

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 19, 1990
 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 16, 1990

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **July 4, 1990**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT DIVISION OF WATER RESOURCES

Discharges of Petroleum and Other Hazardous Substances

Proposed Redoption: N.J.A.C. 7:1E

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10-23.11 et seq., specifically 58:10-28.11 and N.J.S.A. 13:1D-1 et seq., specifically 13:1D-9.

DEP Docket Number: 020-90-04.

Proposal Number: PRN 1990-279.

Submit comments by July 5, 1990 to:

Samuel A. Wolfe, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 7:1E expires on July 15, 1990. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department proposes to readopt this chapter without amendment.

In enacting the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the "Act"), the Legislature recognized that the storage and transfer of petroleum products and other hazardous substances is a hazardous undertaking and imposes a risk of damage to persons and property within the State. The Legislature intended to control the transfer and storage of hazardous substances, and to provide for liability for damage resulting from discharges of hazardous substances. To carry out this intent, the Legislature provided for the Department to receive immediate notice of discharges; in addition, the Legislature authorized the Department to remove or arrange for the removal of discharges, and to direct dischargers to do so. The Act also provided for the Department to establish standards for the availability of preventive, cleanup and removal procedures, personnel and equipment at major facilities.

To fulfill its responsibilities under the Act, the Department originally adopted N.J.A.C. 7:1E in 1977, and readopted it in 1985. In N.J.A.C. 7:1E, the Department adopted specific notice requirements, provided for prompt and effective responses to discharges, required submissions of information from persons who might engage in the cleanup and removal of discharges, and required owners and operators of major facilities to employ the best practicable technology to limit or prevent discharges in the planning, design, maintenance and operation of these facilities.

N.J.A.C. 7:1E establishes a procedure to be followed after a discharge of hazardous substances occurs. The rules require the owner or operator of the facility from which the discharge occurred, and any person responsible for causing the discharge, to attempt to stop and contain the discharge immediately. The rules also provide that the Department, in its discretion, may observe, supervise, participate in, or directly perform containment, cleanup and removal of the discharge. To enable the Department to respond promptly to a discharge and to continue to respond effectively, the rules require immediate notification of a discharge, followed by a more detailed written confirmation report.

N.J.A.C. 7:1E also requires persons engaged in or intending to engage in the cleanup and removal of discharged hazardous substances to provide the Department with information concerning the qualifications of their personnel, the equipment they have available, their experience in responding to discharges, and other information relevant to their ability to respond effectively to discharges. These requirements enhance the Department's ability to communicate with and monitor the competence

of persons who may be called upon to effect the cleanup and removal of discharges of hazardous substances.

The rules also require major facilities (defined at N.J.A.C. 7:1E-1.3) to satisfy certain planning, design, construction, operation and maintenance requirements. The owner or operator of the major facility must submit a discharge prevention, containment or countermeasure (DPCC) plan and a discharge cleanup and removal (DCR) plan, which describe how the facility will satisfy these requirements. The requirements are intended to reduce the likelihood that discharges will occur from major facilities, and to enhance the ability of the Department and of the owners and operators of major facilities to limit the damage caused by those discharges which do occur.

The following is a summary of the significant provisions of each subchapter of N.J.A.C. 7:1E, as it currently exists:

Subchapter 1, General Provisions, contains definitions of terms, sets forth rules of construction, and provides for the Department to have access to facilities. Subchapter 1 also describes the scope of the chapter, and excludes from that scope any discharges which are made pursuant to a valid State or Federal permit.

Subchapter 2, Discharge Notification and Response, requires immediate telephonic notification of any discharge of hazardous substances, to be followed by a written confirmation report. This subchapter also sets forth the procedure for response to a discharge of hazardous substances.

Subchapter 3, Discharge Cleanup Organizations, requires persons engaging or intending to engage in the cleanup and removal of discharges of hazardous substances to file certain information with the Division of Water Resources in the Department.

Subchapter 4, Major Facilities: Plans, Reports and Standards, requires owners or operators of major facilities to file certain information with the Division of Water Resources, and to prepare and submit to the Department the DPCC plan and the DCR plan. This subchapter also sets forth planning, design, construction, operation and maintenance criteria for major facilities.

Appendix A lists substances defined as "hazardous substances." This list has application beyond the proposed redoption; for example, the Environmental Cleanup Responsibility Act rules at N.J.A.C. 7:26B refer to Appendix A of chapter 7:1E in the definition of hazardous substances under those rules.

