during the initial drafting of this section.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

### 8:24-1.3 Definitions

For the purpose of this chapter, the following words, phrases, names and terms shall have the following meanings, unless the context clearly indicates otherwise:

...  
"Bed and breakfast" means any private residence which has been adapted or converted to offer a homestyle place of lodging that provides 10 or fewer separate dwelling units \*as defined by the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.,\* for transients and individual sleeping accommodations for 25 or fewer persons, is occupied by the owner of the facility as his or her place of residence during any time that the facility is used for the lodging of guests, does not allow any guest to remain for more than 30 successive days or more than 30 days of any period of 60 successive days, does not offer food to the general public, and in which the only meal served to guests is breakfast.

"Bulk food" means any unpackaged or unwrapped food in aggregate containers from which quantities desired by the customer are withdrawn, provided that fresh fruits and vegetables, nuts in the shell, salad bars and potentially hazardous foods are not included in this definition.

...  
\*"Commissary" means a catering establishment, restaurant or any other approved facility in which food, containers or supplies are kept, handled, prepared, packaged, or stored for use in vending machines. The term shall not apply to an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.\*

...  
"Community residence" means any community residential facility regulated by N.J.A.C. 10:44A, Standards for Licensed Community Residences for the Developmentally Disabled and N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979; provided that, shelter and food for 16 or fewer residents exclusive of the owner and his or her family and the operator and employees are provided in a family style setting; and, provided further, that food prepared or served is not offered to the public. Community residences include, but are not limited to, licensed or regulated group homes, halfway houses, rooming houses, boarding houses, and similar residences. Licensed or regulated foster homes, skill development homes, family care homes, respite care homes and similar private residences are not considered community residences under this definition.

...  
\*"Condiment" means any food such as salt, pepper, mustard and ketchup that is used to enhance the flavor of other food.

"Controlled location vending machine (limited service vending machine)" means a vending machine which:

1. Dispenses only nonpotentially hazardous food;
2. Is of such design that it can be filled and maintained in a sanitary manner by untrained persons at the location; and

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3. Is intended for and used at locations in which protection is assured against environmental contamination.\*

...  
"Mobile retail food establishments" means any movable restaurant, truck, van, trailer, cart, bicycle, watercraft, or other movable unit including hand carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations.

...  
\*"Packaged" means bottled, canned, cartoned or securely wrapped.\*

...  
"Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, raw seed sprouts, heat treated vegetables and vegetable products, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or the slower growth of *C. botulinum*. The term does not include foods which have a pH level of 4.6 or below or a water activity ( $a_w$ ) value of 0.85 or less.

...  
\*"Readily accessible" means exposed or capable of being exposed for cleaning and inspection without the use of tools.\*

...  
"Retail food establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; roadside stand; industrial feeding establishment; private, public or nonprofit organization, institution, or group preparing, storing or serving food; catering kitchen; commissary; box lunch establishment; retail bakery; meat market; delicatessen; grocery store; public food market, or any similar place in which food or drink is prepared for retail sale or service on the premises or elsewhere, and any other retail eating or drinking establishment or operation where food is served, handled or provided for the public with or without charge; except that agricultural markets, covered dish suppers or similar type of infrequent church or nonprofit type institution meal services shall meet the special provisions of N.J.A.C. 8:24-8; provided that any food and beverage vending machine shall meet the requirements of N.J.A.C. 8:24-11; provided further, that bed and breakfast and community residences, as defined, meet the provisions of N.J.A.C. 8:24-13.

...  
"Safe temperatures", as applied to potentially hazardous food, means temperatures of 45 degrees Fahrenheit or below, and 140 degrees Fahrenheit or above unless otherwise specified\*, and for frozen foods means such temperatures at which the foods remain completely frozen]\*.

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

\*"Vending machine" means any self-service device which, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food, either in bulk or in packages, without the necessity of replenishing the device between each vending operation. It shall also include self-service dispensers equipped for coin, paper currency, token, card or key operations and optional manual operation. Unless otherwise stated, vending machine includes controlled location vending machines.

"Vending machine operator" means any person, who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.\*

8:24-2.1 Source; protection; wholesomeness; misbranding

(a) Food in the retail food establishment shall be from a source which is in compliance with applicable State and local laws and regulations. Food from such sources shall have been protected from contamination and spoilage during subsequent handling, packaging, and storage, and while in transit.

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(b) Home prepared foods are prohibited for use in any retail food establishment. Private residences are prohibited from use as retail food establishments. A specially designated area of a residence may be used if the area meets all the requirements of this chapter, is physically separated from living areas, and is approved by the health authority. Bed and breakfast and community residence food operations as defined by N.J.A.C. 8:24-1.3 shall meet the requirements of N.J.A.C. 8:24-13.

(c)-(g) (No change.)

2. All such products must be served at a temperature of 45 degrees Fahrenheit or below.

### 8:24-2.2 Frozen desserts

(a) All frozen desserts such as ice cream, soft frozen desserts, ice milk, sherbets, ices and mix shall meet applicable State and local laws and regulations, including N.J.A.C. 8:21-7, Frozen Desserts.

(b) The manufacture of frozen desserts shall be conducted only by establishments licensed by the Department pursuant to N.J.A.C. 8:21-7, Frozen Desserts.

### 8:24-2.3 Shellfish source

(a) (No change.)

(b) Shellfish tagging and labeling shall be as follows:

1.-2. (No change.)

3. Shellstock and shucked shellfish, while stored, shall be kept in the container in which they were received until they are empty. The stub or the tag shall not be removed from any container until the container is empty.

4. (No change.)

### 8:24-2.5 Eggs

(a) Only clean whole eggs, with shell intact and without cracks or excessive checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

(b) Whole shell eggs shall be broken by a method that minimizes the comingling of the shell, shell fragments or membrane with the liquid contents of the eggs.

(c) Shell eggs shall only be cracked and pooled when used for immediate cooking.

### 8:24-3.1 General protection of foods

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

(d) Metal or plastic stem-type indicating thermometers, accurate to +3 degrees Fahrenheit, shall be provided and used to assure the attainment and maintenance of proper internal cooking, cooling, reheating, hot holding, and cold holding temperatures of all potentially hazardous foods.

### 8:24-3.2 Food temperatures

(a) All perishable food, such as raw fruits and vegetables, live hardshell clams and oysters, shall be stored at such temperatures as will protect against spoilage.

(b) All potentially hazardous food, including shucked shellfish, unshucked mussels and soft shell clams, except when being prepared, displayed and served as provided in (d) below, shall be kept at 45 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above. Frozen foods shall be maintained frozen until removed from storage for preparation and use except as noted in (f) below.

(c) Potentially hazardous foods which will be refrigerated after preparation, shall be **\*[cooled from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours and]\*** rapidly cooled, without interruption, to below 45 degrees Fahrenheit utilizing such methods as shallow pans having depths no greater than four inches, agitation, quick chilling refrigeration equipment or water circulation external to the food container so that the cooling period shall not exceed four hours. **\*In addition to the above requirements, the method utilized shall be capable of cooling the foods from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours.\*** **\*[Containers]\*** **\*While being cooled in conventional refrigeration equipment, containers\*** of cooling potentially hazardous food **\*[shall]\*** **\*should\*** not be **\*[tightly]\*** covered or stacked. **\*Measures shall be taken to protect these uncovered foods from contamination while they are cooling.\*** The refrigeration of mayonnaise and salad dress-

ings containing eggs and egg products at temperatures of 45 degrees Fahrenheit or below may be waived if:

1.-4. (No change.)

(d) All potentially hazardous food, when placed on display, shall be kept hot or cold as follows:

1.-2. (No change.)

(e) Following preparation, hollandaise and other sauces which, pending service, must be held in the temperature range of 45 degrees Fahrenheit to 140 degrees Fahrenheit, may be exempt from the temperature requirements of this subsection, if they are prepared from fresh ingredients and are discarded as waste within three hours after preparation. Where such sauces require eggs as an ingredient, only pasteurized frozen or dried eggs shall be used.

(f) **\*[Foods intended for sale in a frozen state should be displayed]\*** **\*Frozen foods shall be kept frozen and should be stored\*** at an air temperature of 0 degrees Fahrenheit or below; provided, that during the defrost cycles and brief periods of loading and unloading, the air temperature may rise to levels which do not cause product thawing. Frozen foods on display shall be stored below or behind case fill lines according to the cabinet manufacturer's specifications.

(g) Frozen food shall be kept **\*[at such temperatures as to remain]\*** frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed:

1.-5. (No change.)

### 8:24-3.3 Food preparation

(a) During the preparation of all raw meats, poultry, unpasteurized liquid eggs and fish, other ready to eat foods shall not be permitted to touch these uncooked products or any equipment surfaces which such raw products have touched prior to sanitization. After handling such raw products, hands shall be carefully washed and all equipment and surfaces that the raw meats, poultry, unpasteurized liquid eggs, and fish touched shall be washed and sanitized. Special emphasis shall be given to situations where cross contamination may occur.

(b) Convenient and suitable equipment and utensils, slicers, grinders, saws, cleavers, can openers, forks, knives, tongs, spoons, spatulas, scoops and the like shall be provided to minimize direct manual contact of food, particularly potentially hazardous food, at all points where food is prepared.

(c) (No change.)

(d) Potentially hazardous foods requiring cooking or smoking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit except that:

1. Poultry, poultry stuffings, stuffed meats, and stuffing containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the initial cooking process, except that the stuffing of raw poultry **\*[and poultry products]\*** **\*such as chicken, capon, duck or turkey\*** having a weight greater than two pounds is prohibited; and

2. Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit or, if cooked in a microwave oven, to at least 170 degrees Fahrenheit; and

3. Rare whole roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, or, if cooked in a microwave oven, to at least 145 degrees Fahrenheit. Rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate consumer.

(e) Potentially hazardous foods that have been cooked and then refrigerated or frozen shall be reheated rapidly **\*within two hours\*** to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility; provided, that rare whole roast beef may be reheated to at least 130 degrees Fahrenheit. Steam tables, bainmaries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(f) (No change.)

(g) Custards, cream fillings, and similar products which are prepared by hot or cold processes, and which are used as puddings or pastry fillings, shall be kept at safe temperatures at or above 140 degrees Fahrenheit or at or below 45 degrees Fahrenheit except

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during necessary periods of preparation and service, and shall meet the following requirements as applicable:

1. (No change.)

2. Such fillings and puddings shall be cooled to 45 degrees Fahrenheit or below as required by N.J.A.C. 8:24-3.2(c) immediately after cooking or preparation, and held thereat until combined into pastries, or served.

3. All completed custard filled and cream filled or similar type pastries shall, unless served immediately following filling, be cooled to 45 degrees Fahrenheit or below as required by N.J.A.C. 8:24-3.2(c) promptly after preparation, and held at that temperature until served. Synthetic filled products may be excluded from this requirement if:

i.-iv. (No change.)

### 8:24-3.4 Food storage

(a) Containers of food shall be stored **\*a minimum of six inches above the floor\*** in such a manner as to be protected from splash and other contamination\*[,] **\*except that:\***

1. **Cased food packaged in cans, glass or other waterproof containers including metal pressurized beverage containers need not be elevated above the floor, if the food containers are not exposed to floor moisture; and**

2. **The containers are stored on dollies, racks or pallets, skids that are easily movable.\***

(b) **\*[There shall be a white inspection strip at the floor along each wall in each room where food is stored in bulk for five or more days. In addition,] \*Large quantities of\* food\*[s] \*containers stored\* in bulk \*[storage]\* for five or more days\*[, or which are not packaged in vermin proof containers sealed in shipping cartons, or are stored in rooms which are frequently washed or otherwise subjected to water, or are stored on racks, skids, or open ended pallets which are not easily moved.]\* shall be:**

1. **Elevated \*[at least four to six inches]\* above the floor \*on skids, pallets or similar equipment\*;**

2. **Stored at least 12 inches from any wall \*with a six inch wide white inspection strip at the floor along each wall in each room where food is stored in bulk\*;** and

3. **Divided into manageable cells with aisles \*if necessary to facilitate inspection\*.**

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

### 8:24-3.5 Food display and service

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

(c) Where unwrapped bulk foods are provided to consumers for self-service sale they shall be in cleanable, covered containers which have a depth of no more than 18 inches and have access points located at least 30 inches above the floor. By definition, fresh fruits and vegetables, nuts in the shell, salad bars and potentially hazardous foods are excluded.

(d) Tongs, forks, spoons, picks, spatulas, scoops, and other suitable utensils shall be provided and shall be used by employees to reduce manual contact with food to a minimum. For self-service by customers, similar implements shall be provided in a manner as to encourage their use. Each container of potentially hazardous food shall be provided with its own dispensing utensil and displayed in such a manner as to minimize cross contamination between raw and ready-to-eat products.

(e)-(g) (No change.)

### 8:24-3.6 Food transportation

(a) The requirements for storage, display, and general protection against contamination as contained in this section, shall apply in the transporting of all food from a retail food establishment to another location for service, catering or other distribution. All potentially hazardous food shall be kept at 45 degrees Fahrenheit or below, 140 degrees Fahrenheit or above, and frozen foods shall be kept at such temperature as to remain frozen during transportation: Provided that cold food may be allowed to reach 55 degrees Fahrenheit and hot food may be allowed to reach 130 degrees Fahrenheit if they are to be consumed within one-half hour of plating.

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

### 8:24-3.7 Poisonous and toxic materials

(a)-(f) (No change.)

(g) No person shall apply insecticides or rodenticides in or around any retail food establishment unless they are certified by the New Jersey Department of Environmental Protection and do so in full compliance with N.J.A.C. 7:30-1.

### 8:24-4.1 Health and disease controls

(a) Persons while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores, acute respiratory infection, nausea, vomiting, or diarrhea which could cause food borne diseases such as staphylococcal intoxication, salmonellosis, shigellosis or hepatitis shall not work in any area of a food establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals and no person known or suspected of being affected with any such disease or condition shall be employed in any such area or capacity.

(b) (No change.)

(c) The Department or health authority shall use the latest edition of the American Public Health Association's text, "Control of Communicable Diseases in Man," as guidelines for the characteristics and control of food borne diseases, unless other rules, guidelines or interpretations are issued by the State Department of Health.

### 8:24-4.3 Handwashing

(a) The hands of all employees shall be kept clean while engaged in handling food and food contact surfaces. Employees shall thoroughly wash their hands and exposed arms with soap and warm water before starting work, and shall wash hands during work hours as often as is necessary to keep them clean, and after smoking, eating, drinking, visiting the toilet room, or handling raw food of animal origin. Approved separate handwashing facilities shall be provided at convenient locations as necessary to maintain clean hands and arms during working hours. Utensil washing sinks or vats and food preparation sinks are not acceptable as handwashing facilities for personnel.

(b) (No change.)

### 8:24-5.5 Methods and facilities for washing and sanitizing

(a) (No change.)

(b) Manual washing and sanitizing:

1. All establishments engaging in manual washing, rinsing and sanitizing of utensils and equipment, shall provide and use a sink with not fewer than three compartments. Sink compartments shall be large enough to permit the complete immersion of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods; provided, that establishments where the only utensils to be washed are limited to spatulas, tongs, and similar devices, and when the only equipment to be cleaned is stationary and does not require disassembly for proper cleaning, a two compartment sink may be approved by the health authority for this purpose. At least a two compartment sink shall be provided and used for washing kitchenware and equipment which does not require sanitization. Single compartment sinks, such as cooks' and bakers' sinks, may be used for the prerinsing of utensils. Hot and cold running water shall be supplied for each compartment. Dish baskets, where used, shall be of such design to permit complete immersion of equipment and utensils.

2. (No change.)

(c) Manual sanitization shall be accomplished by one of the following methods:

1.-3. (No change.)

4. Immersion in a clean solution containing any other chemical sanitizing agent listed in N.J.A.C. 8:24-12.1(b) that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 degrees Fahrenheit for one minute; or

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5. Treatment with steam free from materials or additives other than those specified in N.J.A.C. 8:24-12.1(a) in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under (b)-(d) of this section in the case of equipment too large to sanitize by immersion.

6. Chemical sanitizers used shall meet the requirements of N.J.A.C. 8:24-12.1(b) and be used in accordance with manufacturer's directions. A test kit or other device that accurately measures the parts per million concentration of the solution and a thermometer accurate to +3 degrees Fahrenheit to check water temperature shall be provided and used.

(d) Mechanical washing and sanitizing:

1. (No change.)

2. The flow pressure shall not be less than 15 or more than 25 pounds per square inch on the water line at the machine, and not less than 10 pounds per square inch at the rinse nozzles. A suitable gauge cock shall be provided immediately upstream from the final rinse valves to permit checking the flow pressure of the final rinse water on all machines.

3. Machines using hot water for sanitizing shall maintain clean wash and rinse water at not less than the following temperatures, unless otherwise approved by the Department or health authority:

i.-iv. (No change.)

v. Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

(1) Wash temperature: 150° F;

(2) (No change.)

vi. To ensure proper sanitization in no instance shall the \*[plate]\* \*water\* temperature \*at the plate\* be less than 160 degrees Fahrenheit after the cycle is complete.

4.-6. (No change.)

7. Machines (single or multi-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used; provided that:

i.-v. (No change.)

vi. Chemical sanitizers used shall meet the requirements of N.J.A.C. 8:24-12.1(b).

vii. (No change.)

viii. The conversion of hot water sanitizing dishwashing machines to chemical sanitizing machines shall meet the requirements of this section and shall be approved by the Department or health authority.

8.-9. (No change.)

(e) (No change.)

8:24-5.7 Single service articles

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

(c) When offered for self-service, single-service knives, forks and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

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

8:24-6.3 Ice

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

(e) If ice is used, containers and utensils shall be provided for storing and serving it in a sanitary manner. Ice buckets, other containers, and scoops, unless they are of the single service type, shall be of a smooth, impervious material, and designed to facilitate cleaning. Ice dispensing utensils shall be stored on a clean surface which is self draining or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination.

(f)-(g) (No change.)

8:24-6.4 Steam

Steam used in contact with food or food-contact services shall be free from any materials or additives other than those specified in N.J.A.C. 8:24-12.1(a).

8:24-6.5 Sewage

(a) All sewage shall be disposed of by means of:

1. A public sewerage system; or

2. A disposal system which is constructed and operated in conformance with \*[N.J.A.C. 7:9-2]\* \*N.J.A.C. 7:9A,\* Standards for \*[the Construction of]\* Individual Subsurface Sewage Disposal Systems, the New Jersey Water Pollution Control Act regulations, N.J.A.C. 7:14\*,\* and local laws, ordinances, and regulations.

8:24-6.6 Size, installation and maintenance of plumbing

(a) All plumbing shall be sized, installed and maintained in accordance with N.J.A.C. 5:23-1, New Jersey Uniform Construction Code, and shall:

1.-3. (No change.)

4. Not constitute a source of contamination of food, equipment or utensils or create an unsanitary condition or nuisance; and

5. Be installed in such a manner as to preclude the possibility of backflow and backsiphonage.

(b) Nonpotable water shall not be connected to food related equipment or have outlets in the food preparation areas.

8:24-6.7 Drains

(a) Refrigerators, steam kettles, potato peelers, ice storage bins \*[food preparation sinks, equipment and utensil wash sinks]\* \*or ice machines\* and similar types of enclosed equipment in which food, portable equipment or utensils are placed, shall not be directly connected to the drainage system.

(b) (No change.)

(c) Floor drains, when provided within a walk-in refrigerator, shall be so installed as to preclude the backflow of sewage into the refrigerator.

(d) Drain lines from equipment shall not discharge waste water in such a manner as will permit the flooding of floors or the flowing of water across working or walking areas, or into difficult to clean areas, or otherwise create a nuisance. All new drains shall be installed in accordance with applicable sections of N.J.A.C. 5:23-1, New Jersey Uniform Construction Code.

8:24-6.8 Toilet facilities

(a) Each retail food establishment shall be provided with adequate, conveniently located toilet facilities accessible to the employees at all times\*[\*]; provided, that mobile units from which only prewrapped food or beverages are served are exempt]\*. All new establishments shall provide toilets for the public as per the requirements of N.J.A.C. 5:23-1, New Jersey Uniform Construction Code.

(b) Toilet facilities shall be installed in accordance with N.J.A.C. 5:23-1, New Jersey Uniform Construction Code. When a common toilet is used for employees and patrons, access shall not be through food preparation, food storage and utensils and equipment washing areas.

(c)-(g) (No change.)

8:24-6.9 Handwashing facilities

(a) Handwashing facilities shall be adequate in size and number and shall be so located and maintained as to permit convenient and expeditious use by all employees.

(b) (No change.)

(c) Handwashing facilities shall be in accordance with N.J.A.C. 5:23-1, New Jersey Uniform Construction Code.

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

(f) All components of the handwashing facilities shall be kept clean and in good repair.

(g) Handwashing facilities shall be used only for handwashing purposes.

8:24-6.10 Garbage and rubbish disposal facilities

(a) (No change.)

(b) All containers while being stored shall be provided with tight-fitting lids or covers and shall, unless kept in a special vermin proofed room or enclosure or in a waste refrigerator, be kept covered. Containers used in food preparation and utensil washing areas need not be covered; provided they are removed to the garbage storage area upon being filled or otherwise emptied at least daily.

(c)-(k) (No change.)

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### 8:24-7.2 Lighting

(a) (No change.)

(b) Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor\*, at]\* \*:

1. At\* least 20 foot candles of light in utensil and equipment storage areas and in lavatory and toilet areas\*[.] \* \*; and

2. At least 10 foot candles of light\* in dry food storage areas, in walk-in refrigerators, in lavatory and toilet areas, and in all other areas. This shall also include dining areas during cleaning operations.

### 8:24-7.3 Ventilation

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

(c) On all new installations or in extensively remodeled establishments, ventilating systems, including hood ventilators, shall be designed, maintained and operated in accordance with N.J.A.C. 5:23-1, New Jersey Uniform Construction Code and shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces.

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

### 8:24-7.4 Housekeeping

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

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

### 8:24-9.7 Penalties

Any person who shall violate any provision of this Chapter or who shall refuse to comply with a lawful order or direction of the Department or health authority, shall be liable to penalties as provided by N.J.S.A. 26:1A-10 or an injunctive action as provided by law, or both.

### 8:24-9.12 Interpretations

For the purpose of uniform enforcement, the New Jersey Department of Health, at its discretion, will issue statements regarding the interpretation of portions of this chapter. The interpretations shall be regarded by local health authorities as statements of Statewide policy regarding the interpretation of this chapter.

## SUBCHAPTER 10. REVIEW OF PLANS, MANAGER TRAINING AND CERTIFICATION

### 8:24-10.1 Submission of plans

\*[Whenever a retail food establishment is constructed or altered with regard to structure, layout or operations, and whenever a structure is converted to use as a retail food establishment, plans and specifications pertaining to the health and sanitary aspects of the operation, for example, proposed equipment layout, equipment design and installation, construction materials of food related work areas, description of operation, and menu shall be submitted to the health authority for review and approval before construction, alteration or conversion is begun. The health authority shall review these plans and respond accordingly within 30 days of the date of submission. No retail food establishment shall be constructed, altered, or converted except in accordance with plans and specifications previously submitted to and approved by the appropriate health and construction authorities.]\*

\*Whenever a retail food establishment is constructed or renovated, and whenever a structure is converted to use as a retail food establishment or alterations are made that will significantly change the nature of the operation, plans and specifications pertaining to the health and sanitary aspects of the operation, such as proposed equipment layout, equipment design and installation, construction materials of food related work areas, type of operation and foods to be prepared or sold, shall be submitted to the health authority for review and approval before construction, renovations or conversion is begun. The health authority shall review these plans and respond accordingly within 30 days of the date of submission. No retail food establishment shall be constructed, renovated, or converted except in accordance with plans and specifications previously submitted to and approved by the appropriate health and construction authorities.\*

8:24-11.1 (No change in text.)

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### 8:24-11.2 Food protection

(a) (No change.)

(b) The temperature of potentially hazardous foods shall be 45 degrees Fahrenheit or below 140 degrees Fahrenheit or above at all times, except as otherwise provided in this chapter. Frozen foods shall be \*[held at]\* \*kept frozen and should be stored at an air temperature of\* 0 degrees Fahrenheit \*or below\* \*[at all times except during transfer and loading of product or during defrost cycles the food may reach a temperature of 10 degrees Fahrenheit]\* \*provided, that during the defrost cycles and brief periods of loading and unloading, the air temperature may rise to levels which do not cause product thawing\*.

Recodify 8:24-11.4 through 11.6 as 11.3 through 11.5 (No change from proposal.)

### 8:24-11.6 Exterior construction and maintenance

(a)-(f) (No change.)

(g) Counter type machines shall be:

1. (No change.)

2. Mounted on four-inch legs or the equivalent; or

3. (No change.)

(h) All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage their unauthorized or unintentional disconnection.

Recodify 8:24-11.8 through 11.14 as 11.7 through 11.13 (No change in text.)

## SUBCHAPTER 12. ADDITIONAL REQUIREMENTS

### 8:24-12.1 Boiler water additives and chemical sanitizing solutions

(a) Boiler water additives and chemical sanitizing solutions used in a retail food establishment shall be used in accordance with the provisions set forth in the Code of Federal Regulations, Title 21, 173.310 and 178.1010.

(b) Sanitizing agents used in a retail food establishment shall be labeled and used in accordance with the labeling requirements of the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. 135 et seq., and N.J.A.C. 7:30-1.

### 8:24-12.2 Choking prevention posters

Choking prevention posters shall be conspicuously displayed in restaurants as defined and required by N.J.S.A. 26:3E-1.

### 8:24-12.3 Smoking in restaurants and food stores

All restaurants and food stores as defined by N.J.S.A. 26:3D-22 et seq., and N.J.S.A. 26:3E et seq., shall comply with regulations governing smoking and non-smoking areas as required by those Acts.

## SUBCHAPTER 13. COMMUNITY RESIDENCE AND BED AND BREAKFAST RETAIL FOOD ESTABLISHMENTS

### 8:24-13.1 Scope; purpose

Due to the nature, location and variety of conditions surrounding the operation of community residences and bed and breakfast establishments, it is frequently not possible to provide certain physical facilities required of other retail food establishments. In order to assure adequate protection of food served by community residences and bed and breakfast establishments which are unable to fully meet the requirements of this Chapter, it may be necessary to restrict the types of food or the methods by which such food is served, to modify some requirements for procedures and facilities, and to impose additional requirements.

### 8:24-13.2 General provisions

When, in the opinion of the Department or health authority, no imminent hazard to the public health will result, community residences and bed and breakfast establishments which do not fully meet the requirements of N.J.A.C. 8:24-2 through N.J.A.C. 8:24-7 may be permitted to operate when food preparation and service are restricted and alternatives to full compliance are provided for by

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the additional or modified requirements, as set forth in this subchapter. Bed and breakfast establishments serving only commercially prepared non-potentially hazardous foods are excluded from the requirements of N.J.A.C. 8:24. In addition, other private residences regulated under N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979, such as licensed or regulated foster homes, skill development homes, family care homes, respite care homes and similar private residences, are also excluded from the requirements of N.J.A.C. 8:24. However, residential health care facilities shall fully meet the requirements of N.J.A.C. 8:24.

### 8:24-13.3 Food supplies

(a) Food used and served in all establishments shall be from sources which comply with applicable laws and regulations relating to food. Such food shall be free from spoilage and adulteration and be wholesome and safe for human consumption. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment (home canned foods) is prohibited.

(b) Milk and fluid milk products shall be pasteurized and from approved sources, except that reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking.

### 8:24-13.4 Food protection and temperatures

(a) All food, while being stored, prepared, served or transported shall be protected against contamination.

(b) All perishable food shall be stored at temperatures which will protect against spoilage.

(c) All potentially hazardous food, including any foods consisting of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, raw seed sprouts, heat treated vegetable products or other ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of *C. botulinum*, shall be maintained at the following minimal internal temperatures:

1. All potentially hazardous foods shall be kept at 45 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above;

2. \*[All frozen]\* \*Frozen\* food\*[s]\* shall be kept frozen \*[at such temperatures as to remain frozen]\* \*, except when being thawed for preparation or use\*.

3. \*[Potentially hazardous foods which will be refrigerated after preparation shall be cooled to 45 degrees Fahrenheit or below within four hours using such methods as shallow pans (four inches or less in depth), agitation or other quick chilling methods. Stacking of containers and tight fitting covers is prohibited; ]\*

**\*Potentially hazardous foods which will be refrigerated after preparation shall be rapidly cooled, without interruption, to below 45 degrees Fahrenheit within four hours using such methods as shallow pans (four inches or less in depth), agitation or other quick chilling methods. In addition to the above requirements, the method utilized shall be capable of cooling the foods from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours. While being cooled in conventional refrigeration equipment, containers of cooling potentially hazardous food should not be tightly covered or stacked. Measures shall be taken to protect these uncovered foods from contamination while they are cooling.\***

4. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of:

i. 165 degrees Fahrenheit for all poultry, poultry stuffings, stuffed meats, and stuffings containing meat;

ii. 150 degrees Fahrenheit for all pork and any food containing pork, or if cooked in a microwave to 170 degrees Fahrenheit;

iii. 130 degrees Fahrenheit for rare whole roast beef, or if cooked in a microwave to 145 degrees Fahrenheit; and

iv. 130 degrees Fahrenheit for rare beef steak unless otherwise ordered by the immediate consumer; and

5. Potentially hazardous foods that have been cooked and then refrigerated, shall be rapidly reheated to an internal temperature of 165 degrees Fahrenheit or higher.

(d) Meat, poultry, fish, potato, egg, and similar salads shall be prepared from prechilled products with a minimum of manual contact, using equipment which has been cleaned before use.

(e) Conveniently located refrigeration equipment, such as refrigerators and freezers and hot food equipment, such as stoves and ovens shall be provided to assure the maintenance of all food at required temperatures.

(f) Stem-type indicating thermometers shall be provided and used to assure attainment and maintenance of proper internal temperatures of potentially hazardous food during cooking, cooling, hot holding, cold holding, and reheating.

### 8:24-13.5 Preparation of food

(a) During preparation, ready-to-eat foods shall not be permitted to touch raw foods of animal origin, such as meat, poultry, liquid unpasteurized eggs, fish and similar products, and the equipment and surfaces which such raw products have touched prior to being thoroughly cleaned.

(b) Suitable equipment and utensils shall be provided to minimize direct manual contact of food.

(c) All raw fruits and vegetables shall be thoroughly washed before use.

(d) The preparation of potentially hazardous foods in bed and breakfast establishments shall be limited to foods which prior to service require minimal preparation and handling.

(e) All potentially hazardous food shall be prepared immediately before serving. The advance preparation of potentially hazardous food is prohibited.

### 8:24-13.6 Food storage

Containers of food shall be stored above the floor and in such a manner as to be protected from contamination.

### 8:24-13.7 Poisonous materials

(a) Only those poisonous materials necessary to maintain the establishment in a sanitary condition shall be present in any area related to the food operation.

(b) All containers of poisonous materials shall be clearly marked or labeled as to contents.

(c) All poisonous materials shall be stored and used in such a manner as to prevent the contamination of food and food surfaces.

### 8:24-13.8 Personal health and hygiene

(a) Persons while affected with any disease in a communicable form, or while a carrier of such disease or while affected with boils, infected wounds, sores, acute respiratory infection, nausea, vomiting, or diarrhea which could cause foodborne diseases, shall not work in any area of the establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms.

(b) The hands of all foodworkers shall be washed to keep them clean and in such a manner that will not contaminate food and equipment. Hands shall be thoroughly washed with soap and warm water before starting work, frequently during the handling of food and equipment, after handling raw foods of animal origin, smoking, eating, drinking and visiting the toilet room. An adequate supply of hand cleansing soap, and sanitary towels or other approved hand drying device shall be provided.

(c) All persons engaged in handling food and equipment shall wear clean outer garments.

### 8:24-13.9 Food equipment and utensils

(a) Equipment and utensils shall be constructed of safe materials and shall be easily cleanable and durable.

(b) After each usage, all tableware, kitchenware and food contact surfaces of equipment shall be thoroughly cleaned to sight and touch by manual or machine washing to include the following sequence of steps:

1. Equipment and utensils shall be preflushed or prescraped to remove gross food particles;

2. Equipment and utensils shall be thoroughly washed with a detergent solution and clean warm water; and

3. Equipment **\*and utensils\*** shall be rinsed of detergent and other residues with clean water.

(c) When manual washing methods are employed, at least a one compartment sink supplied with hot and cold potable water under pressure shall be provided.

(d) Non food contact surfaces of all equipment shall be cleaned at such frequency as is necessary to keep them free of accumulations and to maintain them in a sanitary condition.

(e) Clean equipment, utensils and food contact surfaces shall be protected from contamination while handled and stored.

#### 8:24-13.10 Water and sewage

(a) The water supply shall be adequate as to quantity, of a safe, sanitary quality, and from a public or private water supply system which is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and rules (N.J.A.C. 7:10) and local laws, ordinances, and regulations; provided, that if approved by the Department of Environmental Protection, a nonpotable water supply system may be permitted within the establishment for purposes such as air conditioning and fire protection, only if such system complies fully with N.J.A.C. 8:24-6.6, Size, installation and maintenance of plumbing, and the nonpotable water supply is not used in such a manner as to bring it into contact, either directly or indirectly, with food, food equipment or utensils.

(b) Hot and cold running water, under pressure, shall be provided in all areas where food is prepared, and where equipment, utensils or containers are washed.

(c) All sewage shall be disposed of by means of:

1. A public sewerage system; or
2. A disposal system which is constructed and operated in conformance with N.J.A.C. \*[7:9-2]\* \*7:9A\*, Standards for \*[the Construction of]\* Individual Subsurface Sewage Disposal Systems, the New Jersey Water Pollution Control Act Regulations, N.J.A.C. 7:14, and local laws, ordinances, and regulations.

#### 8:24-13.11 Toilet facilities

(a) Each establishment shall be provided with adequate and conveniently located toilet facilities accessible to the employees at all times.

(b) Toilet rooms shall be easily cleanable, completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and in good repair.

(c) Toilet facilities, including toilet rooms and fixtures, shall be kept clean and in good repair, and free of objectionable odors.

(d) A supply of toilet tissues shall be provided at each toilet at all times.

#### 8:24-13.12 Garbage disposal

(a) All garbage and rubbish containing food waste shall be stored in a sanitary manner so as to control accessibility to vermin.

(b) Storage containers shall be maintained in a clean condition.

#### 8:24-13.13 Vermin control

(a) Effective control measures shall be utilized to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the establishment.

(b) All openings to the outside shall be protected against the entry of vermin.

#### 8:24-13.14 Other facilities and operations

(a) All floors, walls and ceilings shall be kept clean and in good repair.

(b) Permanently installed and adequate artificial lighting shall be provided in all food preparation, storage, and equipment washing areas.

(c) All areas of the establishment shall be sufficiently ventilated to prevent the accumulation of steam, grease, vapors, odors, smoke, fumes, and excessive heat.

(d) All areas of the establishment and its premises shall be kept clean. Cleaning shall be done at such a time and in such a manner as to prevent the contamination of food and equipment.

(e) No pets or other live animals shall be permitted in areas used for the preparation, serving and storage of food, and the cleaning of equipment during work and serving periods.

(a)

## DRUG UTILIZATION REVIEW COUNCIL Interchangeable Drug Products

### Adopted Amendments: N.J.A.C. 8:71

Proposed: January 22, 1991 at 23 N.J.R. 178(a).

Adopted: June 21, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: June 21, 1991 as R.1991 d.365, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 15, 1991.

Expiration Date: February 17, 1994.

### Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: In opposition to the Pediotic substitute:

Burroughs-Wellcome (B-W) objected to the proposed substitute for Pediotic, stating that the pH of generics may not be high enough to prevent patient discomfort. B-W states that their product, Pediotic, although not being buffered, has pHs in a range higher than the generics, thus avoiding patient discomfort.

RESPONSE: The Council notes that the proposed generic is buffered to a higher pH than the normal otic preparation, thus probably avoiding side effects. Therefore the Council will add the proposed product to the Formulary as a substitute for Pediotic.

COMMENT: In opposition to the Natalins RX substitute:

Bristol-Myers Squibb objected to the proposed substitute for Natalins RX, citing Natalins RX's special core construction, which purports to prevent "burp-back," as well as stating that the generic may not contain the exact same ingredients as the brand.

RESPONSE: The Council notes that any possible negative clinical effects due to "burping" are offset by the statute's provisions that allow such patients to refuse the generic and thus receive the brand. The Council has checked the ingredients of the generic and finds it to be exactly the same as the new formulation of the brand. Thus neither argument against the Natalins RX substitute was felt to be dispositive.

COMMENT: In opposition to Copley's substitute for Stuartnatal 1 + 1.

ICI, the manufacturer of the brand, opposes this generic based on previous Council actions which sought comparative dissolution data, sources of iron and calcium, and comments on biostudies to establish serum iron levels.

ICI reiterated their earlier comments, claiming clinical evidence that different prenatal vitamins deliver iron differently to the patient, especially if the calcium is obtained from calcium carbonate. (Copies of two studies were also submitted.)

ICI argues that a simple matching of ingredients does not mean that prenatal vitamins are equivalent; bioequivalency studies may be needed.

ICI asked earlier that the Council defer action on Copley's proposed substitute until Copley furnished data satisfying dissolution, calcium source, and possible biostudy questions.

RESPONSE: The Council has previously deferred action until the generic's manufacturer furnished the needed data, which has now been received. The Council finds that, although the generic does differ in its calcium source from the brand, that difference alone would not be cause for negative clinical effects, especially since the prenatal vitamins are not marketed as treatments for iron deficiency, but rather as supplements. In addition, many patients are monitored by their physicians during pregnancy, thus any low iron levels would be reflected in blood counts and be corrected by using additional iron. Further, the disintegration data on the generic show a likelihood that it will not differ significantly from the brand in the availability of the iron.

### Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on February 13, 1991. Thomas T. Culkin, PharmD, MPH, served as hearing officer. Six persons attended the hearing. Five comments were offered, as summarized in a previous Register (see 23 N.J.R. 1670(a)). Additional comments were presented at the June 11, 1991, Council meeting, as given above. The hearing officer recommended that the decisions made be based upon the available

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biodata, and that, in regard to Copley's substitute for Stuartnatal 1 + 1, further data on bioequivalency be supplied. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Metaproterenol tabs 10, 20 mg	Biocraft
Natalins RX substitute	Copley
Pediotic/Cortisporin Otic substitute	Bausch/Lomb
Stuartnatal 1 + 1 formula	Copley
Sulfacetamide/Prednisolone sol 100/5 mg	Akorn
Sulindac tabs 150, 200 mg	Mutual

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Watson
Benzonatate caps 100 mg	Chase
CDP/Amitriptyline tabs 5/12.5, 10/25	PBI
Carisoprodol 350 mg	Mutual
Chlorzoxazone tabs 250, 500 mg	Ohm
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Clemastine fumarate tabs 1.34, 2.68 mg	Cord
Clofibrate caps 500 mg	Novopharm
Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs	Cord
Dipyridamole tabs 25, 50, 75 mg	Purepac
Doxycycline caps 100 mg	Sidmak
Erythromycin EC/ER tabs 250 mg, 500 mg	Abbott
Ethosuximide caps 100 mg	Chase
Loperamide caps 2 mg	Cord
Loxapine succ. caps 5, 10, 25, 50 mg	Cord
Methocarbamol tabs 500, 750 mg	Mutual
Minoxidil tabs 2.5, 10 mg	Mutual
Nifedipine caps 10 mg	Novopharm
Nifedipine caps 20 mg	Chase
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Propoxyphene naps/APAP tabs 100/650	LuChem
Sulindac tabs 150, 200 mg	Lemmon
Theophylline CR tabs 450 mg	Sidmak
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100, 150 mg	Mutual

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 23 N.J.R. 1670(a).

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Case Management Services

##### Adopted New Rules: N.J.A.C. 10:73

Proposed: May 6, 1991 at 23 N.J.R. 1328(a).

Adopted: June 21, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: June 21, 1991 as R.1991 d.367, 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. 30:4D-7, 7a, b and c; 30:4D-12; Section 1905(a)19 of the Social Security Act, codified as 42 R.S.C. 1396d; Section 1915g(1) and (2) of the Social Security Act, codified as 42 U.S.C. 1396n.

Effective Date: July 15, 1991.

Expiration Date: July 15, 1996.

##### Summary of Public Comments and Agency Responses:

There was one letter of comment, submitted by Alma L. Saravia, Division Director, Division of Mental Health Advocacy, Department of the Public Advocate. The commenter was generally supportive of the concept of Medicaid funding for case management in New Jersey. The

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commenter raised several issues concerning the proposed new rules. The summary of the comments, and the agency's responses to the issues raised, follows. The term Case Management Program/Mental Health is identified by the acronym CMP/MH.

COMMENT: The commenter was concerned about the definition of case management services (CMS) as it relates to the method of case management intervention, which is to help clients gain access to meaningful services. The commenter wanted a broader definition than the one contained in the proposed new rule (N.J.A.C. 10:73-1.2, Definitions).

RESPONSE: The definition is taken from Federal law (Section 1915 (g) of the Social Security Act, 42 U.S.C. 1396n). The Department wanted to clearly establish the basic definition of case management as the same as, and in compliance with, Federal law. In addition, the Department believes that the entire chapter, including N.J.A.C. 10:73-2.5, describes the services, responsibilities, goals, and activities of the case manager.

COMMENT: The commenter urged that the new rules require all providers of case management services to act on the premise that State-funded agencies are responsible to meet the basic physical and psychological needs of persons diagnosed as mentally or emotionally disabled, pursuant to N.J.S.A. 30:4-24.1.

RESPONSE: The agency's response is twofold. First, the statute cited by the commenter is generally applied to persons in an institutional setting, rather than persons to whom these rules apply, who are in a community setting and are applying for, or receiving, case management services. Second, the availability of Medicaid services is contingent upon the availability of State and Federal funding, pursuant to N.J.S.A. 30:4D-7. The duty of the funded community mental health center to meet the "basic physical and psychological needs" of the mentally ill can only be satisfied within available funding resources.

COMMENT: The commenter urged that case management should serve as a form of quality assurance "which identifies inadequate performance in the existing service system before attempting to change clients' attitudes." The commenter recommended reshaping existing services to accommodate the individual client's needs, rather than force the clients to accept a rigid delivery system.

RESPONSE: The proposed new rules require the case manager to identify the resource gaps and problems that may arise and this will be the method by which service deficiencies are identified (see N.J.A.C. 10:73-2.6(b)1 xvii). Also, the suggestion to provide individual services is not really feasible at the present time. The Department believes that the existing service delivery system provides as much flexibility as possible, taking into consideration the available resources.

COMMENT: The commenter was concerned about the client's right to self-determination, and indicated that the rules suggested that "case managers make multiple outreach visits to people who do not desire mental health services."

RESPONSE: It was never the Department's intention to force a client to accept services they did not want. However, the Department believes that, in some instances, follow-up visit(s) after an initial rejection may be appropriate, because the client may be receptive to case management services at a later date. The Department agrees with the client's right of self determination and believes there are existing rules which address this issue. There are rights governing all clients who participate in community mental health services, as specified in N.J.A.C. 10:37-4.5, captioned "Client rights." More specifically, the client's right to privacy and dignity is set forth at N.J.A.C. 10:37-4.5(h)5. There are also rules governing Medicaid clients and their right to their free choice of provider, as specified in N.J.A.C. 10:49-1.20. While the Medicaid rule is directed at the client's right to choose a provider, there is implicit in the "free choice" provision the client's right to refuse treatment. In addition to both of the rules cited above, there is no mechanism to reimburse a provider who makes an outreach visit to a client who rejects a CMS package. Providers are reimbursed only when they perform a reimbursable service, as such services are defined in this chapter.

COMMENT: The commenter was concerned about the client's right to privacy and confidentiality and referred to a recent unpublished opinion by the New Jersey Superior Court, Appellate Division, pertaining to short term care facilities for acute-care psychiatric patients regulated by the New Jersey Department of Health. (Sup. App. Div. A-2330-89T3). The commenter recommended an amendment to N.J.A.C. 10:73-2.3(a)1 requiring the need for input from significant others, including family members and community and hospital professionals.

RESPONSE: The existing Medicaid rules at N.J.A.C. 10:49-1.22 apply. The Medicaid patients informed consent must be obtained, unless one of the exceptions applies. In addition, there are existing requirements at N.J.A.C. 10:37-6.79, Confidentiality of records, that apply to all State-

funded mental health services. No changes have been made, since there are existing rules which protect the privacy and confidentiality of the patient. The patient's right to privacy has been discussed in a previous response (see above).

COMMENT: There was a request to establish minimum staffing standards.

RESPONSE: The conditions of reimbursement are specified in N.J.A.C. 10:73-2.8 and 2.10, and the provider must meet those standards in order to be reimbursed. The agency believes these requirements are sufficient to fulfill program objectives, and has not, therefore, added minimum staffing standards.

COMMENT: The commenter also wanted to require employment of consumers or former consumers as case managers. (A consumer is defined in N.J.A.C. 10:37-4.1 as one who has applied for, receiving, or has received mental health services.)

RESPONSE: The existing rules governing community mental health services at N.J.A.C. 10:37; specifically, N.J.A.C. 10:37-4, adequately address the role of consumer participation. Clients covered by Medicaid may be considered consumers. However, the Department does not want to mandate that case managers employ consumers. The absence of the mandatory hiring provision does not preclude a consumer from being employed by or as a case manager. In addition, the provider agreement, which all Medicaid providers are required to execute (see N.J.A.C. 10:49-1.3, Exhibit VI) requires compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all applicable State and Federal "Medicaid" laws and policy. Therefore, the Department does not consider the suggested change necessary.

#### Summary of Changes Between Proposal and Adoption:

N.J.A.C. 10:73-2.5(a)1, 2, and 3 have been revised to substitute the term "enrolled CMP/MH clients" for the term "person" which appeared in the original proposal. The agency believes the term "person" is too broad. The more appropriate, and more definitive term, is "enrolled" because it refers to an individual who is Medicaid-eligible and who has voluntarily accepted services offered by the CMP/MH provider. See also N.J.A.C. 10:73-2.2, which indicates that the individuals targeted to receive CMP/MH services are individuals with serious mental illness who are at high risk of hospitalization.

The change in terminology does not enlarge or curtail the scope of the individuals who could be covered by case management services.

N.J.A.C. 10:73-2.5(a)5 has been revised to indicate that a CMP/MH provider shall seek and accept referrals, within the provider's capacity to render services, from sites such as homeless shelters, jails, etc. The Department does not consider this a change of scope of provider responsibility or available services because the provider's capacity to provide services is considered.

N.J.A.C. 10:73-2.9(a) has been revised to indicate that providers conducting an initial risk evaluation shall use a form approved by the Division of Mental Health and Hospitals (DMH&H). This form is merely a means of recording information and does not impose any additional clinical duties or responsibilities on the provider. Therefore, the agency does not consider this to enlarge or curtail the scope of the provider's duties. The provider only has to record clinical information on a form approved by DMH&H. N.J.A.C. 10:73-2.10(b)3iii has been revised to indicate that DMH&H will provide a sample form to be used in the reconciliation process. The provider may use this sample form or develop one of their own. Approval by DMH&H of the sample form is not required.

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 73

#### CASE MANAGEMENT SERVICES MANUAL

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:73-1.1 Purpose and scope

(a) This manual outlines information about targeted case management services provided by approved New Jersey Medicaid Program providers.