The Department plans to revise N.J.A.C. 7:1E in the near future to reflect statutory changes made since the rules were originally promulgated. The Department also plans to revise the rules in the following areas: to update the definition and list of hazardous substances; to strengthen the discharge notification, confirmation and response requirements; to require persons to provide information to the Department upon request, in order to enable the Department to better respond to discharges and identify additional persons who may be liable for discharges; and to clarify the requirements for DPCC and DCR plans and the standards for major facilities set forth in N.J.A.C. 7:1E-4.

Social Impact

The existing rules have had a positive social impact upon persons engaged in the refining, production, storage, handling, transfer, processing or transportation of hazardous substances. The rules established effective procedures for responding to discharges and for the planning, design, construction, operation and maintenance of major facilities. In the absence of the rules, persons required under the Act to notify the Department of discharges would have no guidance concerning the content of the notice, or to whom the notice should be directed. The lack of guidance could delay proper notification to the Department, which in turn could impair the Department's efforts to supervise, direct or perform the response to the discharge. As a result, damage from the discharge (and potential liability of persons responsible for the discharge) could be increased. In addition, without the guidelines in N.J.A.C. 7:1E-4 of the rules, owners and operators of major facilities would have no guidance from the Department for the planning, design, construction, operation or maintenance of such facilities. The lack of guidance in these areas could make discharges more likely or more severe, again increasing the potential liability of persons responsible.

Accordingly, the redoption is necessary to preserve the positive social impact of the existing rules.

Economic Impact

Since the proposed readoption makes no changes to N.J.A.C. 7:1E as it currently exists, the readoption will have no additional economic impact beyond the impact of the existing rules.

The discharge notification and confirmation requirements of the rules impose a minimal economic burden upon owners and operators of facilities from which discharges have occurred and upon other persons responsible for discharges. The discharge response requirements impose no economic burden upon such persons, other than the burden already imposed by the liability provisions of the Act.

By requiring persons engaged in or intending to engage in the cleanup or removal of hazardous substances to assemble and submit certain information to the Department, the existing rules have imposed a minimal economic burden upon these persons.

The proposed readoption will continue the economic impact of N.J.A.C. 7:1E-4 upon owners and operators of major facilities. The costs of complying with N.J.A.C. 7:1E-4 include the cost of preparing DPCC and DCR plans, the collection of other information to be submitted to the Department, and the cost of compliance with the planning, design, construction, maintenance and operation standards set forth in the subchapter. Owners and operators of existing major facilities will continue to be exempted from certain of these requirements.

Environmental Impact

The proposed readoption of N.J.A.C. 7:1E will continue the positive environmental impact of the existing rules. The notification and discharge response provisions of the existing rules have given the Department the opportunity to direct or participate in containment, cleanup and removal activities from the time they begin. The Department believes that such direction and participation has helped to reduce the severity of damage to the environment which would otherwise have resulted from discharges. The requirements imposed upon discharge cleanup organizations have enabled the Department to monitor the competence of persons who may be involved in responding to discharges, and to communicate with them when necessary. The Department also believes that the planning, design, maintenance, operation and planning requirements imposed upon major facilities have helped these facilities decrease the likelihood of discharges, and enabled them to respond more effectively to the discharges that still occur.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant number of small businesses (as defined in the Regulatory Flexibility Act) will be subject to the discharge notification, confirmation and response provisions of the proposed readoption. These small businesses will include owners and operators of facilities and other persons who may at some time be responsible for causing a discharge. The Department cannot estimate the number of such small businesses affected because these provisions will not apply solely to any particular class of small businesses. No capital costs are associated with the notification, confirmation and response requirements. The cost of compliance with the notification and confirmation requirements should remain minimal for small businesses as well as other businesses. However, the cost of compliance with the response requirements will depend upon the severity of the discharge. The cost cannot be reduced for small businesses without risk to public health, safety, welfare and the environment.

The Department also has determined that the approximately 600 discharge cleanup organizations subject to the requirements of N.J.A.C. 7:1E-3 include a significant number of small businesses. However, the Department believes that compliance with N.J.A.C. 7:1E-3 does not require any capital expenditures, other significant costs, or professional assistance.

A significant number of small businesses are among the approximately 230 owners and operators of major facilities subject to the planning and reporting requirements and other standards set forth in N.J.A.C. 7:1E-4. The preparation of DPCC and DCR plans, and compliance with the standards for design, construction, operation and maintenance of major facilities, requires substantial professional services from engineers and other consultants. In addition, compliance with such standards requires capital expenditures and other continuing costs. However, the amount of such costs varies widely depending upon the size, type and location of the major facility, the nature of hazardous substances which may be present at the facility, and the type of activities conducted at the facility.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1E.