1. There are various types of case management providers who will provide different types of case management services to targeted groups of Medicaid recipients, as allowed under Federal statute.

i. The first case management provider type described in this manual is the Case Management Program/Mental Health (CMP/MH) provider (see N.J.A.C. 10:73-2). Other case management provider types may be added to the manual as programs are developed.

(b) N.J.A.C. 10:73-2 describes the Case Management Program/Mental Health, providing a description of the individuals for whom the services are targeted; the case management services covered; the requirements and responsibilities of the agencies that will provide the services, including agency staff; the procedures required to provide services and the reimbursement for the provision of those services.

(c) N.J.A.C. 10:73-3 provides a listing of HCPCS Procedure Codes (HCFA Common Procedure Coding System).

##### 10:73-1.2 Definitions

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

"Advocacy" means the ongoing process of assisting the client in receiving all benefits to which he or she is entitled by working toward the removal of barriers to receiving needed services.

"Assessment" means the ongoing process of identifying and reviewing a client's strengths, deficits, and needs based upon input from the client and significant others including family members and health professionals. The assessment process continues throughout the entire length of service. The assessments are updated periodically based upon availability of client information.

"Case management" means any activity under which responsibility for locating, coordinating and monitoring necessary and appropriate services for an individual rests with a specific person or organization.

"Case Management Program/Mental Health (CMP/MH)" under the Division of Mental Health and Hospitals means a distinct program administered jointly with the Division of Medical Assistance and Health Services to provide case management services. The program offers targeted case management services to seriously mentally ill individuals, both adults and children, who do not accept or engage in community mental health programs and/or who have multiple service needs and require extensive service coordination.

"Case management services" means those services which will assist a Medicaid recipient in gaining access to needed medical, social, educational, and other services.

"Client monitoring" means the ongoing review of the client's status and needs.

"Clinical case management" means the provision of face-to-face individualized clinical support services for a client who needs consistent contact to ensure engagement to the case manager and to help the person maintain stability and remain linked to needed services.

"Division of Medical Assistance and Health Services" (DMA&HS) is an organizational component of the New Jersey State Department of Human Services.

"Division of Mental Health and Hospitals" (DMH&H) is an organizational component of the New Jersey State Department of Human Services.

"HCFA" means Health Care Financing Administration of the United States Department of Health and Human Services.

"HCPCS" (Health Care Financing Administration Common Procedure Coding System) means a nationwide three level coding system. Level 01 codes are adapted from codes published by the American Medical Association in CPT-4 and are utilized primarily by physicians and independent clinical laboratories. Level 02 codes are assigned by HCFA for physician and non-physician services which are not in the CPT-4. Level 03 codes are assigned by the State Medicaid Agency and are used for services not identified by the CPT-4 or HCFA assigned codes.

"Initial evaluation month" means the initial month in which services are provided to a client.

"Liaison case management" means that part of the CMP/MH targeted to a seriously mentally ill individual, adult or child, who has been discharged from a State or county psychiatric hospital, psychiatric unit of a general acute care hospital or a specialty hospital, and who requires short-term assistance to ensure linkage to community mental health programs.

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"Ongoing support services" means the provision of face-to-face individualized clinical support services for a client who needs such contact.

"Risk category" under CMP/MH means the three levels of clinical case management involvement, based upon assessed risk of hospitalization, functional level and willingness and/or ability to access needed services. The three risk categories are: high-risk, or intensive case management; at-risk, or supportive case management; and low-risk, or maintenance level case management.

"Services linkage" means the referral to and enrollment with other appropriate service providers to address the needs identified in the assessment.

"Service planning" means the process of organizing the outcomes of the assessment in collaboration with the client, significant others, potential service providers, and others as designated, to formulate a written service plan that addresses the client's needs, planned services to address these needs, and plans to motivate the client to utilize services. The service planning process continues throughout the client's entire program length of stay.

"Service provider monitoring" means the process of routine follow-up by case manager or by Division of Mental Health and Hospitals with the client's service providers to assess if services are provided as planned and if they meet the client's needs.

"Targeted case management" under Case Management Program/Mental Health (CMP/MH) is the provision of services targeted to adults and children with serious mental illness who are at high risk of hospitalization or deterioration in their functioning and who require an assertive community outreach service to meet their needs. Case management is for either long-term support (clinical case management) or linkage to other mental health services (liaison case management). Targeted case management services include, but are not limited to: assessment, service planning, services linkage, ongoing monitoring, ongoing clinical support and advocacy.

"Unit of service" under CMP/MH means a face-to-face contact with an enrolled client, or on behalf of an enrolled client, which lasts one hour in duration. Travel time shall not be included as part of the face-to-face time. Multiple contacts of less than one hour in duration may be aggregated to produce one unit of service.

### SUBCHAPTER 2. CASE MANAGEMENT PROGRAM/ MENTAL HEALTH

#### 10:73-2.1 Case Management Program/Mental Health (CMP/MH); general

(a) The CMP/MH is under the auspices of the Division of Mental Health and Hospitals and is administered jointly with the Division of Medical Assistance and Health Services. It is a program to provide case management services to serious, mentally ill Medicaid recipients, both children and adults, who do not accept nor engage in community mental health programs and/or who have multiple service needs and require extensive service coordination.

1. CMP/MH is for either long-term support (clinical case management) or short-term support (liaison case management).

(b) Case management services are not available to recipients of the Medically Needy Program, except pregnant women, nor recipients served in the DMAHS' Home and Community Based Services Waiver Program, Model Waivers, DDD Waiver or the Home Care Expansion Program.

1. For information on how to identify a Medicaid recipient, refer to N.J.A.C. 10:49-1.2, Administration.

#### 10:73-2.2 Individuals targeted to receive CMP/MH services

(a) Clinical case management services under CMP/MH are targeted to children and adults with serious mental illness who are at high risk of hospitalization or deterioration in their functioning and who require an assertive community outreach service to meet their needs. This targeted group is composed of individuals who meet at least two of the following:

1. Have repeated admissions to inpatient services. Priority will be given to persons with two or more admissions to inpatient psychiatric services within a 12-month period, or two or more uses of emergency/screening services within a 30-day time period;

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2. Participate in mental health services, but are not receiving additional services which meet the individual's multiple needs, and who require extensive service coordination (for example, individuals who are dually diagnosed as mentally ill and chemical abusing, or children involved with DYFS and school systems);

3. Have a recent history of being a danger to self or others within a time period of three months;

4. Have a history of resistance or non-compliance in use of medication, resulting in a pattern of decompensation and re-hospitalization;

5. Are in another service system and in need of assessment and possible treatment prior to linkage to case management (for example, residential, drug and alcohol programs, or shelters for the homeless); and/or

6. Reside with family, in boarding homes, or other residential settings and are not receiving needed mental health services.

(b) Liaison case management services under CMP/MH are targeted to children and adults who:

1. Recently were discharged from a State or county hospital or a general acute-care hospital psychiatric inpatient unit and in need of linkage services to ensure continuity of care with other mental health services; or

2. Have a recent history of a hospitalization as a result of mental illness and dangerousness to self or others.

#### 10:73-2.3 Case management services provided under CMP/MH

(a) CMP/MH services shall include, but are not limited to, assessment, service planning, services linkage, ongoing monitoring, ongoing clinical support, and advocacy. These services are described below:

1. Assessment is the ongoing process of identifying, reviewing and updating a client's strengths, deficits, and needs, based upon input from the client and significant others including family members and community and hospital professionals. The assessment process continues throughout the entire length of stay. (See N.J.A.C. 10:73-2.9 for information about client's risk status.)

2. Service planning is the process of organizing the outcomes of the assessment in collaboration with the client, significant others, potential service providers, and others as designated, to formulate a written service plan that addresses the client's needs, planned services to address these needs, and plans to motivate the client to utilize services and remain in the community. The service planning process continues throughout the client's entire program length of stay.

3. Services linkage is the ongoing referral to, and enrollment in, a mental health and/or non-mental health program. Mental health program linkage means that the client has completed the mental health program's intake process, that the client has been accepted for service, and that the client has effectively participated in the program.

4. Ongoing monitoring consists of both client monitoring and service provider monitoring by the case manager:

i. Client monitoring is the ongoing review of the client's status and needs, the frequency of which is contingent upon the client's risk status and reported changes from the client, significant others and/or service providers. An update of the service plan may result from the monitoring process to address changing needs.

ii. Service provider monitoring is the process of routine follow-up with the client's service providers to assess if services are provided as planned and if they meet the client's needs. Provider monitoring may result in the adjustment of the service plan including provider changes. Service provider monitoring includes the following:

(1) Monitoring the plans, including the medication management plan for clients in need of such plans;

(2) Coordination of services from multiple providers including calling and coordinating treatment team meetings of a client's service providers until the client exits from the CM program.

5. Ongoing support services is the provision of face-to-face individualized clinical support services for clients who need consistent contact to ensure engagement to the case manager and to help the person maintain stability and remain linked to needed services. It

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includes support within the client's natural support system including family, friends, and employers and typically occurs where the client resides or frequents. The frequency of support services is contingent upon the client's risk status and individual needs.

6. Advocacy is the process of assisting the client in receiving all benefits to which he or she is entitled by working toward the removal of barriers to receiving needed services. Client advocacy is an ongoing activity of the case manager.

### 10:73-2.4 Requirements for providers participating in CMP/MH

(a) This section lists the specific provisions relevant to a provider who wishes to apply and be approved as a provider of CMP/MH services. N.J.A.C. 10:73-2.5 provides information about service responsibilities of the CMP/MH provider and N.J.A.C. 10:73-2.6 describes the responsibilities of staff members of a CMP/MH provider agency.

(b) The following are the specific provisions for provider participation in CMP/MH.

1. Any agency that wishes to provide CMP/MH services must be certified by the Division of Mental Health and Hospitals and under contract as an approved clinical case management and/or liaison provider and must be individually approved as a Medicaid provider by the New Jersey Medicaid Program.

2. Case management providers under CMP/MH shall comply with general Medicaid program policies regarding provider participation (see N.J.A.C. 10:49-1.3). Provider entities must be mental health provider organizations who contract with the New Jersey Division of Mental Health and Hospitals in accordance with the "Rules and Regulations Governing Community Mental Health Services and State Aid Under the Community Mental Health Services Act" N.J.A.C. 10:37 to provide clinical case management and/or liaison services.

3. Upon notification from DMH&H of a certified, under contract CMP/MH provider, the New Jersey Medicaid program shall forward the appropriate provider enrollment forms to the provider. (See N.J.A.C. 10:49-1.3, Eligible Providers.)

4. The CMP/MH provider shall receive written notification of approval or disapproval from the Division of Medical Assistance and Health Services.

i. If approved, the CMP/MH provider will be assigned a provider number by the Fiscal Agent.

ii. The New Jersey Medicaid Program will furnish a provider manual (which includes this chapter, other relevant chapters including N.J.A.C. 10:49 and additional non-regularity material) and an initial supply of pre-printed claim forms.

### 10:73-2.5 Service responsibilities of the CMP/MH provider

(a) The CMP/MH provider shall:

1. Provide ongoing support to \*[persons]\* **\*enrolled CMP/MH clients\***, in their own environment, who are at risk of hospitalization or deterioration in function, to enable them to function in the community and to enable them to access other mental health services whenever possible;

2. Provide or arrange for a clinical off-site service capability to **\*[the target groups]\* \*enrolled CMP/MH clients\*** seven days a week;

3. Provide community-based engagement activities, coordination, and integration for **\*[the target group]\* \*enrolled CMP/MH clients\***;

4. Provide ongoing, individualized clinical support and monitoring to maintain stability until the client participates effectively in other needed services; and

5. Seek and accept referrals **\*within provider capacity\*** of clients from emergency/screening services, local inpatient units and other structured sites, such as homeless shelters or jails, and other referral sites as identified at the local level.

### 10:73-2.6 Staff members of a CMP/MH provider; responsibilities

(a) The following apply to the case management program supervisor:

1. Regarding his or her duties, the CMP/MH supervisor shall ensure the following:

i. Staff availability to meet the needs of program;

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ii. Adequate levels of clinical staff supervision, skill development, and support;

iii. Development and appropriate documentation of the various CMP functions;

iv. Participation in the CMP quality assurance program;

v. Appropriate completion of and monitoring of affiliation agreements with other mental health, social and health services systems in conjunction with the systems coordinator; and

vi. Participation of the CMP in local mental health, health, and human services planning activities.

(b) The following apply to the case manager (CM):

1. Regarding his or her duties the CM providing clinical case management services shall:

i. Identify mentally ill clients in need of CMP/MH services regardless of residence (for example: homeless, shelter, family, boarding home);

ii. Provide clinical assessment of client's strengths, needs, resources, motivation, level of functioning, mental status, and risk category;

iii. Provide functional assessment of client's skills (daily living, self-care, social, vocational, etc.);

iv. Provide intensive community based engagement services to maximize the client's access to services and ability to function adequately and integrate into the community;

v. Provide or arrange for direct clinical intervention;

vi. Provide assessment of the need for crisis intervention, and assistance to providers of psychiatric emergency services in resolving crises;

vii. Provide assessment of substance abuse symptoms;

viii. Provide assessment of available social services, health and mental health resources and the ability of these services to meet each client's needs;

ix. Develop service plans with the primary goal to motivate client to access, appropriately use, and remain in community programs;

x. Develop and monitor a plan for medication management for the client in need of such a plan, in consultation with the county mental health system's psychiatric services components;

xi. Provide ongoing service planning and periodic reviews and revisions of such plans;

xii. Provide access to appropriate services, and ensure the client receives needed transportation in order to attend services;

xiii. Ensure that the client engages in the community mental health and non-mental health systems through provision of ongoing individualized clinical support and monitoring;

xiv. Provide clinical consultation with other providers in a client's network;

xv. Coordinate and integrate services from multiple providers until the client exists from the CMP/MH. This includes coordination of treatment team meetings of the service providers of a client in the community;

xvi. Monitor service delivery to meet a client's changing needs;

xvii. Identify resource gaps and problems of service delivery, and advocate for the resolution of these issues; and

xviii. Provide direct service support to the client's natural support system, including family, friends, employers, self-help and other natural support groups.

3. Regarding his or her duties, the CM providing liaison case management services shall:

i. Assess, as assigned, inpatients of State and county psychiatric hospitals and short term care facilities and determine patient assignment to either liaison case management or clinical case management services;

ii. Develop discharge plans, in conjunction with other State or county psychiatric hospital or short term care facility treatment team members, for clients assessed as able or willing to access or engage in necessary community mental health services within two calendar months after hospital discharge;

(1) Services rendered while the client is an inpatient in a State or county psychiatric hospital or psychiatric unit of a general acute care hospital are not billable activities;

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- iii. Ensure that planned community mental health and non-mental health service linkages occur for clients assessed as willing or able to link within two calendar months after hospital discharge; and
- iv. Monitor the clients linkage to the primary mental health provider for two calendar months post discharge.

### 10:73-2.7 Prior authorization for clinical case management services

(a) Clinical case management services require prior authorization. (See N.J.A.C. 10:73-2.9(b) for exceptions concerning provision of services for a limited period of time while the prior authorization request is under review.)

1. Liaison case management services do not require prior authorization (see N.J.A.C. 10:73-2.11(c)).

(b) The CMP/MH provider shall request prior authorization from the Division of Mental Health and Hospitals, utilizing forms prescribed by that Division.

1. Prior authorization may be for up to 12 calendar months. It is the responsibility of the provider to request prior authorization before furnishing or rendering services. (See N.J.A.C. 10:49-1.8 regarding prior authorization.)

### 10:73-2.8 Basis of payment for CMP/MH services

(a) Reimbursement for services covered under the CMP/MH shall be determined by the Commissioner of the Department of Human Services. The provider of CMP/MH services shall be compensated on a monthly fee-for-service basis. Reimbursement is based upon HCPCS Codes as specified in N.J.A.C. 10:73-3.

1. The provider shall submit a claim form and identify the services performed by the use of procedure codes based on the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). Five HCPCS codes are assigned for the services provided under CMP/MH. If the services were provided to a child, the provider shall add a modifier (ZC) to the code to signify that the services were provided to a child.

2. The five CMP/MH services that shall be identified on a claim form and submitted for reimbursement are:

- i. Initial Evaluation Month;
- ii. High Risk—Intensive Case Management involvement;
- iii. At Risk—Supportive Case Management involvement;
- iv. Low Risk—Maintenance Level Case Management involvement; and
- v. Liaison Case Management.

3. For rules regarding the three case management services (initial evaluation month, case management based on risk category, and liaison case management), see N.J.A.C. 2.9, 2.10 and 2.11, respectively.

(b) A provider may bill for only one case management service per calendar month; for example, for "initial evaluation month," or for one of the clinical case management's risk category services, or for liaison case management services.

1. A recipient who receives case management services is entitled to receive other approved mental health services that are rendered by authorized providers.

(c) Each provider shall make a charge for services to all clients, except as provided by legislation, with the proviso that no charge will be made directly to the Medicaid recipient.

(d) In no event shall the charge to the New Jersey Medicaid Program exceed the charge by the provider for identical services to other groups or individuals in the community.

1. Payment for CMP/MH services shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose, including, but not limited to, the Home and Community Based Service Waiver programs. Payment for CMP/MH services shall not duplicate payment for case management services which are an integral part of another provider service.

(e) See N.J.A.C. 10:49 for requirements for timely submission of claims.

### 10:73-2.9 Procedures for providing initial risk assessment and evaluation for CMP/MH services

(a) Under clinical case management, the provider shall conduct an initial risk evaluation on a prospective CMP/MH client during the initial client contact(s) to determine the "risk category" \*using

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**a form approved by the Division of Mental Health and Hospitals (DMH&H)\*.** If the prospective client is found to be eligible for CMP/MH services, he or she shall be assigned to a risk category described in (a)1-3, below. The provider shall immediately initiate a request for authorization to provide services beyond the first calendar month.

1. High risk (intensive case management involvement) shall be provided to clients who are in crisis and at immediate risk of decompensation, or who are experiencing situational crises which, without active intervention, would rapidly lead to decompensation and hospitalization.

2. At risk (supportive case management involvement) shall be provided to clients who exhibit signs of regression, who stop their medication, who are undergoing major transitions from an inpatient or residential treatment setting, or who are withdrawing or refusing needed aftercare services.

3. Low Risk (maintenance level case management involvement) shall be provided to clients who are stable but who have a pattern of psychiatric hospitalization, acute care recidivism, dropping out of mental health and non-mental health services, medication non-compliance, disruption of living, working program and social environments.

(b) The following apply to the initial evaluation month:

1. In order to facilitate the provision of services to the client while the initial risk evaluation is completed and the request for prior authorization is being evaluated, the initial contact(s) and services may be provided for one calendar month without authorization. The initial evaluation, risk assessment, and initial services within a calendar month shall be billed as "Initial Evaluation" using the appropriate HCPCS Codes as listed at N.J.A.C. 10:73-3.

2. A claim for an initial evaluation month (any part of a calendar month) may be submitted following an initial assessment performed on a prospective clinical case management client during the initial contacts. An initial evaluation month may be billed once per recipient per provider. In the event a recipient changes providers, the HCPCS code may be used for the initial month of service for the new provider.

i. An initial evaluation month visit may be billed by the same provider for the same recipient if there has been a lapse of more than 12 calendar months since the last case management service was provided.

3. During the initial evaluation month, the provider should initiate and submit the request for prior authorization to DMH&H for future service units.

i. The request for prior authorization must be received by DMH&H not later than one calendar month from the initial evaluation month.

4. A claim for an initial evaluation month will be reimbursed at the highest risk category rate within the CMP/MH rate structure. This will enable necessary services to be provided to the client.

### 10:73-2.10 Clinical case management services under CMP/MH

(a) Clinical case management services include, but are not limited to: assessment, service planning, services linkage, ongoing clinical support and advocacy (see N.J.A.C. 10:73-2.3(a)). These services require prior authorization from the DMH&H and claims will not be processed without the appropriate prior authorization approval.

(b) There are three levels (risk category) of clinical case management involvement\*,\* based upon assessed risk of hospitalization, functional level, and willingness and/or ability to access needed services as defined by DMH&H. The three risk categories are: high risk, or intensive case management; at risk, or supportive case management; and low risk, or maintenance level case management (see N.J.A.C. 10:73-2.9).

1. A minimum average "unit of service" shall be provided per month for each of the three codes for case management (high risk, at risk and low risk) in order to earn reimbursement during the prior authorization period.

i. Initial evaluation month requires a minimum average of seven units of service per month.

ii. High risk (intensive case management involvement) requires a minimum average of seven units of service per month.

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iii. At risk (supportive case management involvement) requires a minimum average of 3.5 units of service per month.

iv. Low risk (maintenance level case management involvement) requires a minimum average of two units of service per month.

v. Travel time shall not be included as part of the face-to-face time.

vi. Multiple contacts of less than one hour in duration may be aggregated to produce one unit of service.

2. The following apply in recipient hospitalization circumstances:

i. In the event a clinical case management recipient is hospitalized during a prior authorized period for less than a full month, the case manager provider may bill for services for the entire month. The provider cannot bill for services for any month that the client remains in a hospital or an inpatient psychiatric program for an entire calendar month.

(1) Upon discharge to the community, prior authorization is continued for a CMP/MH recipient if the recipient remains in the same risk level and has not exceeded the authorization period. No notice is required but the provider is expected to include this information in the recipient's chart.

(2) In the event a reassessment occurs following a hospitalization, appropriate documentation must be placed in the case file and a request for prior authorization for the new level of case management services must be forwarded to DMH&H, no later than 10 days after discharge. The case manager cannot bill a new assessment month and, until a new risk level category is authorized, must bill for continued services and the post hospital discharge assessment at the previously authorized risk category level.

ii. In the event a CMP/MH recipient's hospitalization extends beyond a prior authorized period, the provider shall request authorization from DMH&H to provide services post-discharge. Claims for an initial evaluation month will not be processed if the recipient continues with the same provider.

3. Each provider shall, within two months following the end of each prior authorization period, complete a reconciliation of services provided and payment received.

i. The reconciliation shall compare the units of service rendered during the authorization "period" and the initial evaluation month with the minimum required units of service during that period. If more units of service were provided than required, no adjustment will be made. If fewer units of service than the minimum were provided, the provider shall calculate the overpayment as follows:

(1) \$50.00 shall be used as the hourly rate;

(2) The required units of service shall be determined by multiplying the number of months in the authorization period by the minimum average units of service per month as required under this section. If an initial evaluation month was billed for, seven units of service shall be added to the above calculation which was the required units of service only during the prior authorization period.

(3) The actual units of service provided during the authorization period (including initial evaluation month if applicable) shall be compared with the required units of service calculated above.

(4) The hourly rate shall be multiplied by the excess of required units of service over the actual units of service provided.

ii. In the event it is determined that the provider has received an overpayment, repayment shall be forwarded to the Medicaid Fiscal Agent within 30 days of reconciliation with appropriate documentation.

iii. DMH&H shall provide a \*sample\* form to reconcile and document services and payment\*.\* [which]\* **\*Whatever reconciliation form is used\*** must be retained by the provider.

iv. Reconciliation and repayment, if applicable, must be completed within two months after the end of the prior authorization period.

Example: Mr. Jones is a client in a State psychiatric hospital whose treatment team is preparing a discharge plan. Mr. Jones is judged not to be able to effectively link with the community mental health system upon discharge and therefore the hospital treatment team incorporates a clinical case manager from an approved provider as part of the team (the XYZ Community Mental Health Center (CMHC)).

Together, the treatment team, Mr. Jones, and significant others prepare the discharge plan and treatment plan. The time spent by the clinical case manager (or liaison, had liaison staff been appropriate) while Mr. Jones is hospitalized is not billable to the Medicaid program.

On January 1, 19xx, discharge is planned for January 25. The clinical case manager initiates a request for prior authorization to the DMH&H to begin February 1. Mr. Jones is discharged on January 25. The XYZ CMHC continues to provide clinical case management services and receives the prior authorization from DMH&H on February 15, which is effective February 1, through July 31. Mr. Jones has been authorized at the high risk level.

The XYZ CMHC provides the following units of service and bills the following codes:

Period	Units	Code	Reimbursement*
1/25-1/31	5	Z5004**	\$350.00
2/01-2/28	8	Z5000	\$350.00
3/01-3/31	7	Z5000	\$350.00
4/01-4/30	6	Z5000	\$350.00
5/01-5/31	6	Z5000	\$350.00
6/01-6/30	5	Z5000	\$350.00
7/01-7/31	8	Z5000	\$350.00
<b>TOTAL</b>	<b>45</b>		<b>\$2,450.00</b>

\*This is the reimbursement based upon the HCPCS codes as of the promulgation of this Chapter and is subject to change from time to time.

\*\*Z5004 is initial evaluation month and therefore no prior authorization is required.

By July 1, the XYZ CMHC initiates a new request for prior authorization to be effective August 1. After July 31, the XYZ CMHC will need to reconcile the payment received (\$2450.00) with the reimbursement earned based upon the number of units of service provided as follows:

**REQUIRED SERVICE**

1. Minimum units of service required during initial evaluation month (where applicable)	7
2. Minimum units of service required during each month of prior authorization period based on approved risk level	7
3. Number of months in authorization period	6
4. Minimum units of service required for authorization period (#2 x #3)	42
5. Total required units of service (#1 + #4)	49
6. Actual units of service provided	<45>
7. Excess of units required over <under> units provided	4

The XYZ CMHC provided four fewer units of service than required and therefore must calculate and make repayment as follows:

**RATE/UNIT OF SERVICE**

8. Monthly reimbursement for authorized risk level	\$350.00
9. Divide by minimum required units of service	7
10. Rate/Unit of Service	\$50.00

**CALCULATION OF OVERPAYMENT**

Excess of units required over provided (#7 above)	4	
x Rate/Unit of service (#10 above)		x \$ 50.00
Overpayment		\$200.00

The XYZ CMHC forwards the overpayment to the Fiscal Agent by the end of the second month following the authorized period.

**10:73-2.11 Liaison case management services under CMP/MH**

(a) Services provided under the liaison case management include, but are not limited to:

1. Assessment and determination of need for services;
2. Development of discharge plans;
3. Assurance that mental health and non-mental health linkages occur; and

**ADOPTIONS**

**CORRECTIONS**

4. Monitoring of client linkage to mental health provider.  
 (b) Liaison case management services shall be billed for not more than two consecutive months and shall not be billed in conjunction with any other CMP/MH service.  
 (c) Services listed in (a)1 to 4 above are reimbursed on a monthly fee-for-service basis and do not require prior authorization.  
 (d) Liaison case management services shall be billed for the month of discharge and the month following discharge from an acute care hospital, psychiatric hospital, or inpatient psychiatric program.  
 (e) Liaison case management shall be billed for each discharge from a hospital if services are provided. The provider cannot bill for services for any month that the client remains in a hospital or an inpatient psychiatric program for an entire calendar month.  
 (f) If the case manager determines during this period of time that the client will need clinical case management services and the liaison case manager is a certified provider of clinical case management, then the case manager is responsible for completing the risk assessment documentation and submitting a prior authorization request to DMH&H as soon as possible but no later than 30 days prior to the end of the liaison services. If the liaison case manager is not a certified clinical case manager, then the liaison case manager must refer the client to the clinical case manager identified to serve the client's geographic area as soon as possible, but no later than 40 days prior to the end of liaison services.  
 (g) The reconciliation process described at N.J.A.C. 10:73-2.10(b)3 with respect to clinical case management shall be required for liaison case management. The minimum average units of service to be provided are two units per month, post hospital discharge.

10:73-2.12 Recordkeeping for CMP/MH services  
 (a) Case management providers shall keep individual records as are necessary to fully disclose the kind and extent of services provided to make sure information available as the DMA&HS or DMH&H or its agents may request.  
 1. The CMP/MH provider shall maintain the following data in support of all payment claims as required by the rules.  
 i. The name of the client;  
 ii. The name of the provider agency and staff person and the title of the individual providing service;  
 iii. The dates of service;  
 iv. The units of service (aggregated, if needed);  
 v. The length of face-to-face contact (excluding travel to or from client contact);  
 vi. The name of individual(s) with whom face-to-face contact was maintained on behalf of client; and  
 vii. A summary of services provided.

**SUBCHAPTER 3. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)**

10:73-3.1 Introduction  
 (a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this subchapter are relevant to Medicaid case management services and must be used when filing a claim.  
 1. The responsibilities of the case management services provider when rendering services are listed in N.J.A.C. 10:73-2.  
 2. "P" is listed under Ind (indicator) which means that prior authorization is required.  
 3. "ZC" is listed under Mod (modifier) which means that service is rendered for children.

10:73-3.2 HCPCS Codes for case management services

Ind	Code	Mod	Description	Maximum Fee Allowance
P	Z5000		High Risk Intensive Case Management Program/Mental Health (CMP/MH) Adults, Monthly	\$350.00

P	Z5000	ZC	High Risk Intensive Case Management Program/Mental Health (CMP/MH) Children, Monthly	\$350.00
P	Z5001		At Risk Supportive Case Management Program/Mental Health (CMP/MH) Adults, Monthly	\$175.00
P	Z5001	ZC	At Risk Supportive Case Management Program/Mental Health (CMP/MH) Children, Monthly	\$175.00
P	Z5002		Low Risk Maintenance Case Management Program/Mental Health (CMP/MH) Adults, Monthly	\$100.00
P	Z5002	ZC	Low Risk Maintenance Case Management Program/Mental Health (CMP/MH) Children, Monthly	\$100.00
	Z5003		Liaison Case Management Program/Mental Health (CMP/MH) Adults, Monthly	\$100.00
	Z5003	ZC	Liaison Case Management Program/Mental Health (CMP/MH) Children, Monthly	\$100.00
	Z5004		Initial Evaluation Month, Case Management Program/Mental Health (CMP/MH), Adults	\$350.00
	Z5004	ZC	Initial Evaluation Month, Case Management Program/Mental Health (CMP/MH), Children	\$350.00

**CORRECTIONS**

**(a)**

**THE COMMISSIONER**  
**Close Custody Units**  
**Readoption with Amendments: N.J.A.C. 10A:5**  
 Proposed: May 6, 1991 at 23 N.J.R. 1260(a).  
 Adopted: June 12, 1991 by William H. Fauver, Commissioner, Department of Corrections.  
 Filed: June 17, 1991 as R.1991 d.358, **without change**.  
 Authority: N.J.S.A. 30:1B-6 and 30:1B-10.  
 Effective Date: June 17, 1991, Readoption.  
 July 15, 1991, Amendments.  
 Expiration Date: June 17, 1996.  
**Summary of Public Comments and Agency Responses:**  
**No comments received.**  
**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:5.  
**Full text** of the adopted amendments follows.  
 10A:5-2.8 Use of Prehearing Management Control Unit prior to the Management Control Unit Review Committee (M.C.U.R.C.) meeting  
 (a) (No change.)  
 (b) The inmate shall be entitled to a hearing within 10 working days following his placement into Prehearing M.C.U.  
 (c)-(g) (No change.)  
 10A:5-3.1 Admission to Non-Vroom administrative segregation  
 (a) Whenever the Disciplinary Hearing Officer imposes a sanction at the Edna Mahan Correctional Facility for Women which includes

administrative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer to the Institutional Classification Committee (I.C.C.) for review at the Committee's next regularly scheduled meeting.

(b)-(1) (No change.)

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(a)

### DIVISION OF FRAUD

#### Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Features

##### Adopted New Rules: N.J.A.C. 11:3-39

Proposed: February 19, 1991 at 23 N.J.R. 384(a).

Adopted: June 21, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: June 21, 1991 as R.1991 d.363 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. 17:1-8, 17:1C-6e and 17:33B-44.

Effective Date: July 15, 1991.

Operative Date: September 1, 1991.

Expiration Date: January 4, 1996.

##### Summary of Public Comments and Agency Responses:

Comments were received from six insurers (Allstate Insurance Company, State Farm Insurance Companies, Selective Insurance Company of America, Prudential Property and Casualty Insurance Company, MCA Insurance Companies and New Jersey Manufacturers Insurance Company), one reciprocal exchange (Reciprocal Management Corporation), one insurance industry association (American Insurance Association), one consumer association (National Motorists Association) and two corporations involved with the development and marketing of anti-theft devices and/or vehicle recovery systems (National Automotive Certification, Inc. and LOJACK). Not all comments received were responsive to the proposal, and thus, may not be addressed below. Similar comments have been consolidated where reasonable.

COMMENT: Several commenters expressed a belief that the Department is acting arbitrarily in setting discount levels for anti-theft devices. Four commenters noted that there is no statistical or actuarial evidence presented to support the discounts specified. Two commenters suggested discounts should be limited until experience data is collected. One commenter argued that almost no device is effective against a professional thief, and that "juvenile" thefts generally result from driver carelessness. Another commenter stated the belief that non-passive anti-theft devices are rarely used after a short "novelty" period when the insured first acquires the device, (less than the 40 percent use rate suggested by the proposed 10 percent discount rate), and suggested that the Department was too generous. Several commenters suggested that there appeared to be arbitrariness in the categories proposed. More than one commenter stated that N.J.A.C. 11:3-39 may violate N.J.S.A. 17:29A-1 et seq.

RESPONSE: The Department disagrees that it was arbitrary in any manner in developing the proposed rates or the categories of devices to which the rates apply. The Department employed several resources in developing the discounts and categories. The Department used the laws of other states which address anti-theft devices and rate reductions; the policy forms of those insurers which currently provide for anti-theft device discounts in New Jersey; and information provided by manufacturers of anti-theft and recovery systems for automobiles. While discount rates and their application to any specific device were not necessarily consistent, general categories of discounted rates could be developed from this collective information. The Department tended to lean toward the more liberal discount rates in the proposal.

Devices generally have been assigned to higher or lower categories based upon the relative ease with which their usefulness may be obstructed. Non-passive devices rank below passive devices because non-passive devices are subject to proper and consistent utilization by all drivers of the car. Devices which are routinely removed from the vehicle

or the specific vehicle component upon which it functions while the car is in operation rank below similar devices which are permanently attached, because removable devices are more easily forgotten. Single component devices rank below multi-component devices because they are generally easier to remove or disengage. Single system devices rank below multi-system devices because single system devices may be overridden more easily. Finally, devices which are aimed at vehicle recovery as well as theft prevention rank above devices which are strictly anti-theft devices because of the added deterrent factor and dual purpose of the devices.

The Department did not rely upon any statistical analysis or actuarial data because none was currently accessible. The Department believes it is reasonable and fair to rely upon the laws of other states (which had been in place three or more years) and currently filed insurer policy forms. The Department notes that while many insurers use the Insurance Services Office, Inc. (ISO) model for anti-theft rate reductions, some insurers do not, and may vary significantly from the ISO standard.

The commenters which criticized the discount rates and/or categorization of devices proposed by the Department supplied little or no statistical or actuarial evidence to support contentions that rates should be lowered, or raised, or that certain devices should be moved from one category to another. The majority of the commentary is based upon belief and conjecture, which is generally unpersuasive.

With respect to the comments suggesting that N.J.A.C. 11:3-39 may violate N.J.S.A. 17:29-1 et seq., the Department does not believe that N.J.A.C. 11:3-39 offends N.J.S.A. 17:29A-1 et seq. in any manner. The Department notes that N.J.S.A. 17:33B-44 specifically authorizes the Commissioner to promulgate these rules.

COMMENT: Two commenters noted that Category IV devices should require that a warning label be displayed on the vehicle to facilitate the anti-theft feature of the devices.

RESPONSE: The Department agrees and has included this requirement upon adoption.

COMMENT: Two commenters stated that the Category IV device description is too vague and should be revised. One commenter suggested that the description include reference to the system being an electronic unit installed in the vehicle which emits a signal by which the vehicle may be tracked.

RESPONSE: The Department agrees and has included similar language upon adoption.

COMMENT: Two commenters questioned the validity of the discount for Category IV devices which require that police be able to receive an electronic signal, if they are to rapidly recover the vehicle. The commenters noted that not all jurisdictions in which the car may be stolen and subsequently located in the New York, New Jersey, Pennsylvania and Delaware area are equipped with the receiving equipment.

RESPONSE: The Department believes that the commenters have raised a valid point. The Department has considered this point in revising the discount rate applicable to Category IV devices and revising N.J.A.C. 11:3-39.5(d). Readers should be aware however, that since neither commenter suggested an alternative discount rate for this device, the Department relied upon policy forms of insurers which currently provide a discount for such Category IV devices in establishing the new rate.

COMMENT: Four commenters questioned the granting of discounts for safety devices, such as anti-lock brakes and traction control devices. Two commenters stated that they believe separate discounts for such devices as traction control systems and anti-lock brakes are unwarranted because the added confidence these safety devices instill tends to create reckless behavior, or because such devices are primarily installed on high performance vehicles or luxury vehicles. All of the commenters suggested that discounts such as those proposed are unnecessary if the insurer utilizes the symbol rating system. One commenter suggested that language be included upon adoption which permits an insurer not to provide a separate discount for safety features if the insurer rates collision coverage by make and model.

RESPONSE: The Department agrees with the commenters (although the Department rejects the assertion that the safety devices lead to reckless driving behavior), and has included a make and model rating exception upon adoption.

COMMENT: One commenter suggested that since the proposed rules refer to certain devices which are designed primarily for vehicle recovery, such language should be added throughout the rules.

RESPONSE: The Department agrees, and has added the language where appropriate.

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**COMMENT:** Two commenters stated that the 30 percent cumulative discount rate for a Category IV device used in combination with a Category III device is excessive. One commenter stated that total unrecovered theft claims and recovered theft claims are approximately 25 and 20 percent, respectively, of the company's New Jersey comprehensive coverage claims payments. The other commenter stated theft losses (for the most recent six year accident period) accounted for approximately 34 percent of losses paid and four percent of adjustment expense for the comprehensive coverage written by the commenter's company in New Jersey.

**RESPONSE:** The Department has considered the commenter's statements, and is revising downward the cumulative discount for combination of devices for Categories III and IV.

**COMMENT:** One commenter questions whether the establishment by the Department of minimum rate discounts limits insurers from providing greater discounts.

**RESPONSE:** No. The discount rates established by the Department represent only minimum discounts. Insurers may provide larger discounts.

**COMMENT:** Two commenters stated that the Department is stifling competition by requiring insurers to provide discounts for installation of anti-theft devices and by dictating minimum discounts rates.

**RESPONSE:** The Department disagrees that these rules stifle competition. Although all insurers are required to provide minimum discount rates, the Department has not specified any maximum discount rates. Additionally, while the Department has established the minimum category to which any specific device may be assigned, there is nothing which prohibits an insurer from moving a device to a higher category. Insurers are not prohibited from allowing certain combinations of lower category devices to be classified as eligible for a higher category discount, or from providing some type of cumulative discounts for combinations of devices within a category or among categories.

Furthermore, these rules do not prohibit an insurer from:

(1) adding other anti-theft, anti-fraud or vehicle recovery devices to the list, (2) providing coverage discounts for devices the insurer sells to insureds; or (3) providing other legitimate incentives to insureds to install anti-theft and/or vehicle recovery devices in their cars, or from targeting certain vehicles for such incentives. Although certain insurers may be able to take greater advantage of the various avenues of competition, that does not negate the fact that the avenues of competition exist and are open.

**COMMENT:** Several commenters have expressed concern that an inspection done in compliance with the Automobile Physical Damage Insurance Inspection Procedures, N.J.A.C. 11:3-36, may not provide sufficient proof of an anti-theft device. At least one commenter suggested alternative means of verifying coverage.

**RESPONSE:** The commenters appear to have misunderstood the rule. Insurers are not required to use the inspection process of N.J.A.C. 11:3-36 to verify the installation of any specific anti-theft device. In fact, insurers are not required to institute a method of verification at all. The rules merely state that an inspection pursuant to N.J.A.C. 11:3-36 will be considered a reasonable method of proof, should an insurer choose to utilize it. Other forms of verification may also be reasonable. The rules allow each insurer to determine its own needs.

**COMMENT:** One commenter stated that the descriptions of the anti-theft devices set forth by the Department are likely to be anti-consumer and that verification is practically impossible.

**RESPONSE:** The Department disagrees. The Department believes that the diversity of the items described is pro-consumer, as well as relatively close to advertising and instructional materials used to market and educate consumers and insurers about such devices. The Department acknowledges that verification may be difficult sometimes, but the Department disagrees that verification will be practically impossible for any device.

**COMMENT:** One commenter questioned who will protect the motorist from the after-market anti-theft device industry, and stated the belief that car manufacturers will provide less than 20 percent of the anti-theft systems described in the proposal given the general market requirements for anti-theft devices.

**RESPONSE:** No evidence has been provided to suggest that consumers need protection against the after-market anti-theft device industry.

The commenter appears to suggest that the only valid anti-theft device is one which is provided by a car manufacturer. However, the commenter provides no evidence that after-market anti-theft devices are inferior,

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or inappropriate in any other manner. Moreover, there is an apparent market for both devices manufactured by the auto maker and device manufactured by other entities, which may be bought and installed at some point after the purchase of a car. Both types of devices have relative strengths and weaknesses, including price and availability. Consumers and insurers may influence the market, and the market will, over time, reflect that influence.

**COMMENT:** One commenter stated that the rules appear to be aimed solely at deterring the entire vehicle from being stolen. The commenter noted that the rules do not address the new pull-out anti-theft radios, and that a basic alarm ranks only as a Category I device, although an alarm is the only anti-theft device which will deter vandalism.

**RESPONSE:** The rules are not intended to address acts of pure vandalism (which involves no theft or attempted theft) or thefts of parts of the vehicle or items in the vehicle. This does not mean that insurers are precluded from permitting additional premium discounts for automobiles equipped with devices which have added deterrent effects concerning vandalism or thefts of specific items in the automobiles. The Department's rules are silent on these issues.

**COMMENT:** One commenter suggested that an additional discount be provided for those anti-theft devices which also have an anti-fraud element inherent in their design, such as electronic tracking systems.

**RESPONSE:** The Department will not impose an additional discount requirement based on the anti-fraud element of certain devices (that is, tracking devices) at this time. The effectiveness of such devices are not optimal as yet because all neighboring jurisdictions are not currently capable of responding to the use of such devices. However, the Department notes that insurers are not prohibited from offering an additional discount based on an anti-fraud component to the device.

**COMMENT:** One commenter suggested that in order to provide insureds and insurers with protection against excessive and/or unnecessary storage costs following the recovery of a stolen vehicle bearing VIN-window etchings or 24 hour telephone response numbers, storage facility personnel should be required to call within 24 hours after receiving recovered vehicles bearing such identifications. Failure of insurers to respond, or of storage facilities to provide prompt notification, according to the commenter, should result in fines and/or reductions taken against the storage fees.

**RESPONSE:** The Department acknowledges the need for prompt reporting of theft recoveries, but notes that these specific rules are not the appropriate place for the suggested requirements. Additionally, the Department does not agree that such a requirement would have as profound an effect on costs as the commenter suggests. Most vehicles which are recovered following a theft are recovered by the police, whether through capture of the criminal or recovery of an "abandoned" vehicle. The police usually notify the vehicle's owner about its recovery and location. Given that police are already performing the notification function the Department does not believe it is necessary to require notification by a storage facility, or to impose fines for failure to meet the notification requirements. Moreover, the Department believes that insurers already have sufficient motivation to act in a prompt and reasonable manner with respect to storage of these vehicles.

**COMMENT:** One commenter stated that the rules should be clarified with respect to installation of a device during, rather than at the beginning of, the contract period. The commenter stated that devices should be permitted to be installed at any point during the contract period, with the reduction in physical damage coverage rates pro-rated in the first year to the renewal date.

**RESPONSE:** The language at N.J.A.C. 11:3-39.4(a) requires insurers to amend their policy forms to the extent necessary to provide for the discounts as specified. The Department agrees that insureds should be able to install an anti-theft device on their vehicle subsequent to the effective date of the insurance policy, and receive an appropriate credit towards or refund of premiums. The Department anticipates that insurers will treat the addition of an anti-theft device in the same or a substantially similar manner as they would treat other mid-term policy changes. Although treatment may vary slightly from one insurer to another, the Department does not believe it is necessary to include language specifically addressing the issue.

**COMMENT:** One commenter requested that the term "base rates" be defined at N.J.A.C. 11:3-39.3.

**RESPONSE:** The Department believes it is inappropriate and unnecessary to define "base rates." The composition of the base rate from one company to another may vary slightly, but each company is aware of their own base(s).

COMMENT: One commenter suggested that a rate hearing be held pursuant to N.J.S.A. 17:29A-1 et seq. in order to establish the credibility of the expected savings from such required discounts.

RESPONSE: The Department disagrees that a hearing pursuant to N.J.S.A. 17:29A-1 et seq. is necessary at this time. As stated previously, the discount rates set forth in the proposal and the adoption are based substantially upon forms filed by insurers already providing discounts and the laws of other states.

COMMENT: One commenter noted that the proposal of N.J.A.C. 11:3-39 appears to be very similar to Massachusetts' rules on anti-theft devices with several notable exceptions. The commenter stated that New Jersey should follow Massachusetts' example in deleting the window etching technique, and in requiring that all cars eligible for a discount must additionally meet the requirement that the doors have flush or tapered door buttons.

RESPONSE: The Department did follow Massachusetts substantially in its format and descriptions of many devices. However, New Jersey departed from the Massachusetts rules in those areas where it appeared that there was a greater consensus among other states' rules and insurer policy forms to do so. The Department will not delete window etching techniques nor impose the requirement that door buttons be flush or tapered at this time.

COMMENT: One commenter stated that New Jersey should follow New York, noting that New York's discounts are generally much lower.

RESPONSE: As previously stated, the Department looked at various resources in developing these rules, and did not entirely follow any one source, but combined sources. New York's law on anti-theft devices is one of the earliest, but that does not mean it is the only model. New York's mandatory minimum discounts are lower than any other state, ISO and the discounts some insurers currently provide for anti-theft devices in their rating systems.

COMMENT: One commenter suggested that revisions be made to the Buyer's Guide and Coverage Selection Form so that consumers will receive information on this topic.

RESPONSE: The Department agrees that the Buyer's Guide and the Coverage Selection Form may need to be amended. The Department cannot make the amendments simultaneously, but will attempt to revise these forms in the near future.

#### Summary of Agency-Initiated Changes:

The Department has revised N.J.A.C. 11:3-39.4(a)3 upon adoption to read: "At least 15 percent for devices which qualify as Category III anti-theft devices; and". Following a further review of policy forms on file and the anti-theft laws of other states, the Department has determined that there is a consensus among these sources that most of the devices assigned to Category III warrant a 15 percent discount, rather than a 20 percent discount.

The Department has revised N.J.A.C. 11:3-39.4(a)4 upon adoption to read: "At least 20 percent for devices which qualify as Category IV anti-theft devices." After considering the available sources, the Department has determined that 20 percent is a more appropriate discount than the proposed 25 percent.

The Department has revised N.J.A.C. 11:3-39.4(b)2 upon adoption so that the 30 percent discount reads as a 25 percent discount.

N.J.A.C. 11:3-39.5(b)3ii(3) has been revised upon adoption to describe the material required for the cable to be of a material which effectively prevents cutting.

N.J.A.C. 11:3-39.5(c)1i has been revised upon adoption so that the word "triggered" reads as "triggered."

N.J.A.C. 11:3-39.5(c)3iii has been revised upon adoption to remove reference to outdoor telephone booths.

The Department has added a new subsection (f) to N.J.A.C. 11:3-39.5 upon adoption. This new section is intended to make it clear that the anti-theft and vehicle recovery devices listed at N.J.A.C. 11:3-39.5 may not include all devices currently available, or which may become available in the future. The failure of a device to be included on the list, however, does not preclude an insurer from considering the device as one eligible for a premium discount.

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 39. REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER AUTOMOBILES EQUIPPED WITH ANTI-THEFT\*, VEHICLE RECOVERY\* AND SAFETY FEATURES

#### 11:3-39.1 Purpose

The purpose of this subchapter is to encourage consumers to invest in and use anti-theft \*and vehicle recovery\* devices and safety features in private passenger automobiles by providing that there shall be a reduction in the base rates applicable to automobile physical damage coverage, in accordance with N.J.S.A. 17:33B-44, for those private passenger automobiles equipped with anti-theft \*and vehicle recovery\* devices and safety features.

#### 11:3-39.2 Scope

(a) This subchapter shall apply to all insurers which write private passenger automobile insurance in this State.

(b) This subchapter shall apply to all policies which include provisions for physical damage coverage and which are issued or renewed on or after \*[the operative date of this subchapter]\* \*September 1, 1991\*.

#### 11:3-39.3 Definitions

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

"Alarm" means a device which emits sounds audible at 300 feet or more, such as a horn, bell or siren, but does not include those sounds that reasonably may be confused with police or emergency response vehicle sirens.

"Automobile physical damage insurance" means a policy providing one or more of the following coverages:

1. Collision;
2. Comprehensive; and
3. Fire and theft.

"Electronic lock or keyless lock device" means an electronic coding device possessing 10,000 possible combinations or more, which may be unlocked by use of a keyboard or similar data entry device or by means of a remote control device.

"Inspection" means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth at N.J.A.C. 11:3-36.6.

"Insured" means the named insured, as defined in the policy, or an applicant for automobile physical damage insurance.

"Insurer" means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes all affiliated companies within a group.

"Nonpassive" means a device or system designed to remain inoperative and nonfunctional until actively engaged by the user.

"Passive" means a device or system designed to become automatically operative and functional when the automobile's ignition key is moved or stationed in the off position.

"Private passenger automobile" means a vehicle that meets the definition at N.J.S.A. 39:6A-2.

"Tubular lock" means a lock which may be opened by a specific cylindrically shaped key and which possesses at least 50,000 possible combinations.

#### 11:3-39.4 Reductions in rates for anti-theft \*and vehicle recovery\* devices

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its comprehensive and fire and theft coverages, if different, for all private passenger automobiles equipped with one or more anti-theft \*or vehicle recovery\* devices, as described at N.J.A.C. 11:3-39.5. The reductions in the base rates shall be as follows:

1. At least five percent for devices which qualify as Category I anti-theft devices;
2. At least 10 percent for devices which qualify as Category II anti-theft devices;
3. At least \*[20]\* \*15\* percent for devices which qualify as Category III anti-theft \*or vehicle recovery\* devices; and

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4. At least **[25]** **\*20\*** percent for devices which qualify as Category IV anti-theft **\*or vehicle recovery\*** devices.

(b) Insurers are not required to provide greater or additional reductions in the base rates of the comprehensive and fire and theft coverages when a private passenger automobile is equipped with more than one qualified anti-theft **\*or vehicle recovery\*** devices, except as follows:

1. The greater category reduction shall apply when a private passenger automobile is equipped with two or more anti-theft devices qualifying from two or more categories.

2. A private passenger automobile equipped with a Category III anti-theft **\*or vehicle recovery\*** device and a Category IV anti-theft **\*or vehicle recovery\*** device in combination shall receive a reduction of at least **[30]** **\*25\*** percent, (b)1 above notwithstanding.

(c) An insurer may require reasonable proof that a private passenger vehicle is equipped with or has been installed with a device which qualifies as a Category I, II, III, or IV anti-theft **\*or vehicle recovery\*** device, or a combination of such categories, before providing any reduction in the base rates for comprehensive and fire and theft coverages for that private passenger automobile.

1. **[An]** **\*Reasonable proof shall include, but not be limited to, an\*** inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36\*, shall be considered reasonable proof\*.

2. Insurers shall not refuse to provide a reduction for a private passenger automobile in which a qualifying anti-theft **\*or vehicle recovery\*** device has been installed solely on the grounds that the device was installed by the owner of the private passenger automobile.

(d) Insurers may elect not to provide a reduction for a private passenger automobile in which an anti-theft **\*or vehicle recovery\*** device has been installed for a period of up to 24 months following installation of the device, if the device is provided to the insured by the insurer without charge or at a below retail market price, where the reduction in price is equivalent to the reduced premium charges which would otherwise apply.

(e) If an insurer provides an insured with an anti-theft **\*or vehicle recovery\*** device pursuant to (d) above, and the insured terminates the automobile insurance policy, or elects not to renew such insurance with the insurer, prior to the end of the 24 month period, the insurer may demand payment for the cost of the anti-theft **\*or vehicle recovery\*** device provided.

### 11:3-39.5 Categories of anti-theft **\*and vehicle recovery\*** devices

(a) A device qualifies as a Category I anti-theft device if it meets the requirements of one of the devices listed below.

1. An ignition or starter cut-off switch device is qualified if a warning label announces the presence of the device, and the device is designed so that the cut-off switch:

- i. Is wired into the ignition's wiring;
- ii. Is tripped and activated upon exiting of the automobile;
- iii. Shall be re-set in order to start the automobile; and
- iv. Is installed so as not to be visible from the driver's normal seating position.

2. A nonpassive, externally operated alarm is qualified if a warning label announces the presence of the device, and the device is designed so that the alarm is:

- i. Turned off and on by a key used in an externally mounted lock; and
- ii. Triggered by the opening of a door, the trunk or hood, when engaged.

3. A steering column armored collar is qualified if a warning label announces the presence of the device, and the device is designed so that the collar:

- i. Clamps onto the steering column, over the ignition lock;
- ii. Prevents access to the ignition lock;
- iii. Prevents the automobile from being steered, if the automobile is started; and
- iv. Is in no manner attached to the steering column when the device is not in use.

(b) A device qualifies as a Category II anti-theft device if it meets the requirements of one of the devices listed below\*[:]\*\*.\*

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1. A nonpassive fuel cut-off device is qualified if a warning label announces the presence of the device, and the device is designed so that the device:

- i. Shall be activated and deactivated by a switch or key, which is hidden from normal view; and
- ii. Blocks the fuel line, when activated.

2. A nonpassive steering wheel lock device is qualified if a warning label announces the presence of the device, and the device is designed so that:

- i. A steel collar and barrel, into which the shackle of a lock fits, are permanently attached to the steering column;
- ii. The shackle fits over the steering wheel spoke and into the barrel of the collar;
- iii. A tubular key must be used to operate the lock;
- iv. When in use, the steering wheel is prevented from turning;
- v. The shackle is made of case hardened alloy steel; and
- vi. The shackle, collar and barrel resist cutting by a file.

3. An armored cable hood lock and ignition cut-off switch is qualified if the device is designed so that:

- i. The ignition cut-off switch:
  - (1) Is wired into the ignition's wiring;
  - (2) Is tripped and activated by exiting of the automobile;
  - (3) Shall be re-set in order to start the automobile; and
  - (4) Is installed so as not to be visible from the driver's normal seating position;
- ii. The armored cable hood lock:
  - (1) Shall be engaged and disengaged by a push button or such similar device installed within the driver's reach when the driver is seated;
  - (2) Shall extend through the firewall and be secured so as to prevent retraction; and
  - (3) Must be of a material **[similar to that used in outdoor telephone booths]** **\*which effectively prevents cutting\***.

4. An emergency handbrake lock is qualified if the device is designed so that:

- i. A lock replaces the handbrake grip and is permanently attached to the handbrake lever;
- ii. The lock is only released by entering a preset digital combination;
- iii. The lock encasement is of all metal construction; and
- iv. The handbrake cannot be released without releasing the lock.

(c) A device qualifies as a Category III anti-theft **\*or vehicle recovery\*** device if it meets the requirements of one of the devices listed below.

1. A passive alarm system is qualified if a warning label announces the presence of the system, and the system is designed so that:

- i. The alarm is **[triggered]** **\*triggered\*** by entry of the automobile's doors, hood or trunk;
- ii. The alarm sounds for not more than eight minutes and is automatically re-set upon its cessation from sounding;
- iii. The alarm is installed in the engine compartment so as to be inaccessible without opening the hood;
- iv. The hood shall not open unless unlocked from within the automobile by a key or a keyless device;
- v. The ignition or starter shall be cut-off or disabled automatically upon triggering of the alarm; and
- vi. The system shall be disengaged by use of a tubular lock or an electronic keyless device within a maximum time elapse of 20 seconds following entry or re-entry of the automobile.

2. A fuel cut-off device is qualified if a warning label announces the presence of the device, and the device is designed so that:

- i. The fuel line is blocked when the automobile is turned off and is not re-opened unless a switch is tripped each time the automobile is started;
- ii. The switch opening the fuel line is accessible from the driver's seat, but:
  - (1) Is hidden from view; or
  - (2) Is operable only by a tubular key or an electronic keyless device;
  - iii. Any under-the-dash wiring installed in connection with the system shall blend with factory wiring; and

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iv. Any override switch which is installed shall be hidden from view. The override switch shall either:

(1) Not be accessible from the forward passenger compartment; or

(2) If accessible from the forward passenger compartment, be subject to initiating a warning alarm which sounds while the engine is running and the override switch is engaged.

(A) If a warning alarm is required, pursuant to (c)2iv(2) above, then the system shall be designed so that disconnection of the override alarm shall result in disconnection of the entire passive fuel cut-off device.

3. An armored ignition cut-off switch is qualified if a warning label announces the presence of the device, and the device is designed so that:

i. The device, when engaged, prevents normal ignition or "hot wiring" of the automobile, interrupting the ignition current;

ii. A cable runs from a locking system, separate from the ignition lock, to the ignition coil, starter solenoid, or other engine component;

iii. The cable is of a material and a design \*[similar to that used in outdoor telephone booths,]\* which either effectively prevents cutting, or collapses when cut to prevent ready re-connection of cut interior wires; and

iv. The separate locking system shall be installed within the interior of the automobile in a position which is accessible to the driver in normal seating and may be of the tubular type or an electronic keyless device.

4. A passive multi-component cut-off switch is qualified if a warning label announces the presence of the device, and the device is designed so that:

i. When engaged, the primary wire to the ignition coil is disconnected, the starter is disconnected and one or more wires to the electronic ignition system, or the points and condenser are grounded to the chassis;

ii. The wiring blends with factory installed wiring;

iii. The disconnected/grounding wires shall be routed to random points in the electrical system away from the components the wires affect;

iv. The control module, if separate from the electronic locking mechanism, shall be hidden in the engine compartment or other part of the automobile, so that the control module is not easily detectable; and

v. The automobile cannot be started unless the device is deactivated through a locking system installed within the interior of the vehicle. The locking system shall be accessible to the driver in a normal seating position. The lock may be either of a tubular type or a system which uses an electronic keyless device.

5. A passive time delay ignition system is qualified if a warning label announces the presence of the system, and the system is designed so that:

i. The system allows the automobile to be started only if the operator waits a prescribed time period before moving the ignition key from on to start;

ii. The prescribed time period varies from one system to another in a range of three seconds to 20 seconds;

iii. The system requires an additional waiting period of at least 90 seconds before the operator may try to start the automobile again with success;

iv. The system includes a hood lock which is operated by a tubular key; and

v. The system shall resist tampering.

6. An armored cable or electronically operated hood lock and ignition cut-off switch system is a qualified system if a warning label announces the presence of the system, and the system is designed so that:

i. When engaged, the ignition cannot be started, or is cut-off;

ii. When an armored cable hood lock is used:

(1) The cable shall be made of case-hardened solid steel tubing which resists cutting;

(2) The cable shall extend through the firewall and be secured so as to prevent retraction;

## ADOPTIONS

(3) No portion of the cable may be accessible so as to be grasped from beneath the automobile, and if accessible through the grill work, the armor shall extend to the hood locking mechanism; and

(4) The system shall be engaged by a push button within the automobile's interior, or a similar device, which is installed so as to be readily accessible to the driver in normal seating position;

iii. When an electronically operated hood lock is used:

(1) The hood lock is electronically operated and functions so as to remain locked even when wiring which operates the hood is cut;

(2) The hood lock, if accessible through the grill work, or from beneath the car, shall be shielded or armored to prevent manual operation;

(3) The system shall be passively engaged by turning the ignition key to the off position; and

(4) The system shall be disengaged through use of a separate key and lock, or an electronic keyless device; and

iv. The locks controlling the hood lock systems shall be either of the tubular type or be operated electronically.

7. A passive delayed ignition cut-off system is qualified if a warning label announces the presence of the system and the system is designed so that:

i. The ignition circuit is interrupted automatically when the engine reaches a pre-set speed, unless the system is actively disengaged;

ii. The speed is pre-set in a range between 1500 and 2000 revolutions per minute (RPM);

iii. The system is engaged when the ignition is turned off;

iv. The system may be disengaged by a push button or other specific device within the interior of the vehicle, but shall be hidden from view;

v. The system may be disengaged by use of either a lock of the tubular type or an electronic keyless device;

vi. Wiring shall blend with factory wiring, if placed under the dash;

vii. An alarm shall sound when the ignition is disabled; and

viii. If an override switch is provided, the switch shall be hidden from view, and work in conjunction with an alarm that sounds continuously while the engine is running.

8. A passive ignition lock protection system is qualified if a warning label announces the system, and the system is designed so that:

i. A case-hardened steel protective cap fits over the ignition;

ii. The cap fastens to a steel collar fitted around the steering column and over the ignition lock; and

iii. The cap contains a slotted opening through which the ignition key fits and is operable.

9. A high security replacement lock device is qualified if a warning label announces the device, and the device is designed so that it is a case-hardened steering column ignition lock conforming to the National Highway Traffic and Safety Association's Standard No. 114-1, incorporated herein by reference. A copy of Standard No. 114-1 may be obtained by writing:

National Highway Traffic and Safety Association

Docket Room

NAD-52

400 Seventh Street, S.W.

Washington, D.C. 20590

10. A hydraulic brake lock device is qualified if a warning label announces the presence of the device and the device is designed so that:

i. The device is mounted on the dash;

ii. When activated and pressurized with the brake pedal, hydraulic pressure is maintained on the brakes at two or more of the automobile's wheels;

iii. The device has a high security locking system with at least 50,000 combinations; and

iv. The lock is such that it cannot be pulled using a conventional slide hammer or lock puller equipment.

11. A window etching vehicle identification system is qualified if a warning label announces the presence of the system, and the system is designed so that:

i. A specific, identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process;

## ADOPTIONS

ii. The set of numbers must be traceable to the automobile's registered owner; and

iii. Immediate telephonic notification or identification of the registrant must be available 24 hours a day, seven days per week.

(d) A device or system qualifies as a Category IV anti-theft \*or vehicle recovery\* device if \*a warning label announces the presence of the device\* and it meets the following requirements:

\*1. The device or system is designed to transmit a pulse or signal by which the location of the automobile in which the device or system is installed may be tracked by those receiving the signal;\*

\*[1.A]\* \*2. The\* device or system is activated or initiated when an automobile is stolen \*or reported stolen to police\*;

\*[2. Information concerning the automobile]\* \*3. The pulse or signal either\* must be transmittable to the \*[police in the jurisdiction where the automobile was stolen]\* \*New Jersey State Police or to a private central monitoring station which shall have direct communication with the New Jersey State Police for the purpose of reporting, tracking and monitoring the automobile\*;

and \*[3.]\* \*4.\* The \*device or\* system shall be designed so that upon recovery, information concerning the automobile's location may be \*[transmitted]\* \*provided\* to the proper authorities and/or \*the\* automobile's owner or insurer.

(e) All warning labels announcing the presence of an anti-theft \*or vehicle recovery\* device or system shall be located so as to be visible from the automobile's exterior, preferably on the forward passenger and driver's side door windows.

\*[f] The lists set forth in (a) through (d) above are not exclusive, and shall not prevent an insurer from considering other devices or systems as anti-theft or vehicle recovery devices eligible for reductions in the base rates of comprehensive and theft and fire coverages, in a manner determined by the insurer.\*

### 11:3-39.6 Reductions in rates for safety features

(a) \*[Every]\* \*Except as (d) below may apply, every\* insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its collision damage coverage for all private passenger automobiles equipped with one or more safety features. Reductions in the base rates shall be as follows:

1. At least five percent for a private passenger automobile equipped with one safety feature;

2. An additional 2.5 percent reduction shall be provided for each additional safety feature with which the automobile is equipped; and

3. No insurer shall be required to provide more than a 10 percent total reduction for safety features, (a)2 above notwithstanding.

(b) Insurers shall develop a list of features which will qualify as collision damage safety features. This list may include features which are standard features for some private passenger automobiles, but which are options or not available for other private passenger automobiles. This list shall include:

1. Anti-lock braking systems;
2. Traction control systems; and
3. Five-mile-per-hour bumpers.

(c) An insurer may require reasonable proof that a private passenger automobile is equipped with a safety feature before providing any reduction in the base rates for collision damage coverage for private passenger automobiles. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

\*[d] The requirements of (a) through (c) above shall not be applicable to those insurers which utilize make and model rating in pricing collision coverage.\*

### 11:3-39.7 Penalties

Any insurer which fails to comply with the terms of this subchapter shall be in violation of this subchapter, and subject to the assessment of any and all penalties in accordance with the laws of this State.

### 11:3-39.8 Severability

If any provision of this subchapter or application thereof to any person or circumstances is held invalid, the remainder of the subchapter and application of such provisions to other persons or circumstances shall not be affected thereby.

## COMMERCE AND ECONOMIC DEVELOPMENT

## COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

### DIVISION OF TRAVEL AND TOURISM

#### Tourism Matching Grant Program

#### Adopted Repeal and New Rules: N.J.A.C. 12A:12-3

Proposed: May 20, 1991 at 23 N.J.R. 1513(a).

Adopted: June 24, 1991 by George R. Zoffinger, Commissioner, Department of Commerce, Energy and Economic Development.

Filed: June 25, 1991 as R.1991 d.370, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27H-6.

Effective Date: July 15, 1991.

Expiration Date: September 21, 1992.

#### Summary of Public Comments and Agency Responses:

COMMENT: Regarding information which must be included with the Tourism Matching Grant Application in order for an applicant to be eligible for a Tourism Matching Grant, Barbara Steele, Director of Economic Development for Ocean County, questioned why governmental entities should be required to provide the information requested by 12A:12-3.3(a)1i, ii, v and vi. She also questioned the relevance of 12A:12-3.3(a)1iv, which would require governmental entities to submit their entire budget.

RESPONSE: The Department agrees that governmental entities would not need to provide the information requested by 12A:12-3.3(a)1i, v and vi as this information is well-established in the public record. In addition, the Department agrees that requiring the submission of the entire budget of a county or municipality would be both unwieldy and irrelevant. Therefore, the Department has revised N.J.A.C. 12A:12-3.3(a) with the addition of N.J.A.C. 12:12-3.3(a)2, on adoption. However, the Department will continue to require that governmental entities provide an audit report demonstrating financial stability/condition under N.J.A.C. 12A:12-3.3(a)1ii.

COMMENT: Regarding the evaluation criteria to be used by the Matching Grant Advisory Committee in N.J.A.C. 12A:12-3.5(c)1 through 8, Ms. Steele asked if these criteria are equally weighted.

RESPONSE: The eight evaluation criteria are equally weighted.

COMMENT: Ms. Steele asked that scores be given to grants so that the public will be aware of the values assigned to each factor.

RESPONSE: All grant applications will be scored against the same evaluation criteria. Final scores for each application will be available upon written request to the Tourism Matching Grant Coordinator in the Division of Travel and Tourism.

COMMENT: Ms. Steele asked for a time table for the awarding of the grants.

RESPONSE: As per N.J.A.C. 12A:12-3.4(a), deadlines for application submission will be delineated in the application instructions. All grant applications will be collected, evaluated and granted during one period of the year, and this period will be clearly outlined in the application instructions.

COMMENT: Ms. Steele asked if the grant evaluation process will be open to the public.

RESPONSE: Although the actual process of evaluation will not be open to the public, evaluation criteria are public record and the application scores will be available to interested parties upon written request to the Division of Travel and Tourism.

COMMENT: Ms. Steele asked if there will be a mechanism for evaluation input from the Regional Tourism Council representing an applicant's area.

RESPONSE: There is no mechanism for evaluation input from the Regional Tourism Councils because these councils are themselves eligible to receive matching grants. Such input would represent a conflict of interest.

COMMENT: Mr. Robert Patterson, Executive Director of the Cape May County Chamber of Commerce, asked for a clarification regarding the type of audit report, whether a formal audit or just a financial

statement review by an accountant, is required by N.J.A.C. 12A:12-3.3(a)lii.

RESPONSE: A formal audit is required. This is consistent with the guidelines promulgated by the Department of Treasury, Office of Management and Budget Circular Letter 80-12, "Adequacy of Provider Financial Management Systems."

Full text of the repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12A:12-3.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*).

SUBCHAPTER 3. MATCHING TOURISM GRANTS TO REGIONAL TOURISM COUNCILS, COUNTIES, MUNICIPALITIES AND TOURISM PROMOTION ORGANIZATIONS

12A:12-3.1 Scope and purpose

(a) The rules in this subchapter are promulgated by the Department of Commerce, Energy and Economic Development to implement the Tourism Matching Grant Program within the Department under the auspices of the Division of Travel and Tourism. This Program has been established to encourage regional tourism councils, counties, municipalities and tourism promotion organizations to engage in creative promotional projects or events which complement State tourism promotional efforts. These projects or events should also target out-of-State markets and in-State markets that are in excess of 35 miles from the activity or outside the organization's designated boundary, in order to increase travel from out-of-State and among the State's regions.

(b) Applications and questions regarding participation in this Program should be addressed to:

Matching Grant Coordinator  
N.J. Department of Commerce, Energy and Economic Development  
Division of Travel and Tourism  
CN 826  
Trenton, New Jersey 08625-0826

(c) This Program shall be open to all regional tourism councils, counties, municipalities, and tourism programs which meet the requirements of this subchapter. All applications for the grant program which meet the requirements of this subchapter shall be given due consideration; however, not all applicants are guaranteed to be awarded a grant.

12A:12-3.2 Definitions

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

"Applicant" means any regional tourism council, county, municipality, or tourism promotion organization applying for a tourism grant pursuant to this subchapter.

"Audit" means an independent certified audit stating the actual financial position of the organization.

"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development.

"DCEED" means the Department of Commerce, Energy and Economic Development.

"Director" means the Director of the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Division" means the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Grant Coordinator" means the Coordinator of the Division of Travel and Tourism Matching Grant Program.

"Grantee" means a regional tourism council, county, municipality, or tourism promotion organization which has been awarded a grant under the Tourism Matching Grant Program.

"Logo" means the promotional symbol authorized by the Division of Travel and Tourism in use for promoting tourism and related industries of the State of New Jersey.

"Regional tourism councils" means any or all of the six regional tourism councils designated and created under the New Jersey Tourism

Master Plan by the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Tourism promotional organization" means any non-profit organization created under N.J.S.A. 15A:1-1 et seq. including, but not limited to, chambers of commerce, merchant business associations and heritage, cultural or historic commissions.

12A:12-3.3 Eligibility of counties, municipalities, tourism promotion organizations and regional tourism councils

(a) To be eligible to receive a tourism grant, the applicant shall forward to the matching grant coordinator:

1. A completed DCEED Tourism Matching Grant Application which shall include the following:

- i. Proof of not-for-profit status and articles of incorporation;
- ii. A copy of the organization's last fiscal year, or most recent, audit report demonstrating financial stability/condition;
- iii. An overall marketing plan;
- iv. An overall budget for the entire organization which includes the amount requested and all other anticipated funds for period covered by this application;
- v. A description of the applicant's organizational structure, including the names and addresses of officers, directors and members;
- vi. A copy of the applicant's constitution and/or by-laws; and
- vii. Copies of letters of commitment for funding applicant's 50 percent share.

2. \*Counties and municipalities need not provide the information requested in (a)li, v and vi above. Regarding (a)liv above, counties and municipalities need only provide the budget for the specific project or event for which funding is being requested.\*

(b) The amount of funding requested from DCEED may not exceed 50 percent of the total budget of the event or project. For purposes of this subsection, total budget of the event or project shall identify and exclude non-eligible project cost from the request for funding.

(c) In each program cycle no more than one grant will be awarded to any organization.

(d) No organization will be eligible to receive a grant if they are not in good standing with the Division. For purposes of this subsection, "good standing" means that all terms and conditions of previously received grants have been met.

12A:12-3.4 Application deadlines for grants to counties, municipalities, tourism promotion organizations and regional tourism councils

(a) Applicants shall be advised in the instructions for grant application of deadlines for the submission of the Grant Application. These dates will be determined by the Commissioner as deemed necessary, and noticed in the New Jersey Register.

1. For purposes of this section, date of receipt of application means postmark date.

12A:12-3.5 Evaluation of matching grant applications

(a) Upon receipt of an application, the Division shall evaluate and rank the application through its Matching Grant Advisory Committee.

(b) The Matching Grant Advisory Committee shall consist of:

- 1. Members of the Tourism Advisory Council, as determined by the Council;
- 2. The Deputy Commissioner of Commerce and Economic Development or his or her designee; and
- 3. The Director of the Division of Travel and Tourism.

(c) The Committee shall evaluate each application on the following factors and then rank all applications based upon application scores:

- 1. Integration of the program or event into the overall State tourism promotional program;
- 2. Prominent use of the Division's promotional logo;
- 3. Program quality;
- 4. The anticipated benefit to the region in which the project is proposed;
- 5. The amount of local support for the program or event;
- 6. The amount of local funds raised during the previous year for tourism programs;

7. The scope of planning needed for the program or event; and
8. The scope of local participation in the program or project.

(d) The Matching Grant Advisory Committee shall issue a report to the Commissioner which shall include:

1. A prioritized listing for recommended grant recipients; and
2. A recommended amount for each grant.

(e) Upon receipt of the report, the Commissioner shall issue a final decision as to the grant recipients and the amount of each grant. Each grant recipient will be notified of the award in writing and will receive, along with the notification, a contract for the grant which will include the deadline for submission of said contract.

1. The Commissioner may establish the timeline for the Program grant cycle including announcement and distribution dates.

2. The Commissioner may award grants on an incremental basis, such that a grantee may be required to produce specific documents for periodic reports as a condition of receipt.

12A:12-3.6 Allowable expenditures

(a) Allowable expenditures are expenses authorized for reimbursement under this subchapter, such as:

1. Media advertising;
2. Brochure development printing and distribution;
3. Cooperative advertising programs;
4. Trade show registration, fees and booth rental;
5. Travel missions (promotional expenses only);
6. Familiarization tours (travel expenses only);
7. Trade show promotions;
8. Distribution cost of promotional material; and
9. Promotional specialty items.

12A:12-3.7 Non-eligible project cost

(a) Non-eligible project cost means a cost for which a tourism grant will not be awarded or funded. These costs include, but are not limited to:

1. Durable equipment, capital investments, restoration/rehabilitation of structures or buildings, except when these types of expenditures are an integral part of the proposed project or event;
2. Wages, payroll taxes or benefits for employees for the project or event;
3. Administrative expenses such as utility expenses, office space and equipment, postage, and office supplies;
4. Personal service contracts;
5. Travel expenses, including transportation costs, mileage, parking, lodging and per diem (excluding familiarization tours);
6. Entertainment expenses;
7. Rent of facilities (except travel show space);
8. Fireworks; and
9. Membership fees (except those required for trade show participation).

12A:12-3.8 Grant forfeiture

(a) Any grant funds not utilized by the grantee shall be returned to the general grant pool and shall be available to other applicants or to increase awards to other grantees.

(b) Failure to timely submit a fully negotiated contract, properly signed and dated with all documentation required by these rules, may result in forfeiture of the grant by the grantee.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Commercial Drivers' Schools Licensing Rules

**Adopted Amendments: N.J.A.C. 13:23-1.1, 2.1 through 2.10, 2.13, 2.15, 2.16, 2.18, 2.19, 2.28, 2.30, 2.32 through 2.37, 3.1 through 3.9, 3.12, 4.1 and 4.2**

**Adopted Repeals and New Rules: N.J.A.C. 13:23-2.12, 2.20, 2.21, 2.22, 2.23 and 2.24**

**Adopted Repeals: N.J.A.C. 13:23-2.14, 2.17, 2.25, 2.26, 2.27, 2.31, 2.38, 3.10, 4.3 and 4.4**

Proposed: March 4, 1991 at 23 N.J.R. 662(a).

Adopted: June 24, 1991 by Stratton C. Lee, Jr., Acting Director, Division of Motor Vehicles.

Filed: June 25, 1991 as R.1991 d.371, 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. 39:12-4.

Effective Date: July 15, 1991.

Expiration Date: May 26, 1994.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the above-referenced edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. The period for public comment was extended by the March 28, 1991 media advisory until April 28, 1991.

Two commenters forwarded comments to the Division of Motor Vehicles with regard to the proposal. The two commenters were: James Herman, Esq., as counsel for and on behalf of the members of the Driving School Association of New Jersey, Inc.; and Joseph Monteiro of the Liberty Driving School. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666.

Commenter Monteiro of the Liberty Driving School raised the following points as summarized below, together with the Division's responses thereto.

COMMENT: The proposed regulations will make it almost impossible for small driving schools to remain open and in business. The new rules and regulations would not help the small schools to operate; only the big schools would be able to abide by the regulations because of their bigger capital flow. This will help the big schools get bigger and force the small schools to close. Regulations should be within reason to help all, big and small schools, and of course the student to get the proper training through lessons to obtain their driver's license. Regulations should help all.

RESPONSE: The Division does not agree with the primary thrust of this comment, that is, that the proposal "helps" large driving schools to the detriment of smaller driving schools. The purpose of the Division's driving school regulations (N.J.A.C. 13:23) and the instant proposed amendments, repeals and new rules which are being adopted by the Division is to properly regulate all driving schools, regardless of the size of the school, in order to protect the interests of the general public (particularly driving school students and prospective students). N.J.S.A. 39:12-4 provides that "[t]he director may make such rules as he deems reasonable for the conduct of drivers' schools", and the Division believes that the rules in question comply with that statute by providing reasonable regulation of driving schools in this State regardless of whether the size of the school is large or small.

COMMENT: New Jersey should adopt a regulation like New York, where everyone must have four or five lessons by a licensed school before going for their driving test, to replace the current New Jersey system. In New Jersey anyone (a family member or friend, not necessarily a driving school) can take an individual for lessons and be paid for same and then take the individual for the driving test at the Division. No proof of lessons taken at a licensed driving school is requested at the driving test. If New Jersey were to adopt a regulation like New York, big and

small schools would hire more instructors and create more jobs while producing more competent drivers and improving highway safety.

**RESPONSE:** The change requested by this comment, that is, that this State require a person to take a given number of lessons at a licensed driving school as a prerequisite to taking the State driving test, cannot be effectuated by the Division by regulation. Such a change as to how persons prepare for this State's driving test administered by the Division would require appropriate enabling legislation. The relevant New Jersey statutes, N.J.S.A. 39:3-13 et seq., do not currently impose the type of driving test preparation requirements sought by the commenter. The Division cannot establish by regulation driver testing preparation requirements which are at variance with those set forth in the controlling statutes (N.J.S.A. 39:3-13 et seq.). Comments regarding suggested statutory changes should be directed to State legislators rather than to the Division because statutory changes are a legislative rather than administrative matter. It must be noted parenthetically that the Division is not aware of any compelling need for novice drivers to be required by the State to attend a driving school as a prerequisite to being allowed to take the State driving test.

Commenter Herman raised the following points on behalf of the Driving School Association of New Jersey, Inc. (hereinafter referred to as the Association) as summarized below, together with the Division's responses thereto.

**COMMENT:** With regard to N.J.A.C. 13:23-2.8, the Association is concerned that a driving school may be forced out of a shopping center or other commercial complex if the Division decides to place a facility or agency there. Such a forced move may prevent the successful continuance of the school in question and raise legal implications with regard to the school's existing lease arrangements, and would therefore represent an unlawful infringement upon the constitutional right to pursue a legitimate business enterprise. The Association accordingly objects to the unqualified use of the word "location" in the above cited regulation and asks that specific language be inserted in the rule to protect schools from being displaced by subsequent Division relocation or expansion.

**RESPONSE:** The Division believes the commenter's concerns regarding N.J.A.C. 13:23-2.8 are misplaced and accordingly declines to make the changes to that provision requested by the commenter. The rule prohibits a licensee from conducting his business at such locations or in such manner as to give the appearance to the public that the business has some official connection with a Division of Motor Vehicles facility or authorized motor vehicle agency. In making the determination as to whether such an appearance is created, the rule sets forth various factors that the Director may consider. The rule in question does not apply to the situation raised by the commenter, that is, placement of a motor vehicle agency by the Division in the same shopping center already occupied by a licensed driving school. Implicit in this regulatory prohibition is the requirement that the licensee have control over the choice of the location of his business. If the Division of Motor Vehicles locates one of its facilities in the same shopping center already occupied by a licensed driving school, the licensed driving school has no choice over such location and cannot be held to have violated such provision especially since the choice of such location constitutes an affirmative decision by the Division that the location for its facility will not present a conflict between its business and that of the driving school. In such circumstances, the proximity of the driving school alone would not be violative of this provision unless in some other manner the licensee holds himself out to the public as being affiliated with the Division.

**COMMENT:** With regard to N.J.A.C. 13:23-2.12(a)1, the rule may inadvertently include the power to deny, suspend or revoke if a driver or office staff person is, or has been, convicted of a crime. The regulation should be clarified to confirm that these contractors or employees are not included within the purview of this regulation.

**RESPONSE:** The Division does not agree with the commenter that a change to N.J.A.C. 13:23-2.12(a)1 is necessary. Provided a driving school is in compliance with N.J.A.C. 13:23-2.35, the school is not subject to license denial, suspension or revocation solely because one of its instructors or authorized agents has been convicted of a crime.

**COMMENT:** With regard to N.J.A.C. 13:23-2.12(a)3, the following wording should be added to the beginning of this paragraph: "Subject to the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1, et seq.,"

**RESPONSE:** The Division does not agree with the commenter's contention that a specific reference to the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq., hereinafter the Act) in N.J.A.C.

13:23-2.12(a)3 is necessary. A specific reference to the Act is unnecessary because all regulations promulgated by State agencies are read consistent with all of the laws of the State of New Jersey. In this respect, the rule in question is, by operation of law, subject to any provisions of the Rehabilitated Convicted Offenders Act that may be applicable to driving schools.

**COMMENT:** With regard to N.J.A.C. 13:23-2.12(a)4 and 5, to the extent that these sections require reporting and expose the school licensee to punitive actions prior to the entry of an actual conviction, these sections are constitutionally offensive. In addition to violating the presumption of innocence, it is clear that information will be entered in and remain in the school's official file regardless of the outcome of the criminal charges involved. As a practical matter, these entries will never be purged from the licensee's file. Future reference to the file will reveal the existence of the charges, thereby creating prejudice against the school. An entry in the file that a charge did not result in a conviction will do little to minimize such prejudice. The two above cited provisions should be rewritten to require notice and action against the license only when a conviction occurs. The Director should have discretion to defer any decision during the pendency of any timely filed appeal.

**RESPONSE:** The Division does not agree with the commenter that N.J.A.C. 13:23-2.12(a)4 and 5 are constitutionally offensive. However, after reviewing N.J.A.C. 13:23-2.12(a)4, it appears that the manner in which this provision applies to license suspensions and revocations is in need of clarification and elaboration. Since these revisions cannot be made without deferring the adoption of the entire proposal, N.J.A.C. 13:23-2.12(a)4 is being deleted until such time as the Division can propose an appropriate amendment.

The requirement that an applicant or a licensee provide the Division with information regarding arrests, criminal charges, indictments, and convictions is information necessary to the conduct of a proper investigation into the applicant or licensee's background. The commenter's argument that the retention of this information in the licensee's file will result in future prejudice to the licensee is unfounded. This information will only impact on the applicant or licensee's ability to hold a license if, through further investigation, it results in evidence that establishes one of the grounds for disqualification listed in N.J.A.C. 13:23-2.12.

**COMMENT:** With regard to N.J.A.C. 13:23-2.12(a)6, the Association objects to license action for alleged acts which are not even prosecuted and which may be barred from prosecution by law. It would be impossible to adequately protect the rights of the schools. The proof problems would be insurmountable in such situations. Such actions would, by their very nature, be grossly unfair and indefensible. This is an overly broad catch-all provision, with no reasonable, definable limits.

**RESPONSE:** The Division does not agree with this comment and N.J.A.C. 13:23-2.12(a)6 has not been changed (except that it has been recodified to N.J.A.C. 13:23-2.12(a)5 upon adoption). A driving school confronted by a proposed license denial, suspension or revocation pursuant to the regulatory provision in question has the right to request an administrative hearing at which the burden of proof will be upon the Division to prove the commission of the alleged misconduct. The Division does not believe the proof problems in such a hearing to be any greater than in any other hearing, and cannot discern why it would be "impossible" to adequately protect the rights of a driving school in such a proceeding as asserted by the commenter. The Division believes the rights of the schools are adequately protected by the administrative hearing process in such a situation. Failure by the Division to carry its burden of proof in such cases will result in dismissal of the proposed administrative action. Accordingly, the Division does not agree with the commenter's objections regarding the regulatory provision in question.

**COMMENT:** With regard to N.J.A.C. 13:23-2.22, the Association objects to any sample Service Agreement and especially the requirement that Behind the Wheel and Classroom Instruction Services be detailed, with a Grand Total Cost to Student given. It is impossible to predict in advance the number of lessons that any particular student will need. Many schools may not use the "lesson" as its unit of service. The term "lesson unit" may be more appropriate and may be defined as 60 minutes per lesson unit, with fractional lesson units being permissible. Instruction Services with an amount per lesson unit, as so defined, could then be moved up into the Itemized Account section of the sample. The Grand Total, however, must be deleted in any event. Its inclusion would require the further inclusion of extensive and potentially confusing disclaimer language as to the inability to predict the Grand Total until the conclusion of the services which actually need to be rendered. The inclusion of a Grand Total would thereby be rendered a meaningless exercise in futility.

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**RESPONSE:** The Division does not agree with this comment and N.J.A.C. 13:23-2.22 has not been changed. The provision in question is necessary in that the Service Agreement affords the consumer protection by placing him or her on notice as to the services which he or she is purchasing from the driving school. Such a document serves to promote fundamental fairness in the dealings between a driving school and its students. In regard to the commenter's argument that it is not possible to predict in advance the number of lessons a student will need, if lessons beyond those agreed for are required, a new agreement may be entered into with the student which sets forth the additional services agreed to be provided by the driving school and the additional costs to be incurred by the student. As to the commenter's concern over the use of the term "lesson" as the unit of service, it should be noted that "minutes" are set forth in the sample Service Agreement in N.J.A.C. 13:23-2.22. The use of a Grand Total Cost to the student is appropriate, since without such an entry the usefulness of the Service Agreement as a means to supply the driving school student with fundamental consumer protection information would be destroyed. A driving school is not precluded from entering into a supplemental agreement with a student if additional lessons are agreed to. The supplemental agreement would specifically set forth services agreed to be performed by the driving school and fees to be incurred by the student. The supplemental agreement will necessarily contain the Grand Total Cost to the student. In sum, the Division has adopted N.J.A.C. 13:23-2.22 without the changes requested by the commenter because said changes would adversely impact on the consuming public.

**COMMENT:** With regard to N.J.A.C. 13:23-2.28(b), the insurance requirement should be amended to provide for the coverage required by N.J.S.A. 39:6A-3, namely \$15,000/\$30,000/\$5,000. The Association believes that N.J.S.A. 39:12-3 should be read *in pari materia* with this statute to require the slightly higher minimum coverage. The Association believes that any requirement for the higher coverage required by the proposed regulation is *ultra vires* and beyond the scope or power of the regulatory authority. The Association also believes that other commercial motor vehicle operators, such as taxi cabs and commercial truckers, are not required to carry coverage higher than \$15,000/\$30,000/\$5,000. Driving schools are being improperly singled out in being forced to procure higher coverage. Given the dramatic increase in auto insurance premiums over the past decade, this attempted regulatory provision is no longer a minor imposition but rather is a major financial burden upon driving schools.

**RESPONSE:** The Division does not agree with the primary thrust of this comment, that is, that the Director lacks the requisite statutory authority necessary to impose upon driving schools the insurance requirements set forth in N.J.A.C. 13:23-2.28(b). This proposed amendment does not change the minimum levels of insurance required, which have been part of the Division's regulations since 1984. This regulatory provision is an appropriate exercise of authority by the Director of Motor Vehicles pursuant to N.J.S.A. 39:12-4, which provides that "[t]he director may make such rules as he deems reasonable for the conduct of drivers' schools."

**COMMENT:** With regard to N.J.A.C. 13:21-2.30(a)2, many driving schools provide the service of obtaining tags for their customers, either for a fee or simply at cost. There should be no prohibition of advertising this perfectly legal activity, as long as due care is taken to avoid any representation that the school is affiliated with the Division of Motor Vehicles.

**RESPONSE:** The Division does not agree with this comment and has not changed N.J.A.C. 13:23-2.30(a)2. The provision in question does not prohibit a driving school from rendering the service described by the commenter, but prohibits the advertisement of same by the school. Such advertisements could serve to confuse the public as to the precise nature of the business being conducted by the driving school; could cause the public to erroneously conclude that the school is acting in the capacity of a motor vehicle agency; and could serve to confuse the public as to whether the school has an official connection with the Division. For the foregoing reasons, the Division does not believe any change to N.J.A.C. 13:23-2.30(a)2 to be appropriate.

**COMMENT:** With regard to N.J.A.C. 13:23-2.30(a)3, many driving schools do not charge for a re-test if the student fails the first test. Many schools believe this to be a part of the school's responsibility to a student (who may have paid for and completed 25 lesson units of training). This should be a financial decision each school has to make and such an offer does not realistically create the impression that a result is, or can be, guaranteed, or that the school is affiliated with the Division of Motor

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Vehicles. The above cited provision should be deleted or modified to permit such an advertisement with appropriate qualifying language that the school cannot guarantee that a license will ever be issued.

**RESPONSE:** The Division does not agree with the substance of this comment and will not change or delete N.J.A.C. 13:23-2.30(a)3. Despite the commenter's assurance that a driving school advertisement containing a phrase such as "no charge for a re-test" does not infer that eventual successful passage of the driving test is guaranteed, the Division remains concerned that precisely such an impression will be conveyed to prospective students by the use of such a phrase in advertising. The Division is not convinced that such an inference of guaranteed licensure can be totally removed by the use of the qualifying language suggested by the commenter. Even if an advertisement includes qualifying language to the effect that the school cannot guarantee that a license will ever be issued, the phrase "no charge for a re-test" may still imply to a prospective student that the driving school would not make such an offer unless licensure was assured. Accordingly, the Division does not believe that amendment or deletion of N.J.A.C. 13:23-2.30(a)3 is warranted.

**COMMENT:** With regard to N.J.A.C. 13:23-2.30(a)4, the Association believes that it would be proper to use the words "approved" or "certified" in addition to "licensed" and asks that these words be added to the words permitted to be used in reference to the school business authorized by the State of New Jersey.

**RESPONSE:** The Division does not agree with this comment and has not made the change to N.J.A.C. 13:23-2.30(a)4 requested by the commenter. Use of the words "approved" or "certified" when referring to the State of New Jersey or Division of Motor Vehicles in driving school advertising may be interpreted by some members of the public as inferring that either the State or the Division recommends that persons utilize the services of the business in question when in fact such is not the case. The public might also erroneously infer that a driving school which is "approved" or "certified" by the State or Division has met a more stringent qualification standard than a driving school which is merely licensed. The Division "licenses" driving schools pursuant to N.J.S.A. 39:12-1 et seq.; it neither "approves" nor "certifies" them. In view of the foregoing, no valid reason exists which would warrant the amendment of N.J.A.C. 13:23-2.30(a)4 sought by the commenter.

**COMMENT:** With regard to N.J.A.C. 13:23-2.30(c), the Association believes that this provision is an impermissible prior restraint on free commercial speech and asks that this provision be deleted.

**RESPONSE:** The Division does not agree with the substance of this comment and will not delete N.J.A.C. 13:23-2.30(c). Rather than constituting an impermissible prior restraint on free commercial speech as asserted by the commenter, the provision in question represents a valid exercise of authority by the Director of Motor Vehicles in his capacity as the State official vested with the responsibility of licensing and regulating driving schools pursuant to N.J.S.A. 39:12-1 et seq. The purpose of the above cited regulatory provision is to prevent an advertisement which contains false, misleading or deceptive information from being published in any media in which it cannot be changed, deleted or withdrawn within a period of seven days or less. The public is thereby protected from being subjected to a false, misleading or deceptive driving school advertisement. In the absence of N.J.A.C. 13:23-2.30(c), a false, misleading or deceptive advertisement printed in a publication such as the classified telephone directory would be read and relied upon by the public for an entire year following its publication, resulting in incalculable harm to consumers. Accordingly, given the strong need to protect consumers and the general public from false, misleading or deceptive advertising, the Division rejects the commenter's request to delete N.J.A.C. 13:23-2.30(c).

The proposal was adopted with changes not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

### Summary of Changes Upon Adoption:

N.J.A.C. 13:23-2.12(a)4 has been deleted upon adoption of the proposal. After reviewing N.J.A.C. 13:23-2.12(a)4, the Division concluded that the manner in which the provision applies to license suspensions and revocations is in need of clarification and elaboration. Since these revisions cannot be made without deferring the adoption of the entire proposal, N.J.A.C. 13:23-2.12(a)4 has been deleted until such time in the future as the Division can propose an appropriate amendment. As a result of the aforementioned deletion, N.J.A.C. 13:23-2.12(a)5 and 6 have been recodified upon adoption to N.J.A.C. 13:23-2.12(a)4 and 5.

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 23 DRIVING SCHOOLS

### SUBCHAPTER 1. DEFINITIONS

#### 13:23-1.1 Words and phrases defined

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

"Authorized agent" means a person who represents or acts on behalf of a driving school in obtaining permits and transporting students to driver testing centers in school vehicles.

"Branch office" means an approved location where the business of the driving school is conducted, other than the principal place of business.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety in the State of New Jersey.

"Driving school" means the business of giving instruction, for compensation, in the driving of motor vehicles and motorcycles. The words "instruction in the driving of motor vehicles and motorcycles" shall include classroom or behind the wheel instruction when given to a person who does not possess a basic driver or motorcycle license. This definition shall not be taken to include instruction which is given by public, private, parochial or secondary schools.

"Driving school instructor" means a person who is licensed by the Director to provide instruction in the driving of motor vehicles and motorcycles.

"Fraudulent practices" include, but are not limited to, any conduct or representation tending to give the impression that a license to operate a motor vehicle or motorcycle or any other class of license, registration or service granted by the Director may be obtained by any means other than those prescribed by law; the furnishing or obtaining a license of any class, registration or service by illegal or improper means; or the requesting, accepting, exacting or collecting money for furnishing or obtaining a license of any class, registration or service by illegal or improper means.

"Person" means an individual, corporation or partnership.

"Place of business" means a designated location at which the business of a driving school is conducted.

"Principal place of business" means the location designated by the applicant, and approved by the Director, as the primary facility of the driving school.