(a)

DIVISION OF WATER RESOURCES**New Jersey Pollutant Discharge Elimination System (NJPDES)****Notice of Pre-Proposal for N.J.A.C. 7:14A-1.8**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

Pre-Proposal Number: PPR 1990-8.

Take notice that the Division of Water Resources will hold a public hearing on July 6, 1990 at 10:00 A.M. at:

New Jersey Records Storage Center
2300 Stuyvesant Avenue
Trenton, New Jersey

Subject: NJPDES fee rule and fee schedule (N.J.A.C. 7:14A-1.8).

The Department of Environmental Protection adopted amendments to the NJPDES fee rule on March 6, 1990 (see 22 N.J.R. 1124(a)). During the public comment period, interested parties submitted comments on parts of the rule which were not currently being amended. As a result, the Department would like to provide interested parties with the opportunity to submit ideas for incorporation into the next proposal which is expected to be published in the New Jersey Register in August/September 1990.

The agency is considering increasing the minimum fees for all categories of discharge to better distribute the cost of administering the NJPDES permit program. Under consideration are a tier minimum fee structure for Hazardous Waste Facilities and Industrial Waste Management Facilities similar to the structure currently used for non-IWMF/HWF facilities at N.J.A.C. 7:14A-1.8(h)2i through iii; a higher minimum fee for contaminated stormwater runoff; and possibly higher minimum fees for facilities classified as major facilities by the United States Environmental Protection Agency and the Department. The Department is also considering the establishment of a maximum permit fee so that no one facility pays a disproportionate share of the costs of the NJPDES program.

Currently, the rule provides for the submittal of the minimum fee with a new NJPDES permit application. The Department is considering raising this fee to cover the initial cost of developing the NJPDES permit.

Significant indirect users (SIUs) are a category of NJPDES permittees which discharge wastewater to a publicly owned treatment works (POTW). The Department would like to revise the environmental impact formula at N.J.A.C. 7:14A-1.8(g) to consider all limited pollutants discharged and the risk associated with each pollutant similar to the environmental impact calculation that is used for other surface water dischargers.

The Department prepares an Annual Fee Report and Fee Schedule in accordance with N.J.A.C. 7:14A-1.8(b). Many permittees have commented that they would like the Department to provide different/additional information. The Department would like to hear from interested parties as to the nature of information desired in this report.

Environmental impact for surface water discharges is based upon the quantity of limited pollutants discharged by the permittee, the risk associated with each pollutant, a bioassay factor and stream rating factor. The Department is now requiring, where appropriate, that permittees conduct chronic bioassay testing to evaluate the long term effects of its discharge. The Department would like to incorporate chronic bioassay testing into the bioassay factor in the surface water fee formula.

On March 6, 1990, the Department adopted a major revision to the environmental impact calculation for those facilities conducting compliance monitoring and corrective action. Now that many permittees have experienced the application of this formula, the Department would like to receive comments on improvements to the existing formula.

Written comments, suggestions or ideas may be submitted by July 13, 1990 to:

Stephen Tarnowski
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(a)**DIVISION OF ENVIRONMENTAL QUALITY****Fees for Initial Registration Application and Annual Registration of Ionizing Radiation-Producing Machines****Proposed Amendment: N.J.A.C. 7:28-3.12**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-9.

DEP Docket Number: 021-90-05.

Proposal Number: PRN 1990-307.

A **public hearing** concerning this proposal will be held on:

June 20, 1990 at 10:30 A.M.

State of New Jersey Auditorium

New Jersey State Museum

205 West State Street

Trenton, New Jersey 08625

Submit written comments by July 5, 1990 to:

John F. Dickinson, Jr., Esquire

Division of Regulatory Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (hereinafter, the "Act") was enacted. The Act, amended in 1971, 1977, 1981 and 1986, relates to the possession, handling, transportation and use of sources of radiation within the State of New Jersey. The Act established New Jersey's Radiological Health Program, which was transferred from the State Department of Health to the Bureau of Radiation Protection in the Department of Environmental Protection (hereinafter the "Department") upon creation of the Department in 1970. The Bureau of Radiation Protection is now known as Radiation Protection Program (hereinafter the "program"). The Act also created a New Jersey Commission on Radiation Protection (hereinafter, the "CORP") in the Department and vested in that body the authority to promulgate rules and regulations, as may be necessary, to prohibit and prevent unnecessary radiation. Additionally, the Act empowers the Department to administer the rules promulgated by CORP and, at N.J.S.A. 26:2D-9(1), authorizes the Department to establish and charge fees for the services it performs under the Act.