"Telephone answering service" means the location of a telephone used only for the purpose of answering telephone inquiries pertaining to the driving school services. A telephone answering service is not to be considered a branch office, and the location and/or address of a telephone answering service shall not be advertised if it differs from that of a licensed location.

### SUBCHAPTER 2. DRIVING SCHOOLS

#### 13:23-2.1 Licenses

(a) Every person proposing to engage in the business of conducting a driving school shall be licensed by the Director prior to engaging in such business.

(b) A license shall not be issued until at least one instructor has secured an instructor's license, and at least one motor vehicle has been equipped in accordance with the provisions of N.J.A.C. 13:23-2.28 by the driving school.

(c) A license, either initial or renewal, shall not be issued until compliance with the conditions in this subchapter has been effected.

#### 13:23-2.2 Applications; contents

(a) Application is to be made on a form prescribed by the Director. These forms may be obtained from the Division of Motor Vehicles. Renewal applications must be submitted for approval and issuance at least 30 days prior to the expiration date of the current license.

(b) (No change.)

(c) When application is made by an individual it must be signed and sworn to by said individual. In the case of a partnership, the application shall be signed and sworn to by all partners. In the case of a corporation, the application must be signed and sworn to by the president and attested to by the secretary.

(d) Individual applicants, partners and corporate officers are required to submit fingerprint cards along with an application for an initial license. Upon application for renewal of a license, the Director, in his or her discretion, may require the applicant's authorization to conduct a name check. The applicant shall submit authorization for the name check and payment in such amount as established by the Division of State Police.

(e) Every initial application must be accompanied by the following supplementary documents:

1. In the case of a corporation, a certified copy of a certificate of incorporation, and a copy of the corporate resolution authorizing the corporation to engage in the business of operating a driving school;

2. Samples of each form to be used by the driving school;

3. A statement of whether classroom instruction is offered by the driving school; and

4. Proof of compliance with all State and local zoning ordinances, building codes, fire codes, health codes and any other applicable ordinances and codes. Said proof shall consist of a letter from the zoning board of the municipality in which the school is located or a copy of the certificate of occupancy issued by the municipality.

#### 13:23-2.3 License fee; term

(a) The annual fee for the initial license shall be \$250.00; the fee for a renewal license shall be \$100.00.

(b) The license shall be valid for the calendar year for which it is issued.

(c) The licensee shall be assigned the same license number for the duration of the license.

#### 13:23-2.4 Display of license

(a) The license shall be conspicuously displayed at the licensee's principal place of business.

(b) The licensee shall not alter, delete from, add to, or in any manner cover any portion of the license.

#### 13:23-2.5 Change of business ownership or interest

(a) In the event of any change of ownership or interest in the business, application for a new license must be filed with the Director within seven days of such change of ownership or interest. This shall include any sale or transfer of five percent or more of capital stock of a corporation. In the event of a sale or transfer of less than five percent of the capital stock it shall not be necessary for the licensee to pay a new fee to the Director.

(b) The Director may, in his or her discretion, permit continuance of the business by the licensee pending processing of the application made by the person to whom the business, or interest therein, is to be transferred. The licensee shall request in writing the Director's permission to continue the business pending the processing of the application.

(c) In the event of a name change as a result of a sale or transfer, the existing license and copies thereof, all instructors' certificates issued thereunder, and all other documents issued in connection with the driving school must be surrendered before a license will be issued to the new owner.

#### 13:23-2.6 Lost, mutilated or destroyed licenses

(a) In the event a license, or duplicate thereof, is lost, mutilated or destroyed, a duplicate shall be issued upon proof of the facts, and upon payment of \$3.00 and, in the case of mutilation, upon surrender of such mutilated license. Such proof shall be submitted in the form of an affidavit indicating:

1. The date the license, or duplicate thereof, was lost, mutilated or destroyed; and

2. The circumstances involving the loss, mutilation or destruction of the license, or duplicate thereof.

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### 13:23-2.7 Surrender of license

(a) A license may be surrendered for cancellation, or deposited for safekeeping, at the Division of Motor Vehicles.

(b) (No change.)

### 13:23-2.8 Location of business

No licensee shall conduct his business at such location or in such manner as to give the appearance to the public that the business has some official connection with a Division of Motor Vehicles facility or authorized motor vehicle agency. In making this determination the Director may consider the proximity of the place of business to any building in which motor vehicle registrations or driver licenses are issued to the public, the proximity of the place of business to the location where driving tests are conducted by the Division of Motor Vehicles, the trade name under which the licensee conducts business, the nature of any signs or advertisements used by the licensee and any other factor which tends to give the impression that the licensee has some official connection with the Division of Motor Vehicles or any officer or agent of the Division of Motor Vehicles.

### 13:23-2.9 Change of business location or name

(a) A driving school may not change its principal place of business or branch office or business name without prior approval of the Director.

(b) Any renewal application which reflects a change of business address shall include proof of compliance with all State and local zoning ordinances, building codes, fire codes, health codes and any other applicable ordinances and codes as set forth in N.J.A.C. 13:23-2.2(e)4.

### 13:23-2.10 Prohibited business locations

No license shall be issued for a [drivers'] driving school where the place of business is conducted from a liquor store, a bar, tent, temporary stand, temporary address or through the exclusive facilities of a telephone answering service.

### 13:23-2.12 Denial, suspension or revocation of license

(a) After due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq. and the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq., the Director may deny issuance or renewal of a driving school license or may suspend or revoke such license on the basis of any of the following criteria:

1. Any reason specified in N.J.S.A. 39:12-1 et seq. or failure of the applicant or licensee to comply with any of the provisions of this chapter;

2. Failure of the applicant or licensee to provide information or documentation required by N.J.S.A. 39:12-1 et seq. or this chapter or requested by the Director, or concealment of a material fact by the applicant or licensee, or the supplying of information which is untrue or misleading as to a material fact;

3. The conviction of any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, of any offense in any jurisdiction which would be:

i. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

All crimes of the first degree;

N.J.S.A. 2C:5-1 (attempt to commit an offense which is listed in this subparagraph);

N.J.S.A. 2C:5-2 (conspiracy to commit an offense which is listed in this subparagraph);

N.J.S.A. 2C:11-4b (manslaughter);

N.J.S.A. 2C:11-5 (death by auto);

N.J.S.A. 2C:12-1b (aggravated assault);

N.J.S.A. 2C:13-1 (kidnapping);

N.J.S.A. 2C:14-1 et seq. (sexual offenses);

N.J.S.A. 2C:15-1 (robberies);

N.J.S.A. 2C:17-1a and b (crimes involving arson and related offenses);

N.J.S.A. 2C:17-2a and b (causing or risking widespread injury or damage);

N.J.S.A. 2C:18-2 (burglary);

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N.J.S.A. 2C:20-1 et seq. (theft and related offenses);

N.J.S.A. 2C:21-1 et seq. (forgery and fraudulent practices);

N.J.S.A. 2C:21-4a (falsifying or tampering with records);

N.J.S.A. 2C:27-1 et seq. (bribery and corrupt influence);

N.J.S.A. 2C:28-1 et seq. (perjury and other falsification in official matters);

N.J.S.A. 2C:30-2 and N.J.S.A. 2C:30-3 (misconduct in office and abuse of office);

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog);

N.J.S.A. 2C:35-6 (employing a juvenile in a drug distribution scheme);

N.J.S.A. 2C:35-7 (distributing, dispensing, or possessing a controlled dangerous substance or controlled substance analog on or within 1,000 feet of school property or bus);

N.J.S.A. 2C:35-10 (possession, use or being under the influence of a controlled dangerous substance or a controlled substance analog, or failure to make lawful disposition of same);

N.J.S.A. 2C:35-11 (distribution, possession or manufacture of imitation controlled dangerous substances);

N.J.S.A. 2C:35-13 (acquisition of controlled dangerous substances by fraud); or

ii. Any other offense under present New Jersey or Federal law which indicates that licensure of the applicant or continued licensure of the licensee would be inimical to the licensing standards set forth in N.J.S.A. 39:12-1 et seq. and this chapter;

\*[4. Current prosecution or indictment in any jurisdiction against any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, for any of the offenses enumerated in (a)3 above; provided, however, that at the request of an applicant seeking initial licensure as a driving school, the Director shall defer decision upon such application during the pendency of such charge;]\*

\*[5.]\*\*4.\* The failure of any proprietor, partner, officer, director or stockholder of a licensed driving school, or of any entity seeking such licensure, to notify the Division of Motor Vehicles that he or she has been arrested for, charged with, indicted for or convicted of any of the offenses enumerated in (a)3 above within 14 days after the date of such event; or

\*[6.]\*\*5.\* The commission by any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, of any act or acts which would constitute any offense under (a)3 above, even if such conduct has not or may not be prosecuted under the laws of this State.

### 13:23-2.13 Business hours

(a) The hours during which a driving school office is open to the public for service must be filed with the Director.

(b) A driving school must be accessible to the public during normal business hours of each regular working day. This requirement may be satisfied by having office personnel available or having a telephone answering service or telephone answering machine.

### 13:23-2.14 (Reserved)

### 13:23-2.15 Branch office application

(a) A driving school shall make application for a branch office license on a form prescribed by the Director.

(b) If the application is approved, the Director shall issue a license for use at the branch office.

(c) The license shall be conspicuously displayed at the branch office at all times.

(d) A branch office shall meet all of the requirements for a licensed principal place of business.

### 13:23-2.16 Branch office relocation or discontinuance

(a) (No change.)

(b) Should use of a branch office be discontinued, the branch office license must be surrendered within seven days to the Division of Motor Vehicles.

### 13:23-2.17 (Reserved)

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**13:23-2.18 Changes in addresses of officers; notice**

The Director must be notified within seven days, in writing, if a change occurs in the residence address of any proprietor, partner, officer, director, authorized agent or instructor of any driving school.

**13:23-2.19 Recordkeeping requirements**

(a) A file shall be maintained containing the service record and the service agreement, if used, between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the driving of motor vehicles or motorcycles.

(b) The service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles.

(c) The records specified in this subchapter shall be maintained in a business-like manner with all entries on written records to be made in ink. Corrections of written records shall be made by drawing a single line through the error and making a new entry. The original entry must be legible after the corrections of written records have been made. Only standard abbreviations are to be used.

(d) Each business shall keep and maintain such other books, records and files necessary for the proper conduct of the business.

(e) The records of the business may be electronically stored.

**13:23-2.20 Loss, mutilation or destruction of records**

(a) The loss, mutilation or destruction of any records which a driving school is required to maintain, under this subchapter, shall be reported on the next regular business day to the Division of Motor Vehicles by affidavit, stating:

1. The date such records were lost, destroyed or mutilated;
2. The circumstances involving such loss, destruction or mutilation; and
3. The name of the precinct, police officer or police department to which such loss was reported, and the date of such report.

**13:23-2.21 Retention of records**

All records must be maintained at the principal place of business for a period of three years, during which period they shall be subject to inspection by the Director or his or her designee at any time during driving school business hours.

**13:23-2.22 Statement of services to be rendered and fees to be charged; service agreements**

(a) The driving school shall provide to all students a statement of services to be rendered and fees to be charged and shall advise all students of the availability of a service agreement wherein the services to be rendered are specifically set forth.

(b) The driving school shall comply with the conditions set forth in the sample service agreement in (d) below, specifically including:

1. To cancel a lesson and reschedule that lesson, 24 hours advance notice is required or the student may be charged for that lesson. Cancellation must be made at the phone number listed for the driving school. Appointments must be mutually agreed upon for date, time and location.
2. The number of minutes per lesson shall be the actual number of minutes of instruction provided to the student.
3. The student may rescind the agreement within 72 hours of the first lesson and upon such rescission shall receive a refund for any lessons or services not provided.

(c) The driving school shall provide to all students a receipt for payments made to the driving school.

(d) All service agreements shall contain at a minimum all information contained in the following sample service agreement:

**SAMPLE**

**Service Agreement**

**School Information**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 License # \_\_\_\_\_  
 Phone # \_\_\_\_\_

**Student Information**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Permit/License #  
 of Student \_\_\_\_\_  
 Phone # \_\_\_\_\_

This agreement between (Driving School Name) and (Student Name) will include the following services:

**Itemized Account**

Services	Total Cost to Student
Purchase Permit at Agency (Paid to School)	_____
Transportation to Law Knowledge and Vision Tests	_____
Road Test Services	_____

Instruction Services	# Lessons	# Min. Per Lesson	Cost Per Lesson	Total Cost of Lessons
Behind The Wheel	_____	_____	_____	_____
Classroom	_____	_____	_____	_____
<b>Grand Total Cost to Student</b>				<b>\$ _____</b>

This agreement must show an itemized account of any and all services rendered. In order to cancel a lesson and reschedule that lesson, 24 hours advance notice is required or the student may be charged for that lesson. Cancellation must be made at the phone number for the school listed above. Appointments must be mutually agreed upon for date, time and location.

The number of minutes per lesson specified shall be the actual number of minutes of instruction provided to the student.

The vehicle to be used for instruction has:  automatic transmission;  standard manual gear shift; and shall be equipped with, at minimum, a brake for both the instructor and the student.

No fees will be charged other than those specified above.

This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized. The student may rescind this agreement within 72 hours of the first lesson and upon such rescission shall receive a refund for any lesson or service not conducted or provided.

**Signature Requirement**

Date \_\_\_\_\_ Student Signature  
 or Legal Guardian \_\_\_\_\_  
 Date \_\_\_\_\_ Instructor's Signature \_\_\_\_\_

**13:23-2.23 Agreements with secondary schools**

A driving school may enter into an agreement where authorized by law with a secondary school for the purpose of teaching the behind-the-wheel driver education portion of a high school driver education program. If any portion of the actual behind-the-wheel instruction is waived by virtue of substituting driver simulator or multiple car instruction, the secondary school principal must sign the permit upon completion of the required actual behind-the-wheel instruction. If the driving school teaches the full six hour course of behind-the-wheel instruction, the permit shall be signed by the driving school owner.

**13:23-2.24 Student requirements**

(a) Driving schools, prior to giving behind-the-wheel instruction, shall make certain that each student has:

1. A valid permit;
2. Passed a vision test as evidenced by the signature of the school nurse or representative of the Division of Motor Vehicles; and
3. Passed the law knowledge test as evidenced by either:

## ADOPTIONS

- i. A certificate from the high school indicating a passing grade of 80 percent or better; or
- ii. Certification by a representative of the Division of Motor Vehicles.

13:23-2.25 (Reserved)

13:23-2.26 (Reserved)

13:23-2.27 (Reserved)

13:23-2.28 Insurance and vehicle equipment requirements

(a) Any vehicle, except buses, motorcycles and articulated vehicles, used for instruction by a driving school must be equipped with dual controls on foot brake and, if any, on clutch, and must be otherwise equipped in accordance with the Motor Vehicle and Traffic Laws.

(b) The licensee must file with the Director evidence of liability insurance with a company authorized to do business in this State, in the amount of at least \$250,000 because of bodily injury to, or death of, any one person in any one accident and subject to said limit for any one person, to a limit of at least \$500,000 because of bodily injury to, or death of, two or more persons in any one accident, and to a limit of \$50,000 because of damage to, or destruction of, property of others in any one accident. The driving school shall furnish evidence of insurance coverage required by this subsection by submitting an original certificate of insurance to the Division of Motor Vehicles. This certificate of insurance shall stipulate that such insurance may not be cancelled or terminated, except upon 30 days prior written notice to the Director of Motor Vehicles at Trenton, New Jersey. In the event of cancellation or expiration of such insurance, such vehicle may not thereafter be used for driving school purposes.

(c) Any vehicle, except a motorcycle, used for instruction by a driving school must be equipped with seat belts for both the student and instructor. The seat belts shall be used by both the student and instructor when the vehicle is being operated.

(d) Any vehicle, except a motorcycle, used for instruction by a driving school must be equipped with inside and outside rear view mirrors for both student and instructor.

13:23-2.30 Advertising

(a) Advertising by driving schools must conform to the following:

1. Schools must not publish, advertise or intimate that licensure is guaranteed or assured upon completion of instruction.

2. Advertisements or signs using a phrase such as "License or Plates Secured Here" are prohibited.

3. Advertisements such as "no charge for road test failures" are prohibited.

4. The driving school may use, on forms, agreements and similar documents, or in advertising, the phrase, "This school is licensed by the State of New Jersey". No other reference to the State of New Jersey or the Division of Motor Vehicles is permitted.

5. The use of the word "State", in any sign or other medium of advertising, except as permitted in (a)4 above, is prohibited.

6. A driving school shall not advertise the address of any location other than the licensed principal place of business, or a licensed branch office.

7. The driving school shall not advertise any name or combination of names, or abbreviation of name, other than the trade name by which the driving school is licensed to do business by the Director and which appears on the driving school wall license.

8. A driving school shall not solicit business, or cause business to be solicited in its behalf, or display or distribute any advertising material in such a manner as to give the impression that the business has some official connection with the Division of Motor Vehicles or an authorized motor vehicle agent. This paragraph shall not be construed to prohibit driving schools from appearing at driver testing locations with vehicles which contain the name, address and telephone number of the driving school, and any other sign(s) or identification which may be required by this chapter or N.J.S.A. 39:12-1 et seq.

(b) (No change.)

## LAW AND PUBLIC SAFETY

(c) Any advertisement through any media which cannot be changed, deleted or withdrawn within a period of seven days or less, including classified telephone directory advertisement, shall require the approval of the Director or his or her designee prior to printing. The full copy of such advertisement must be submitted to the Director in writing.

13:23-2.31 (Reserved)

13:23-2.32 Practice driving

Practice driving is prohibited on State grounds used for State driving tests.

13:23-2.33 Learner permits

A licensee or employee is required to ascertain, prior to giving behind the wheel instructions or presenting the student for a driving test, that a student is in possession of a valid driver examination permit properly validated for practice driving, or a valid driver's license.

13:23-2.34 Requirements at driving test

(a) Applicants appearing for the driving test shall be accompanied by a licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and a valid insurance identification card.

13:23-2.35 Employees of driving schools

A driving school shall not knowingly employ any person as an instructor or agent who has been convicted of any of the offenses enumerated in N.J.A.C. 13:23-2.12(a)3 unless the Director has determined that such person may serve in such capacity.

13:23-2.36 Authorized agents; certificates; denial, suspension or revocation of certificate

(a) The school owner may appoint, with the approval of the Director, authorized agents for the purpose of transporting the school's students to a driver testing center to take the driving test portion of the driver examination or to purchase a permit.

(b) The Director may issue an "Authorized Agent" identification certificate when the following requirements have been met:

1. Applicant must be of good moral character;

2. Applicant must be at least 18 years of age;

3. Applicant must hold a valid driver's license;

4. Applicant must have a driving record devoid of the offenses set forth in (d) below;

5. Applicant who has been licensed by another state or states during the past three years must submit a certified abstract of his or her driving record from the state or states in which he or she is or was licensed to drive with the initial application and all renewals thereof; and

6. Applicant must submit State Police and FBI fingerprint cards and payment in such amount as may be established by the Division of State Police.

(c) The fee for the authorized agent certificate shall be \$5.00 and the certificate shall be valid for the calendar year expiring December 31. The certificate shall contain the agent's permanent identification number. The Director may deny, suspend or revoke any authorized agent identification certificate upon conviction of any of the offenses enumerated in N.J.A.C. 13:23-2.12(a)3, a violation of this chapter or other good cause, after due notice in writing thereof, in accordance with the provisions of the "Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq.

(d) The Director or his or her designee may deny, suspend or revoke any authorized agent identification certificate if the holder of such certificate or applicant for such certificate has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1 or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

(e) Upon severance of employment, the school owner shall notify the Driving School Unit of the Division of Motor Vehicles, in writing,

of the date of severance. Upon severance, the agent shall surrender his or her identification certificate to the Division of Motor Vehicles.

#### 13:23-2.37 Conduct with employees of Division of Motor Vehicles

(a) (No change.)

(b) The owner, operator, partner, officer of any driving school, or any employee of any licensee, shall not influence, or attempt to influence, any decision of any employee of the Division of Motor Vehicles, with respect to the licensing of any student of the licensee, or any other person.

13:23-2.38 (Reserved)

### SUBCHAPTER 3. DRIVING SCHOOL INSTRUCTORS

#### 13:23-3.1 Licenses

The owner, operator, partner or any officer of a driving school, or any other person, shall not give instructions, for compensation, in the driving of motor vehicles or motorcycles, unless such person is the holder of a valid instructor's license issued for such purpose by the Director.

#### 13:23-3.2 Valid use of license

Instructors' licenses shall be valid for use only in connection with the business of the driving school or schools listed thereon and only for lessons authorized by those schools.

#### 13:23-3.3 Standards for license issuance

Instructors' licenses shall not be issued to any person unless that person is the possessor of a valid driver's license, and has held a license permitting him or her to drive for at least the last three consecutive years, and who has complied with the other requirements contained in this subchapter.

#### 13:23-3.4 Application for instructor's license

(a) Application for an initial or renewal license must be made on a form prescribed by the Director.

(b) A renewal application shall be submitted for approval and issuance at least 30 days prior to the expiration date of the current license.

(c) The Director shall issue an instructor's license to the applicant upon approval of an initial or renewal application. The instructor's license shall be assigned the same license number for the duration of the license.

(d) Every applicant for an initial instructor's license is required to submit to fingerprinting. Applicants for renewal licenses may be required to submit to a name check at the discretion of the Director. The applicant will be required to submit authorization for a name check and payment in such amount as may be established by the Division of State Police.

(e) An initial instructor license shall not be issued unless the applicant is at least 21 years of age.

(f) An applicant who has been licensed to drive by another state or states during the past three years must submit a certified abstract of his or her driving record from the state or states in which he or she is or was licensed to drive with the initial application and all renewals thereof.

#### 13:23-3.5 Instructor's license fee

The instructor's license is valid for the calendar year. The fee for the initial license shall be \$75.00 and the fee for the annual renewal thereof shall be \$30.00.

#### 13:23-3.6 Possession of instructor's license

The instructor's license must be in the possession of the instructor at all times while giving driving instructions, or when accompanying a student.

#### 13:23-3.7 Lost, mutilated or destroyed licenses

(a) In the event a license, or duplicate thereof, is lost, mutilated, or destroyed, a duplicate license shall be issued upon proof of the facts and payment of a fee of \$3.00 and, in the case of a mutilated license, upon surrender of such mutilated license. Such proof shall be submitted in the form of an affidavit indicating:

1. The date the license, or duplicate thereof, was lost, mutilated or destroyed; and

2. The circumstances involving the loss, mutilation or destruction of the license, or duplicate thereof.

#### 13:23-3.8 Surrender of instructor's license

An instructor's license or endorsement shall be surrendered to the Director upon termination of an instructor's services with, or by, any driving school designated on such license and/or endorsement. When the services of an instructor are terminated by one or more of the schools designated on the instructor's license and/or endorsement, the endorsement certificate for each school so terminating the services of the instructor shall be returned to the Division of Motor Vehicles within seven days. It shall be the responsibility of the driving school to notify the Division of Motor Vehicles, in writing, of such termination.

#### 13:23-3.9 Special tests

(a) An applicant for an instructor's license shall be required to submit to special law-knowledge, driving tests and screening of visual acuity, and may be required to submit additional proof of his or her qualifications as an instructor.

(b) If application is made for an instructor's license by a person who was the holder of an instructor's license within a period of three years prior to the date of such application, the Director may waive the testing.

(c) All instructors licensed after July 1, 1984 shall be required to complete either the six hour or eight hour National Safety Council Defensive Driving Program. Evidence of having completed such program shall be filed with the Director. Instructors shall submit such evidence prior to renewal of the initial instructor's license.

13:23-3.10 (Reserved)

#### 13:23-3.12 Revocation, suspension and refusal to issue or renew instructor's license

(a) The Director or his or her designee may deny, suspend or revoke an instructor's license, or refuse to issue an instructor's license or a renewal thereof, for any of the reasons specified in N.J.S.A. 39:12-1 et seq. or N.J.A.C. 13:23-2.12, or for failure to comply with any of the provisions of this subchapter or for other good cause, after due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq. and the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq.

(b) The Director or his or her designee may deny, suspend or revoke an instructor's license or may refuse to issue an instructor's license or a renewal thereof, if such instructor or applicant has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1 or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

### SUBCHAPTER 4. DRIVING SCHOOL CLASSROOMS

#### 13:23-4.1 Classroom facilities

(a) The facilities of each driving school which provides classroom instruction must include, not necessarily on the immediate premises, sufficient space and sufficient equipment to carry on the business of giving classroom instruction for those students enrolled in the driving school.

(b) The facilities maintained for classroom instruction may be used by one or more driving schools. Whenever the classroom facilities are used by more than one school, the Director must be notified.

#### 13:23-4.2 Classroom requirements

(a) The classroom facility may be subject to inspection by the Director or his or her designee and must meet the following requirements:

1. Minimum space required per student is 15 square feet. Existing facilities may apply for and may be granted exemptions from this requirement;

2. Seating facilities and writing surfaces must be available for each student;

3. Adequate lighting, heating, ventilation and toilet facilities;

4. Adequate charts and diagrams or pictures relating to the operation of motor vehicles, and traffic laws;
5. Adequate blackboards which are visible from all seating areas; and
6. Textbooks, reference books and pamphlets relating to the proper operation of motor vehicles and traffic laws.

13:23-4.3 (Reserved)

13:23-4.4 (Reserved)

(a)

**DIVISION OF CONSUMER AFFAIRS  
BOARD OF DENTISTRY**

**Delegation of Physical Modalities to Unlicensed  
Dental Assistants**

**Adopted New Rule: N.J.A.C. 13:30-8.17**

Proposed: September 4, 1990 at 22 N.J.R. 2647(b).

Adopted: May 29, 1991 by the New Jersey Board of Dentistry,  
William Cinotti, D.D.S., President.

Filed: June 11, 1991 as R.1991 d.351, **without change.**

Authority: N.J.S.A. 45:6-3 and 45:6-50(h).

Effective Date: July 15, 1991.

Expiration Date: March 12, 1995.

**Summary of Public Comments and Agency Responses:**

The Board of Dentistry afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:30-8.17, relating to delegation of physical modalities to unlicensed dental assistants. The official comment period ended on October 4, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 4, 1990 at 22 N.J.R. 2647(b). Announcements were also forwarded to the Star Ledger, Trenton Times, Asbury Park Press, Courier Post, Bergen Record, New Jersey Dental Assistants Association, New Jersey Dental Hygienists Association, New Jersey Department of Health, American Dental Association, American Dental Hygiene Association, and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Dentistry, P.O. Box 45005, Newark, New Jersey 07101.

Six comments were received during the 30-day comment period. The New Jersey Board of Physical Therapy and the New Jersey Chapter of the American Physical Therapy Association (N.J.P.T.A.) expressed opposition to the proposed new rule, while letters generally in favor of the proposal, with some modification, were received from the president of the International College of Cranio-mandibular Orthopedics, the president of the American Academy of Head, Neck, Facial Pain and TMJ Orthopedics, and from John Paul Dizzia, an attorney representing a number of TMJ practitioners. A summary of the specific issues raised by these commenters as well as the Board's responses follows.

COMMENT: The State Board of Physical Therapy and the N.J.P.T.A. stated that the regulation is contrary to the legislative intent expressed in Assembly Bill A-546, which was signed into law on July 16, 1990. This bill amends the New Jersey Physical Therapy Practice Act to prohibit physicians, chiropractors, podiatrists and physical therapists from utilizing unlicensed personnel to apply a number of physical modalities.

RESPONSE: In the absence of a specific reference to dentists in Assembly Bill A-546, the Board of Dentistry believes it is reasonable to assume that the Legislature did not intend to include dentists in the prohibition against utilizing unlicensed personnel to apply physical modalities as defined in the amended statute. The Board points out that the commenters were aware that the bill did not include dentists during the legislative review process and were afforded an opportunity to comment on the legislation at that time. Any relief sought now must be sought through the Legislature.

COMMENT: The N.J.P.T.A. stated that it provided opposition testimony at the hearing at which the Board considered the draft of this proposed new rule and that its position remains unchanged; that is, that adoption of this rule is not in the best interests of the consumer and serves only to enhance the economic interest of dental practitioners.

RESPONSE: The Board is aware of the N.J.P.T.A.'s opposition to this rule and understands its position. However, for all of the reasons stated in the rule proposal, the Board believes promulgation of the rule to be in the best interests of the public.

COMMENT: The two professional societies and John Paul Dizzia, counsel for several TMJ practitioners, suggested amending paragraph (c)4, which requires the dentist to evaluate the patient at each visit. These commenters stated that while in some cases reevaluation should be done at each visit, clinicians have found that the benefit of therapy typically is not seen after one, two or even three visits; therefore, the frequency of reevaluation should be left to the clinical judgment of the dentist, but with a proviso for reevaluation at least every sixth visit. In addition, requiring reevaluation after each visit undermines the cost reduction benefits of the rule.

RESPONSE: In its initial assessment of whether the delegation of the specified physical modalities to unlicensed assistants was advisable and in the best interests of the public, the Board determined to permit such delegation but only upon the dentist's assumption of the concomitant responsibility to closely supervise the application of these modalities. In the Board's opinion, reevaluation at each visit is not burdensome to the dentist and is necessary in order to ensure that the patient receives the appropriate care during each visit under the close supervision of a dentist. Any dilution of the cost reduction benefits of the rule which is occasioned by this requirement is more than outweighed by the protection afforded to the patient.

COMMENT: The president of the American Academy of Head, Neck, Facial Pain and TMJ Orthopedics suggested that paragraph (c)2 be amended to permit the unlicensed assistant who administers physical modalities to record the required treatment information on the patient's chart. The commenter suggested that the dentist should be in a general supervisory role but should not have to make each note on each visit.

RESPONSE: The Board does not find this recordkeeping requirement to be unduly burdensome to the dentist and believes that it is useful in assuring that the dentist personally evaluates the patient at each visit. Therefore, no modification will be made to permit the unlicensed assistant to assume the dentist's recordkeeping responsibilities.

COMMENT: To reflect the dentist's typical practice of determining treatment at the first visit and thereafter confirming the treatment previously prescribed, John Paul Dizzia, Esq., suggested inserting the words "or confirm" following the words "shall determine" in the second line of subsection (c)2 and inserting the words "or confirmation" following the word "determination" in the third line.

RESPONSE: The Board does not view this addition as necessary, since a determination may include a confirmation that the previous prescription is still valid. The Board believes the rule is sufficiently clear in that respect and that no modification is required.

**Full text of the adoption follows.**

**13:30-8.17 Delegation of physical modalities to unlicensed dental assistants**

(a) A dentist may direct an unlicensed assistant to administer to the dentist's patients certain physical modalities in the limited circumstances set forth in this section.

(b) Physical modalities, for the purpose of this section, shall be limited to heat, cold, ultrasound, and electrogalvanic stimulation. An unlicensed assistant shall not be permitted to perform any rehabilitative exercise programs. No other modalities including, but not limited to, transcutaneous electrical nerve stimulation ("T.E.N.S.") and phonophoresis, shall be performed by an unlicensed assistant.

(c) A dentist may direct the administration of the physical modalities by the unlicensed assistant provided all of the following conditions are satisfied:

1. The dentist shall examine the patient to ascertain the nature of the dental condition or disease; to determine whether the application of a physical modality will encourage the alleviation of dentally related pain and the promotion of healing; to assess the risks of the modality for a given patient and the diagnosed condition, injury or disease, and to decide that the anticipated benefits are likely to outweigh those risks.

2. The dentist shall examine the patient prior to each visit and shall determine all components of the treatment to be performed at the present patient visit. This determination shall include all types of modalities to be employed, a delineation of the precise area to

which the application of each modality shall be limited, the dosage, wattage, or other applicable setting, the length of the treatment, and any and all other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or static placement of the applicator. This information shall be written on the patient's chart prior to each patient's treatment after the dentist has examined the patient, and it shall be made available at all times to the unlicensed assistant carrying out the instructions. Each dentist who employs such assistants shall submit written notice to the Board of such employment prior to permitting an unlicensed assistant to perform physical modalities as provided in this section.

3. The dentist shall provide instruction to and shall ascertain a satisfactory level of education, competence and comprehension of each unlicensed assistant in regard to all modalities used in that office prior to the use of any modality by an unlicensed assistant. The dentist shall prepare and maintain a written document listing the names of all such unlicensed assistants and outlining the instructions given to each unlicensed assistant. The dentist shall submit such document to the Board upon request.

4. The dentist shall evaluate the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The dentist shall be physically present in the dental office at all times that treatment orders are being carried out by the unlicensed assistant and shall be within reasonable proximity to the treatment room.

(d) A dentist shall have due regard for the specialized training and experience of registered physical therapists. The application of these physical modalities in cases of injuries, diseases or conditions requiring prolonged treatment, if not administered personally by the dentist, shall normally be referred to a licensed physical therapist or other appropriate health care provider.

(e) On a health insurance claim form pertaining to such service and requiring certification by the dentist, the dentist shall identify the specific modality applied and shall not generically identify the treatment as physical therapy.

(a)

**STATE BOARD OF MORTUARY SCIENCE**

**Fees**

**Adopted Amendment: N.J.A.C. 13:36-1.6**

Proposed: April 15, 1991 at 23 N.J.R. 1063(b).  
 Adopted: June 4, 1991 by the State Board of Mortuary Science,  
 Michael A. Petrolle, President.  
 Filed: June 14, 1991 as R.1991 d.356, without change.  
 Authority: N.J.S.A. 45:7-38 and 45:1-3.2.  
 Effective Date: July 15, 1991.  
 Expiration Date: September 27, 1994.

**Summary of Public Comment and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees:

1. Application fee .....	\$ 50.00
2. Initial license fee:	
i. During the first year of a biennial renewal period .....	170.00
ii. During the second year of a biennial renewal period .....	85.00
3. Initial certificate of registration for a mortuary:	
i. During the first year of a biennial renewal period .....	350.00
ii. During the second year of a biennial renewal period .....	175.00

4. Licensure examination fee .....	125.00
5. Practical examination fee .....	75.00
6. Intern registration fee .....	75.00
7. New installation inspection fee .....	150.00
8. Rules and regulations .....	5.00
9. Biennial license renewal fees:	
i. Practitioner .....	170.00
ii. Embalmer .....	170.00
iii. Funeral director .....	170.00
iv. Mortuary certificate of registration .....	350.00
v. Late renewal fee .....	100.00
10. Change of manager registration fee .....	35.00
11. Funeral home name change fee .....	40.00
12. Duplicate license fee .....	25.00
13. Replacement, embossed registration certificate fee .....	25.00
14. Reinstatement fee plus initial license fee .....	150.00
15. Verification of licensure .....	25.00

(b)

**DIVISION OF CONSUMER AFFAIRS  
 STATE BOARD OF OPTOMETRISTS**

**Fees**

**Adopted Repeal: N.J.A.C. 13:38-3.6  
 Adopted Amendments: N.J.A.C. 13:38-5.1**

Proposed: April 15, 1991 at 23 N.J.R. 1064(a).  
 Adopted: June 10, 1991 by the State Board of Optometrists  
 Leonard Strulowitz, O.D., President.  
 Filed: June 19, 1991 as R.1991 d.360, without change.  
 Authority: N.J.S.A. 45:1-3.2 and 45:12-4.  
 Effective Date: July 15, 1991.  
 Expiration Date: August 27, 1995.

**Summary of Public Comments and Agency Responses:**

The State Board of Optometrists afforded all interested parties an opportunity to comment on the proposed repeal of N.J.A.C. 13:38-3.6 and the proposed amendments to N.J.A.C. 13:38-5.1, relating to fees. The official comment period ended on May 15, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 15, 1991, at 23 N.J.R. 1064(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Optometric Association, the Society of Dispensing Opticians and Pamela Mandel, Esq.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Optometrists, Post Office Box 45012, Newark, New Jersey, 07101.

From the date of publication of the Notice of Proposal until the Board's review of these comments on May 29, 1991, comments were received from the New Jersey Optometric Association (NJOA), Suzanne Offen, O.D., and Alvin Stern, O.D. A summary of the specific issues raised by these commenters as well as the Board's responses follows.

COMMENT: The NJOA stated that the Board has provided no justification for the fee increases. The commenter suggested that the Board's expenses are unrealistic and inflated and requests financial information for the past four years as well as for the current and coming fiscal years. Dr. Alvin Stern also requested justification for the fee increases.

RESPONSE: The justification for the fee increases was set forth in the Notice of Proposal. As stated therein, the increases are necessary to cover increased investigative, administrative and program costs incurred by the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to meet its expenses. The Board has thoroughly reviewed the projected expenditures for the coming cycle and is satisfied that the new fee schedule, which is based upon these projected expenditures, will provide the Board with the minimum financial resources necessary to continue its operations. Specific financial information concerning the Board of Optometrists is included within the State of New Jersey Budget for each fiscal year, a public record which is available in the State library as well as in many local libraries. Appropriations data for the Board for the

current fiscal year may be found at page D-335 of the State of New Jersey Budget for the Fiscal Year 1991-1992.

COMMENT: Noting that the Division of Consumer Affairs has proposed to increase fees for seven licensing boards, the NJOA stated that it appears the Division has determined to exempt itself from the budget cuts resulting from the State's fiscal crisis by laying the burden of all operations onto licensing fees.

RESPONSE: The seven licensing boards for which the Division is seeking fee increases are on the same biennial license renewal cycle, and the proposals to increase fees correspond to that cycle. Pursuant to N.J.S.A. 45:1-3.2, all licensing Boards are required to be self-funding. The estimates of the amounts required to be raised for the Board of Optometrists as well as the other licensing boards are reasonable and based on historical information. Any excess funds raised will be carried over for the benefit of the board.

COMMENT: The NJOA stated it does not believe the boards should sustain the burden of the administrative super-structure that others in the Division and the Department have created to manage and supervise the activities of the various boards.

RESPONSE: Administrative support services are a necessary component of the proper and efficient functioning of the professional boards. The cost of these services is allocated among the professional boards based upon the number of licensees of each board. The Division and the Board believe this is the most equitable method of allocating support service costs.

COMMENT: The NJOA questioned whether the fines and penalties assessed by the Board of Optometrists have been properly received as Board income and applied to offset expenses.

RESPONSE: Funds received by the Board as penalties are used completely to offset Board expenses.

COMMENT: The NJOA expressed the opinion that the April 15, 1991 publication of the Notice of Proposal was defective in that an incorrect zip code was listed for the Board. The NJOA stated that although a Notice of Administrative Correction was published in the New Jersey Register on May 6, 1991 to correct the zip code error, the comment period was not extended to 30 days subsequent to the corrected notice (June 6, 1991).

RESPONSE: The Board does not view the publication of the incorrect zip code to be a substantive error and believes the Notice of Administrative Correction, which was published two weeks later in the next issue of the New Jersey Register, to be a sufficient remedy (see 23 N.J.R. 1279(a)). The Board points out that as of May 29, 1991, it had not received any response which had been misrouted due to an incorrect zip code and that any such responses would likely have been rerouted to the Board by that date. Moreover, the Board properly publicized that discussion of public comment on this proposal was to be held at its May 29, 1991 open public meeting and was prepared to consider any additional public comment received subsequent to the end of the 30-day comment period (May 16, 1991). No additional public comment was received. For all of these reasons and in light of the approaching biennial renewal deadline, the Board has determined that a reproposal is both unnecessary and inadvisable.

COMMENT: Dr. Alvin Stern suggested that in order to discourage multiple offices, the Board should establish a graduated fee schedule, with multiple practices paying higher fees.

RESPONSE: The Board sees no reason to discourage, for the benefit of the public or the profession, practices with multiple offices.

COMMENT: Dr. Suzanne Offen suggested that the State Board can be run on monies generated from the ever-increasing number of optometrists. Dr. Offen stated that if the purpose of a State Board is to serve its members, then a fee increase will not help and may cause some to seek licensure elsewhere.

RESPONSE: The Board notes that the number of its licensees is not increasing but in fact has remained at the same approximate level for the past several years. As previously stated, the fee increases are necessary in order to prevent a fiscal loss to the Board, which is required by statute to be self-funding. The Board also points out that the purpose of the State Board of Optometrists is not to serve its members but to protect the public by regulating the practice of optometry and punishing persons violating the provisions of the Optometry Act.

Full text of the adoption follows:

13:38-3.6 (Reserved)

13:38-5.1 Fee schedule

The following fees shall be charged by the Board:

- 1. Application fee: \$125.00;
- 2. Initial license fee:
  - i. During the first year of a biennial renewal period: \$250.00;
  - ii. During the second year of a biennial renewal period: \$125.00;
- 3. Biennial renewal fee—active certificate: \$250.00;
- 4. Biennial renewal fee—non-active certificate: \$100.00;
- 5. Initial branch office certificate:
  - i. During the first year of a biennial renewal period: \$250.00;
  - ii. During the second year of a biennial renewal period: \$125.00;
- 6. Biennial renewal fee—branch office certificate: \$250.00;
- 7. Change of address fee—active or non-active: \$25.00;
- 8. Transfer fee—non-active to active:
  - i. During the first year of a biennial renewal period: \$150.00;
  - ii. During the second year of a biennial renewal period: \$75.00;
- 9. Penalty for late renewal of certificate: \$200.00;
- 10. Endorsement fee: \$75.00;
- 11. Duplicate wall certificate: \$25.00;
- 12. Letter of certification:
  - i. License: \$40.00;
  - ii. Continuing education credit: \$50.00;
- 13. Preceptorship certificate: \$25.00;
- 14. Reinstatement fee: \$200.00.

(a)

**DIVISION OF CONSUMER AFFAIRS  
BOARD OF PHARMACY  
Prescriptions for Controlled Substances  
Adopted Amendment: N.J.A.C. 13:39-5.6**

Proposed: June 18, 1990 at 22 N.J.R. 1866(b).

Adopted: May 15, 1991 by the Board of Pharmacy, Elaine Dunn, President.

Filed: June 14, 1991 as R.1991 d.355, 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. 45:14-26.2; 45:14-36.1.

Effective Date: July 15, 1991.

Expiration Date: June 19, 1994.

**Summary of Public Comments and Agency Responses:**

The Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:39-5.6, relating to filing requirements for prescriptions for controlled substances. The official comment period ended on July 18, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on June 18, 1990 at 22 N.J.R. 1866(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Department of Health, the New Jersey Pharmaceutical Association, the New Jersey Society of Hospital Pharmacists, Rite-Aid Corporation, Wakefern Food Corporation, Supermarkets General Corporation, and a number of pharmacists and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Pharmacy, Post Office Box 45013, Newark, New Jersey 07101.

The Board of Pharmacy received two sets of comments:

COMMENTS FROM THE DEPARTMENT OF HEALTH: Mr. Lucius Bowser, Chief, Office of Drug Control in the New Jersey State Department of Health, commented on June 22, 1990 (during the formal comment period) that his agency had no objections to the language or intent of the proposal and that his office supported adoption of the proposal.

However, on August 1, 1990, after the formal comment period, Mr. Bowser again commented, stating (1) that filing of all Schedule III, IV, and V prescriptions in a separate file would make it easier to locate "misfiled" prescriptions, (2) that the requirement for a one-inch high red "C" on Schedules III, IV, and V would serve no purpose because the proposal establishes three separate files, (3) that the proposed exception at N.J.A.C. 13:39-5.6(f) for pharmacies with electronic filing systems would not help anyone locate or retrieve hard copies of prescriptions and (4) asking that the Board reconsider its proposal and allow the Department of Health to amend its Controlled Dangerous Substances (CDS) regulations to mandate three separate files.

RESPONSE: Although Mr. Bowser's objections were voiced after the comment period, as a courtesy the Board took them into consideration and replies as follows:

The Board agrees that filing in three separate files would ease access, and the proposal establishes that type of filing when a non-electronic system is in place. The Board also agrees that the use of a red "C" would be unnecessary if three files were created, but notes that the exception for those with electronic filing systems would still result in two sets of files, including one with intermixed non-CDS and CDS prescriptions; thus, the red "C" would still be needed among the prescriptions so filed. In addition, the requirement for a red "C" when prescriptions are intermixed is set by Federal law; thus, this proposed section only mirrors that requirement. The Board therefore believes that the red "C" requirement must be retained in the amendment, but only for those files where intermixing occurs.

Further, the electronic exception was not intended to help locate or retrieve prescriptions manually, but rather to assist in retrieval by locating the prescription numbers in a computer, thus allowing anyone looking for "hard copies" to go immediately to them. The Board therefore has decided to retain the exception to the need for three sets of files when an electronic retrieval system is used.

The Board does not agree that the proposal rightfully belongs as an amendment to the Controlled Dangerous Substances regulations. Although the CDS regulations affect records, the Board also has the authority to regulate pharmacists and pharmacies, and record-keeping requirements are part of that authority.

COMMENTS FROM THE NEW JERSEY PHARMACEUTICAL ASSOCIATION: The New Jersey Pharmaceutical Association disagreed with the proposal, citing these reasons: (1) no positive public health results associated with the proposal in that most Controlled Dangerous Substances prescriptions are never viewed by authorities, (2) the red "C" being unnecessary when a separate file is used, (3) three agencies (FDA, Department of Health Drug Control Program, and the Board of Pharmacy) being involved in regulating CDS prescriptions, with confusing and conflicting regulations. The example they cite was that the FDA allows a single file for CDS, while the proposal mandates a separate file for Schedule II products.

For the above reasons, the New Jersey Pharmaceutical Association asked that the Board not adopt the proposal, but rather ask the Federal government to change its requirements.

RESPONSE: The Board agrees that most CDS prescriptions are never viewed by authorities, but nonetheless feels that it is important that access to CDS prescriptions be made easy no matter how infrequent that need is, in order to decrease the opportunity for pharmacists to hide CDS misuse under a layer of non-CDS prescriptions. The Board agrees that the red "C" is unnecessary when a separate file for Schedules III, IV, and V is used; thus the Board changed the amendment to make it clear that it was not intended that such separate files use the red "C." The mere fact that three agencies are involved in regulating CDS prescriptions does not mean that the rules will cause confusion. The Board believes that a preponderance of pharmacists currently use separate files for Schedule II drugs; thus, the Board's proposal only formalizes a system already widely in place, which should not be confusing. (The Board also notes that State and Federal regulations do not allow the use of a single file, despite the New Jersey Pharmaceutical Association's claim to the contrary.)

The Board therefore decided to clarify when a red "C" is needed, but disagreed with the other comments from the New Jersey Pharmaceutical Association.

In summary, the Board agreed with Mr. Bowser's comments, agreeing with and supporting the proposal, that were filed within the formal comment period, but disagreed with his comments in opposition filed later, and the Board agreed with the New Jersey Pharmaceutical Association's comment about the red "C", but disagreed with all their other

comments. The Board will adopt the proposed amendment with a change not in violation of N.J.A.C. 1:30-4.3.

#### Summary of Change Upon Adoption

The Board has revised N.J.A.C. 13:39-5.6(e) in order to clarify that the requirement of a stamped letter "C" is unnecessary when separate files are kept for schedules III, IV and V prescriptions. Since all prescriptions for schedules III, IV and V substances will be in a separate file, there is no need to further identify such prescriptions as being for controlled substances through the use of the stamped letter "C."

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*):

#### 13:39-5.6 Record of pharmacist filling prescription

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

(d) Prescriptions for all controlled substances listed in schedules I and II shall be maintained in a separate prescription file.

(e) \*[Prescriptions]\* **\*Except when they are kept in a separate file, prescriptions\*** for all controlled substances listed in schedules III, IV and V shall be stamped in red ink in the lower right corner with the letter "C" no less than one-inch high.

(f) Prescriptions for all controlled substances listed in schedules III, IV and V shall be maintained in a single file separate from all other prescriptions, unless an electronic data processing system is utilized which meets the requirements of (i) below. If such an electronic data processing system is utilized, prescriptions for all substances listed in schedules III, IV and V shall be filed either in the prescription file for controlled substances listed in schedules I and II or in the usual consecutively numbered prescription file for noncontrolled substances.

Recodify existing (d)-(g) as (g)-(i) (No change in text.)

(j) Initials and/or access code number(s) of the dispensing pharmacist and intern or extern, if applicable, shall be entered into the system each time a prescription is filled or refilled. Computer programs which automatically generate a pharmacist's initials without requiring a direct entry by the dispensing pharmacist at the time of dispensing are prohibited.

(a)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHYSICAL THERAPY State Board of Physical Therapy Rules Readoption: N.J.A.C. 13:39A

Proposed: April 15, 1991 at 23 N.J.R. 1065(a).

Adopted: June 12, 1991 by the State Board of Physical Therapy,  
Stanley Mendelson, Chairman.

Filed: June 21, 1991 as R.1991 d.366, **without change.**

Authority: N.J.S.A. 45:9-37.18 and 45:1-3.2.

Effective Date: June 21, 1991.

Expiration Date: June 21, 1996.

#### Summary of Public Comments and Agency Responses:

The State Board of Physical Therapy afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:39A. The official comment period ended on May 15, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 15, 1991, at 23 N.J.R. 1065(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the New Jersey Society of Physical Therapy, the New Jersey Chapter of the American Physical Therapy Association, the Department of Health, the Medical Society of New Jersey, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Physical Therapy, Post Office Box 45014, Newark, New Jersey 07101.

One comment was received during the 30-day comment period from Robert Levinson, president of ATLA-NJ, an association of over 3,000

## ADOPTIONS

attorneys who represent persons injured in accidents. Mr. Levinson stated that ATLA-NJ has a direct interest in rules relating to the preparation and release of patient records in that its members are required to obtain complete information concerning the nature of their clients' injuries and the medical treatment rendered.

While stating general support for portions of N.J.A.C. 13:39A-3.1(a)1 and 2 which deem certain acts or business practices relating to patient records to be professional misconduct, Mr. Levinson stated ATLA-NJ's belief that certain rules should be clarified or expanded. A summary of the specific issues raised by this commenter together with the Board's responses follows.

**COMMENT:** N.J.A.C. 13:39A-3.1 should be amended to require that a physical therapist provide all records relating to billing, if requested, since the preparation of a personal injury claim requires the production of the bill for medical services as well as the treatment record.

**RESPONSE:** The Board considers the bill for medical services to be part of the treatment record. As such, it must be provided, pursuant to N.J.A.C. 13:39A-3.1(a)4, within 15 days of a written request. The Board believes the existing rule is sufficient and that an amendment is unnecessary at this time.

**COMMENT:** The production of a treatment record will be of no value if the record is not legible. Therefore, the Board should amend its rules to require the licensee to provide a transcription at no cost to the patient if the treatment record is illegible or prepared in a language other than English.

**RESPONSE:** The Board agrees that an illegible record is of no value. However, it views the legibility of treatment records to be a clerical issue which does not require rulemaking—if a record is illegible, the Board expects that the patient or the patient's representative will request clarification. The Board has, however, established a policy requiring clarification of treatment records when necessary.

**COMMENT:** More specific guidelines should be established, similar to those established by the Medical Board and the Department of Health, with regard to treatment record reproduction fees. The commenter suggests that the failure to establish more specific guidelines will result in an absence of uniformity.

**RESPONSE:** The Board believes more specific guidelines are unnecessary as it has not experienced problems with regard to fees charged for treatment record reproduction. In any event, as a matter of policy the Board does not set fees.

**COMMENT:** More specific guidelines should be established as to the amount a licensee may charge for a written report. In addition, the rules should be amended to require licensees to provide a narrative report within 30 days from receipt of a written request. The commenter listed the specific information which should be a part of the narrative report.

**RESPONSE:** Again, as a matter of policy the Board does not set fees. With regard to requiring submission of a narrative report upon request, the Board points out that all of the information the commenter suggests should be included in a narrative report is already required, pursuant to N.J.A.C. 13:39A-3.1(a)1, to be included in the treatment record. Therefore, the requirement of a narrative report would essentially be duplicative of the existing patient record requirement.

**COMMENT:** Physical therapists should not be permitted to charge a fee for medical records or testimony when the record or testimony is used in connection with the patient's lawsuit against the insurance carrier to obtain payment of medical bills.

**RESPONSE:** Pursuant to N.J.A.C. 13:39A-3.1, a licensee may charge a reasonable fee to prepare a written report, and the Board does not believe the exception suggested by the commenter is warranted. A more equitable solution would be achieved by the patient seeking to recover costs as part of the lawsuit.

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:39A.

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(a)

### DIVISION OF CONSUMER AFFAIRS OFFICE OF WEIGHTS AND MEASURES

#### Notice of Administrative Correction

#### Weightmasters; Weights and Measures Standard Containers for Farm Products; Weights and Measures

#### N.J.A.C. 13:47E through 13:47G

**Take notice** that the Office of Administrative Law has discovered an error in the 9-17-90 update to the New Jersey Administrative Code. N.J.A.C. 13:47E through 13:47G were inadvertently deleted from the Code in the Code publication of the adopted repeal of N.J.A.C. 13:47D (see 22 N.J.R. 2982(b)). The current text of N.J.A.C. 13:47E through 13:47G (from the 2-15-80 Code update) will be returned to the Code through the 7-15-91 update. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

## OTHER AGENCIES

(b)

### ELECTION LAW ENFORCEMENT COMMISSION

#### Violations; Political Communications

#### Adopted New Rule: N.J.A.C. 19:25-17.2

#### Adopted Amendment: N.J.A.C. 19:25-11.10

Proposed: May 6, 1991 at 23 N.J.R. 1299(a).

Adopted: June 21, 1991 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: June 21, 1991 as R.1991 d.364, **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. 19:44A-6.

Effective Date: July 15, 1991.

Expiration Date: October 1, 1995.

#### Summary of Public Comments and Agency Responses:

The Election Law Enforcement Commission (hereafter, the Commission) received written comments from Assemblyman Garabed "Chuck" Haytaian, Minority Leader, on behalf of the Assembly Republican Caucus; from Assemblyman Patrick J. Roma, Assistant Minority Leader; and from John A. Schepisi, Esq., Chairman, Bergen County Republican Organization. A public hearing was held by the Commission on June 19, 1991, but no persons appeared to offer any comments at that time. The following is a summary of the comments received and the Commission's responses:

**COMMENT:** Mr. Schepisi wrote that although he applauded the proposed new rule on violations (N.J.A.C. 19:25-17.2) as an initiative to improve election reporting, he expressed concern that violations pertinent to substantial amounts of money (for example, \$100,000) would be treated identically to violations pertinent to relatively smaller amounts of money (for example, \$100.00). He suggested that an incumbent or party organization might receive thousands of contributions, each of which would be treated as a separate violation. He suggested that a percentage of a major contributor violation should serve as a standard for determining penalties.

**RESPONSE:** The proposed rule establishes the principle that each omitted, incorrect, or late reporting or record keeping transaction constitutes a separate violation subject to civil penalties pursuant to N.J.S.A. 19:44A-22. The rule is a departure from past Commission practice in cases where all reporting and record keeping transactions relevant to a single late or non-filed report were treated as a single violation subject to a maximum civil penalty of \$1,000 (\$2,000 in the case of a previous violator) (see N.J.S.A. 19:44A-22). The Commission anticipates that the rule will provide it with greater flexibility to correlate civil penalties that more closely reflect the number and amount of reporting and record keeping violations occurring in a single late or non-filed report.

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The Commission agrees that the amount of money implicated in any single reporting or record keeping violation should be one factor considered by it in arriving at an appropriate penalty. However, the Commission would not agree that the amount of a misreported or omitted contribution should be the sole factor in assessing any civil penalty. Other factors must also be considered. These include the type of transaction (that is, contribution, expenditure, designation of campaign account, etc.), the number of days late in cases involving late reporting, whether reporting was accomplished before or after the date of an election, and possible exculpatory reasons for the lateness or non-reporting.

The Commission recognizes that a reporting entity with a high volume of relatively smaller contributions is necessarily exposed to a greater number of potential violations than is an entity with fewer, but larger, contributions. However, N.J.S.A. 19:44A-22 permits the Commission to impose a civil penalty for a violation ranging from a reprimand without monetary fine to a fine of up to \$1,000 (\$2,000 for a previous violator). Therefore, the Commission has considerable discretion to tailor any penalty imposed for any single violation to reflect the amount implicated. Further, if the cumulative impact of all fines imposed for multiple violations in a single report appears out of proportion to the total amount raised or expended in that reporting period, the Commission may in its discretion waive or reduce some of the monetary penalties.

COMMENT: In regard to the amendment to N.J.A.C. 19:25-11.10, Political communications, all of the commenters suggested that communications made by elected officeholders in response to letters or telephone calls from constituents should be permitted without requiring those officeholders to report a political communication. Specifically, concern was expressed that "generic response letters" by legislators (that is, letters sent to a large number of constituents in response to constituent mail, telephone calls or petitions on a particular legislative subject) should not be regarded as political communications subject to subsection (b) of the rule.

RESPONSE: The rule defines the term "political communication" to mean some printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate, typically containing words such as "Vote for (name of candidate)." However, under subsection (b) even a communication that does not contain such an explicit appeal may, under the circumstances enumerated in the rule, be deemed as a "political communication." The circumstances under which a letter from an incumbent legislator seeking reelection might be regarded as a "political communication" and therefore subject to reporting are that the letter is circulated within 90 days of the election, it is circulated to an audience substantially comprised of persons eligible to vote for the candidate, it contains a statement or reference concerning the government or political objectives or achievements of the candidate, and the candidate has cooperated or consented in the circulation of the letter.

The Commission agrees that if an officeholder is circulating such a letter to constituents who have made some prior expression of concern on a topic relevant to public duties as an officeholder, the officeholder should not incur reporting obligations as long as the response is limited to the topic raised by the constituent. In reaching this conclusion, the Commission has attempted to balance the interest in promoting constituent communications by an officeholder against the interest of promoting full campaign disclosure by incumbent-candidates. Since the Commission believes that such "generic response letters" should not be subject to reporting because reporting requirements may inadvertently prove burdensome in the context of responding to constituent concerns, the Commission has amended the text of subsection (c) to exclude specifically such responsive communications by officeholders to their constituents.

COMMENT: Assemblyman Haytaian and Mr. Schepisi suggested that even unsolicited communications made during the 90-day period prior to an election from an officeholder to constituents should be permitted under certain limited circumstances. Specifically, they suggested that if the purpose of the communication is to solicit input or other commentary from constituents on a specific public matter, subsection (b) of the rule should not apply.

RESPONSE: Under the existing text of subsection (b), a letter circulated by an officeholder-candidate that does not contain any statement or reference concerning the governmental or political objectives or achievements of that officeholder-candidate does not meet the "political communication" definition. The Commission believes that an unsolicited letter circulated from an incumbent officeholder to constituents in the 90-day period before an election can seek input from constituents without containing any such statement or reference. Further,

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the Commission is concerned that amending the rule to permit unsolicited communications containing such a statement or reference would unduly compromise the candidate reporting purposes of the rule. Therefore, the Commission is unable to agree that an amendment to the rule is necessary on this basis.

COMMENT: Assemblyman Roma inquired whether an incumbent legislator seeking reelection would be permitted to place a public service announcement in a newspaper noting that the legislator had information available at the legislator's district office regarding a matter of public concern such as financial aid information for students, veteran's benefits, or some other service.

RESPONSE: If the public service announcement did not contain any statement or reference concerning the governmental or political objectives or achievements of the incumbent legislator-candidate, the announcement would not meet the definition of a "political communication" pursuant to subsection (b). In the event that the announcement did contain such a statement or reference, the Commission believes it should be subject to reporting as a "political communication."

COMMENT: Assemblyman Haytaian and Assemblyman Roma suggested that an incumbent officeholder who is a candidate in an uncontested primary election should not be subject to the provisions of subsection (b).

RESPONSE: The Commission agrees that in an uncontested primary election no significant reporting purpose is served by requiring an incumbent-officeholder to be subject to the reporting provisions of subsection (b). In the absence of any opponent in a primary election, the Commission believes that an incumbent officeholder is entitled to a presumption that any communication to constituents, even if made within 90 days before the primary election, is not for political purposes unless the communication contains "express advocacy" language of the type described in subsection (a). Therefore, the Commission in adopting this rule has added subsection (d) which excludes a candidate in an uncontested primary election from the scope of subsection (b).

COMMENT: Assemblyman Haytaian suggested that the text of the rule be clarified to reflect that primary elections as well as other elections are intended to be within its scope.

RESPONSE: The Commission agrees that the text of subsection (b) should be clarified to reflect that candidates in contested primary elections as well as other elections are affected. Therefore, the Commission has adopted technical amendments to the text of subsection (b) to this effect.

### Summary of Agency-Initiated Changes:

The Commission initiated two changes to the text of N.J.A.C. 19:25-11.10(c) for purposes of clarification. The word "those" was removed from the phrase "... if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring those constituents to make applications or take other actions ..." because it was deemed unnecessary in the context of the full subsection. Also, in the phrase "if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring constituents to make applications or take other actions within a specified time period ...", the Commission substituted the words "before the date of the upcoming election" to replace the phrase "within a specified time period" because that phrase was too vague. The phrase "a specified time period" could be construed to refer to any specified period of time when in fact the intent of the Commission was to specify that the applications or other actions referred to in the text must be made before the date of the upcoming election if the exemption contained in subsection (c) was to be applicable.

### Summary of Changes Upon Adoption:

In regard to N.J.A.C. 19:25-11.10, Political communications, the Commission added the words "nomination for election" to the text of subsection (b) to clarify that the rule applies to primary elections. In the absence of this additional phrase, the rule could be construed as omitting primary elections because the winning candidate in a primary election receives the nomination for election from a political party, but is not in fact elected to a public office.

The Commission added to the text of subsection (c) an exemption removing a communication made by an incumbent officeholder seeking reelection if that communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent. The purpose of that addition was to respond to the comments that incumbent officeholders should be able to circulate "generic response letters" to constituents without incurring reporting obligations.

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Also, in subsection (c), the Commission substituted the phrase "before the date of the upcoming election" for the phrase "within a specified time period" because the existing text was too vague.

The Commission added subsection (d) in response to comments to the effect that provisions of subsection (b) should not be applicable to a communication made by a candidate seeking nomination for election in a primary election if that candidate is not opposed in that primary election.

These substantive and technical changes do not require additional public notice and comment because they lessen the reporting obligations for candidates. Specifically, candidates are permitted to circulate "generic response letters" to constituents without incurring reporting obligations, and candidates in uncontested primary elections are exempted. The other changes are of a technical nature to clarify the text, but do not create reporting obligations.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

### 19:25-11.10 Political communication

(a) The term "political communication" means any written statement, pamphlet, advertisement or other printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.

(b) A written statement, pamphlet, advertisement or other printed or broadcast matter that does not contain an explicit appeal pursuant to (a) above for the **\*nomination for election or for the\*** election or defeat of a candidate shall be deemed to be a political communication if it meets the following conditions:

1. The communication is circulated or broadcast within 90 days of the date of any election in which the candidate on whose behalf the communication is made is seeking **\*nomination for election or\*** elected office; except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, and in the case of a candidate for election to the office of Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following the date of the gubernatorial primary election;

2. The communication is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the communication was made;

3. The communication contains a statement or reference concerning the governmental or political objectives or achievements of the candidate; and

4. The production, circulation or broadcast of the communication, or any cost associated with the production, circulation or broadcast of the communication, has been made in whole or in part with the cooperation of, prior consent of, in consultation with, or at the request or suggestion of the candidate.

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection **\*if the communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent,\*** if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring **\*[those]\*** constituents to make applications or take other actions **\*[within a specified time period,]\*** **\*before the date of the upcoming election\***, or if it is circulated or broadcast to constituents for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

**\*[d]** Nothing contained in (b) above shall be construed to require reporting of a communication by a candidate seeking nomination for election in a primary election if that candidate is not opposed

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**by another candidate seeking nomination for election in that primary election.\***

### SUBCHAPTER 17. COMPLAINTS AND OTHER PROCEEDINGS; VIOLATIONS

#### 19:25-17.2 Violations

(a) The term "reporting transaction" means the receipt of a contribution, the making of an expenditure, or the occurrence of any other event which is subject to the reporting requirements of the act or this chapter.

(b) The term "record keeping transaction" means the receipt of a contribution, the making of an expenditure, or the occurrence of any other event which is subject to the record keeping requirements of the act or regulations.

(c) Each reporting transaction that is not reported in the manner or not filed on the date established for reporting or filing by the act or regulations shall constitute a violation of the act subject to the penalties provided in N.J.S.A. 19:44A-22.

(d) Each record keeping transaction which is not made or maintained in the manner prescribed by the act or regulations shall constitute a violation of the act subject to the penalties provided in N.J.S.A. 19:44A-22.

(a)

### CASINO CONTROL COMMISSION Notice of Administrative Correction Procedure for Exchange of Checks Submitted by Gaming Patrons Slot Booths N.J.A.C. 19:45-1.34

**Take notice** that the Casino Control Commission has discovered an error in the codification of N.J.A.C. 19:45-1.34(a)10 through 12 as set forth in the adoption of proposed N.J.A.C. 19:45-1.34(a)10 published in the June 17, 1991 New Jersey Register at 23 N.J.R. 1964(a). Contrary to the codification set forth in the notice of adoption, paragraph (a)10 should be (a)11; (a)11 should be (a)12; and (a)12 (adopted as paragraph (a)9 at 23 N.J.R. 885(a)) should be (a)10. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

#### 19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-8. (No change.)

9. The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40;

[10. The issuance of cash to patrons upon the presentation of a recognized credit card in accordance with N.J.A.C. 19:45-1.25(i);

11. The exchange with the cashiers' cage of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

12. The issuance of coin or slot tokens to automated coupon redemption machines in exchange for proper documentation; and]

10. The issuance of coin or slot tokens to automated coupon redemption machines in exchange for proper documentation;

11. The issuance of cash to patrons upon the presentation of a recognized credit card in accordance with N.J.A.C. 19:45-1.25(i); and

12. The exchange with the cashiers' cage of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

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

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF WATER RESOURCES

##### Notice of Administrative Correction

##### Water Pollution Control

##### Wastewater Discharge Requirements

##### Effluent Standards

##### N.J.A.C. 7:9-5.7

Take notice that the Office of Administrative Law has discovered an error in the current text of N.J.A.C. 7:9-5.7(b). The published rule text, from the 8-19-85 Code update, does not contain the full text of the last clause of the subsection as adopted effective May 20, 1985 (see 17 N.J.R. 1270(a)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus):

##### 7:9-5.7 Effluent standards

(a) (No change.)

(b) The effluent standard for phosphorus discharged to freshwater lakes, ponds, reservoirs, or tributaries to these waterbodies is that, at a minimum, no effluent shall contain more than 1.0 mg/l total phosphorus (as P), as a monthly average, unless the discharger(s) to such a waterbody can demonstrate that a less stringent requirement will not result in a violation of the Surface Water Quality Standards (N.J.A.C. 7:9-4) or that the **control of point sources alone, in the absence of effective nonpoint source controls**, will not result in a significant reduction of phosphorus loadings to the waterbody.

### (b)

#### DIVISION OF SOLID WASTE MANAGEMENT

##### Solid Waste Fees

##### Adopted Amendments: N.J.A.C. 7:26-4.3, 4.4 and 15.6

Proposed: October 1, 1990, at 22 N.J.R. 3079(a).

Adopted: June 21, 1991, by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: June 24, 1991 as R.1991 d.368, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with N.J.A.C. 7:26-4.6 and the amendment to N.J.A.C. 7:26-1.4 not adopted.**

Authority: N.J.S.A. 13:1E-18.

DEP Docket Number: 030-90-08.

Effective Date: July 15, 1991.

Operative Date: July 15, 1991, *provided however*, that the operative date is March 1, 1992 for the portions of the amendment to N.J.A.C. 7:26-4.3(b) which concern annual fees

for compliance monitoring services for thermal destruction facilities.

Expiration Date: October 25, 1995.

##### Summary of Public Comments and Agency Responses:

On October 1, 1990, the Department of Environmental Protection (Department) proposed amendments to N.J.A.C. 7:26-4.3, 4.4 and 15.6, and a new rule to be codified at N.J.A.C. 7:26-4.6. In addition to publication in the New Jersey Register, notice of the proposal was published in the Trenton Times and the Star-Ledger. The Department also mailed copies of the proposal to all New Jersey District Solid Waste Management officials and two major solid waste industry associations.

The period to submit comments on the proposal ended on November 30, 1990. A public hearing was held at the New Jersey State Museum Auditorium on October 23, 1990. Five persons testified at the public hearing. In response to the proposal, the Department received oral or written comments from the following persons:

Michael P. Brailsford, Wheelabrator Gloucester Company, L.P.

B. Kent Burton, Director, Institute of Resource Recovery

Bart Carhart, Executive Director, Pollution Control Financing Authority of Warren County

John W. Crafchun, Township Manager, Township of Medford

Wayne DeFeo, New Jersey Chapter, National Solid Wastes Management Association

Jean DiGennaro, Borough Administrator, Borough of Collingswood

Alan Feit, Township Manager, Township of Mount Holly

Frederick F. Galdo, Clerk/Administrator, Board of Chosen Freeholders of the County of Burlington

Elaine B. Hinkle, RMC, Township Clerk, North Hanover Township

Joseph E. Kazar, Executive Director, Union County Utilities Authority

J. Michael McGee, Director of Public Works, Berlin Township

Steven L. Pollock, Director, Department of Solid Waste Management, Ocean County

Mitchell L. Press

John Purves, Executive Director, Camden County, Pollution Control Financing Authority

Matthew Root, Chairman, New Jersey Ad Hoc Committee of the Institute of Resource Recovery

Bruce C. Rosetto, President, Rosetto Recycling Center, Inc.

Nicholas R. Smolney, Project Coordinator, Middlesex County Utilities Authority

John G. Waffenschmidt, Assistant Director, Environmental Compliance, American Ref-Fuel of Essex County

Sherry Williams, Gloucester County Improvement Authority

In response to comments on the proposal, and in the interest of increasing the Department's accountability for the timeliness of the activities it performs, the Department has recognized that changes in the fee schedule as originally proposed are necessary.

As originally proposed, this rulemaking provided for annual automatic increases in the fees, based upon annual changes in the Consumer Price Index. The Department has deleted this automatic increase from the rules as adopted.

Instead, the Department will review these fees each year, based upon changes in the Department's costs in rendering services for which fees are charged. Several factors may increase or decrease costs, including, but not limited to, improvements in the time the Department requires to perform activities, changes in the average level of compensation of Department employees, and changes in regulatory requirements of the solid waste program.

After consultation with the Department of Law and Public Safety, Division of Law, the Department has determined that it cannot incorporate such a change into the rule upon adoption, without providing additional opportunity for public comment as required by N.J.A.C. 1:30-4.3. Therefore, within the next few weeks, the Department will propose an amendment to these rules providing the Commissioner with the ability to implement this annual change through the publication of a report in the New Jersey Register, setting forth any revised fees and describing the changes in the Department's costs upon which the revisions will be based.

Several commenters objected to the annual compliance monitoring fee for thermal destruction facilities operating at 9.6 tons per day or more. In public hearings concerning permits for these facilities, the Department stated that it would perform continuous compliance monitoring of the facilities.

In calculating the fee, the Department assumed that it would fulfill this commitment by having its enforcement personnel present at the

## ADOPTIONS

facility 24 hours per day, five days per week, 52 weeks per year. However, the Department is now able to monitor emissions from these facilities continuously through telemetry, without the need to station its personnel at the facility. In light of the availability of this technology, the Department recognizes that it can perform continuous monitoring with a smaller, more efficient staff. As a result, within the next few weeks the Department will propose an amendment to these rules, to reduce the fee. To provide time to adopt that amendment, the Department has postponed until March 1, 1992 the operative date of the increased fee. During the interim period until the Department adopts the amendment, the compliance monitoring fee for resource recovery facilities operating at 9.6 tons per day or more will continue to be \$500.00 per day that an inspector is on the premises.

In the same proposal, the Department will propose a reduction in the annual compliance monitoring fee for thermal destruction facilities operating at less than 9.6 tons per day. To provide time to adopt that amendment, the Department has postponed until March 1, 1992 the operative date of the increased fee. During the interim period until the Department adopts the amendment, the compliance monitoring fee for resource recovery facilities operating at less than 9.6 tons per day will continue to be \$270.00 per site visit.

This issue is discussed in more detail in the summaries of comments and agency responses.

A summary of the comments, and the Department's responses, follows: Several commenters stated that the increased fees were excessive.

**COMMENT:** The Camden County Pollution Control Financing Authority commented that the fees are clearly excessive and somewhat outrageous. The Board of Chosen Freeholders of the County of Burlington also noted that New Jersey's costs to design, permit, construct and operate solid waste facilities are the highest in the nation.

**RESPONSE:** The Department has calculated the fees based upon the duration and complexity of the services for which fees are charged, as required by the Solid Waste Management Act. Although specific fees for some types of services are much higher than the fees imposed under the previous rules, the fees are necessary to fund the cost of these services. The Department recognizes that the magnitude of the fee increases has provoked strenuous objections; nonetheless, as discussed in more detail in the proposal and in responses to specific comments below, the fees accurately reflect the duration and complexity of the Department's services. The Department has not compared these fees to the fees charged by other state environmental agencies, because such a comparison is not relevant to the requirements of the Solid Waste Management Act.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, expressed its concern that the increased fees would hurt landfills and resource recovery facilities, and perhaps discourage recycling as well. The Borough of Collingswood also expressed its concern that the increases in fees for compost facilities and for transporters would be a stumbling block to municipalities' efforts to recycle as much solid waste as possible.

**RESPONSE:** While the Department recognizes that resource recovery facilities and landfills will pay higher fees under these rules, the Department has found no basis to determine that such facilities would suffer any material injury. The Department also has found no basis to believe that the fees will discourage recycling. However, to minimize any adverse effects of the fees where possible, the Department is preparing rules which will enable certain types of solid waste facilities to be "permitted by rule," without the need to pay permitting fees. The Department is preparing a rule proposal to accomplish this, and expects to propose these rules this fall. In addition, "permit by rule" procedures are already available for certain types of compost facilities.

**COMMENT:** The Burlington County Board of Chosen Freeholders stated that while certain costs are necessary to ensure protection of the environment, the magnitude and complexity of State environmental regulation and its associated costs make it impossible to comply, and possibly encourage noncompliance. Similarly, the Berlin Township Public Works Department commented that the increase in fees would force municipalities to circumvent the law.

**RESPONSE:** The rates for the facility approved in a ratemaking proceeding may reflect these fees as well as the costs of design, construction, operation and other factors considered in ratemaking; the ability to obtain approval of rate increases to reflect the increased fees reduces any incentive to illegally avoid payment of the fees. In addition, the Department expects that the improved enforcement activities to be funded by the increased fees will discourage noncompliance.

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Furthermore, the Department has found no basis to conclude that the increased fees will make it impossible to comply with the Department's requirements. Even as increased by these rules, the fees will not constitute a significant part of the cost of designing and constructing a new facility. For a Class A sanitary landfill, the Bureau estimates that construction and development costs range from \$40 million to \$150 million, while permitting fees will range from approximately \$151,000 to \$214,000. For a Class C transfer station or materials recovery facility, the Bureau estimates that construction and development costs would exceed \$10 million, while permitting fees will range from approximately \$124,000 to \$166,000.

The Department recognizes that for some types of existing facilities, the annual fees imposed under these rules will be a significant portion of the annual operating costs of the facility. For example, the Department's Bureau of Solid Waste and Resource Recovery Planning estimates that based upon existing service agreements with Class F thermal destruction facilities, compliance monitoring fees and other annual fees may approach from five to 10 percent of the facilities' annual operating costs. However, it is the nature of the activities of such facilities and the resulting potential for environmental harm that makes the Department's work necessary; the Department strives to perform that work efficiently, to limit the amount of the fees necessary to support it. For the reasons discussed above, the Department believes that these fees are not so substantial that avoidance would be encouraged.

**COMMENT:** The Burlington County Board of Chosen Freeholders commented that its ability to maintain stable solid waste disposal rates is seriously threatened by the adoption of these rules. North Hanover Township agreed; in expressing its strong opposition to the fee increases, the Township noted that tipping fees are already astronomical at the Township's landfills.

**RESPONSE:** The Department believes that it is fairer to fund the cost of its services through fees paid by the persons who cause that cost to be incurred, rather than through general appropriations paid for by all New Jersey taxpayers. The Department recognizes that persons paying these fees may be able to increase their rates to reflect the increased fees, thereby imposing increased costs upon their customers. However, those customers also are benefiting from the Department's services rendered in connection with the permitting and operations of the facilities; again, the Department believes that it is fairer for those persons to share in the cost of providing those services, rather than distributing the burden to the State's taxpayers generally.

**COMMENT:** The Middlesex County Utilities Authority commented that if the financial impacts of the fee increases upon small businesses were to be reduced, as stated in the Regulatory Flexibility Analysis in the proposal, the same effort to reduce costs should be extended to facilities operated by governmental authorities.

**RESPONSE:** In the Regulatory Flexibility Analysis, the Department stated that exempting small businesses from the increased fees would undermine the Department's ability to carry out its duties under the Solid Waste Management Act, and would be detrimental to the environment. Accordingly, the fee schedule provides no reduction in costs for small businesses. The fee schedule does provide that since smaller facilities generally require less Department time and effort than larger facilities of the same type, these facilities will pay proportionally lower fees; these are also the facilities likely to be least capable of bearing an increase in costs. If governmental authorities are operating smaller facilities, they will benefit from this aspect of the fee structure.

**COMMENT:** The Berlin Township Public Works Department commented that the amount of time to accomplish each activity was absurd; the commenter concluded that the fees based upon those estimates of time are unfounded, ill-advised, and unaffordable. Specifically, the commenter expressed disbelief concerning the time required to review an engineering design, determine a facility's consistency with the district Solid Waste Management Plan, issue a permit for a compost facility, and process a transporter registration.

**RESPONSE:** In determining the amount of time required to perform services for which fees are charged, the Department used a cost accounting analysis for fiscal year 1988 to determine the number of hours generally required to perform each service. For some types and sizes of facilities, the Department supplemented that data with its professional judgment to correlate the capacity of a facility with the duration and complexity of the service. The Department will generate more data in permitting more facilities; if that data shows that the actual staff time required to perform a service differs from the estimate, the Department will propose revised fees for that service. However, the Department

believes that this approach is a technically defensible and reasonably accurate method of calculating the amount of time required to perform a service, based upon the data available.

COMMENT: The Middlesex County Utilities Authority objected to the inclusion of the cost of legal services rendered to the solid waste program in the calculation of the hourly rate for the Department's services. Specifically, the Authority stated that the costs associated with judicial and administrative litigation should be paid from penalties collected in such actions. The Authority also stated that the costs of drafting regulations and planning documents are the cost of governing. The Authority stated that all of these costs which are not incurred directly in support of a particular facility should not be incorporated into fees paid by the particular facility.

RESPONSE: The legal costs incurred in litigation concerning penalties are linked to many of the services for which the Department collects fees. Enforcement litigation directly supports compliance monitoring, for which the Department assesses annual fees; such litigation also arises when the Department's registration, permitting, and other regulatory requirements (for which fees are assessed) are violated. Accordingly, the Department believes that it is reasonable to recover these legal costs from fee revenues collected in connection with activities from which enforcement litigation arises. Penalty collections in solid waste enforcement matters are generally deposited with the Treasury, and the Department is not authorized to draw upon those penalty collections to pay the cost of legal services rendered in enforcement litigation.

The Department agrees that the cost of drafting regulations and planning documents is part of the cost of governing. However, the Department incurs this cost of governing as a result of the activities of those persons to whom fees are assessed. The Department's planning activities benefit facilities directly, in connection with the permitting and operational services for which fees are assessed. For example, a facility cannot begin the permitting process without establishing that it has been included in the applicable district solid waste management plan; the Department's planning activities are also necessary to direct waste to a permitted facility. The Department's regulatory activities are also linked to services for which fees are charged; for example, the entire permitting process is governed by regulation. For these reasons, the Department has concluded that the Legislature intended that the Department fund the costs associated with these activities from the proceeds of fees for services linked to the activities.

COMMENT: The Middlesex County Utilities Authority stated that the allocation of legal costs to all activities for which fees are charged is arbitrary and capricious; to illustrate the point, the Authority noted that the review of annual topographic survey submissions requires only engineering expertise, and should not cause the Department to incur legal costs.

RESPONSE: The Department has calculated the fees based upon the assumption that the number of person-hours spent in rendering legal services in connection with each of the types of activities for which fees are assessed is proportional to the number of person-hours which the Division of Solid Waste Management spends on such activities. The proposed amendment apportions the total cost of legal services in accordance with these proportions. It is not practicable to determine the exact proportion of time which Deputy Attorneys General spend upon each type of activity; the timekeeping records maintained by the Division of Law in the Department of Law and Public Safety does not provide that data. However, the effect of the entire cost of legal services is only to increase the Department's hourly rate from \$47.96 to \$52.20; accordingly, an apportionment of the cost of legal services which precisely reflected the apportionment of the time of the Deputy Attorneys General cannot have a substantial effect upon the hourly rate, or upon any fee.

COMMENT: American Ref-Fuel of Essex County commented that the proposal did not make it clear whether the Department intends that the fee revenues cover all costs related to planning and policy development, though the aggregate fees that would be collected appear to provide sufficient capital to administer all programmatic functions relating to solid waste.

RESPONSE: The revenues from the increased fees will fund those Department services which are made necessary by or otherwise closely linked to the activities of the persons required to pay fees. For example, in addition to services which directly concern a particular facility, the legal services and services related to district planning will be funded from fee revenues. However, the solid waste program will continue to require a significant amount of tax-based support to provide general services for the public at large. These services normally include: responses to

public inquiries regarding solid waste issues, public information, regional and statewide planning and other generic activities. These services will not be funded from fee revenues.

COMMENT: The Pollution Financing Authority of Warren County summarized the first paragraph of the Economic Impact Statement in the proposal as stating that industry would pay \$8.6 million in fees during the first year under the revised fee schedule. The commenter questioned whether this figure conflicted with the figure of \$13,414,474 listed as the total cost of providing services under the solid waste program.

RESPONSE: The commenter has incorrectly summarized the first paragraph of the Economic Impact Statement. That paragraph states that fees will increase by \$8.6 million in the first year; this statement does not conflict with the total cost of \$13,414,474.

Several commenters stated that fees would result in increased local taxes or fees:

COMMENT: Several commenters linked the increase in fees to a future increase in taxes. Wheelabrator commented that the increase in fees will result in increased taxes. The New Jersey Ad Hoc Committee of the Institute of Resource Recovery stated that fees assessed to solid waste facilities will be passed on to citizens as an additional tax. The Gloucester County Improvement Authority also stated that the increased fees would indirectly result in increased taxes. Medford Township commented that the increased fees will cost county and municipal taxpayers thousands of dollars in application fees and other new charges.

RESPONSE: The Legislature has directed the Department to establish fees based upon the duration and complexity of the services it performs under the solid waste program. The Department also now receives appropriations which are less than the total cost of operating the solid waste program, and eliminated the appropriations which had previously funded the Department's solid waste permitting and enforcement activities. Through these actions, the Legislature and the Office of Management and Budget have established a policy that the costs of these services should be paid for by those persons whose activities make it necessary for the Department to incur the costs, rather than by the taxpayers generally. The Department recognizes that the shortage of revenues available from general funds make this policy choice necessary.

COMMENT: Some commenters linked the increase in fees to an increase in costs paid by ratepayers. The Institute of Resource Recovery noted that fees are pass-through costs under the provisions of vendor/project sponsor contracts, which are passed along to taxpayers in the form of increased tipping fees. Wheelabrator commented that the increase in compliance monitoring fees will be passed on to its ratepayers, and will result in an increase to the ratepayers of \$2.25 per ton. The Union County Utilities Authority commented that it was misleading for the Department to state that the increased fees would increase costs to the solid waste industry because the "industry" in many cases is a public agency, and the fees are ultimately paid by ratepayers. The Middlesex County Utilities Authority commented that the Department should determine whether the increased fees would increase the costs paid by individual homeowners. The National Solid Wastes Management Association, New Jersey Chapter, commented that increased transporter fees will be passed on to the homeowner and business sector of New Jersey, hindering the State's economy. That commenter also asserted that the Department's fees would cause an increase of approximately \$2.00 per ton in tipping fees for all aspects of solid waste disposal.

RESPONSE: The Department recognizes that persons paying these fees may be able to increase their rates to reflect the increased fees, thereby imposing increased costs upon their customers. However, those customers also are benefiting from the Department's services rendered in connection with the permitting and operations of the facilities; the Department believes that it is fairer for those persons to share in the cost of providing those services, rather than distributing the burden to the taxpayers generally. The Department does not have the statutory authority to regulate ratemaking by public utilities such as the solid waste facilities and transporters to which the commenters refer. Therefore, the Department cannot determine the precise impact of the increased fees upon ratepayers.

Several commenters questioned the effect of the increased fees upon the ability of municipalities to comply with the local government cap law:

COMMENT: Three commenters commented that the increased fees will make it difficult or impossible for municipalities to comply with the local government cap law, N.J.S.A. 40A:4-45.1 et seq. The Township of Mount Holly noted that the 1990 revisions to the cap law eliminated the exception to the overall spending limitation for solid waste costs.

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The Township commented that if the increased fees are passed along to municipalities, the municipalities will not be able to comply with the cap law without increasing taxes and cutting service. The Middlesex County Utilities Authority commented that municipalities will frequently be the parties ultimately bearing the cost of the new fees; the Authority concluded that the astronomical increase in fees, combined with the effects of 1990 amendments to the cap law which eliminated the exemption of solid waste expenditures, leaves municipalities unable to pay the increased fees. The Berlin Township Public Works Department commented that the permit fees are being increased to amounts that are well above the budget capabilities of municipalities when the items subject to the cap law are being expanded, State aid is being cut, Federal aid is nonexistent and local budgets are stretched to the limit.

**RESPONSE:** The Department recognizes that the elimination of the cap law exemption for solid waste costs will make it more difficult for municipalities to budget for increases in those costs. The Department also understands that reductions in State and Federal aid exacerbate the budget difficulties which municipalities face, though these reductions are not within either the Department's control or the scope of these rules. However, by delaying and possibly reducing the increase in the annual compliance monitoring fee for the largest thermal destruction facilities, which is the most dramatically increased fee under these rules, the Department believes that it is easing the most significant source of that difficulty for many municipalities. In addition, the Department notes that municipalities can exercise some control over their solid waste disposal cost by increasing the percentage of their solid waste which is recycled in accordance with the recommendations of the Governor's Emergency Solid Waste Task Force.

Several commenters stated that the increased fees would be a barrier to entry into the solid waste industry:

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that the fees will be a barrier to entry into the solid waste industry.

**RESPONSE:** The Department disagrees with the assertion that the new fees will be an obstacle to entry into the solid waste field. Smaller, simpler solid waste facilities likely to be constructed by a new entrant into the industry have relatively small fees associated with them; accordingly, the Department believes that the fees for smaller, simpler facilities are sufficiently low that they create no barriers to entry. For larger facilities, the cost of the facility itself represents a barrier to entry much more significant than any fees charged by the Department.

Several commenters questioned the premise that the solid waste program should be funded from fees, rather than from general appropriations:

**COMMENT:** Several commenters expressed concern that the revenues generated from the increased fees would be diverted from the solid waste program. Wheelabrator commented that the proceeds of the fees will be deposited into the State's General Fund, padding the General Fund with money that cannot be earmarked for specific uses such as environmental improvements. The Institute of Resource Recovery and its New Jersey Ad Hoc Committee agreed, stating that the proceeds of the fee will go into the State's general fund, which is used at the discretion of the State's Treasurer and by law cannot be earmarked for specific uses. Accordingly, the New Jersey Ad Hoc Committee of the Institute of Resource Recovery doubted that the fees would be allocated to provide regulatory services for the facilities which pay the fees, and expressed concern that the fees would subsidize other programs. The National Solid Waste Management Association, New Jersey Chapter, also commented that the proceeds of fees are not dedicated to a particular program, and may be used for programs other than the one which the fees were originally intended to fund. The Union County Utilities Authority commented that it was not clear that the revenues from permit fees will be legally dedicated to permitting matters and to increasing the resources available to the Division of Solid Waste Management; the commenter feared that the Department would use the fee revenues as a substitute for general appropriations, or transfer the revenues to the general State treasury.

**RESPONSE:** Until fiscal year 1988, all revenues from solid waste fees were deposited into the General Fund. Under a new fee schedule adopted in fiscal year 1989, the first \$445,000 in fee revenues were deposited in the General Fund, and all fee revenues in excess of \$445,000 were deposited into a separate account, solely for use by the solid waste program. Likewise, independently of the adoption of these fee rules, revenues from the increased fees under these rules in excess of \$445,000 will continue to be deposited into a separate account for use solely by

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the solid waste program, while the first \$445,000 will continue to be deposited into the General Fund. It should be noted, however, that the solid waste program receives appropriations which more than offset the \$445,000 deposited in the General Fund. Furthermore, the funds collected in excess of \$445,000 will be accounted for by category and will be used to support only the staff costs associated with the specific solid waste program area for which fees have been collected.

**COMMENT:** The Camden County Pollution Control Financing Authority commented that considering the high priority of meeting the State's solid waste disposal needs, the Department's regulation of solid waste facilities should be funded in part from general funds, not solely from fees.

**RESPONSE:** In light of the high priority of meeting the State's solid waste disposal needs, the Department agrees with the commenter that funding for the Department's regulatory services is necessary. However, through the appropriations process and amendments to the Department's statutory fee authority, the Legislature and the Office of Management and Budget have determined that the importance of those services does not make it necessary that the cost be paid from general appropriations when other sources, such as fees, are available. The Department receives an annual appropriation funding part of the cost of the solid waste program. The appropriation is insufficient to fund the entire cost of the program. By choosing to appropriate less than the entire cost of the program, and providing for the Department to make up the shortfall through fees, the Legislature and the Office of Management and Budget have made a decision to shift the responsibility for the cost of these services from the general tax base to those persons whose activities make it necessary for the Department to incur the costs. The Department recognizes that the shortage of revenues available from general funds make this choice necessary.

**COMMENT:** American Ref-Fuel of Essex County commented that the Department has not explained or justified why it is more efficient and effective to fund the solid waste program through fees than through general revenues. The commenter stated that under either funding mechanism, the taxpayers will bear the costs; accordingly, the commenter recommended that the most efficient and effective mechanism should be used.

**RESPONSE:** The Department does not assert that it is most efficient and effective to fund the solid waste program through fees. However, through the appropriations process and amendments to the Department's statutory authority to assess fees, the Legislature and the Office of Management and Budget have made a decision to shift the responsibility for the cost of these services from the general tax base to those persons whose activities make it necessary for the Department to incur the costs, by choosing to appropriate less than the entire cost of the program, and providing for the Department to make up the shortfall through fees. The Department also notes that funding the program through fees encourages efficient operation, because the fees collected for particular services are to be used only for that type of service. For example, under this fee structure if the Department receives fewer applications than expected concerning transfer stations, that portion of the program will generate less revenue and will support less staff. The current method of funding provides no incentive to cut staff in areas where the workload is reduced.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, disagreed with the Department's assertion that the revised fees would shift responsibility for the cost of the Department's services from the general taxpayer to those who receive the most direct benefits of the services. The commenter asserts that there will simply be a shift in how the general taxpayer pays for these services.

**RESPONSE:** The fees are paid directly by the applicant or permittee whose activities make the Department's services necessary. The applicant or permittee may be able to pass the cost of these fees on to its ratepayers; however, those ratepayers also benefit from the Department's services, which are rendered in connection with the applicant's or permittee's services to the ratepayers.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, disagreed with the Department's assertion that the revised fees would shift responsibility for the cost of the Department's services from general taxpayer to those who receive the most direct benefits of the services; the commenter asserts that it is the general taxpayer of New Jersey who benefits from the inspection of solid waste facilities to guarantee their environmental compliance.

**RESPONSE:** The Department agrees that the customers of a solid waste facility, and persons living or working in the vicinity of a facility,

benefit from the Department's services. However, since the activities of the facility itself make the Department's services necessary, and since the facility could not lawfully operate unless the Department performed those services, it is the facility which benefits from the services and fairly bears the cost.

COMMENT: The Gloucester County Improvement Authority commented that the increased fees amounted to a tax created by the Department to fund other projects.

RESPONSE: The proceeds of these fees will be accounted for by category of service, and will be used to support only the staff costs associated with the program area for which fees have been collected. Accordingly, the Department cannot fund other projects with the proceeds of the fees collected for a specific solid waste program.

COMMENT: Medford Township commented that the proposed taxes are a veiled attempt to bail out the State by saddling local governments with new expenses. Tax revenues which have been budgeted to fund the Department will now be supplemented by additional fees.

RESPONSE: The Department agrees that revenues from fees will supplement tax revenues which have been budgeted to fund the Department's solid waste operations; however, the amount of those tax revenues which have been appropriated to the Department have been reduced. Since the fee increases are made necessary by the reduction in the general appropriations available for the solid waste program, and not by the State's projected deficits, the Department does not view the fee increases as a veiled attempt to bail out the State on the backs of local governments.

The Department recognizes that local governments will bear additional costs as a result of the increased fees, whether directly as the operator of a solid waste facility, or indirectly as a customer of a facility which is able to increase its rates to reflect the increased fees. However, funds are necessary for the solid waste program to continue to operate in a manner which protects public health, safety and the environment. These funds may come from general appropriations paid for by the taxpayers generally, or from fees paid directly by facilities whose activities make the Department's services necessary. In the absence of general appropriations sufficient to cover the costs of the solid waste program the necessary funds must come from fees.

COMMENT: The Burlington County Board of Chosen Freeholders commented that the public would be best served if the State reduced the tax burden, rather than shifting it.

RESPONSE: The Department has no power to raise or lower the tax burden. Funds are necessary to enable the solid waste program to operate in a manner which protects public health, safety and the environment. Through amendments to the Department's statutory authority to assess fees and through the appropriations process, the Legislature and the Office of Management and Budget have directed the Department to obtain those funds through fees based upon the duration and complexity of its services, rather than from general appropriations paid for by all taxpayers.

Several commenters stated that the fees penalized counties which had addressed their solid waste disposal problems:

COMMENT: Wheelabrator commented that the proposed fees send the message that those New Jersey counties which have solved their solid waste problem through recycling, trash-to-energy and landfilling will be penalized by having to pay the highest fees, and that excess fees affecting a single type of disposal method jeopardize the success of all disposal methods. The Gloucester County Improvement Authority also opposed the fee increase, stating that Gloucester County has followed all State mandates concerning the crisis in solid waste disposal, and now will be unfairly forced to pay higher fees than the people who have ignored those mandates.

RESPONSE: Counties which have already addressed their solid waste disposal needs by constructing thermal destruction facilities, landfills and other solid waste facilities have already paid the bulk of the fees associated with permitting these facilities, thus avoiding much of the impact of these increased fees. The Department expects that counties which have not yet addressed their solid waste disposal needs have merely postponed the need to do so; when they do, these increased fees will apply to the permitting of their facilities. For this reason, the counties which have already addressed their solid waste needs are at an advantage, rather than being penalized by the increased fees associated with permitting.

With respect to the increase in the annual fees for services such as compliance monitoring, the Department recognizes that counties which have already addressed their solid waste disposal needs will be directly

or indirectly paying these fees, while counties employing the temporary expedient of disposing of solid waste outside the State will not. This disparity is not a penalty, however; the fees in question are made necessary by the nature of the activities of the monitored facilities and the resulting potential for environmental harm, which creates the need for the Department's work funded by the fees. The Department strives to perform that work efficiently, to limit the amount of the fees necessary to support it.

COMMENT: American Ref-Fuel commented that this fee structure is a disincentive for municipalities which seek to develop a mix of transfer stations, landfills, compost facilities and resource recovery facilities in addressing their solid waste disposal needs. A municipality developing such a multi-tiered approach would be assessed fees for each such facility. The commenter stated that municipalities should not be penalized for the specific mix they develop to address waste disposal needs.

RESPONSE: The Department acknowledges that assessing fees for every facility involved in the permitting process makes it more expensive for an applicant to permit multiple facilities than to permit a single facility. The Department also recognizes that increasing all permitting fees will increase the disparity in cost between permitting multiple facilities and permitting one facility, thereby increasing any incentive against developing multiple facilities. However, the amount of these fees reflects the nature of the Department's regulatory activities funded by the fees; there are no economies of scale or other efficiencies for the Department when several facilities are being developed by one applicant instead of by several applicants. Accordingly, there can be no reduction of fees to the applicant without violating the Department's statutory mandate to link fees to the duration and complexity of the services performed. The single applicant developing multiple facilities is not penalized under this fee structure, because the permitting fees paid by that applicant will be no greater than the total permitting fees which would be paid by multiple applicants seeking permits for the same facilities.

COMMENT: Medford Township commented that the increased fees are so costly that they will severely hamper recycling operations.

RESPONSE: The fees established under these rules generally do not affect recycling facilities, except for the fees payable in connection with recycling business loans. These one-time fees of \$125.00 for review of the loan application, \$1,441 for the loan closing and technical review, and \$626.00 for loan management do not materially hamper recycling operations, especially since they are payable in connection with loans intended to encourage recycling efforts.

Several commenters commented upon specific fees:

1. Compliance monitoring fees for thermal destruction facilities

Several commenters stated that the annual compliance monitoring fee of \$390,874 for thermal destruction facilities operating at 9.6 tons per day or more was unjustified. The Department based this fee upon the assumption that it would perform continuous on-site compliance monitoring for an average of five days each week, 52 weeks each year. The Department based this assumption upon its commitment to provide continuous compliance monitoring of thermal destruction facilities. The Department has stated this commitment in permit hearings for such facilities.

The Department recognizes that given the availability of continuous emissions monitoring data, the Department can fulfill its commitment to continuous monitoring of the facilities' compliance with laws and regulations governing air pollution control, without having enforcement personnel at the facility 24 hours per day. However, the availability of continuous emissions monitoring information cannot completely obviate the need for on-site compliance monitoring inspections. These compliance monitoring inspections serve purposes unrelated to emissions monitoring, such as ensuring compliance with the operations and maintenance manual, checking operating parameters on facility computer equipment, checking incoming vehicles to confirm registration for disposal of waste at the facility, ensuring against the possibility of illegal waste storage or acceptance of improper wastes, and inspecting overall facility operations at the following locations: tipping floor, ash handling area (to ensure that ash is handled in a totally enclosed manner and that the ash handling equipment is functioning properly), ash load-out area (to ensure that ash is loaded into watertight containers), and ash storage area (to ensure that ash containers are not leaking and not being spilled during pickup).

Nonetheless, the Department has concluded that it can adequately carry out all of the compliance monitoring responsibilities listed above, without the need to have its personnel at the facility around the clock.

## ADOPTIONS

Within the next few weeks, the Department will publish a proposed amendment to the fee schedule, reducing the compliance monitoring for thermal destruction facilities operating at 9.6 tons per day or more, based upon a reduced level of on-site monitoring. The Department has postponed the effective date of the fee increase for these facilities until March 1, 1992; during the interim period until the amendment to the fee is adopted, the existing fee of \$500.00 per day that an inspector is on the premises will remain in effect.

In the same proposal, the Department will propose a reduction in the annual compliance monitoring fee for thermal destruction facilities operating at less than 9.6 tons per day. The Department has postponed the effective date of the fee increase for those facilities until March 1, 1992; during the interim period until the Department adopts the amendment, the existing fee of \$270.00 per site visit will remain in effect.

The specific comments received on this issue, and the Department's responses, are as follows:

**COMMENT:** Several commenters stated that the compliance monitoring fees for thermal destruction facilities operating at 9.6 tons per day or more were unjustified. Wheelabrator Gloucester Company, L.P., commented that the proposed increase in solid waste enforcement fees unfairly overburdens and exploits the highly public issue of trash-to-energy (thermal destruction) facilities. Wheelabrator stated that in light of the sophisticated emissions monitoring and pollution control systems available for such facilities and the significant expense it has incurred in providing continuous real-time emission data from some facilities to the Department, a sixteen-fold increase in inspection fees is a disservice to ratepayers. The Camden County Pollution Control Financing Authority agreed that the availability of continuous emissions monitoring information by telemetry for thermal destruction facilities will reduce the need for Department employees to monitor compliance by these facilities. The Institute for Resource Recovery noted that continuous emissions monitoring is the most important aspect of facility compliance, and that it is being conducted efficiently and thoroughly through the use of telemetry. The Pollution Control Financing Authority of Warren County also stated that the compliance monitoring fee was outrageous, in light of the performance monitoring which the permittee is required to conduct, at substantial cost. The New Jersey Ad Hoc Committee of the Institute of Resource Recovery similarly stated that it could not comprehend the need for the level of staffing to be supported by the increased fees, in light of the requirement of continuous emissions monitoring. The Union County Utilities Authority stated that since it is required to telemeter to the Department various operational and emissions data, it found the fee for compliance monitoring to be absolutely without merit. American Ref-Fuel of Essex County stated that the fee is unjustified, because it appears to be based upon more than two staff-days of work for each day of a 365-day year; the commenter stated that the amount of compliance oversight necessary to ensure that the facility is adhering to solid waste rules does not require this level of staffing.

**RESPONSE:** All of the fees in these rules, including the annual compliance monitoring fee, are based upon the duration and complexity of the Department's services. In estimating the duration and complexity of the compliance monitoring services, the Department assumed that it would perform an average of 260 full days of compliance monitoring each year for the largest thermal destruction facilities. That assumption, in turn, was based upon the Department's commitment to provide continuous compliance monitoring of thermal destruction facilities. Under the previous fee schedule, the Department lacked the funds to support the staffing levels necessary to fulfill that commitment.

As discussed above, the Department recognizes that the availability of continuous emissions monitoring data enables the Department to fulfill its commitment to continuous monitoring of the facilities' compliance with laws and regulations governing air pollution control, without having its enforcement personnel at the facility 24 hours per day. In response to the comments received on this rule, the Department is postponing until March 1, 1992 the operative date of the increase in this fee. Within the next few weeks, the Department will propose an amendment to these rules, reducing the fee based upon a reduction in the level of the Department's on-site presence at these facilities.

**COMMENT:** The Institute of Resource Recovery commented that aside from emissions, which are monitored continuously through telemetry, there are virtually no other aspects of a thermal destruction facility's operations requiring on-site inspection twenty-four hours a day. For example, while Department inspectors are charged with monitoring compliance of the waste received at each facility, trash deliveries are usually

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made during an eight or ten hour period, six days a week. That fact alone shows that on-site inspections for tipping floor operations can be no more than the time during which deliveries are accepted each day, and not on a 24 hour a day basis. Even then, the purpose of compliance monitoring is to ensure that the facility operator is carrying out its responsibilities and following the provisions of its permit. The Department inspector is not on-site to undertake the duties of employees inspecting the trash. The inspector is on-site to ensure the employees are doing their job.

**RESPONSE:** The previous response set forth a partial list of the duties performed by Department inspectors responsible for compliance monitoring of thermal destruction facilities. These duties are not limited to monitoring of the waste received at the facility. As discussed above, however, the Department has postponed the effective date of the increase of this fee, and within the next few weeks will propose an amendment to these rules reducing the fee.

**COMMENT:** Wheelabrator Gloucester Company, L.P., stated that in light of the qualifications of its engineers operating thermal destruction facilities, a sixteen-fold increase in inspection fees is a disservice to ratepayers.

**RESPONSE:** The compliance monitoring fees are intended to fund the compliance monitoring activities of the Department's enforcement personnel. Accordingly, the Department is unable to reduce the fees on the basis of the abilities of the commenter's operating personnel, without delegating to those personnel the Department's responsibility to ensure that the facility is operated in an environmentally sound manner.

**COMMENT:** The Institute of Resource Recovery noted that its members have agreed to permit provisions allowing for 24-hour on-site inspection, and provided dedicated offices for Department staff to use for that purpose. However, the Institute commented that site visits instead are usually conducted during normal business hours; for two facilities having the longest periods of operation in New Jersey, the Department performs an average of one or two days of inspections per week, with each inspection lasting between four and eight hours.

**RESPONSE:** As discussed above, the Department has postponed the effective date of the increase of this fee, and within the next few weeks will propose an amendment to reduce the fee based on a reduced level of on-site monitoring.

**COMMENT:** Two commenters questioned the disparity between compliance monitoring fees for sanitary landfills and compliance monitoring fees for thermal destruction facilities. The Camden County Pollution Control Financing Authority commented that the level of effort required to inspect landfills is greater than the level required for thermal destruction facilities. Wheelabrator Gloucester Company, L.P., objected to the increase in compliance monitoring fees for thermal destruction facilities, which it characterized as exorbitant, especially in comparison to the compliance monitoring fees for sanitary landfills. Wheelabrator charged that the difference in fees was discriminatory.

**RESPONSE:** In determining the amount of time required to perform services for which fees are charged, the Department used a cost accounting analysis for fiscal year 1988 to determine the number of hours generally required to perform each service. For compliance monitoring of the largest thermal destruction facilities, the Department had also based its estimate of the time required upon its commitment to the citizens of the State to provide continuous compliance monitoring of such facilities. As discussed above, however, the Department has determined that it can fulfill that commitment through the use of continuous emissions monitoring via telemetry, and reduce the need for its enforcement personnel to be at the facility continuously. Nonetheless, the Department expects that the duration and complexity of the services the Department will need to perform in connection with thermal destruction facilities will require greater staff time than the corresponding services performed in connection with sanitary landfills, due to the difference in the nature of the operations of each type of facility accounts. For this reason, the Department expects that there will be a disparity in fees for at least some classes of thermal destruction facilities even after the Department reduces the fee. Fees for the Department's services under this rule, regardless of the type of facility, are based upon the same hourly rate of \$52.20.

**COMMENT:** Wheelabrator Gloucester Company, L.P., commented that the compliance monitoring fees for thermal destruction facilities are an unnecessary addition to an already costly but safe regulatory process.

**RESPONSE:** The compliance monitoring fees will fund the Department's efforts to monitor facility compliance with applicable laws, rules, permit conditions and other requirements. This monitoring occurs after the facility has obtained a permit through the regulatory process to which the comment refers. Accordingly, the monitoring activities, and the fees which fund those activities, are a necessary addition to the fees incurred in the regulatory process.

**COMMENT:** The Camden County Pollution Control Financing Authority commented that in the "McEnroe Act," N.J.S.A. 13:1E-136 et seq., the Legislature declared that there was a need to develop alternative technologies for solid waste disposal, such as waste-to-energy facilities, composting facilities and recycling facilities. The statute provides incentives to reduce the cost of disposal at resource recovery facilities, including thermal destruction facilities. The commenter stated that the disparity between annual fees for landfills and annual fees for thermal destruction facilities conflicts with the goals of the McEnroe Act, by making disposal at thermal destruction facilities more expensive.

**RESPONSE:** The Department's technical staff from the Bureau of Resource Recovery Engineering estimates that the total cost of designing, developing and constructing a Class F thermal destruction facility currently ranges from \$100 million to \$500 million. As discussed above, the Department is considering reducing the annual fees charged to Class F thermal destruction facilities; however, even under the fee schedule as originally proposed, the annual fees will total less than \$400,000. For this reason, the Department does not expect the fees to make the disposal of solid waste at such facilities materially more expensive, or to conflict with the goals of the McEnroe Act. The duration and complexity of the services the Department performs in connection with the thermal destruction facilities requires substantially more staff time than the corresponding services performed in connection with sanitary landfills. This difference accounts for the disparity in fees. Fees for the Department's services under this rule, regardless of the type of facility, are based upon the same hourly rate of \$52.20.

**COMMENT:** The Camden County Pollution Control Financing Authority commented that it is not difficult to inspect the operations of a thermal destruction facility, because of the requirements placed upon operators of such facilities in their operations and maintenance manual and in their solid waste and air pollution control permits. The commenter states that these requirements alleviate the need for much of the Department's compliance monitoring activities, and suggest that a facility can be monitored by one full-time person in the field, and one full-time person in the office performing administrative duties and monitoring data provided by telemetry. The commenter further suggested that this level of staffing would be supported by an annual compliance monitoring fee of \$50,000. The Institute of Resource Recovery also commented that all compliance monitoring of a facility, including monitoring performed by the Division of Environmental Quality and the Division of Water Resources, could be performed by the equivalent of one full-time employee; the Institute therefore recommended that the fee should be reduced to \$74,831 (the cost of a full-time employee), and that the fee should cover all compliance monitoring performed by all programs in the Department.

**RESPONSE:** The existence of these stringent requirements to which the Camden County Pollution Control Financing Authority refers makes the extent of the Department's compliance monitoring activities necessary. The Department would not be adequately protecting the environment and the public health safety and welfare if it imposed requirements through rules and permit conditions, but failed to monitor a facility's compliance with those requirements. However, the Department recognizes that it can perform this duty, and conduct continuous compliance monitoring, without having its personnel continuously on site. Accordingly, as noted above, the Department will propose a reduction in the fee based upon the reduced need for an on-site presence.

**COMMENT:** The New Jersey Ad Hoc Committee of the Institute of Resource Recovery questioned the Department's methodology in arriving at the fees set forth in the rule. Specifically, the commenter noted that the annual compliance monitoring cost for thermal destruction facilities operating at 9.6 tons per day or more would support approximately seven full-time employees for each facility. The commenter stated that it could not comprehend the need for this level of staffing in light of the requirement of continuous emissions monitoring. The commenter suggested that one full-time employee would be sufficient to perform compliance monitoring for a facility.

**RESPONSE:** As originally proposed, the annual compliance monitoring fee would have supported 4.8 staff positions (based on an average

annual total of salary, fringe benefits, indirect costs and normal operating expenses of \$74,831 per employee, excluding costs of legal services), rather than seven. Four of the positions were to have been on-site inspectors; in addition to those four staff years, 0.8 staff years would have consisted of supervisory, clerical and administrative time related to the inspectors. This level of staffing was based upon an assumption of twenty-four hour on-site monitoring, 260 days per year. As discussed above, the Department recognizes that it can reduce this level of on-site monitoring, thereby reducing the annual compliance monitoring fee and the staff required as well. Within the next few weeks, the Department will propose such a reduction.

**COMMENT:** The Gloucester County Improvement Authority ("GCIA") commented that the compliance monitoring fees are unreasonable and unrelated to the cost of providing compliance monitoring services.

**RESPONSE:** The annual compliance monitoring fees are based upon the duration and complexity of the on-site compliance monitoring inspections which the Department performs (as calculated pursuant to a cost accounting analysis of the most recent Department data available). In calculating the fees, the Department used a cost accounting analysis for fiscal year 1988, and assumed that it would perform an average of 260 full days of on-site compliance monitoring each year for the largest thermal destruction facilities. This assumption is based upon the Department's commitment to provide continuous compliance monitoring of thermal destruction facilities, which the Department has stated in permit hearings for such facilities. As discussed above, the Department has determined that it can fulfill this commitment through the use of continuous emissions monitoring via telemetry, and a reduced amount of on-site monitoring, and will propose to reduce the fees accordingly.

**COMMENT:** The Pollution Control Financing Authority of Warren County commented that the classification of thermal destruction facilities should be expanded. The commenter pointed out that the impact of compliance monitoring fees will be proportionally greater upon smaller facilities within any given classification than the impact of the fee upon a larger facility within the same classification, since both facilities pay the same compliance monitoring fee. For example, the compliance monitoring fee amounts to \$3.15 per ton for a Class F thermal destruction facility operating at 400 tons per day, while the same fee amounts to only \$0.61 for a Class F facility operating at 2,050 tons per day. The commenter found this inequitable, asserting that the Department incurs a greater cost in providing the compliance monitoring services for the larger facility, which normally will have a larger number of boilers and supporting equipment, a larger amount of waste received and processed, and a larger number of trucks delivering waste to the facility. The commenter suggested that the fees would be more equitable if they reflected the varying ability of facilities of different sizes to generate revenues.

**RESPONSE:** As required by the Solid Waste Management Act, the reduced compliance monitoring fee to be proposed by the Department will be based upon the duration and complexity of the Department's compliance monitoring services. The Department recognizes that the level of on-site monitoring required for a facility operating at 9.6 tons per day is less than that required for a much larger commercial facility. The reduced fees to be proposed will reflect this difference.

**COMMENT:** The Pollution Control Financing Authority of Warren County asked for clarification of the hours required to perform compliance monitoring of thermal destruction facilities operating at 9.6 tons per day or more.

**RESPONSE:** The fee was based upon the assumption that the Department would perform on-site compliance monitoring for an average of five days per week, 52 weeks per year. The compliance monitoring would be carried out around the clock on each monitoring day; this would require a total of 28.8 hours of staff time each day, reflecting the 24 hours spent at the facility, and 4.8 hours attributable to supervisory, clerical and administrative time related to the monitoring. As discussed above, the Department recognizes that improvements in technology enable the Department to fulfill its commitment to continuous compliance monitoring without the need to have its personnel at the facility around the clock, and therefore will propose a reduction in the fee.

**COMMENT:** The Pollution Control Financing Authority of Warren County asked whether the Department should reduce the estimated number of employees required to perform services in connection with thermal destruction facilities, in light of the recommendations of the Governor's Emergency Solid Waste Task Force.

## ADOPTIONS

**RESPONSE:** The commenter is correct in noting that a reduced need for services in connection with the permitting of new thermal destruction facilities will reduce the need for employees performing those services. If the number of new facilities seeking permits decreases, in accordance with the Task Force recommendations, the Department will require fewer employees to perform services related to permitting of such facilities. If the number of such facilities decreases, the fees collected from such facilities also will decrease; the number of employees supported by such fees will decrease automatically, notwithstanding the number of employees estimated to be necessary at the time these rules were proposed.

### 2. Other compliance monitoring fees

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that a materials recovery facility will pay annual compliance monitoring fees of \$12,000. The commenter noted that this was the cost of forty-eight site visits under the previous fee schedule, and questioned whether so many visits were necessary.

**RESPONSE:** For a materials recovery facility operating at 31,200 or more tons per year, the annual fee of \$12,017 represents 24 visits per year. For a materials recovery facility operating at less than 31,200 tons per year, the annual fee is \$4,510, representing shorter, less frequent visits. The duration and frequency of the site visits has not changed from previous Department practice; however, the fee for such visits is now calculated on the basis of the \$52.50 hourly rate.

**COMMENT:** The Pollution Control Financing Authority of Warren County commented that the annual compliance monitoring fee for a sanitary landfill receiving over 31,200 tons of waste annually was based upon 52 weekly site visits, requiring 14.4 hours per visit. The commenter stated that in light of the performance monitoring which the facility performs (for example, daily, weekly and monthly monitoring reports, monitoring well testing, leachate testing, annual topographical surveys and report), and the substantial cost of that monitoring, the Department should justify why 52 site visits are required each year. The commenter questioned whether the benefit of this number of visits was worth the cost.

**RESPONSE:** In its experience, the Department has found that sanitary landfills accepting more than 31,200 tons of waste annually are generally the facilities which accept the majority of the waste stream within a district. Weekly monitoring of such facilities enables the Department to properly monitor the majority of a district's waste stream and ensure that it is properly disposed of. The Department has not found that it can properly monitor the operations of a sanitary landfill with less frequent site visits. While the Department recognizes that the permittee of the facility is required to perform detailed performance monitoring, the Department cannot wholly delegate its monitoring duties to the permittee while carrying out its responsibility to ensure that the facility is operated in an environmentally sound manner.

**COMMENT:** The Pollution Control Financing Authority of Warren County commented that in its experience, Department visits to the commenter's landfill site do not require 14.4 hours per visit, even including travel time to and from the facility.

**RESPONSE:** In addition to inspection time and travel time, the figure of 14.4 person-hours per inspection includes duties such as reviewing files, drafting reports, preparing enforcement documents such as notices of violation and administrative consent orders, preparing correspondence, and checking records of other agencies which are relevant to the facility.

**COMMENT:** The Ocean County Department of Solid Waste Management commented that the Ocean County Health Department performs compliance inspections. The commenter asked how the compliance monitoring fees under these rules would be assessed in Ocean County.

**RESPONSE:** The Ocean County Health Department performs inspections of solid waste facilities in the county in accordance with an interagency agreement with the Department. The county already assesses a fee in accordance with N.J.A.C. 7:26-4. The county's inspections do not obviate the need for the Department to perform compliance monitoring; instead, the county's inspections serve as a supplement to the compliance monitoring which the Department performs. The county's work improves the Department's ability to detect and respond to violations, and to respond to emergency situations, in comparison to those counties in which county authorities do not inspect solid waste facilities. Therefore, all applicable compliance monitoring fees will be assessed to facilities in Ocean County.

**COMMENT:** The Pollution Control Financing Authority of Warren County questioned why the estimates of time required for compliance

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monitoring were expressed in terms of different time frames such as weekly, monthly, and semi-monthly, rather than using a uniform time frame.

**RESPONSE:** Different types of solid waste facilities are monitored at different frequencies. The estimates of time required to perform monitoring reflect these different frequencies.

### 3. Permitting fees

**COMMENT:** The Institute of Resource Recovery commented that an applicant seeking a permit for a Class F thermal destruction facility would pay nearly \$750,000 in permitting fees. The New Jersey Ad Hoc Committee of the Institute of Resource Recovery estimated the cost of obtaining a permit for a Class F thermal destruction facility to be \$733,000, which it stated would support 13 full-time Department employees for a full year. The Ad Hoc Committee commented that it could not see the justification for this staffing level.

**RESPONSE:** The commenters apparently arrived at their estimates by adding all of the fees in N.J.A.C. 7:26-4.3(d)1 applicable to thermal destruction facilities. Of those fees, the minor modification, major modification, permit renewal, permit ownership transfer and minor technical reviews would not be payable in connection with the issuance of the original permit. The applicable fees would total approximately \$445,000. At a cost of \$74,831 per employee (including salary, fringe benefits, indirect cost and operating expenses, and excluding the costs of legal services), and assuming that all of the fees were incurred within one year, these fees would fund approximately six positions (excluding attorney positions with the Department of Law and Public Safety).

**COMMENT:** Several commenters questioned how the increased permitting fees would be applied to pending applications. The Institute of Resource Recovery stated that the proposal was unclear as to when the increased fees would apply to projects that are already well into the permitting process. The New Jersey Ad Hoc Committee of the Institute of Resource Recovery noted that its members' thermal destruction facilities are in different phases of the permitting process, and asked which portions of the permit-related fees would be payable. The Ocean County Department of Solid Waste Management also asked how fees would be assessed for preexisting applications. The Middlesex County Utilities Authority stated that if the Department were to impose the increased fees upon submissions which were pending before the fee schedule was revised, that action would be arbitrary and capricious.

**RESPONSE:** Payment for each phase of the process (pre-application meeting, administrative completeness determination, preliminary environmental and health impact study review, and hearing officer's report) is due before the beginning of that phase. If a facility has already begun a phase before the effective date of the revised fees, and already paid the original fee for that phase, there will be no additional fee for that phase. The new fee schedule will apply to any steps in the permitting process which have not been undertaken at the time of adoption.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter stated that to open a compost facility in the State will cost over \$700,000 in fees.

**RESPONSE:** The fees associated with the Department's permitting process for compost facilities will vary from \$6,466 to \$211,822, depending on the classification of the facility type and whether a public hearing is necessary.

**COMMENT:** The Board of Chosen Freeholders of Burlington County expressed its outrage at the increased fees, and its opposition to the adoption of these rules. The Freeholders commented that the new fees will bring added costs to the permitting and construction of new solid waste facilities, thereby deterring or halting entirely the construction of new facilities. The Union County Utilities Authority agreed, stating that the fees are increased by such a massive amount that they would have a negative impact upon the cost of new facilities; as a result, the commenter asserts that the increased fees will discourage the development of new facilities, and continue reliance upon outdated, inadequate and environmentally inferior facilities.

**RESPONSE:** The Department has found no basis to conclude that the increased fees will deter or halt construction of new facilities. Even as increased by these rules, the fees will not constitute a significant part of the cost of a new facility. For example, the Bureau of Solid Waste and Resource Recovery Planning estimates that the cost of construction and development ranges from \$40 million to \$150 million, while permitting fees will range from approximately \$151,000 to \$214,000. For a Class C transfer station or materials recovery facility, the Bureau estimates that construction and development costs would exceed \$10 million, while permitting fees will range from approximately \$124,000 to \$166,000.

Furthermore, the rates for the facility to be approved by the Board of Public Utilities or in another ratemaking process may reflect the permitting fees as well as the costs of design and construction; the Department expects that the ability to recover the cost of the fees through ratemaking should reduce or eliminate any deterrent effect upon the construction of new facilities.

COMMENT: The Burlington County Board of Chosen Freeholders commented that in connection with a co-composting facility to process municipal solid waste and dewatered sewage sludge, it has already expended more than \$1.5 million in planning studies, preliminary environmental impact evaluations, archaeological investigations and cost analyses; it expects to spend an additional \$3 million to \$4 million to prepare engineering designs and reports, an environmental and health impact study, wetlands delineation, additional archaeological work, compost market studies, and geotechnical investigations and reports. The Freeholders commented that in addition to these costs, the county will pay \$211,822 in solid waste permitting fees, as well as annual fees when the facility is in operation. The freeholders concluded that these costs will drive generators away from the proposed facility to less expensive out-of-State facilities, in violation of waste flow rules.

RESPONSE: The Department acknowledges that the county will incur substantial expense in performing design work required by the Department, to ensure that the facility will handle solid waste and dewatered sludge in an environmentally sound manner. The solid waste permitting fees, however, are a relatively small addition to the cost, and should not result in a material increase in the facility's rates. The Department does not expect that the increase would be so significant that generators would avoid the facility at the cost of exposing themselves to the threat of enforcement action.

COMMENT: The Burlington County Board of Chosen Freeholders commented that municipalities will be forced to pay enormous fees for permitting and operation of vegetative waste composting facilities. The Berlin Township Public Works Department also objected to the increase in fees related to the permitting of compost facilities for leaves, in light of the prohibition upon disposing of leaves in landfills.

RESPONSE: The aggregate fees for permitting of a Class A compost facility are approximately \$9,000; this amount will be reduced by approximately \$2,600 if no public hearing is required. These fees are based upon the duration and complexity of the services the Department will provide in connection with the permitting, as required by the Solid Waste Management Act.

COMMENT: The Ocean County Department of Solid Waste Management commented that composting facilities will play a key role in meeting the 60 percent recycling goal established by the Governor's Emergency Solid Waste Reassessment Task Force.

Ocean County has developed a regional composting scheme, under which a municipality provides a permitted compost facility for regional use by surrounding municipalities, while the County provides staff and equipment to operate the facility. The commenter stated that this approach is necessary because of the many land development restrictions affecting land in Ocean County. The fees for permitting a regional vegetative (Class B) compost facility total nearly \$80,000; at this cost, the commenter believes that a municipality will seriously question whether it would be economically feasible to develop a regional facility, in accordance with the county's regional system. As a result, the commenter believes that some municipalities in the county could be left without a facility to dispose of yard waste.

RESPONSE: While the Department acknowledges the problem foreseen by the commenter, the Department notes that the permitting of regional compost facilities is a complex process designed to mitigate any adverse environmental effects of the facility, and requires substantial staff time. The Department's permitting activities for this type of facility include, without limitation, the analysis of all steps of the composting process, including waste delivery, staging, composting methods, curing, screening, finishing and packaging; the review of the facility's potential environmental impacts including handling of transport vehicles, traffic impacts, noise impacts, odor control techniques and access and exit points; confirming the sufficiency of utilities servicing the site, such as storm water drainage systems, leachate control methods and water supply systems; analyzing the disposal options if the composted end product cannot be marketed; reviewing soil borings and site plan maps; and coordinating the review and approval of associated Department programs such as wetlands, stream encroachment, Pinelands and Green Acres. The Department cannot reduce the staff time required to perform this work

without endangering its ability to mitigate adverse environmental impacts; accordingly, it cannot reduce the fees based upon that staff time.

COMMENT: The Ocean County Department of Solid Waste Management commented that materials recovery facilities will play a significant role in meeting the 60 percent recycling goal established by the Governor's Emergency Solid Waste Reassessment Task Force. These facilities provide a means of recovering recyclables which have escaped curbside pickup or drop-off centers, and provide a practical means of obtaining recyclables from commercial and industrial establishments. The commenter believes that the permitting fees are sufficiently high to discourage the development of such facilities in New Jersey, thereby impairing the State's ability to remove recyclables from the waste stream that will otherwise be disposed of. The National Solid Wastes Management Association, New Jersey Chapter, also commented that the fees could eliminate the profit margin of such facilities; accordingly, the commenter stated that the fees will hinder the expansion of recycling through the development of such facilities.

RESPONSE: The Department has developed strategies to create markets for recyclables, and developed a grant program to assist recycling businesses, which provide incentives to locate materials recovery facilities in New Jersey. While the Department recognizes that any fees will, to some extent, be a disincentive to constructing new facilities, the staff time required in connection with the permitting of such facilities (and the fees based upon that staff time) cannot be reduced without impairing the Department's ability to mitigate the adverse environmental effects of such facilities. The Department's permitting activities for this type of facility are complicated by the need to ensure that the facility: is designed to be capable of collecting, storing, treating and disposing of wastewater generated in its operations, and that wastewater is properly contained and channeled; is designed to properly manage stormwater and ensure that stormwater is not mixed with wastewater; has sufficient internal storage areas for incoming unprocessed solid waste to ensure environmentally sound operations; has sufficient processing and storage areas for reclaimed materials; has adequate equipment and machinery to process the incoming solid waste, with redundancy built in; does not generate excessive noise, odors and dust; prevents traffic backups and traffic hazards on access roads serving the facility; has sufficient alarm and fire protection systems; and does not place excessive demands upon utilities serving the facility. The Department cannot reduce the staff time required to perform this work without endangering its ability to mitigate adverse environmental impacts; accordingly, it cannot reduce the fees based upon that staff time.

COMMENT: The National Solid Wastes Management Association, New Jersey Chapter, commented that the 2,828 hours required for the Department to issue a permit to a Class A transfer station or materials recovery facility was excessive, because these facilities are not highly technical in nature.

RESPONSE: The total time required to issue a permit to a Class A transfer station or materials recovery facility averages 1,598 hours. This figure includes the pre-application meeting, administrative completeness determination, preliminary environmental and health impact statement review, engineering design report review, recycling plan consistency review, and preparation of the hearing officer's report. The bulk of this time is consumed by the engineering design report review, preliminary environmental and health impact statement review, and hearing officer's report. In some cases, no preliminary environmental and health impact statement is required; the time required would then be 1,198 hours. The figure which the commenter cites includes the time required for major and minor permit modifications, permit renewals, transfer of ownership, and minor technical reviews; none of these tasks arises in the permitting of a new facility.

The details of the Department's responsibilities in processing permit applications for these facilities are described in the previous response. The time required for the Department to carry out those responsibilities does not depend solely upon the technical nature of the facility.

COMMENT: The National Solid Wastes Management Association, New Jersey Chapter, commented that a Class A transfer station would incur total permitting fees of \$147,616; the commenter stated that this is an exorbitant fee to permit a relatively simple facility.

RESPONSE: The total permit fees for a Class A transfer station will be \$83,410. This figure includes the pre-application meeting, administrative completeness determination, preliminary environmental and health impact statement review, engineering design report review, recycling plan consistency review, and preparation of the hearing officer's

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report. The engineering design report review, preliminary environmental and health impact statement review, and hearing officer's report account for most of the fee. In some cases, no preliminary environmental and health impact statement is required; the total permit fees would be \$62,532. The figure which the commenter cites includes the fees for major and minor permit modifications, permit renewals, transfer of ownership, and minor technical reviews; none of these tasks arises in the permitting of a new facility.

The details of the Department's responsibilities in processing permit applications for these facilities are described above. While the Department acknowledges that a transfer station is much simpler than a large thermal destruction facility, for example, the transfer station is also much less expensive to permit.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that a Class A compost facility would require over 477 hours to prepare and approve a permit, at a total cost of \$24,738. The commenter stated that this fee would eliminate new applicants from this field, and hurt existing operations.

**RESPONSE:** The total permit fees for a Class A compost facility will be \$9,078. This figure includes the pre-application meeting, administrative completeness determination, preliminary environmental and health impact statement review, engineering design report review, recycling plan consistency review, and preparation of the hearing officer's report. The total fees will be reduced by \$2,612 if no public hearing is required, and by an additional \$1,566 if no preliminary environmental and health impact statement is required. The figure which the commenter cites includes the fees for major and minor permit modifications, permit renewals, transfer of ownership, and minor technical reviews; none of these tasks arises in the permitting of a new facility.

The permitting fees will not affect existing operations, which should already have obtained permits and will not need to incur the associated fees. For new facilities, the Department disagrees with the assertion that the new fees will eliminate new entrants from the field; this assertion is apparently based upon an inflated estimate of the fees.

**COMMENT:** Rosetto Recycling Center commented that it would be required to pay permitting fees in excess of \$156,000 for its currently operating materials recovery facility; under this fee structure, the facility would be required to close. Accordingly, the commenter stated that the fee structure was contrary to the 60 percent recycling goal established by the Governor's Emergency Solid Waste Reassessment Task Force.

**RESPONSE:** The fees to be incurred in the permitting of a Class A materials recovery facility total approximately \$83,000. However, since the commenter states that his facility is currently operating, he presumably has already obtained a permit; accordingly, the facility would not incur additional permitting fees except upon modification or renewal of permit, or transfer of ownership.

The 60 percent recycling goal is not intended to be accomplished through the use of facilities which pose a threat to the environment or to public health safety and welfare. For this reason, the Department does not interpret the recommendations of the task force as directing the Department to reduce the time and effort it spends ensuring that such facilities are environmentally sound. The fees established by this rule are based upon that level of time and effort.

**COMMENT:** The Institute of Resource Recovery commented that the permitting fees for thermal destruction facilities are excessive, particularly because both the Department and the applicants will gain experience in working with permit applications as time goes on. Department staff will increase their expertise and ability to process permits more rapidly as additional projects move forward, while many vendors pursuing applications for more than one project will be in a better position to satisfy the requirement for permit applications.

**RESPONSE:** The Department agrees that the permitting process will become more efficient over time. Accordingly, the Department will review the data available annually, and propose amendments to the fees if improvements in efficiency reduce the time required to perform services.

#### 4. Fees for permit modifications

**COMMENT:** The Camden County Pollution Control Financing Authority asked if a major or minor permit modification carried only the fees identified for that item in the rule, or if there were separate charges for preparation of a hearing officer's report, preapplication meetings and other items.

**RESPONSE:** The fee for a major modification includes the cost of processing any permit modification that necessitates a public hearing,

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which in turn includes preparation of the draft modified permit and public notice, conducting the public hearing, and preparation of the hearing officer's report and the final modified permit (if applicable). The fee for a minor modification includes all processing of any modification that does not require a public hearing, other than processing covered by another category listed herein or in other fee rules of the Department. Accordingly, there would be an additional charge for a pre-application meeting, if one were held.

**COMMENT:** An individual commenter objected to the high cost of major and minor permit modifications. The commenter stated that there should be only a nominal fee, if any, for permit modifications made necessary by new regulatory requirement imposed after a facility has received a final permit.

**RESPONSE:** In the Department's experience, the vast majority of major and minor permit modifications are initiated by the permittee, and not by new regulatory requirements. Nonetheless, the fees for major and minor permit modifications are linked to the complexity and duration of services performed by the Department, as required by the Solid Waste Management Act; the Department has found no basis to determine that the complexity and duration of these services is reduced when the modification is made necessary by new regulatory requirements instead of by changes initiated by the permittee.

**COMMENT:** An individual commenter noted that the cost of permit modifications seemed overly burdensome to small municipalities operating a transfer station or compost facility, because permit modifications for these types of facilities are not technically difficult enough to justify the cost of providing the Department's services.

**RESPONSE:** The Department believes that this rule minimizes that burden. The graduated fee structure established by this rule imposes proportionally lower fees upon smaller facilities, which the Department recognizes are generally least capable of bearing an increase in costs. However, all permit modifications must comply with the Department's rules regardless of the capacity of the permitted facility or the size of its operator. Those rules require the Department to perform a detailed review and analysis of updated engineering designs and an environmental impact statement, to ensure the environmental soundness of solid waste facilities. In addition, for major modifications, the Department must conduct a public hearing and Department personnel must prepare a hearing officer's report. All of these activities require many hours of complex work. The fees for permit modifications are linked to that duration and complexity, as required by the Solid Waste Management Act.

**COMMENT:** The Camden County Pollution Control Financing Authority commented that the fees for major and minor modifications to permits are excessive, and provide an incentive against making improvements to solid waste facilities.

**RESPONSE:** The Department recognizes that in deciding to make improvements to a solid waste facility, a permittee will consider all costs associated with the improvements. These costs must include the fee for the Department's services in issuing a permit modification, since the fee pays the cost of services the Department renders in connection with the modification. Under the previous fee structure, however, the permittee's economic decision to proceed with an improvement was distorted because the general public paid this cost, rather than the permittee. The Department recognizes that a permittee may choose not to proceed with an improvement when the total cost, including permit modification fees, makes the improvement economically unfeasible. The Department believes that this is a correct result. The Department will handle changes that require minimal effort as minor technical reviews, which carry a reduced fee reflecting the reduced duration and complexity of the effort expended by the Department in providing the service.

**COMMENT:** American Ref-Fuel of Essex County asked how the Department would be curtailed from interpreting the permit process to maximize the revenues generated. For example, the commenter suggested that the Department might expand the number and magnitude of permit changes specifically to generate more revenues. The commenter stated that the rule must include a mechanism to minimize this possibility.

**RESPONSE:** The fee schedule does not provide the Department with the discretion to affect the revenues generated from fees. Except for those classes of submissions for which no set fees are established under this rule, the fee schedule provides specific fees for specific services for specific types of facilities.

The Department recognizes that an applicant or permittee may believe that the Department has incorrectly classified a submission, possibly as

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a result of a factual mistake or incorrect interpretation of the rules. The Department certainly will correct any such mistake as soon as it learns that the mistake has been made. However, if the applicant or permittee and the Department cannot resolve a dispute over the classification of the submission within the fee schedule or over the calculation of a fee not provided for in the fee schedule, the Department's classification or fee calculation can be challenged in a legal proceeding.

**5. Fees for permit renewals**

**COMMENT:** American Ref-Fuel of Essex County commented that a permit renewal without changes is unlikely to take the amount of time specified in the proposal. The commenter suggested that the fee schedule should provide a reduced fee for renewals with minimal changes.

**RESPONSE:** The Department agrees with the commenter. In the Department's experience, it is extremely rare for a permit renewal to be completely without modification; as a result, the Department's calculation of the time required to process a permit renewal is based upon the much more common situation in which modifications to the permit are involved. For this reason, the fees set forth in this rule for permit renewals are inappropriate for renewals involving no change.

Therefore, the Department has clarified the rule upon adoption to provide that for the rare renewal involving no modifications, the fee set forth in the schedule will not apply. Instead, the Department will calculate a lower fee for such renewals individually, pursuant to N.J.A.C. 7:26-4.3(f), which addresses fees for services not specifically listed in the fee schedule.

**6. Pre-application meeting fees**

**COMMENT:** An individual commenter noted that pre-application meetings are an important first step in guiding the permit applicant through the permit process, and suggested that the fees for pre-application meetings should be lower than those proposed, to encourage applicants to avail themselves of this service.

**RESPONSE:** The Department agrees that the pre-application meeting is a valuable step in the permit process. The importance of that step is reflected in N.J.A.C. 7:26-2.4(a), which requires pre-application meetings to be conducted for most permit applications. For such applications, the pre-application meeting is a formal, integral part of the permit process, which requires substantial staff time for preparation, attendance and follow-up work.

However, applications for some types of facilities tend to be sufficiently straightforward that the Department's rules do not require the applicant to attend a pre-application meeting. The Department agrees with the commenter that applicants may nonetheless find such meetings to be helpful, and therefore has decided to eliminate the fee for pre-application meetings for applications where such meetings are optional.

In addition, the Department's personnel will continue to be available to discuss the proposed application informally with the applicant, provide general information about the permitting process, and informally answer the applicant's inquiries. The Department charges no fees for these activities.

**7. Fees for closure plan submissions**

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that the fees related to sanitary landfill closure plans will increase costs for the taxpayers of the State of New Jersey with little additional environmental protection as a benefit. The commenter was unsure that the scope work proposed by the Department can be justified in accordance with these costs.

**RESPONSE:** In enacting the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq., the Legislature declared that the proper closure of sanitary landfills is essential to the public health, safety and welfare, and that it is therefore necessary to guarantee that adequate funds are reserved to ensure proper closure. The Legislature also noted that proper closure was necessary to prevent contamination of surface and ground waters, including potable water supplies, and the migration of methane gas, which also poses a significant threat to life and property. In ensuring that these goals are met, the Department believes that its responsibilities concerning closure plans provide substantial environmental protection as a benefit.

The work involved in processing closure plan submissions is extensive. Complex analysis of these submissions is necessary to ensure that the plans adequately provide for the design and implementation of a soil erosion and sediment control plan, final cover and final cover vegetation (and their maintenance), maintenance of side slopes, run-on and run-off control, groundwater monitoring, methane gas venting or evacuation, leachate collection and control, and facility access control. In addition, complex analysis of a financial plan is required to determine that it

adequately describes the costs of implementing closure and post-closure plans, and that the permittee has established adequate means to pay those costs.

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that the increase in costs associated with closure plan submissions is difficult for individual companies to absorb, especially during the final phases of their operation.

**RESPONSE:** The Department's rules prohibit any person from constructing or operating a sanitary landfill without having obtained approval of a closure and post-closure plan. Accordingly, the fees for these submissions are assessed up front (and periodically, for updates of the post-closure financial plan), rather than during the final phases of the operation of a sanitary landfill.

**8. Transporter fees**

**COMMENT:** The National Solid Wastes Management Association, New Jersey Chapter, commented that the increased fees will increase annual fees for a modestly sized transporter (one owning 10 packers, four roll-offs and 389 containers) from \$11,405 under the current schedule to \$39,674 under the increased fees.

**RESPONSE:** Although the cost to transporters will increase, it is not to the magnitude stated. Using the collector information cited in the comment the Department does not arrive at the amount of \$39,674, but \$21,391 as shown:

	Current Fee	Total	Increased Fee	Total
10 packers	120.00	1,200.00	222.00	2,220.00
4 roll-offs	120.00	480.00	222.00	888.00
389 containers	25.00	9,725.00	47.00	18,283.00
		<u>\$11,405.00</u>		<u>\$21,391.00</u>

**9. Fees for cost determinations**

**COMMENT:** An individual commenter objected strongly to the Department charging a fee for the cost of preparing a cost determination. The commenter stated that applicants have a right to be provided with basic cost information, in a timely manner and at no cost, in order to include the cost of the State's services in their project planning.

**RESPONSE:** The Department agrees with the commenter, and has changed the rule upon adoption to delete the fee for preparing the cost determination.

Several commenters stated their concerns about the quality of the Department's services to be funded from the proceeds of the fees:

**COMMENT:** An individual commenter stated that the Department has provided no assurances that it will render its services in a reasonable time frame, or that each step of the process will be coordinated by a technically qualified individual.

**RESPONSE:** The Department's rules governing the solid waste permitting process already establish time frames for the Department's action on stages of the permit process. These rules do not affect those time frames. The Department believes that those time frames, to which it is already bound under previously promulgated rules, are reasonable. Without the fees implemented under this rule, the Department will lack the funds necessary to maintain sufficient staff to render its services in the time frames required under its other rules.

The Department believes that its professional, technically qualified staff renders services in a professional manner, and that technically qualified individuals coordinate these services. In addition, the work of the Department's staff is subject to review by all levels of management.

**COMMENT:** The Institute of Resource Recovery noted that if an applicant or permittee were to pay these fees to a private engineering consulting firm there would be various parameters in terms of scope and timing to which the consultant would be required to adhere. However, there is no similar "performance guarantee" from the Department in these rules, or any guarantee that permit processing will be carried out in a timely manner.

**RESPONSE:** The Department's rules already impose time limitations for several (but not all) aspects of the permitting process, to ensure that those aspects are completed in a timely manner (see N.J.A.C. 7:26-2.4(g)). In addition, the Department expects that this fee structure will increase the Department's accountability for rendering its services in a timely manner, because the applicants and permittees to whom the Department will be accountable for providing timely service will be paying the costs of the Department's services directly. Furthermore, the Department will annually review the time it requires to perform services, and revise the fees based upon any changes in its efficiency. The Department also notes that the speed with which the Department can complete

its work will depend heavily upon the quality of the work provided by the applicant or permittee. If all other factors are equal, the Department will complete its work more quickly when the submission by the applicant or permittee better satisfies the requirements imposed under other rules.

**COMMENT:** The Middlesex County Utilities Authority recommended that no increases or new fees be instituted until the Department imposes reasonable limits upon the time it takes to render a decision in connection with items for which fees are assessed.

**RESPONSE:** The Department's rules already impose time limitations for several (but not all) aspects of the permitting process, to ensure that those aspects are completed in a timely manner (see N.J.A.C. 7:26-2.4(g)). In addition, the Department expects that by shifting the burden of paying for the Department's services from the general taxpayer to the persons whose activities make those services necessary, this fee structure will increase the Department's accountability for rendering its services in a timely manner. The applicants and permittees to whom the Department will be accountable will be paying the costs of the Department's services directly. Furthermore, the Department will annually review the time it requires to perform services, and revise the fees based upon any changes in its efficiency.

The increased fees are an essential part of the Department's efforts to render its decisions within the time frames established by its rules. As a result of reductions in its appropriations, the Department needs the proceeds of the increased fees to maintain sufficient staff to complete reviews of permit applications and other submissions in a reasonable time. Without these funds, the Department will be required to reduce the staff responsible for reviewing submissions.

**COMMENT:** The Union County Utilities Authority commented that the increased fees are not justified, particularly when there is no corresponding commitment to streamline an unnecessarily lengthy and costly permitting process.

**RESPONSE:** The Department is committed to making its permitting processes more efficient and accountable. However, the work which the Department performs in the permitting process is necessary to protect against the potential for harm to public health, safety and the environment posed by the facilities being permitted. Accordingly, that commitment to efficiency and accountability should not be construed as a commitment to reduce the level of the Department's scrutiny of facilities seeking permits. The Department acknowledges that the proposal, which solely concerns fees, does not address any aspect of the permitting process. However, without the revenues from the increased fees, the problems noted by the commenter will be exacerbated because the Department will lack the resources necessary to process permits in a timely manner.

**COMMENT:** The Union County Utilities Authority commented that the fees were calculated based upon past records concerning the time required to perform services, and does not reflect plans to streamline the permitting process.

**RESPONSE:** The commenter is correct in noting that the Department is working to make the permitting process more efficient. Since the Solid Waste Management Act requires that fees must be linked to the duration and complexity of services performed by the Department, improvements in efficiency which reduce the time required to perform a service will result in a reduction in the fee for that service. As discussed above, the Department annually will be reviewing its records to determine whether it has reduced the time required to perform services, and will propose amendments to these fees based upon any such reductions. At this time, the Department has no data which shows that the time required to perform services has increased or decreased since the cost accounting study was performed.

**COMMENT:** American Ref-Fuel of Essex County commented that the fee structure appeared to limit any potential benefits which may be accomplished through administrative efficiencies due to effective policy development and management of available regulatory resources. American Ref-Fuel supported its assertion by noting that the fees would support future projected activities, but were based on previous practices. Accordingly, American Ref-Fuel recommended that the fee structure should be rejected as contrary to principles of good government, because it provides for potential bureaucratic entrenchment due to the self-funding aspects of the fees.

**RESPONSE:** Though the commenter is correct in noting that this fee structure is based upon records of previous activities, this will not result in bureaucratic entrenchment. The Department annually will review the time it requires to perform services, and revise the fees based upon any changes in its efficiency. The annual review will increase the accountability

of all levels of the Department's management for efficiency in the performance of the services for which these fees are assessed. Furthermore, this fee structure encourages efficient operation, because the fees collected for particular services are to be used only for that type of service. For example, under this fee structure if the Department receives fewer applications than expected concerning transfer stations, that portion of the program will generate less revenue and will support less staff. The current method of funding primarily from general appropriations provides no incentive to cut staff in areas where the workload is reduced.

**COMMENT:** American Ref-Fuel of Essex County commented that no cost/benefit control exists to periodically determine the value of the Department's services; the fees will merely increase the costs of solid waste disposal for the citizens of New Jersey without necessarily providing increased benefits.

**RESPONSE:** The Department recognizes that the amount of the fees is not linked to any calculation of the value of the Department's fee-supported services. The Legislature has directed instead that the fees must be linked to the duration and complexity of those services, rather than to any estimate of their dollar value. In delegating to the Department the authority to implement the Solid Waste Management Act, the Legislature has indicated that the Department's services in carrying out that authority has value.

The increased fees are necessary to enable the Department to continue to provide the services it currently provides. While the fees are being increased, the funds available from general appropriations for the solid waste program have been reduced. Appropriations for the program's permitting and enforcement activities have been eliminated. Accordingly, the Department has asserted only that the increased fees are necessary to prevent a deterioration in services, not that they will result in an improvement.

**COMMENT:** An individual commenter expressed his hope that the Department would not lose its focus upon its mission protecting human health and the environment, by concerning itself with generating revenues.

**RESPONSE:** The Department agrees with the comment. However, the Department cannot maintain its level of effectiveness in protecting human health and the environment without obtaining the revenues necessary to fund this work.

Several commenters questioned the escalation of fees to match increases in the Consumer Price Index. Based upon these comments, the Department has deleted the provision for this automatic escalation. Instead, the Department will reevaluate annually the number of hours required to perform its services, and revise the fees based upon that reevaluation, and upon the changes in the hourly rate resulting from changes in salaries, indirect costs, fringe benefits, operating expenses and costs of legal services.

The specific comments received on this issue, and the Department's responses, are as follows:

**COMMENT:** The rule provides for the fees to increase with increases in the Consumer Price Index. Some commenters questioned whether this escalation would discourage efficiency in the Department's operations. An individual commenter stated that he was not convinced that linking increases in labor costs to increases in the Consumer Price Index was a fair method of passing on costs. The commenter noted that the certainty of an annual cost increase provides no incentive for the State to attempt to control these costs. The Pollution Control Financing Authority of Warren County commented that Department salaries and fringe benefits will not necessarily increase along with the CPI; the Authority noted that a system which automatically increases fees using an index possibly unrelated to actual costs does nothing to promote efficient regulatory operations.

**RESPONSE:** As discussed above, the Department agrees with the commenters and has deleted the provision for automatic escalation of fees based upon increases in the CPI. Instead, the Department will reevaluate annually the number of hours required to perform its services, and revise the fees based upon that reevaluation, and upon the changes in the hourly rate resulting from changes in salaries, indirect costs, fringe benefits, operating expenses and costs of legal services. The Department expects that this annual review of the time the Department takes to perform its services will make the Department more accountable for that time.

**COMMENT:** The Middlesex County Utilities Authority commented that the New York-Northeastern New Jersey area Consumer Price Index is an invalid predictor of price trends affecting the Department's services,

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because most of the employees providing those services work in Trenton and its surrounding suburbs.

**RESPONSE:** As discussed above, the Department has deleted the automatic escalation of fees based upon increases in the Consumer Price Index.

Some commenters questioned whether fees could be appealed:

**COMMENT:** An individual commenter suggested that the Department should provide a procedure for appealing the cost of services considered "substandard," such as "rubberstamping" an application with only a cursory review of the information submitted. American Ref-Fuel of Essex County also commented that a mechanism should be provided to exclude certain modifications which require only minimal effort by the Department.

**RESPONSE:** The Solid Waste Management Act requires the Department to establish fees based upon the complexity and duration of the services it performs. To the extent practicable, the Department has established fees based upon the average duration and complexity of services which it performs for each classification of facilities and submissions. The Department recognizes that the fees are based upon averages, and that in individual cases the actual complexity of an application and the amount of time required to process it may be greater than or less than the average. It would consume large amounts of the Department's available resources to provide for appeals when the duration or complexity of services rendered is less than the average, thus requiring an increase in all fees to fund those resources. However, many submissions requiring only a modest effort by the Department are classified as minor technical reviews, which carry substantially lower fees than would be charged for a major or minor permit modification.

**COMMENT:** The Middlesex County Utilities Authority commented that the rule abridges the right of an applicant, because the rule specifies no procedure for appealing fees, and allows the Department to suspend review of a submission until the fee is paid.

**RESPONSE:** The Department has proposed these fees in a rule, and invited public comment which it is required to consider and to which it must respond, in order to avoid the need for case-by-case determinations of fees. The rulemaking process is structured to protect the rights of all applicants and permittees, who can voice their objections to proposed fees and ensure that the fees are justified. Accordingly, the rule does not provide for an applicant or permittee to appeal the amount of an individual assessment of a fee established by the rule. Interested persons can appeal these rules generally for failure to satisfy the requirements of the Solid Waste Management Act or the Administrative Procedure Act.

Several commenters questioned the classification of facilities, and the assessment of different fees based upon a facility's classification:

**COMMENT:** The Union County Utilities Authority commented that the rationale for the size Classification of facilities should be better documented. American Ref-Fuel of Essex County also commented that the proposal provided insufficient justification for the comparative fees for differently sized facilities pursuing the same type of regulatory service.

**RESPONSE:** The fees are based upon data compiled while performing particular services in connection with facilities of various sizes; for some types and sizes of facilities, the Department supplemented that data with its professional judgment concerning the relationship between the capacity of a facility and the duration and complexity of the service. For example, the Department has issued solid waste facility permits for Class F thermal destruction facilities; the data indicate that the amount of time necessary to provide the various services associated with permitting was approximately equal for all such facilities. The fees reflect this data. For smaller thermal destruction facilities, the Department supplemented the data available with information derived from its experience with such smaller facilities and its judgment of the correlation between the reduced capacity of the facility and the reduced duration and complexity of services required for the facility. The Department will generate more data in permitting more facilities; if that data shows that the actual staff time required to perform a service differs from the estimate, the Department will propose revised fees for that service.

**COMMENT:** The Pollution Control Financing Authority of Warren County asked whether Class D, E and F thermal destruction facilities are commercial facilities.

**RESPONSE:** The fees for Class D, E and F thermal destruction facilities apply only to commercial facilities. In the proposal, the Department inadvertently omitted the word "commercial" from that classification. The Department has corrected the omission in this adoption.

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The Department does not believe that the omission had any substantive effect; to the Department's knowledge, no noncommercial facilities as large as a Class D, E or F facility incinerating only on-site generated waste exist, are contemplated, or would be practicable. If any noncommercial facilities of this size incinerating only on-site generated waste exist or are contemplated, the fees for such facilities would have to be estimated under N.J.A.C. 7:26-4.3(f).

**COMMENT:** The Pollution Control Financing Authority of Warren County commented that the classifications of landfills should be clarified.

**RESPONSE:** The fee schedule provides for different classifications of landfills for the purposes of calculating fees for compliance monitoring, closure plan submissions, and permitting. The different classifications are necessary, because the method of distinguishing landfills for the purpose of one type of fee is of no help in distinguishing landfills for other types of fees. As explained in the proposal, the reasoning behind the different classifications is as follows:

The Department determined that the time required for compliance monitoring is related to the amount of waste the facility receives each year. Accordingly, there are separate fees for facilities receiving at least 31,200 tons per year, and facilities receiving less than that amount.

For closure plan submissions, the time required to process a submission is related to the acreage of the landfill.

For permitting of sanitary landfills, the time required to perform the permitting services can be broken down among the three classes of landfills set forth in N.J.A.C. 7:26-1.4.

Several commenters questioned the data the Department used to determine the time required to perform services:

**COMMENT:** The Middlesex County Utilities Authority found no support for the Department's assertion that the data used by the Department to determine the time required to perform a service provides a reasonably accurate estimate of that time. Specifically, the Authority stated that the Department analyzed a period of only nine months to determine the fees; since major applications often require more than nine months to complete, the Authority asserted that the Department must have made its determination based upon estimates, rather than actual records.

**RESPONSE:** The Department studied its records for the nine-month period ending March 31, 1990 to determine the types of services it performs, and the number of each type of service it reasonably expects to perform each year; the Department did not use these records to determine the time required to perform the service. For that purpose, the Department used a cost accounting study which covered an entire fiscal year.

The Department recognizes that a large, complex facility often requires more than nine months or a year to complete the permitting process. However, in these rules the Department has broken down that process into smaller parts which requires only a portion of that time. The Department believes that the cost accounting study covered a period of sufficient length to accurately reflect the time required to complete those smaller parts of the permitting process.

**COMMENT:** The Middlesex County Utilities Authority noted that the statements of hours required to perform services show an overwhelming use of round numbers. Based upon this fact, the Authority concluded that the Department did not have adequate records upon which it could base these figures, and that the period studied was too short to provide sufficient data for accurate calculations. Accordingly, the Authority asserts that there is no evident valid basis for these figures.

**RESPONSE:** The statements of hours required to perform services represent the midpoints within ranges of hours required to do similar tasks. These ranges were calculated from data recorded on Department timesheets for fiscal year 1988, the most recent full year's data available at the time the fees were being formulated. The resulting figures were based on this workload analysis and a professional interpretation of the data.

**COMMENT:** The Middlesex County Utilities Authority commented that the Department based its fee calculations upon current workforce analysis; the Authority stated that this methodology does not provide for re-analysis, and will cause inherent distortions to be magnified over time. American Ref-Fuel of Essex County also recommended that these rules should require the Department to adjust fees in the future to reflect any reduction in the costs which the Department incurs to perform services.

**RESPONSE:** The Solid Waste Management Act requires the Department's fees for services to be based upon the duration and complexity of the services. The Department recognizes that it must periodically

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review the time required to perform services in order to ensure compliance with this statutory mandate. Accordingly, the Department will revisit the fee calculations annually, thereby analyzing and correcting any distortions and incorporating any improvements in the time required to perform services.

**COMMENT:** The Middlesex County Utilities Authority commented that the proposal presented no performance audit information which would indicate that the Department's existing operations and staff were reasonably efficient. The Authority cited press reports of studies of a possible reorganization of the Department to address this issue. The Authority recommended that it would be more prudent to adopt a fee schedule after the reorganization studies are complete.

**RESPONSE:** If the Department is reorganized in a manner which will affect the time required to perform services, it will be necessary to collect and analyze new data, upon which new fees will be based. Such new fees will reflect any improvements in efficiency resulting from a reorganization.

**COMMENT:** The Middlesex County Utilities Authority noted that for a sanitary landfill, the same amount of time is required to review a preliminary environmental and health impact statement, a solid waste permit renewal, and a transfer of ownership. Based upon this fact, the Authority concluded that the fees are based upon inexact estimates rather than calculations.

**RESPONSE:** The fees for a permit renewal and a transfer of ownership are the same because the services required for each of these two types of submissions are quite similar. It is coincidental that the time required to review a preliminary environmental and health impact statement is the same as the time required for a period renewal or transfer.

**COMMENT:** The Pollution Control Financing Authority of Warren County summarized a statement in the proposal summary, paragraph 2, 22 N.J.R. 3080, as follows: "It is stated that the proposed fees 'do not reflect the amount of time and expertise required for the services . . . Nor do they defray a substantial part of the total cost . . . to provide these services.'" The commenter found that this conflicted with the descriptions of hours required to perform services.

**RESPONSE:** The commenter has incorrectly summarized the proposal. The quoted language refers to the existing fees, which are capped at \$500.00.

**COMMENT:** The Pollution Control Financing Authority of Warren County asked about the Department's estimate of the likely number of sanitary landfills to be serviced.

**RESPONSE:** In preparing the proposal, the Department estimated that during calendar 1990, it would perform each type of service for the following number of landfills:

Type of Service	Class A	Class B	Class C
1. Pre-application meeting	3	7	0
2. Administrative completeness determination	3	7	0
3. PEHIS review	0	4	0
4. Engineering design report review	3	0	0
5. Recycling plan consistency review	0	4	0
6. Hearing Officer's report	3	0	0
7. Major modification to permit	5	0	0
8. Minor modification to permit	0	4	0
9. Solid waste facility permit renewal	0	3	0
10. Transfer of ownership of permit	0	0	0
11. Minor technical reviews	0	6	0
12. Construction Inspection	(7—no category listed)		

Two commenters questioned the inclusion of "indirect costs" in the fee calculation:

**COMMENT:** The Ocean County Department of Solid Waste Management and the Pollution Control Financing Authority of Warren County asked what constitutes indirect cost.

**RESPONSE:** Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one cost objective and not readily assignable to the cost objective specifically benefited without effort

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disproportionate to the results achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and operating expenses (personnel, fiscal and general support staff), building rent, and the Department allocation of the indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. The rate is negotiated annually between the Department and the United States Environmental Protection Agency, and applies to all Department fee programs at the same rate of 32.7 percent of salaries and fringe benefits.

Several commenters suggested that the Department bill for its services on an hourly basis, rather than providing set fees:

**COMMENT:** Several commenters questioned the use of set fees for services, and suggested that the Department instead bill for its services based upon the time actually spent performing those services. The Ocean County Department of Solid Waste Management recognized the difficulty in establishing a set number of hours to perform services for many different facilities, and suggested that the Department consider billing each task based upon the number of hours actually spent, rather than charging a set fee. The commenter stated that under these rules, this would be done for submissions concerning disruptions, methane venting systems, on-site disposal and cover material. The commenter suggested that this process would remove inequities resulting from a set fee, and make employees more responsible for their time. The Middlesex County Utilities Authority also commented that the only equitable method of assessing fees would be for the Department to bill applicants individually, for time actually spent reviewing a particular submission. American Ref-Fuel of Essex County also commented that certain minor modifications and other regulatory actions should be billed on the basis of the time actually spent, rather than on the basis of a pre-set fee.

**RESPONSE:** The Department decided against billing the applicant/permittee based upon the actual time spent, for two reasons. First, this billing process would require substantial administrative support for book-keeping and for mailing of bills; to fund the resources for that administrative support, the Department would be required to assess higher fees. Second, the set fee enables the applicant/permittee to know the total fee cost in advance, rather than at the end of the permitting process; accordingly, the applicant/permittee can make a more informed economic decision to proceed with an application. The Department notes that submissions concerning disruptions, methane venting systems, on-site disposal and cover material will not be billed on the basis of the actual time spent; for these submissions, the Department will inform the applicant/permittee of the amount of the fee after performing an initial review. The Department concedes that some submissions will take less time than the average upon which the fees are based; however, some submissions will take more time than the average. The Department also notes that billing for the time actually spent will make employees less accountable for their time, since the Department would be able to recover the cost of all such time regardless of whether it was well spent.

**COMMENT:** The Pollution Control Financing Authority of Warren County noted that service providers provide information concerning hours, rates, work output and other data to support their invoices. The commenter suggested that the Department provide similar accountability for its services.

**RESPONSE:** To provide specific information about the time required to perform each particular service for each particular facility would require substantial administrative support to record timekeeping data on a facility-specific basis, assemble the timekeeping data, put it in usable form, and provide it to the permittee or applicant. To fund the resources for that administrative support, the Department would be required to assess higher fees. The Department will be keeping detailed records of the time it spends overall on various types of services, to ensure that the fees continue to reflect the time normally required to perform the service.

**Summary of Hearing Officer's Report and Agency Response:**

John Castner, of the Division of Solid Waste Management in the Department, served as hearing officer at the public hearing. After reviewing the testimony presented at the public hearing, Mr. Castner recommended that the Department adopt the proposed amendments and new rules, without change. However, Mr. Castner also recommended that the Department consider whether it could effectively perform its compliance monitoring responsibilities for thermal destruction facilities operating at 9.6 tons per day or more without stationing its enforcement personnel at the facilities 24 hours per day. Accordingly, Mr. Castner recommended that the Department postpone implementing the increase in the compliance monitoring fee while it studies the issue.

The Department accepts the recommendation concerning the compliance monitoring fee. The Department also accepts Mr. Castner's other recommendations in part. However, based upon written comments which the Department received, the Department has made the following changes from the proposal:

1. In response to written comments, the Department has deleted the automatic escalation in fees based upon increases in the Consumer Price Index. Instead, the Department will reevaluate annually the number of hours required to perform its services, and revise the fees based upon that reevaluation, and upon the changes in the hourly rate resulting from changes in salaries, indirect costs, fringe benefits, operating expenses and costs of legal services.

2. In response to a written comment, the Department has clarified the definitions of Class D, Class E and Class F thermal destruction facilities, to state that these classifications apply to commercial facilities only. The word "commercial" was inadvertently omitted from the definition in the proposal. The Department knows of no non-commercial thermal destruction facilities in New Jersey with the capacity of a Class D, E or F facility.

3. In response to a written comment, the Department has eliminated the pre-application meeting fees for those types of applications for which no pre-application meeting is required under the Department's rules. These applications include permit applications for Class A thermal destruction facilities, Class C sanitary landfills, Class A transfer stations and materials recovery facilities, Class A and Class B compost facilities, and all closure plans. While the elimination of pre-application meeting fees for these types of applications will have a positive effect upon those persons seeking pre-application meetings for such applications, the change will have only a small negative effect upon the revenues resulting from this rule, since the pre-application meeting fee as originally proposed was relatively small in comparison to other fees payable in connection with such applications.

4. In response to a written comment, the Department has eliminated the fee for determining the fee for types of services not specifically listed in the fee schedule. While the elimination of this fee will have a positive effect upon those persons requiring such fee determinations, the change will have only a small negative effect upon the revenues resulting from this rule, since the fee in question was relatively small in comparison to other fees payable in connection with such applications.

5. In response to a written comment, the Department has clarified the rule upon adoption to provide that for the rare renewal involving no modifications, the fee for permit renewals set forth in the schedule will not apply. Instead, the Department will calculate a lower fee for such renewals individually, pursuant to N.J.A.C. 7:26-4.3(f), which addresses fees for services not specifically listed in the fee schedule.

6. The Department has discovered that the proposal erroneously stated that 3,900 person-hours were required to perform an engineering design report review for a Class E thermal destruction facility. The correct amount is 3,150 hours. The Department has lowered the fee accordingly.

7. The Department has discovered that the proposed amendment to N.J.A.C. 7:26-15.6, concerning application and award procedures for Recycling Business Loans, incorrectly stated that the loan management fee was payable at the time of application. The fee is payable at closing. The Department has revised the rule upon adoption accordingly. The change has a small positive effect upon persons required to pay the fee, because it delays the time at which the fee is payable.

Mr. Castner's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Sue Kleinberg, Esq.  
Department of Environmental Protection

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*):

7:26-1.4 Definitions

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

\*["CPI" means the Consumer Price Index (Urban Wage Earners and Clerical Workers—All Items, 1982-1984 = 100) for the New

York, New York-Northeastern New Jersey area, which is currently computed by the Bureau of Labor Statistics of the United States Department of Labor. If the method of computing the CPI is changed materially and the Federal agency computing the same publishes a conversion factor to calculate the CPI as currently computed from the CPI as so newly computed, such conversion factor shall be applied to the newly computed CPI to determine the CPI for purposes of this chapter.]\*

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration, volume monitoring and planning consistency activities is as follows:

1. The permittee for a facility who is required to submit to the Department monthly summaries of waste received at such facility shall pay an annual facility volume monitoring fee of \$902.00. The annual facility volume monitoring fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

2. The permittee for a facility shall pay an annual facility registration update fee of \$313.00. The annual facility update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

3. An applicant for a solid waste facility permit shall pay a fee of \$501.00 for determination of consistency with the district solid waste management plan. The fee is due at the time the application is submitted.

(b) The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	\$ 39,087
Sanitary Landfill—operating at less than 31,200 tpy	\$ 6,013
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	\$ 12,027
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	\$ 4,510
Thermal Destruction Facilities—operating at 9.6 tons per day or more	\$390,874
Thermal Destruction Facilities—operating at less than 9.6 tons per day	\$ 26,058

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:
  - Class A: design capacity of less than 800 pounds per hour of on-site generated waste
  - Class B: design capacity of at least 800 pounds per hour, but less than 50 tons per day of on-site generated waste
  - Class C: commercial, with design capacity of less than 50 tons per day
  - Class D: \*commercial, with\* design capacity of at least 50 tons per day, but less than 100 tons per day
  - Class E: \*commercial, with\* design capacity of at least 100 tons per day, but less than 400 tons per day
  - Class F: \*commercial, with\* design capacity of at least 400 tons per day.
2. Sanitary landfills:
  - Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)
  - Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)
  - Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

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- 3. Transfer stations and materials recovery facilities:
  - Class A: design capacity of less than 100 tons per day
  - Class B: design capacity of at least 100 tons per day but less than 250 tons per day
  - Class C: design capacity of at least 250 tons per day
- 4. Compost facilities:
  - Class A: vegetative, sole source
  - Class B: vegetative, regional
  - Class C: compostable type 10 solid waste of less than 100 tons per day
  - Class D: compostable type 10 solid waste of at least 100 tons per day
- 5. Closure plan submissions:
  - Closure Plan I (pre-1982)
    - Class A: less than 10 acres
    - Class B: 10 to 30 acres
    - Class C: more than 30 acres
  - Closure Plan II (post-1982)
    - Class A: less than 10 acres
    - Class B: 10 to 30 acres
    - Class C: more than 30 acres

(d) The following table sets forth fees (in dollars) for services for the classes of solid waste facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

	Class		
	A	B	C
a. Pre-application meeting	*[833]* *N/A*	833	1,566
b. Administrative completeness determination	1,566	1,566	3,132
c. Preliminary environmental and health impact study review	15,660	23,490	31,320
d. Engineering design report review	7,830	11,745	20,881
e. Recycling plan consistency review	6,352	6,352	12,703
f. Hearing officer's report	5,218	10,442	15,660
g. Major modification to permit	5,218	10,442	15,660
h. Minor modification to permit	2,086	3,132	4,178
i. Solid waste facility permit renewal	5,218	10,442	15,660
j. Transfer of ownership of permit	5,218	10,442	15,660
k. Minor technical reviews	1,046	1,566	2,086

	Class		
	D	E	F
a. Pre-application meeting	2,612	3,915	5,218
b. Administrative completeness determination	6,264	9,396	12,528
c. Preliminary environmental and health impact study review	31,320	46,980	62,640
d. Engineering design report review	109,620	*[203,580]* *164,430*	219,240
e. Recycling plan consistency review	10,016	15,024	20,032
f. Hearing officer's report	62,640	93,960	125,280
g. Major modification to permit	46,980	70,470	93,960
h. Minor modification to permit	10,450	15,660	20,900
i. Solid waste facility permit renewal	49,592	70,470	93,960
j. Transfer of ownership of permit	31,320	46,980	62,640
k. Minor technical reviews	2,086	3,132	4,178
l. Construction Inspections (per facility)	13,029	13,042	13,042

2. Sanitary Landfill Facilities

	Class		
	A	B	C
a. Pre-application meeting	5,218	4,698	*[2,612]* *N/A*
b. Administrative completeness determination	12,528	11,275	6,264
c. Preliminary environmental and health impact study review	62,640	56,376	31,320

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d. Engineering design report review	93,960	84,564	46,980
e. Recycling plan consistency review	8,208	7,388	4,104
f. Hearing officer's report	31,320	28,188	15,660
g. Major modification to permit	73,082	65,772	36,538
h. Minor modification to permit	18,792	16,913	9,396
i. Solid waste facility permit renewal	62,640	56,376	31,320
j. Transfer of ownership of permit	62,640	56,376	31,320
k. Minor technical reviews	4,178	3,758	2,086
l. Construction Inspections (per facility)	3,007	3,007	3,007

3. Transfer Stations and Materials Recovery Facilities

	Class		
	A	B	C
a. Pre-application meeting	*[2,086]* *N/A*	3,132	3,132
b. Administrative completeness determination	2,086	3,132	4,178
c. Preliminary environmental and health impact study review	20,878	31,320	41,762
d. Engineering design report review	41,762	62,640	83,518
e. Recycling plan consistency review	6,156	9,234	12,313
f. Hearing officer's report	10,442	15,660	20,878
g. Major modification to permit	26,102	41,762	52,198
h. Minor modification to permit	6,264	10,442	12,528
i. Solid waste facility permit renewal	15,660	20,878	31,320
j. Transfer of ownership of permit	15,660	20,878	31,320
k. Minor technical reviews	520	1,046	2,086

4. Compost Facilities

	Class			
	A	B	C	D
a. Pre-application meeting	*[783]* *N/A*	*[2,086]* *N/A*	3,915	5,218
b. Administrative completeness determination	626	2,086	9,396	12,528
c. Preliminary environmental and health impact study review	1,566	20,878	46,980	62,640
d. Engineering design report review	2,612	41,762	70,470	93,960
e. Recycling plan consistency review	879	2,638	4,397	6,156
f. Hearing officer's report	2,612	10,442	23,490	31,320
g. Major modification to permit	2,612	26,102	54,810	73,082
h. Minor modification to permit	1,566	6,264	14,094	18,792
i. Solid waste facility permit renewal	5,218	15,660	46,980	62,640
j. Transfer of ownership of permit	5,218	15,660	46,980	62,640
k. Minor technical reviews	1,046	1,566	2,086	3,132
l. Pre-construction site visits and construction inspections (per visit)	157	251	157	251

5. Closure Plan I (pre-1982)

	Class		
	A	B	C
a. Pre-application meeting	*[263]* *N/A*	*[520]* *N/A*	*[520]* *N/A*
b. Administrative completeness determination	520	1,046	1,046
c. Preliminary environmental and health impact study review	N/A	N/A	N/A
d. Engineering design report review	2,612	4,178	5,218
e. Hearing officer's report	N/A	N/A	N/A
f. Major modification to approval	2,612	4,178	5,218
g. Minor modification to approval	1,046	1,303	1,566
h. Solid waste facility approval renewal	1,046	1,303	1,566
i. Transfer of ownership of approval	2,612	4,178	5,218
j. Minor technical reviews	263	520	520

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6. Closure Plan II (post-1982)

	Class		
	A	B	C
a. Pre-application meeting	*[1,566]* *N/A*	*[2,086]* *N/A*	*[2,612]* *N/A*
b. Administrative completeness determination	1,566	2,086	2,612
c. Preliminary environmental and health impact study review	N/A	N/A	N/A
d. Engineering design report review	5,218	15,660	20,878
e. Hearing officer's report	N/A	N/A	N/A
f. Major modification to approval	5,218	15,660	20,878
g. Minor modification to approval	1,566	5,218	7,830
h. Solid waste facility approval renewal	1,566	5,218	7,830
i. Transfer of ownership of approval	5,218	15,660	20,878
j. Minor technical reviews	520	520	520
7. Annual Topographic Map Submissions			
a. Pre-application meeting	N/A		
b. Administrative completeness determination	N/A		
c. Preliminary environmental and health impact study review	N/A		
d. Engineering design report review	2,086		
e. Hearing officer's report	N/A		
f. Major modification to permit	N/A		
g. Minor modification to permit	N/A		
h. Solid waste facility permit renewal	N/A		
i. Transfer of ownership of permit	N/A		
j. Minor technical reviews	N/A		

N/A means the item is not applicable to that submission type.

(e) For submissions concerning disruption, methane venting systems, on-site disposal, or cover material, the applicant/permittee shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$52.20. \*[The fee for the initial review of the submission is \$250.00, due at the time of the request for the initial review. The fee for initial review will be applied against fees payable for the Department's services in connection with the submission. The fee for initial review is nonrefundable if the applicant/permittee elects not to pursue the submission further.]\*

(f) The omission of any type of service **\*(including, without limitation, a solid waste facility permit renewal involving no modifications)\*** from the fee schedules set forth in (a), (b), (d) and (e) above shall not be construed as a waiver of the Department's authority to assess fees for such services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$52.20. \*[The fee for the initial review of the submission is \$250.00, due at the time of the request for the initial review.]\* The Department will calculate the fee for performance of the Department's services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a), (b), (d) or (e) above, the amount of the fee shall be equal to the \*[sum of the following:

- i. The]\* amount listed in (a), (b), (d) or (e)\*[; and
- ii. The cost of preparing the cost determination pursuant to (f)3 below]\*.

2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the \*[sum of the following:

i. The]\* Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$52.20\*[; and

ii. The cost of preparing the cost determination pursuant to (f)3 below]\*.

\*[3. The cost of preparing the cost determination shall be the number of person-hours which the Department has spent in preparing the cost determination, multiplied by the hourly rate of \$52.20.]\*

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee shall \*[again make the \$250.00 payment required by (e) or (f) above]\* **\*request a redetermination of the fee in writing\***, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

(h) The Department may, in its discretion, refrain from commencing work on the activity which is the subject of a fee determined pursuant to (e) or (f) above until the Department has received full payment of the fee. If the Department has already commenced work, the Department may, in its discretion, suspend such work until it has received full payment of the fee.

7:26-4.4 Fee schedule for transporters

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

(c) All transporters shall pay an annual fee of \$222.00 for each solid waste cab or for each solid waste single unit-vehicle.

(d) All transporters shall pay an annual fee of \$222.00 for each solid waste trailer.

(e) All transporters shall pay an annual fee of \$47.00 for each solid waste container.

(f) (No change.)

7:26-4.6 **\*[Adjustment of fees to reflect inflation]\* **\*(Reserved)\*****

\*[(a) Except as provided in (b) below, each fee charged pursuant to N.J.A.C. 7:26-4.3 and 4.4 shall be increased on July 1 of each year, by a percentage equal to the percentage increase, if any, in the most current CPI available on July 1 of such year over the most current CPI available on July 1 of the immediately preceding year. Such increase shall become effective automatically on July 1 of each year, without the need for any action by the Department. Notice of the increased fees will be published in the New Jersey Register.

(b) The hourly rate used for the purpose of calculating fees pursuant to 4.3(e) and (f) above shall be increased on July 1 of each year. Such hourly rate shall increase by a percentage equal to the percentage increase, if any, in the most current CPI available on July 1 of such year over the most current CPI available on July 1 of the immediately preceding year. Such increase shall become effective automatically on July 1 of each year, without the need for any action by the Department. Notice of the increased rates will be published in the New Jersey Register.]\*

7:26-15.6 Application and award procedures for Recycling Business Loans

(a)-(h) (No change.)

(i) The applicant for the loan or loan guarantee shall pay the following fees:

1. Loan Application Review—\$125.00 per application, payable at the time of the application.

2. Loan Closing and Technical Review—\$1,441 per loan, payable at closing.

3. Loan Management—\$626.00 per loan, payable at the time of \*[application]\* **\*closing\***.

# EMERGENCY ADOPTIONS

## COMMUNITY AFFAIRS

(a)

### DIVISION OF LOCAL GOVERNMENT SERVICES

#### Tax Collection Administration

#### Tenants' Property Tax Rebate Program Administration

#### Adopted Emergency and Concurrent Proposed Repeals and New Rules: N.J.A.C. 5:33-3

Emergency Repeals and New Rules Adopted and Concurrent Proposed Repeal and New Rules Authorized: July 1, 1991 by Barry Skokowski, Sr., Director, Division of Local Government Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): July 1, 1991.

Emergency Repeal and New Rules Filed: July 1, 1991 as R.1991 d.383.

Authority: N.J.S.A. 54:4-6.10.

Concurrent Proposal Number: PRN 1991-383.

Emergency Repeals and New Rules Effective Date: July 1, 1991.  
Emergency Repeals and New Rules Expiration Date: August 30, 1991.

Submit comments by August 14, 1991 to:

Marc H. Pfeiffer, Manager  
Office of Administration and Local Government Research  
Division of Local Government Services  
CN 803  
Trenton, New Jersey 08625

These emergency repeals and new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency repeals and new rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted repeals and new rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency period expiration date.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The proposed new rules provide a mechanism and procedure for tax collectors to use in determining the properties that are affected by the law and to calculate property tax reduction. Generally, rented residential property with four or more dwelling units, and one, two and three family units that are not owner-occupied are affected. Hotels and seasonal or transient dwelling units, or cooperative or condominium units that receive homestead rebates are not affected by the Act.

Tax collectors are instructed to send a Notice of Tax Reduction ("Notice") to each property that falls under specific classifications of the New Jersey MOD IV Property Tax System. The MOD IV system is a standard computer program that maintains property assessment and tax information for all parcels in the State through regional computer centers. The program is administered by the New Jersey Division of Taxation.

In 1991, tax collectors must send Notices to all properties classified as residential (one to three dwelling units), farm homestead, and apartments (four or more units). Notices for subsequent years may be based on the certifications submitted by owners and other locally generated information. The Notices must be mailed within 30 days from the time tax bills are mailed.

Collectors are expected to automate the processing of the information whenever possible. The rules refer to a model Notice form and requires that the Director approve the use of substitutes.

The owner or landlord of rented property is required to compute rent rebates for each renter and certify the amounts to the "local agency" within 30 days of receipt of the Notice. A "local agency" is the municipal tax collector, or, if it exists, a local rent control board or office. A copy

of the certification and allocation of rebates must also be prominently posted in the owner's building.

The Notice must also include a "plain language" explanation of the law and rules, with the model Notice provided to municipal tax collectors by the Division of Local Government Services.

Rebates are based on a calendar year and must be paid or credited in full by the end of the year. Equitable apportionment of the tax liability to vacant or owner-occupied units to the owner is permitted. Owners must arrange for rebates to tenants who moved out earlier in the year or who move in later in the year.

Owners may compute rebates using one of two methods. The "Rent Method" provides for dividing the total tax reduction by the total rent from all units to calculate a "rebate percentage." The rebate percentage is then multiplied by the rent of each unit to determine the annual rebate for each unit. The "Square Footage" method is similar, but based on the total rentable square footage and area of each unit. In either case, the owner may make appropriate allowance for commercial or owner occupancy.

Owners failing to comply with the law and rules are subject to penalty of up to \$100.00 for each offense. Complaints may be filed in the local municipal court by the local rent control agency or any individual.

#### Social Impact

The rules amplify the basic premise of the legislation; that the tenants in the State are entitled to receive a share of the tax reform initiatives made by the Governor and Legislature in 1991. The provisions for formal posting of rebates due each different rental amount are meant to ensure that tenants are notified of what is due them and that owners provide the credits or rebates that are due.

Though some owners may believe they are entitled to keep the rebate, the legislative intent of the law is that it is their tenants who are the source of the property taxes originally paid, and who are entitled to the rebate. The rules provide the mechanism for achieving that objective.

The use of a standard form and explanatory information provided to each owner also provides a common information standard and equal knowledge of the program's requirements, making it easier to comply with the rules.

#### Economic Impact

The economic impact of the rules includes the cost to local governments of complying with the preparation and mailing of the notices, and the costs to owners of processing rebates/credits. These costs will vary, based on the number of eligible properties and number of units in each building. Costs, with the exception of postage, are expected to be lower than when the program was initially implemented due to the availability of computerized systems to prepare Notices and assist owners in calculating and processing payments.

On the whole, the economic and social benefits of returning property tax reductions to the renters that paid them is expected to outweigh the costs to process notices and rebates.

#### Regulatory Flexibility Analysis

Rental of residential property is a business. Many rental properties in New Jersey are non-owner occupied, one, two and three family units. For them the cost of compliance as described in the Economic Impact Statement is small and easy to meet. The larger the building or structure, the larger and more complex the business, the greater the cost of compliance, though that cost is spread among many rental units. For this program, the cost of compliance is directly related to the size of the enterprise.

The Director has determined that a common rule for all sizes of rental businesses is appropriate, as the smaller the business, the lower the cost of compliance. For local governments, alternatives to the promulgated design of the Notice is allowed and content standards are described in the rule. Finally, the statute provides no exemption for small businesses as defined under The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the emergency repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:33-3.

Full text of the emergency adopted and concurrently proposed new rules follows:

SUBCHAPTER 3. TENANTS' PROPERTY TAX REBATE PROGRAM

5:33-3.1 Authority

(a) This subchapter is promulgated under the authority of N.J.S.A. 54:4-6.10.

(b) This subchapter implements the provisions of the Tenant Property Tax Rebate Program, originally adopted in 1976 and revised in 1991.

(c) Correspondence and inquiries regarding the program may be addressed to:

Tenant Rebate Program  
 Division of Local Government Services  
 N.J. Department of Community Affairs  
 CN 803  
 Trenton, New Jersey 08625

5:33-3.2 Definitions

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

"Act" means the Tenants' Property Tax Rebate Act, N.J.S.A. 54:4-6.2 et seq., as amended by P.L. 1991, c.65.

"Base year" means, as appropriate:

1. Calendar 1990, for real rental property qualified on March 15, 1991, the effective date of the Act;

2. Any year after 1990 which produces a larger tax reduction in comparison with the current year than the current year compared to 1990.

"Current year" means the calendar year in which a property tax reduction is realized and rebates are calculated.

"Director" means the Director of the Division of Local Government Services.

"Division" means the Division of Local Government Services.

"Local agency" means the local rent control agency, where one exists, or the tax collector, in absence of a local rent control agency.

"MOD IV" means the MOD IV New Jersey Property Tax System administered by the State Division of Taxation, mandated for use by every municipal assessor and municipality, and authorized for use by data centers serving municipal clients.

"Notice" or "Notice of Tax Reduction" means the notice that the tax collector sends to owners when there is a property tax reduction in the current year. It includes a Tax Reduction Calculation, an Owner's Rent Rebate Certification, and a plain language summary of the law and rules.

"Owner" means the owner or landlord of qualified real rental property.

"Property tax reduction" means the difference between property taxes paid in the base year, and the lower taxes paid or payable in the current year, excluding taxes on improvements added since the base year, and reductions ordered by a county tax board, the State tax court, or any civil court. A negative number or zero does not produce a property tax reduction.

"Qualified property" or "qualified real rental property" means any building or structure, or complex of buildings and structures, in which dwelling units are rented or offered for rent, except: hotels, motels, and other guesthouses serving transient or seasonal guests; units in cooperative or mutual housing corporations whose occupants are eligible for homestead rebates, and owner-occupied structures of three units or less.

5:33-3.3 Tax collector responsibilities

(a) When property tax bills are prepared for the June 14 mailing in accordance with N.J.S.A. 54:4-64, each collector shall identify those properties in MOD IV Qualification Codes 2 (Residential), 3A (Farm Regular), 4A (Commercial), and 4C (Apartments, five-family or more) on which property taxes are reduced with respect to the base year.

(b) The collector shall, within 30 days after tax bills are mailed, send a Notice of Tax Reduction to each owner of qualified property on which property taxes are reduced, with a copy to the local agency to retain for at least one year.

(c) Beginning in 1992, collectors shall send Notices to all owners who returned Rent Rebate Certifications the year before and whose

qualified property again shows a tax reduction with respect to the base year; to all owners of newly qualified properties, and to all others identified as possibly liable for tenant rebates.

5:33-3.4 Notice of Tax Reduction

(a) The Notice of Tax Reduction, the form of which is incorporated herein by reference as Appendix A, shall include the following components:

1. Tax Reduction Calculation/Rent Rebate Certification. The front of this form is the collector's calculation of the decrease in taxes from the base year to the current year; the back provides for a rent rebate schedule, to be completed and certified by the owner or his agent, listing the various rental amounts and the amount of rebate for each, monthly and annual. The form shall contain the following information:

- i. The jurisdiction name;
- ii. The property owner name and address;
- iii. The property block and lot numbers;
- iv. The property tax reduction calculation;
- v. The purpose of form/general explanation;
- vi. The instructions;
- vii. The owner's Certification of Rent Rebate;
- viii. The signature of the owner;
- ix. The rent list with corresponding rebate amounts; and
- x. The return address of the local agency.

2. Supplemental Rent Rebate Certification. An additional form for use when the original contains insufficient room.

3. Summary Statement. A plain language summary of the law and these rules, to guide owners as to their legal responsibilities. Reliance upon the Summary Statement shall not relieve an owner of any responsibilities under the law or rules.

(b) Collectors and MOD IV data centers may develop alternate forms, subject to approval of the Director, to meet their individual needs.

(c) Each collector shall maintain an active current file of qualified property owners, to facilitate future distribution of Notices and to assist in answering inquiries regarding the program.

5:33-3.5 Owner responsibilities

(a) Within 30 days after receipt of a Notice of Tax Reduction, every owner shall return to the local agency his Rent Rebate Certification, showing the total annual rebate due his residential tenants, adjustments for commercial or owner-occupied units when applicable, and his statement of compliance with the Act.

(b) When he returns his Rent Rebate Certification, every owner shall also post and maintain in a prominent place on his property a notice listing each different rent category and the corresponding amount of annual and monthly rebate due his tenants.

(c) Every owner shall endeavor to obtain addresses of former tenants who would be eligible for rebates for any period of the calendar year preceding the first rebate payment date, and to notify them by mail of their entitlement. Owners shall hold such rebates in escrow for one year, pending possible claims; unclaimed rebates shall thereafter revert to the owners with no further obligation.

5:33-3.6 Rebate calculation and payments

(a) Tenant rebates may be calculated by either of the two following methods; provided, that the Square Foot Method shall be used only when authorized or directed by ordinance.

Rent Method:

$$i. \frac{\text{Total tax reduction}^*}{\text{Total rent payable from all units}} = \text{Rebate percentage for all units}$$

$$ii. \text{Rebate percentage} \times \text{rent of each unit} = \text{Rebate per unit}$$

2. Square Foot Method (when permitted or directed by ordinance):

$$i. \frac{\text{Total tax reduction}^*}{\text{Total rentable square footage}} = \text{Rebate per square foot}$$

$$ii. \text{Rebate per square foot} \times \text{area of each unit} = \text{Rebate per unit}$$

\*Less allowance for commercial or owner occupancy

## EMERGENCY ADOPTIONS

(b) When applicable, owners may reduce their "total tax reduction" subject to rebate by the proportion that owner-occupied units bear to total residential units, or that commercial occupancy bears to total rentable area (for example, 10 percent, where the owner occupies one unit in a 10-unit complex; 25 percent, where commercial occupancy is one-fourth the square-foot area of a multi-unit building).

(c) The first rebate of any year shall include payment or credit retroactive to January 1 for each current tenant resident for any part of that time, and for former tenants similarly resident and paid up. Thereafter, rebate payments or credits shall be given whenever rents are due and paid.

1. Rebate amounts shall be completely paid or credited by the end of the calendar year for all tenants whose rent payments are current, provided that, rebates for delinquent tenants or cases in dispute shall be held in escrow pending resolution.

## COMMUNITY AFFAIRS

(d) When a lease is terminated by the death of a tenant, any prior payment or credit due shall be paid promptly to the surviving spouse or to the executor or administrator of the decedent's estate.

(e) All rebate payments and credits shall be rounded to the nearest dollar. If credited rather than paid, rebates shall be treated as immediate rent reductions.

(f) Rebates for unoccupied units shall revert to the owner, on a pro rata basis, for whatever periods the units are unoccupied.

### 5:33-3.7 Penalty provisions

(a) An owner who fails to provide a rebate to his tenants when it is due, or to a surviving spouse or executor of a deceased tenant, shall be liable to them for twice the amount due, or \$100.00, whichever is greater.

(b) An owner who knowingly and willfully fails to comply with specified provisions of the act shall be liable to the penalties and enforcement provisions prescribed in N.J.S.A. 54:4-6.12.

**New Jersey Tenant Property Tax Rebate Program - Notice of Tax Reduction**  
*If the property identified on this card is not a rented residential property, disregard this notice.*

Municipality:	County:	<b>Tax Rebate Calculation</b>	
Block:	Lot:	Qual:	Base Year - 19XX \$ _____
Property Address:			19XX Taxes \$ _____
<p>The N.J. Tenant Property Tax Rebate Act requires landlords of most year-round, rented residential property to rebate 100% of property tax reductions to tenants. Exceptions include 2 and 3 unit owner-occupied properties, and seasonal or transient rentals. If this property is not exempt, you must rebate to your tenant(s) the amount shown to the right, in accordance with the law and program rules (N.J.S. 54:4-6.2 et seq. and N.J.A.C. 5:33-3.1 et seq.)</p>			Amount to be rebated \$ _____
<div style="border: 1px solid black; width: 300px; height: 80px; margin: 10px 0;"></div>			<p><b>The owner must complete the other side, and return this entire form, within 30 days of receipt, to:</b></p> <p><i>Name of Office</i>  <i>Municipality Name</i>  <i>Address</i>  <i>City, State, Zip</i></p>
			<p><b>Refer to the enclosed explanation sheet for additional information on the law and program rules.</b></p>

*Text set in this type style is to be replaced by computer generated data*

**New Jersey Tenant Property Tax Rebate Program - Rent Rebate Certification**

*For instructions on calculating the rebates, please consult the enclosures received with this form.*

Landlords of non-owner occupied properties with 3 or fewer units complete the section below. If more room is required, or for properties of 4 or more units, use this or the enclosed Supplemental Owner's Rent Rebate Certification form (or a facsimile of it). In all cases, post a copy of the other side of this card and the Owner's Rent Rebate Certification form in a prominent place on the property. Return this card and a copy of any Supplemental certification form to the municipal office at the address shown on the other side.

**Owner Rent Rebate Certification**

The undersigned hereby certifies that the amounts shown below reflect the property tax rebate to be paid to tenants and that a copy of both sides of this form and any Supplemental Owner's Certification have been posted prominently for tenant inspection.

<b>Rent per unit</b>	<b>Rebate/Credit per month</b>	<b>Rebate / credit per year</b>	
1. \$	\$	\$	
2.			
3.			
4.			
<b>Residential Totals.</b>		\$ _____	_____ Owner or Agent
<b>Allocation to owner-occupied or commercial unit:</b>		\$ _____	Date: _____

# PUBLIC NOTICES

## EDUCATION

(a)

### STATE BOARD OF EDUCATION Notice of Public Testimony Session August 21, 1991

Take notice that the following agenda item is scheduled for Notice of Proposal in the August 19, 1991 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, August 21, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, August 16, 1991.

**Rule Proposal:** N.J.A.C. 6:11-6.2, Early Childhood Certification.

**Please Note:** Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the July 3, 1991 monthly public meeting.

(b)

### BUREAU OF GRANTS AND CONTRACTS Notice of Availability of Directory of Federal and State Programs

Take notice that the New Jersey Department of Education has available for the general public the 1991-92 edition of Directory of Federal and State Programs which gives information regarding the availability of Federal and State grant funds pursuant to Chapter 7, laws of 1987, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each Local Education Agency and County Office of Education. Copies may be obtained by writing to:

Bureau of Grants and Contracts  
State Department of Education  
CN 500  
Trenton, N.J. 08625

## ENVIRONMENTAL PROTECTION

(c)

### DIVISION OF SOLID WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES Notice of Receipt of Petition For Rulemaking N.J.A.C. 7:26-2.13 and 7:26-6.3

Petitioner: New Jersey Auto and Metal Recyclers Association.

Take notice that on March 11, 1991, the Department of Environmental Protection (Department) and on March 13, 1991, the Board of Public Utilities received a petition for rulemaking concerning the amendment of the definition of Type 27 waste and the amendment of the rule which exempts certain classes of waste from interdistrict and intradistrict waste flow orders.

The petitioner requests that the Department amend the definition of automobile shredder residue, which is currently classed as Type 27 waste, to comprise a distinct solid waste type separate from all other classes of solid wastes and to institute rulemaking that would permit this type of waste to move in interstate commerce independently of County Solid Waste Management Plans or Interdistrict Solid Waste Flow Orders.

(d)

### DIVISION OF WATER RESOURCES Amendment to the Monmouth County Water Quality Management Plan Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes designating the site of Due Process Golf Course, Block 51, Lots 1.01/1, 20.01/20, 2 and 3, Colts Neck, as the service area for an on-site domestic treatment works (DTW) with a ground water discharge.

An 18-hole golf course clubhouse will be served by the DTW. A flow of 19,250 gallons per day is projected based on a maximum number of 550 persons per day at any peak period at a flow of 35 gallons per person. A total of 40 single family homes on the site will be served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, 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 the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons should submit written comments on the amendment to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to Gary S. Sawhill, G.S. Sawhill and Associates, Moss Mill Road, Towne of Smithville, New Jersey 08201. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP 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 30 days of the date of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(e)

### DIVISION OF WATER RESOURCES Amendment to the Ocean County Water Quality Management Plan Public Notice

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes designating the site of New Beginnings at Lakehurst, Manchester Township, Block 77, Lot 18, as a ground water discharge (under 20,000 gallons per day) service area. This is an existing facility which is proposing to expand. The proposed expansion would result in a total wastewater generation of 9,150 gallons per day. This site is within the service area of the Ocean County Utility Authority's Central Water Pollution Control Facility served by the Union Branch interceptor. At this time, the collection system does not extend to the vicinity of the project site. The Manchester Township Wastewater Management Plan adopted December 28, 1987, contains wetland restriction language restricting development in wetlands. Wetlands issues will be addressed through the Pinelands Commission approval process.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment

is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Ocean County Planning Board at (908) 929-2054.

**Interested persons** should submit written comments on the amendment to Alan Avery, Ocean County Planning Board, at the address cited above. A copy of the comments should be sent to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP 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 30 days of the date of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(a)

## DIVISION OF WATER RESOURCES

### Amendment to the Ocean County Water Quality Management Plan

#### Public Notice

**Take notice** that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes designating the site of the Jackson Asphalt Plant, Block 16 Lot 1.02 in Jackson Township, as a ground water discharge service area for a treatment works of less than 20,000 gallons per day (GPD). The discharge, estimated at a maximum of 5,000 GPD, is generated as a result of the recycling of exhaust gases which produces a condensate which is then treated prior to discharge.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** should submit written comments on the amendment to Alan Avery, Ocean County Planning Board at the address cited above. A copy of the comments should be sent to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP 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 30 days of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(b)

## DIVISION OF WATER RESOURCES

### Amendment to the Lower Delaware Water Quality Management Plan

#### Public Notice

**Take notice** that on June 7, 1991, pursuant to the provisions of the 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 Delaware Water Quality Management Plan was adopted by the Department. This amendment allows the Sunnyside Vegetable Packing Company facility, located at Block 172, Lots 11-14 in Deerfield Township, Cumberland County, to construct a treatment works to upgrade and expand its existing on-site spray irrigation discharge to 72,000 gallons per day. In addition, a subsurface disposal system is proposed to accommodate the facility's wastewater discharge during freezing weather.

(c)

## DIVISION OF WATER RESOURCES

### Amendment to the Lower Delaware Water Quality Management Plan

#### Public Notice

**Take notice** that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the Hopewell Township Crest School located at Block 35, Lot 2, in Hopewell Township, Cumberland County, to expand its on-site groundwater disposal system to serve a proposed 20,702 square foot addition. The proposed school expansion will bring the total school population to 430 students and staff.

**This notice** is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to J. Michael Fralinger, P.E., Albert A. Fralinger, Jr. P.A., West Park Executive Campus, 629 Shiloh Pike, P.O. Box 477, Bridgeton, N.J. 08302. All comments must be submitted within 10 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 NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP 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 days of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

**DIVISION OF WATER RESOURCES****Amendment to the Tri-County Water Quality Management Plan****Public Notice**

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes the construction of a new 4.6 million gallons per day tertiary wastewater treatment facility to replace the two existing wastewater treatment facilities currently servicing Fort Dix and McGuire Air Force Base. The proposed land application site for this new facility contains wetlands; however, wetlands issues will be addressed during the Pinelands Commission approval process.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit comments on the amendment to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to Peter Sitkowski, U.S. Army Corps of Engineers, ATTN: CENAP-EN-MM, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP 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 30 days of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

**DIVISION OF WATER RESOURCES****Amendment to the Upper Delaware Water Quality Management Plan****Public Notice**

Take notice that on June 11, 1991, pursuant to the provisions of the 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 Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment expands the sewer service area of the Town of Phillipsburg Sewage Treatment Plant to include Block 78, Lot 1 (Warren Business Park).

(c)

**DIVISION OF WATER RESOURCES****Amendment to the Upper Raritan Water Quality Management Plan****Public Notice**

Take notice that on June 10, 1991, pursuant to the provisions of the 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 Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment allows for the expansion

of the Township of Bedminster wastewater treatment plant (WTP) sewer service area to include Block 34, Lot 9, on which the present school is located, and Block 36, Lot 1.01 and a portion of Lot 1, on which a new proposed elementary school is to be constructed. The existing school is presently served by the WTP.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: The Bedminster Township Board of Education has chosen to take advantage of N.J.A.C. 7:15-3.4(h)1, which allows schools to avoid the obtaining of endorsements required in N.J.A.C. 7:15-3.4(g)3 and 4. The Board of Education is not entitled to avoid the endorsement requirement due to the provisions of N.J.A.C. 7:15-3.4(h)3ii and iii.

RESPONSE: Projects entitled to the modified amendment procedure in N.J.A.C. 7:15-3.4(h)1 are identified under N.J.A.C. 7:15-3.4(h)3i and ii. The modification is available for public schools as identified in subparagraph (h)3i. Therefore, subparagraph (h)3ii and subparagraph (h)3iii are not applicable.

COMMENT: The Bedminster Township Treatment Plant does not have any capacity available for the Bedminster Board of Education's proposed project at the present time.

RESPONSE: Adoption of the amendment merely puts the site into the 20-year sewer service area of the Bedminster Township Treatment Plant; it does not automatically give the applicant capacity in the treatment plant. The applicant must still obtain a Treatment Works Approval for the connection, at which time the capacity issue will be examined. It should be noted that the existing school is presently being served by the Bedminster Township Treatment Plant.

COMMENT: In the Bedminster Township Wastewater Management Plan (WMP), the Board of Education's property is delineated as a recreational area subject to the environmentally sensitive criteria of the N.J.D.E.P. and consequently is not eligible for sanitary sewer service.

RESPONSE: The WMP does not restrict development in environmentally sensitive areas. The WMP identifies various types of environmentally sensitive areas and indicates that such areas "may be unsuitable for wastewater treatment facilities" and that all the appropriate permits must be obtained prior to development in the environmentally constrained areas.

Additionally, in the present WMP, the site is identified to be served by on-site groundwater disposal facilities with design flows of less than 20,000 gallons per day, rather than excluded from wastewater service. The municipal zoning also allows for the development of schools at this location.

(d)

**DIVISION OF WATER RESOURCES****Amendment to the Upper Raritan Water Quality Management Plan****Public Notice**

Take notice that on April 2, 1991, pursuant to the provisions of the 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 Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Tewksbury Township, Hunterdon County. The WMP identifies the following actions: construction of a wastewater treatment plant to service the Route 78 Office Service Area; construction of an on-site groundwater disposal facility to service a Mount Laurel II development south of Oldwick; expansion of the service area to the Valley Road Sewerage Company treatment plant in the Pottersville area; abandonment of the A.M. Best Company treatment plant and incorporation of its flow into the Route 78 Office Service Area Treatment Plant; and, the remainder of the Township to be designated as an area for on-site groundwater disposal facilities with design flows of less than 20,000 gallons per day. The Oldwick Village and Hunters Glen wastewater treatment plants and service areas will remain as is.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: Comments were received from one party concerning the information and proposal regarding the A.M. Best Company treatment plant. The comments included: change in the design capacity of the A.M. Best treatment plant from 7,500 to 13,000 gallons per day (gpd); A.M. Best should be allowed to continue to utilize its existing plant under

its current permit until such time as the Route 78 Office Service Area treatment plant is available; change in the defined service area of the Route 78 Office Service Area treatment plant from "A.M. Best offices" to "A.M. Best property"; the need to verify that allowance for the future wastewater flow from the A.M. Best Company property has been included in the future Route 78 Office Service Area treatment plant.

**RESPONSE:** The information regarding the A.M. Best Company treatment plant was corrected and clarified as appropriate. The 7,500 gpd design capacity indicated in the WMP is correct and was not changed. The WMP's constraints on further development to utilize unused permitted flow under the existing A.M. Best permit were removed. The change defining the Route 78 Office Service Area from "A.M. Best offices" to "A.M. Best property" was made. Modifications were made to note that the flows to the A.M. Best facility (which is to be abandoned) is included in the future wastewater flow estimate for the Route 78 Office Service Area treatment plant.

(a)

## DIVISION OF WATER RESOURCES

### Amendment to the Upper Raritan Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would identify a discharge to groundwater treatment facility proposed to serve three commercial office/warehouse buildings of the Errico development, totalling 104,800 square feet and having a planning flow of 7,850 gallons per day, located at Block 4.03, Lot 28 of Clinton Township, Hunterdon County. This proposal would amend the Clinton Township Wastewater Management Plan (WMP). The site is presently identified in the WMP as being part of the service area of the proposed Township of Clinton East Sewage Treatment Plant.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 the Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** should submit written comments on the amendment to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to John Waltz, Applied Wastewater Technology, Inc., 2 Clerico Lane, P.O. Box 1079, Belle Mead, New Jersey 08502-1079. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP 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 30 days of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

## DIVISION OF WATER RESOURCES

### Amendment to the Upper Raritan Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the

Township of Readington and the Borough of Lebanon in Hunterdon County. The WMP proposes: an expansion of the Readington-Lebanon Sewerage Authority sewage treatment plant to accommodate wastewater flow of 1,453 million gallons per day; reduction of the Readington-Whitehouse and Three Bridges Sewer Service Areas; expansion of the Raritan Township Municipal Utilities Authority service area to include the Hedgerow Estates and Park Lane Estates developments; several on-site groundwater disposal facilities with design flows of less than 20,000 gallons per day; two surface irrigation effluent facilities; and the use of wastewater treatment and recycling facilities.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 the Bureau of Water Quality Planning at (609) 633-7026.

**A public meeting** on the amendment will be held by the Readington Township Committee on Tuesday, September 3, 1991. The meeting will be at 8:00 P.M. in the Readington Township Municipal Building, 105 Route 523, Whitehouse Station, New Jersey 08889, in the main courtroom.

**Interested persons** should submit written comments on the amendment to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of comments should be sent to Richard Cranmer, Readington-Lebanon Sewerage Authority, Old Route 28, P.O. Box 136, Whitehouse, New Jersey 08888. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

(c)

## DIVISION OF WATER RESOURCES

### Amendment to the Northeast Water Quality Management Plan Public Notice

**Take notice** that an amendment to the West Milford Township Wastewater Management Plan, which is a component of the Northeast Water Quality Management (WQM) Plan, has been proposed. This amendment proposes a new on-site groundwater disposal system to serve the proposed Bald Eagle Manor residential/commercial development in West Milford, Passaic County. The projected wastewater flow for this facility is 96,476 gallons per day.

**This notice** is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 the Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. A copy should be sent to Kenneth Ochab, 12-16 Fair Lawn Avenue, Fair Lawn, N.J. 07410. All comments must be submitted within 30 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 NJDEP with respect to the amendment request.

**Any interested persons** may request in writing that NJDEP 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 30 days of this public notice to Ed Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

**INSURANCE****(a)****OFFICE OF THE COMMISSIONER****Six Month Nonbinding Rulemaking Schedule**

Take notice that the Department of Insurance is publishing the following nonbinding list of administrative rules that it intends to propose within the next six months. This action is taken to provide the public with as much advance notice as possible so as to encourage the filing of public comments on matters of interest.

Please note that this listing is for informational purposes and is not intended to prohibit the Department from proposing other rules not currently listed.

**Rules to be Proposed Within Six Months:**

1. Requirements and procedures for unauthorized insurers which seek to become eligible surplus lines insurers in this State.
2. Factors the Commissioner may consider in determining whether an insurer is in a hazardous financial condition.
3. Procedures for Public Advocate challenges to automobile insurance flex rate filings.
4. Establishment of penalties for insurer failure to submit required data to the Division of Motor Vehicles for uninsured motorist system.
5. Establishment of new classification system for private passenger automobile insurance in accordance with N.J.S.A. 17:33B-32.
6. Amendments to CPA audit rules to reflect NAIC revisions to model rule (N.J.A.C. 11:2-26).
7. Procedures to establish fees for Public Advocate in contested rate cases.
8. Re-adoption of legal services insurance regulations (N.J.A.C. 11:12).
9. Amendments clarifying certain provisions of the private passenger automobile insurance rate filing requirements regulation (N.J.A.C. 11:3-16).
10. Filing requirements for employers seeking to self insure for workers compensation liability.
11. Amendments to municipal joint insurance fund rules with respect to group health and group term life insurance (N.J.A.C. 11:15-2).
12. Procedures and filing requirements for automobile insurance fraud and theft prevention/detection plans.
13. Explanation of documents which the Commissioner will accept as agent for insurers pursuant to N.J.S.A. 17:32-2(c) and N.J.S.A. 2A:15-31.
14. Applicability of N.J.S.A. 17:33B-15 to insurers not currently writing automobile insurance.
15. Procedures for filing quarterly standard/nonstandard reports by all insurers writing private passenger automobile insurance and all servicing carriers of the Market Transition Facility.
16. Establish a prohibition on discrimination by life and health insurers based solely on blindness or partial blindness, and permit discrimination with regard to physical or mental impairments under certain conditions.
17. Amendments to rules governing advertising and disclosure requirements in life insurance and annuities to address preneed funeral contracts.
18. Procedures governing the voluntary appointment of producers from the New Jersey Automobile Full Insurance Underwriting Association.
19. Procedures governing the mandatory assignment of eligible producers from the New Jersey Automobile Full Insurance Underwriting Association pursuant to N.J.S.A. 17:33B-9(c).
20. Procedures and requirements for the establishment and operation of the private passenger automobile insurance assigned risk plan.

**(b)****DIVISION OF THE REAL ESTATE COMMISSION****Notice of Action on Petition for Rulemaking**

Name of Petitioner: Michael R. Monihan.

Take notice that, as required by N.J.A.C. 1:30-3.6, the Real Estate Commission, at its public meeting on June 4, 1991, considered the petition to amend N.J.A.C. 11:5-1.13(c) filed with it by Michael R. Monihan (see 23 N.J.R. 1968(a)). It is hereby certified by the Real Estate Commission that the petition was duly considered pursuant to law. Upon concluding its consideration of the petition, the Commission referred the

matter for further deliberations and the preparation of a formal notice of proposed amendment. The Commission's deliberations on whether to approve the publication of a formal notice of proposed amendment as suggested in this petition are to conclude by no later than October 8, 1991. The Commission determined to consider proposing an amendment to this rule because it concurred with the petitioner that the rule currently does not clearly reflect the Commission's intent to prohibit a departing licensee from removing from a broker's office files on pending listings whereon no contract or lease has yet been executed.

**LAW AND PUBLIC SAFETY****(c)****STATE BOARD OF OPTOMETRISTS****Notice of Action on Petition for Rulemaking Practice of Optometry****N.J.A.C. 13:38**

Petitioner: New Jersey Optometric Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4.

Take notice that on June 22, 1989, petitioner, a not-for-profit New Jersey corporation composed of New Jersey licensed optometrists, filed a Petition for Rulemaking with the State Board of Optometrists regarding the use and prescription of pharmaceutical therapeutic measures or agents by optometrists. Petitioner requested the Board to construe the provisions of N.J.S.A. 45:12-26 and determine and declare that the practice of optometry shall include "the use and prescription of pharmaceutical agents for the purposes of treating deficiencies, deformities, diseases or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae."

The Board's initial response, published on November 6, 1989 at 21 N.J.R. 3565(c), was to refer the matter to a subcommittee for further deliberations. Upon further deliberation, the Board of Optometrists voted, at its January 16, 1991 meeting, to deny the petition for rulemaking. The Board stated in denying the petition that, on the basis of the information provided by the petitioner, it does not appear that the Board has the authority to promulgate such a rule.

Subsequent to the filing of the Notice of Action on Petition for Rulemaking, published in the April 15, 1991 New Jersey Register at 23 N.J.R. 1213(a), it was brought to the Board's attention that inadvertently petitioner and others may not have had adequate notice of the Board's consideration of this petition and adequate opportunity to comment thereon. Accordingly, the Board determined at its meeting of June 19, 1991, to reopen the matter for consideration.

Anyone wishing to submit comments regarding the subject matter of the petition is invited to do so. Submit comments by August 15, 1991 to the New Jersey State Board of Optometrists, Post Office Box 45012, Newark, New Jersey 07101.

**(d)****STATE BOARD OF OPTOMETRISTS****Notice of Action on Petition for Rulemaking Practice of Optometry****N.J.A.C. 13:38**

Petitioner: New Jersey Academy of Ophthalmology and Otolaryngology.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4.

Take notice that on March 9, 1990, petitioner, through its counsel, John D. Fanburg, Esq., filed a petition for rulemaking with the State Board of Optometrists regarding prescription of pharmaceutical therapeutic agents. The petition requested the Board to determine that the use and prescription of pharmaceutical therapeutic measures or agents by optometrists is beyond the scope of an optometrist's licensure (see 22 N.J.R. 1634(c)).

Upon consideration of this petition at its January 16, 1991 meeting, the Board of Optometrists voted to deny the petition for rulemaking.

## LAW AND PUBLIC SAFETY

## PUBLIC NOTICES

In denying the petition, the Board stated its opinion that the use and prescription of pharmaceutical therapeutic measures or agents by optometrists is not presently within the scope of an optometrist's licensure. The Board stated further that it believes its position in this regard is clear and that a rule prohibiting optometrists from prescribing is unnecessary.

Subsequent to the filing of the Notice of Action on Petition for Rulemaking, published in the April 15, 1991 New Jersey Register at 23 N.J.R. 1214(a), it was brought to the Board's attention that inadvertently

petitioner and others may not have had adequate notice of the Board's consideration of this petition and adequate opportunity to comment thereon. Accordingly, the Board determined at its meeting of June 19, 1991, to reopen the matter for consideration.

Anyone wishing to submit comments regarding the subject matter of the petition is invited to do so. Submit comments by August 15, 1991 to the New Jersey State Board of Optometrists, Post Office Box 45012, Newark, New Jersey 07101. \_\_\_\_\_

# 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 June 3, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 20, 1991**

**NEXT UPDATE: SUPPLEMENT JUNE 17, 1991**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

**If the N.J.R. citation is between:**

22 N.J.R. 2063 and 2202  
 22 N.J.R. 2203 and 2386  
 22 N.J.R. 2387 and 2622  
 22 N.J.R. 2623 and 2860  
 22 N.J.R. 2861 and 3072  
 22 N.J.R. 3073 and 3182  
 22 N.J.R. 3183 and 3274  
 22 N.J.R. 3275 and 3420  
 22 N.J.R. 3421 and 3606  
 22 N.J.R. 3607 and 3666  
 22 N.J.R. 3667 and 3896  
 23 N.J.R. 1 and 144  
 23 N.J.R. 145 and 248

**Then the rule proposal or adoption appears in this issue of the Register**

July 16, 1990  
 August 6, 1990  
 August 20, 1990  
 September 4, 1990  
 September 17, 1990  
 October 1, 1990  
 October 15, 1990  
 November 5, 1990  
 November 19, 1990  
 December 3, 1990  
 December 17, 1990  
 January 7, 1991  
 January 22, 1991

**If the N.J.R. citation is between:**

23 N.J.R. 249 and 332  
 23 N.J.R. 333 and 636  
 23 N.J.R. 637 and 798  
 23 N.J.R. 799 and 924  
 23 N.J.R. 925 and 1048  
 23 N.J.R. 1049 and 1226  
 23 N.J.R. 1227 and 1482  
 23 N.J.R. 1483 and 1722  
 23 N.J.R. 1723 and 1854  
 23 N.J.R. 1855 and 1980  
 23 N.J.R. 1981 and 2071  
 23 N.J.R. 2079 and 2204

**Then the rule proposal or adoption appears in this issue of the Register**

February 4, 1991  
 February 19, 1991  
 March 4, 1991  
 March 18, 1991  
 April 1, 1991  
 April 15, 1991  
 May 6, 1991  
 May 20, 1991  
 June 3, 1991  
 June 17, 1991  
 July 1, 1991  
 July 15, 1991

**N.J.A.C. CITATION**

**ADMINISTRATIVE LAW—TITLE 1**

1:1-3.3 Return of contested cases: failure of party to appear at hearing  
 1:1-3.3, 14.4, 14.14 Return of cases; failure to appear; sanctions  
 1:1-5.4 Representation by non-lawyers  
 1:1-9.5 OAL Notice of Filing: preproposal regarding notification of parties to contested case  
 1:10-8.1 Transmission of Economic Assistance cases  
 1:13-1.1, 4.1 Division of Motor Vehicle cases  
 1:13-14.4 Motor Vehicle cases: failure to appear  
 1:13A-14.1 Lemon Law hearings: failure to appear  
 1:14 Board of Public Utility hearings  
 1:14 Board of Public Utility hearings: extension of comment period

**PROPOSAL NOTICE (N.J.R. CITATION)**

23 N.J.R. 1728(a)  
 23 N.J.R. 639(a)  
 23 N.J.R. 1053(a)  
 22 N.J.R. 2066(b)  
 23 N.J.R. 3(a)  
 23 N.J.R. 928(a)  
 23 N.J.R. 639(a)  
 23 N.J.R. 639(a)  
 23 N.J.R. 640(a)  
 23 N.J.R. 1230(a)

**DOCUMENT NUMBER**

R.1991 d.279  
 R.1991 d.296  
 R.1991 d.330  
 R.1991 d.279  
 R.1991 d.279  
 R.1991 d.361

**ADOPTION NOTICE (N.J.R. CITATION)**

23 N.J.R. 1786(a)  
 23 N.J.R. 1919(a)  
 23 N.J.R. 2010(a)  
 23 N.J.R. 1786(a)  
 23 N.J.R. 1786(a)  
 23 N.J.R. 2120(a)

**Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)**

**AGRICULTURE—TITLE 2**

2:6-1 Distribution and use of veterinary biologics  
 2:9-1 Avian influenza: indemnification of poultry losses  
 2:17-7.1 Movement into State of pepper transplants  
 2:18 Nursery inspection fees  
 2:21-7 Fees for seed testing  
 2:50-1.1, 2.1 Dairy farmers and milk dealers notice to discontinue sale or purchase of milk  
 2:51 Milk prices to dairy farmers  
 2:69-1.11 Commercial values of primary plant nutrients  
 2:73-2 Seal of Quality for Eggs program

22 N.J.R. 2068(a)  
 23 N.J.R. 1485(a)  
 Emergency (expires 7-30-91)  
 23 N.J.R. 1230(b)  
 23 N.J.R. 1231(a)  
 23 N.J.R. 929(a)  
 Emergency (expires 7-30-91)  
 23 N.J.R. 1728(b)  
 23 N.J.R. 1729(a)

R.1991 d.317

23 N.J.R. 1966(a)

23 N.J.R. 2010(b)

23 N.J.R. 1966(b)

**Most recent update to Title 2: TRANSMITTAL 1991-3 (supplement May 20, 1991)**

**BANKING—TITLE 3**

3:1-2.17 Closing of branch offices  
 3:1-2.25, 2.26 Conversions of savings and loan associations and savings banks  
 3:1-6.1, 6.2, 6.6 Assessments on trust assets  
 3:1-18 Foreign banks and associations: registration of service facilities  
 3:3-2 Nonpublic records  
 3:3-2.1 Department records designated nonpublic  
 3:6-8 Conversions of savings and loan associations and savings banks  
 3:16-2.1 Pawnbroker service charges  
 3:17 Consumer Loan Act rules  
 3:17-1.1, 1.4 Consumer loan advertisements  
 3:17-1.1, 1.4 Consumer loan licensees: check solicitations  
 3:17-3.4 Location of consumer loan records  
 3:18-2.1 Location of secondary mortgage loan records

23 N.J.R. 801(a)  
 23 N.J.R. 929(b)  
 23 N.J.R. 1073(b)  
 23 N.J.R. 1233(a)  
 23 N.J.R. 253(a)  
 23 N.J.R. 1858(a)  
 23 N.J.R. 929(b)  
 23 N.J.R. 1729(b)  
 23 N.J.R. 1234(a)  
 22 N.J.R. 2626(a)  
 23 N.J.R. 931(a)  
 23 N.J.R. 803(a)  
 23 N.J.R. 803(a)

R.1991 d.294  
 R.1991 d.350  
 R.1991 d.347  
 R.1991 d.287  
 R.1991 d.294  
 R.1991 d.354  
 R.1991 d.329  
 R.1991 d.362  
 R.1991 d.362

23 N.J.R. 1919(b)  
 23 N.J.R. 2028(a)  
 23 N.J.R. 2029(a)  
 23 N.J.R. 1921(a)  
 23 N.J.R. 1919(b)  
 23 N.J.R. 2121(a)  
 23 N.J.R. 2031(a)  
 23 N.J.R. 2122(a)  
 23 N.J.R. 2122(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)	R.1991 d.324	23 N.J.R. 2032(a)
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)		
3:32-1.11, 2	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)

Most recent update to Title 3: TRANSMITTAL 1991-4 (supplement May 20, 1991)

#### CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

#### PERSONNEL—TITLE 4A

4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		

Most recent update to Title 4A: TRANSMITTAL 1991-1 (supplement May 20, 1991)

#### COMMUNITY AFFAIRS—TITLE 5

5:14-1.1-1.6, 2.1, 2.2, 2.3, 3.1-3.12, 3A, 4.10, App. A-D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3-4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)		
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)	R.1991 d.325	23 N.J.R. 2046(a)
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)		
5:23-3.11A, 4.2	Uniform Construction Code: plan review of proposed school facilities	23 N.J.R. 1084(a)	R.1991 d.309	23 N.J.R. 1922(a)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)		
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)	R.1991 d.326	23 N.J.R. 2044(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-5.3, 5.15, 5.20, 5.23	Uniform Construction Code: fire inspector RCS license	23 N.J.R. 1085(a)	R.1991 d.308	23 N.J.R. 1923(a)
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)	R.1991 d.288	23 N.J.R. 1925(a)
5:33-3	Tenants' Property Tax Rebate Program	Emergency (expires 8-30-91)	R.1991 d.383	23 N.J.R. 2183(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:34-7.1-7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)	R.1991 d.284	23 N.J.R. 1787(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)	R.1991 d.295	23 N.J.R. 1925(b)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)	R.1991 d.334	23 N.J.R. 2055(a)
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)	R.1991 d.335	23 N.J.R. 2058(a)
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)	R.1991 d.344	23 N.J.R. 2058(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)		

**Most recent update to Title 5: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		

**Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)**

**EDUCATION—TITLE 6**

6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)	R.1991 d.282	23 N.J.R. 1816(b)
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)		
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)		
6:22-1.2-1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)		
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(b)	R.1991 d.337	23 N.J.R. 2032(b)
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)	R.1991 d.283	23 N.J.R. 1817(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)		
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)		
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)		
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)		
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)		
6:47	Repeal Management Services	23 N.J.R. 1244(b)		
6:48	Repeal Professional Services	23 N.J.R. 1244(b)		
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)		
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)		
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)		
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)		

**Most recent update to Title 6: TRANSMITTAL 1991-4 (supplement May 20, 1991)**

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:0	Clean Water Enforcement Act: notice of intention to propose rules regarding civil administrative penalties	23 N.J.R. 935(b)		
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:2-11.3-11.9, 11.12-11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	23 N.J.R. 1926(a)		
7:9-5.7	Wastewater effluent standards: administrative correction	_____	_____	23 N.J.R. 2166(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R.CITATION)</b>
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:14A-1.9, 2.5, 3.10, 8.13	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)		
7:18-6.6	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)	R.1991 d.277	23 N.J.R. 1788(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)		
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)	R.1991 d.348	23 N.J.R. 2011(a)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)	R.1991 d.328	23 N.J.R. 2011(b)
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)	R.1991 d.278	23 N.J.R. 1792(a)
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)	R.1991 d.327	23 N.J.R. 2012(a)
7:25A-1.4, 1.5, 1.6, 1.9	Oyster management	23 N.J.R. 1112(a)	R.1991 d.349	23 N.J.R. 2012(b)
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)	R.1991 d.369	23 N.J.R. 2166(b)
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:26B-1.3, 1.5	ECRA "cleanup plan" and applicability: validity of rules	_____	_____	23 N.J.R. 1797(a)
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3-17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4-3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)	R.1991 d.305	23 N.J.R. 1937(a)
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R.CITATION)</b>
<b>HEALTH—TITLE 8</b>				
8:9-1.2, 1.4, 1.5	Handling and disposition of human remains	23 N.J.R. 1508(a)		
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)		
8:24	Retail food establishments	23 N.J.R. 168(b)	R.1991 d.357	23 N.J.R. 2124(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:33P-2.1, 2.4	Designation of additional Level II trauma centers	23 N.J.R. 822(a)	R.1991 d.290	23 N.J.R. 1938(a)
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)	R.1991 d.291	23 N.J.R. 1939(a)
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)	R.1991 d.292	23 N.J.R. 1943(a)
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-10.3	Controlled dangerous substances: addition of anabolic steroids to Schedule III	_____	_____	23 N.J.R. 1943(b)
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a), 1672(a))	22 N.J.R. 2501(a)		
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a))	23 N.J.R. 178(a)	R.1991 d.365	23 N.J.R. 2136(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		

**Most recent update to Title 8: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**HIGHER EDUCATION—TITLE 9**

9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-3.2	Tuition Aid Grant Program: determining award levels	23 N.J.R. 1057(a)	R.1991 d.336	23 N.J.R. 2013(a)
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)	R.1991 d.306	23 N.J.R. 1944(a)

**Most recent update to Title 9: TRANSMITTAL 1991-2 (supplement April 15, 1991)**

**HUMAN SERVICES—TITLE 10**

10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)		
10:3-4	Cognizant division contracting by community provider agencies	23 N.J.R. 1647(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)		
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)	R.1991 d.353	23 N.J.R. 2035(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.6, 1.14	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R.CITATION)</b>
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)	R.1991 d.331	23 N.J.R. 2042(a)
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	23 N.J.R. 1200(a)	R.1991 d.302	23 N.J.R. 1945(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)		
10:73	Medicaid program case management services	23 N.J.R. 1328(a)	R.1991 d.367	23 N.J.R. 2137(a)
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1-6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:97-1.3, 1.4, 2.1-2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1-7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)		
10:120	Youth and Family Services administration	23 N.J.R. 1658(a)		

**Most recent update to Title 10: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**CORRECTIONS—TITLE 10A**

10A:2-2	Inmate accounts	23 N.J.R. 1992(b)		
10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)		
10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)		
10A:2-9	Gifts to correctional facilities	23 N.J.R. 1754(a)		
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:4	Inmate discipline	23 N.J.R. 658(a)	R.1991 d.276	23 N.J.R. 1797(b)
10A:5	Close custody units	23 N.J.R. 1260(a)	R.1991 d.358	23 N.J.R. 2143(a)
10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)	R.1991 d.346	23 N.J.R. 2043(a)
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:18-1.3, 2.7	Inspection of inmate outgoing mail	23 N.J.R. 1758(a)		
10A:22-2.5	Inmate and parolee records: availability of information to correctional facility personnel	23 N.J.R. 1512(a)		
10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)	R.1991 d.293	23 N.J.R. 1945(b)

**Most recent update to Title 10A: TRANSMITTAL 1991-4 (supplement May 20, 1991)**

**INSURANCE—TITLE 11**

11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)		
11:1-32	Department fees	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)	R.1991 d.363	23 N.J.R. 2144(a)
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)	R.1991 d.345	23 N.J.R. 2014(a)
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R.CITATION)</b>
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		
11:18-1.4, 1.5, 1.7, App. A, B, C	Medical Malpractice Reinsurance Recovery Fund surcharge	23 N.J.R. 938(a)	R.1991 d.304	23 N.J.R. 1955(a)

**Most recent update to Title 11: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**LABOR—TITLE 12**

12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)		
12:235	Workers' Compensation	23 N.J.R. 834(a)	R.1991 d.275	23 N.J.R. 1819(a)
12:235	Workers' Compensation system	23 N.J.R. 1759(a)		

**Most recent update to Title 12: TRANSMITTAL 1991-3 (supplement April 15, 1991)**

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:12-3	Tourism Matching Grant Program	23 N.J.R. 1513(a)	R.1991 d.370	23 N.J.R. 2149(a)
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	23 N.J.R. 828(a)		
12A:31-1, 2, 3	Development Authority for Small Businesses, Minorities' and Women's Enterprises: extension of comment period on loan programs	23 N.J.R. 1769(a)		
12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)		
12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)		
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	23 N.J.R. 1515(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)		

**Most recent update to Title 12A: TRANSMITTAL 1991-1 (supplement May 20, 1991)**

**LAW AND PUBLIC SAFETY—TITLE 13**

13:14-1	Family Leave Act rules	23 N.J.R. 1993(a)		
13:18-6	Verification of automobile liability insurance coverage	23 N.J.R. 973(a)	R.1991 d.289	23 N.J.R. 1806(b)
13:23-1.1, 2.1-2.10, 2.12-2.28, 2.30-2.38, 3.1-3.10, 3.12, 4.1-4.4	Licensure of driving schools	23 N.J.R. 662(a)	R.1991 d.371	23 N.J.R. 2151(a)
13:27-5.8, 8.15	Licensure of architects and certification of landscape architects: fee schedules	23 N.J.R. 1059(a)	R.1991 d.318	23 N.J.R. 2021(a)
13:27-6.2-6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:29-1.7	Accountant licensure: conditional credit and reexamination	23 N.J.R. 1060(a)	R.1991 d.310	23 N.J.R. 1959(a)
13:29-1.8, 1.11, 1.12, 1.13, 2.3	Board of Accountancy: fee schedule	23 N.J.R. 1061(a)	R.1991 d.319	23 N.J.R. 2022(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)	R.1991 d.351	23 N.J.R. 2159(a)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.13	Board of Medical Examiners: biennial registration fees	23 N.J.R. 833(a)	R.1991 d.286	23 N.J.R. 1815(a)
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)	R.1991 d.356	23 N.J.R. 2160(a)
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)	R.1991 d.311	23 N.J.R. 1959(b)
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)	R.1991 d.360	23 N.J.R. 2160(b)
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)	R.1991 d.355	23 N.J.R. 2161(a)
13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)	R.1991 d.366	23 N.J.R. 2162(a)
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)	R.1991 d.285	23 N.J.R. 1816(a)
13:40-7.2-7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:41-4.2-4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
13:42-1.2	Board of Psychological Examiners: fee schedule	23 N.J.R. 980(a)	R.1991 d.312	23 N.J.R. 1960(a)
13:44-4.1	Board of Veterinary Medical Examiners: fee schedule	23 N.J.R. 1066(a)	R.1991 d.321	23 N.J.R. 2023(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.4	Chiropractor of record: responsibility for patient care	23 N.J.R. 1280(a)		
13:44E-2.5	Board of Chiropractic Examiners: fee schedule	23 N.J.R. 1067(a)	R.1991 d.320	23 N.J.R. 2023(b)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:47E, 47G	Weighmasters; standard containers for farm products: administrative correction	_____	_____	23 N.J.R. 2163(a)
13:63	Combat Auto Theft Program	23 N.J.R. 981(a)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-12.37	Thoroughbred racing: open claiming	23 N.J.R. 1068(a)	R.1991 d.313	23 N.J.R. 1960(b)
13:70-13A.1, 13A.2, 13A.3, 13A.5, 13A.7	Thoroughbred racing: hearings regarding license suspensions	23 N.J.R. 1281(a)		
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)		
13:71-14.36	Harness racing: open claiming	23 N.J.R. 1068(b)	R.1991 d.314	23 N.J.R. 1960(c)
13:71-16.3	Harness racing: error in declaration of horse	23 N.J.R. 1069(a)	R.1991 d.315	23 N.J.R. 1961(a)
13:71-27.47	Harness racing: daily double	23 N.J.R. 2004(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.27	Violent crimes compensation: counseling fees	23 N.J.R. 167(b)	R.1991 d.332	23 N.J.R. 2023(c)
13:75-1.28	Violent crimes compensation: secondary victim eligibility	23 N.J.R. 168(a)	R.1991 d.333	23 N.J.R. 2024(a)

**Most recent update to Title 13: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

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14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:5	Electric service	23 N.J.R. 1519(a)		
14:5A	Nuclear generating plant decommissioning: preproposed new rules regarding periodic cost review	23 N.J.R. 942(a)		
14:6	Gas service	23 N.J.R. 944(a)		
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)		
14:12	Demand side management	23 N.J.R. 1283(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
14:18-3.5	Cable television outage credit: withdrawal of proposed amendment	23 N.J.R. 24(c)		
14:18-3.13	Cable television: prompt restoration standards	23 N.J.R. 682(a)	R.1991 d.298	23 N.J.R. 1961(b)
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:38-1.2, 2.1-2.3, 3.1-3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1-8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

**Most recent update to Title 14: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**ENERGY—TITLE 14A**

**Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)**

**STATE—TITLE 15**

15:3	Management of public records	23 N.J.R. 1912(b)		
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**Most recent update to Title 15: TRANSMITTAL 1991-1 (supplement April 15, 1991)**

**PUBLIC ADVOCATE—TITLE 15A**

**Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)**

**TRANSPORTATION—TITLE 16**

16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:28-1.10, 1.81	Speed limit zones along U.S. 46, 1 and 9 in Dover and Route 49 in Bridgeton	23 N.J.R. 950(a)	R.1991 d.280	23 N.J.R. 1799(a)
16:28-1.38	Speed limit zones along Route 57 in Mansfield	23 N.J.R. 1291(a)	R.1991 d.340	23 N.J.R. 2024(b)
16:28-1.45, 1.60, 1.93, 1.107	Speed limit zones along Routes 324 and 44 in Gloucester County, Route 79 in Monmouth County, and Route 48 in Salem County	23 N.J.R. 1291(b)	R.1991 d.338	23 N.J.R. 2025(a)
16:28-1.46	Speed limit zone along Cuthbert Boulevard in Cherry Hill	23 N.J.R. 1771(a)		
16:28-1.67, 1.76, 1.129	Speed limit zones along U.S. 202 in Somerset and Morris counties, Route 15 in Morris County, and Route 12 in Hunterdon County	23 N.J.R. 1293(a)		
16:28-1.96	Speed limit zones along Route 45 in Salem and Gloucester counties	23 N.J.R. 1772(a)		
16:28-1.150, 1.151	Speed limit zones along U.S. 1 Business and U.S. 1 in Mercer and Middlesex Counties	23 N.J.R. 1072(a)	R.1991 d.297	23 N.J.R. 1962(a)
16:28-1.158	Speed limit zones along Route 179 in Hunterdon County	23 N.J.R. 1294(a)	R.1991 d.341	23 N.J.R. 2026(a)
16:28A-1.21	Handicapped parking space on U.S. 30 in Haddon Township	23 N.J.R. 1295(a)	R.1991 d.339	23 N.J.R. 2026(b)
16:28A-1A.1	No stopping or standing zones on roads under reconstruction or repair	23 N.J.R. 1524(a)		
16:31-1.6	Turn prohibitions along Route 88 in Ocean County	23 N.J.R. 1524(b)		
16:31-1.17	Turn restrictions along Route 73 in Evesham	23 N.J.R. 1295(b)	R.1991 d.342	23 N.J.R. 2027(a)
16:31-1.30	U turn restriction along Route 49 in Millville	23 N.J.R. 1296(a)	R.1991 d.343	23 N.J.R. 2027(b)
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:53D-1.1	Zone of Rate Freedom for regular route autobus carriers: 1992 percentage maximums	23 N.J.R. 2004(b)		
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)		
16:79	NJ TRANSIT: background checks of prospective employees	23 N.J.R. 1775(a)		

**Most recent update to Title 16: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**TREASURY-GENERAL—TITLE 17**

17:2-5.6	Public Employees' Retirement System: purchases of service credit	23 N.J.R. 685(b)	R.1991 d.281	23 N.J.R. 1800(a)
17:3-5.6	Teachers' Pension and Annuity Fund: methods of payment of service credit purchases	23 N.J.R. 1073(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
17:14-1.9 17:16	Minority and female businesses: subcontracting targets State Investment Council rules: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 395(b) 23 N.J.R. 26(a)		
17:16 17:16-20.1, 20.2, 20.4	State Investment Council rules State Investment Council: international government and agency obligations	23 N.J.R. 983(a) 23 N.J.R. 1775(b)	R.1991 d.274	23 N.J.R. 1800(b)
17:16-36 17:16-41.3	SIC: guaranteed income contracts SIC: U.S. common and preferred stocks and issues convertible into common stocks	23 N.J.R. 1776(a) 23 N.J.R. 1776(b)		
17:16-44.3	SIC: common and preferred stocks and issues convertible into common stock of international corporations	23 N.J.R. 1777(a)		
17:16-67.7, 67.8, 67.12	SIC: Common Pension Fund D	23 N.J.R. 1777(b)		
17:16-81.2 17:28-1.5, 2.4, 2.6, 2.7, 2.8, 3.2, 3.3, 3.4, 4.6	SIC: purchase and sale of international currency Public Employee Charitable Fund-Raising Campaign	23 N.J.R. 1778(a) 23 N.J.R. 1897(a)		
17:32-4.7, 5	State Development and Redevelopment Plan: negotiation and issue resolution phases of cross-acceptance	23 N.J.R. 1778(b)		

**Most recent update to Title 17: TRANSMITTAL 1991-5 (supplement May 20, 1991)**

**TREASURY-TAXATION—TITLE 18**

18:2-2.7	Abatement of penalty and interest for failure to pay tax or file return	23 N.J.R. 1899(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:18A 18:24-9.11	Petroleum Gross Receipts Tax Sales and Use Tax: exempt organizations carrying on trade or business	22 N.J.R. 3715(a) 23 N.J.R. 2004(a)		
18:24-16.6, 16.7, 16.9, 17.1-17.4	Vending machine sales	23 N.J.R. 396(a)		
18:26-2.14, 2.15, 3.4, 3.10, 7.10, 8.1, 8.2, 8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.21, 9.1, 9.3, 9.4, 9.5, 9.6, 9.10, 10.1, 10.12, 11.4, 11.8, 11.15, 11.16	Transfer of Inheritance and Estate Tax: assessment and valuation	23 N.J.R. 188(b)		
18:35-1.14, 1.25 18:35-1.26	Gross Income Tax: partnerships Service in combat zone: extension of time to file income tax return	23 N.J.R. 950(b) 23 N.J.R. 908(a)	R.1991 d.273	23 N.J.R. 1806(a)

**Most recent update to Title 18: TRANSMITTAL 1991-4 (supplement May 20, 1991)**

**TITLE 19—OTHER AGENCIES**

19:3A-1.3	Hackensack Meadowlands Development Commission: petitions for rulemaking	23 N.J.R. 1917(a)		
19:4-6.27, 6.29, 6.30	Hackensack Meadowlands Development Commission: District zoning and rule changes	23 N.J.R. 1917(a)		
19:12 19:16	PERC: negotiations and impasse procedure PERC: labor disputes in public fire and police departments	23 N.J.R. 1296(b) 23 N.J.R. 1298(a)		
19:25-11.10, 17.2	ELEC: political communications; reporting and recordkeeping violations	23 N.J.R. 1299(a)	R.1991 d.364	23 N.J.R. 2163(b)
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Atlantic County Transportation Authority: fee schedule for review of applications	22 N.J.R. 1999(a)	Expired	

**Most recent update to Title 19: TRANSMITTAL 1991-2 (supplement May 20, 1991)**

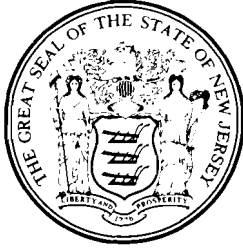
**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:41-8.8	Reapplication by individuals for licensure, qualification or approval after denial or revocation	23 N.J.R. 1301(a)		
19:41-11.1 19:43-1.2 19:43-1.2	Filing of agreements Determination of casino service industries Determination of casino service industries	22 N.J.R. 3202(a) 22 N.J.R. 3203(a) 23 N.J.R. 1963(a)	R.1991 d.299	23 N.J.R. 1963(a)
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)		
19:45-1.1, 1.3, 1.10, 1.11, 1.12	Management control standards and supervisory organization tables	23 N.J.R. 1302(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
19:45-1.1, 1.25	Acceptance of checks from gaming patrons	23 N.J.R. 191(a)	R.1991 d.301	23 N.J.R. 1963(b)
19:45-1.7	Filing of licensee's financial and statistical reports	23 N.J.R. 2006(a)		
19:45-1.25, 1.34	Cash advances at slot booths	23 N.J.R. 397(a)	R.1991 d.300	23 N.J.R. 1964(a)
19:45-1.34	Cash advances at slot booths: administrative correction			23 N.J.R. 2165(a)
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:45-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
19:45-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)		
19:46-1.6	Destruction of gaming chips, tokens and plaques	23 N.J.R. 1780(a)		
19:46-1.26	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:46-1.27	Density of slot machines: alternatives	23 N.J.R. 192(a)		
19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6, 7.2, 8.2, 8.3	Optional variations in rules of table games	23 N.J.R. 1784(b)		
19:47-2.3	Payout odds for blackjack	23 N.J.R. 1781(a)		
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)		
19:47-2.6	Dealing "hole" card in blackjack	23 N.J.R. 1782(a)		
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