In 1972, the CORP and the Department promulgated N.J.A.C. 7:28-3. This subchapter established the registration procedures for radioactive materials, and radiation-producing machines and also set forth the registration fee schedule for radiation protection. It also clarified the registration requirements necessitated by technological innovations and changes in the administration of the registration program. In 1987, the Department revised and adopted N.J.A.C. 7:28-3.12, to increase the registration fees in response to the increased cost of inspecting ionizing radiation-producing machines. The Department is again proposing to amend N.J.A.C. 7:28-3.12 to increase the fees for the program.

The fees must be increased because of the escalating demands being imposed upon the program as a result of the increased manufacture, placement and use of regulated ionizing radiation-producing equipment. The costs associated with inspecting the existing equipment regulated by the Act has increased substantially over the past several years and the program will experience additional expense as new equipment is manufactured, purchased and utilized by the regulated community. Revenue from the existing "Ionizing Radiation-Producing Machine" fee schedule is not sufficient to fund even the program's existing operating expenses. At the same time, no new fiscal resources can be expected from the State. In fact, State funding from the General Fund has been substantially reduced and Federal funding through the Food and Drug Administration has remained static. Additionally, the Department is experiencing escalating administrative and overhead costs, a portion of which are charged against the program's funding sources. The increased fees will provide the necessary funds for the Department to conduct inspections of all ionizing radiation-producing equipment in accordance with the recommended inspection cycles for specific facility types set forth in the "Criteria for

Adequate Radiation Control Program (x-ray); A Report of Task Force 2A by the Conference of Radiation Control Program Directors April 1981", that is, hospitals, dental offices, podiatric offices, medical offices, radiology clinics, chiropractic offices, veterinary offices and industrial facilities.

Social Impact

Since the use of radiation and radioactive material is an indispensable part of daily living and the presence of radioactivity in the environment is, to an extent, unavoidable and, in some situations, desirable and necessary, the inherent goal of the Department's radiological health program is to eliminate unnecessary radiation and to reduce radiation dose levels and rates of exposure to a point that is as low as reasonably achievable. The proposed fee increases will enable the Department to continue an effective inspection program to ensure that patients, health workers and the general public are protected from unnecessary radiation generated by improperly maintained or defective equipment.

N.J.A.C. 7:28-3.12 provides the revised fee schedule for the registration of ionizing radiation-producing machines. The schedule includes CAT Scanning Units, Therapeutic Units, Diagnostic X-ray Units, Mammography Units, Industrial X-ray Units, X-ray Diffraction and Fluorescence Spectroscopy Units, Industrial and Research Accelerator Units, Electron Microscopy Units, Cabinet X-ray Systems, and X-ray Baggage Inspection Systems. A separate category has been established for each machine to facilitate the administration of the registration program.

Economic Impact

If the proposed fee increases are adopted, the Department will be able to maintain its services, including essential enforcement activities. Increased fees are necessary because the current fees do not cover all of the expenses incurred by the Department in administering the machine registration program and in providing the inspection services needed to protect the public from unnecessary exposure to radiation resulting from the use of ionizing radiation-producing machines. If the fee increases are not adopted, the Bureau of Radiological Health will lose nine of its current 24 positions, in addition to operating funds, because of a projected shortfall of approximately \$600,000. This deficit exists because of budget cuts and salary shortfalls in the State appropriation account, cost of living increases, inflation, and increased administrative charges. The deficit makes it impossible for the program to meet even its most important commitments. As a result, there could be an increase in the number of persons being unnecessarily exposed to radiation from defective or poorly maintained ionizing radiation-producing machines. The increased health care costs resultant from such exposure would have a negative economic impact on the citizens of the State of New Jersey. Conversely, the fully functional radiation protection program afforded by this proposed amendment would have a positive economic impact by reducing health problems associated with unnecessary exposure to radiation and the costs attendant thereto.

The initial application and annual registration fee for ionizing radiation-producing machines will increase by \$25.00. Fee generated income for the program will increase from \$1,300,000 to \$1,900,000 when the fees are fully implemented in July 1991. This increase will enable the Department to maintain present services and allow continued research into the radiation emitted by x-ray equipment and its effect on the public health. These increases take into account rising administrative cost over the next few years, including cost of living adjustment and inflation. The Department has evaluated these expenses and has determined that by imposing the registration fees set forth in the proposed amendment, the costs will be borne fairly by the registrants of ionizing radiation-producing machines. The registrants should bear the cost of ensuring that their equipment and installations are safe for the public.

The collected fees are used by the program to review and evaluate registration applications; manage data on facility fee accounts and delinquent collections; inspect x-ray equipment for compliance with N.J.A.C. 7:28; review and evaluate radiation surveys; revise rules; and conduct studies to decrease unnecessary radiation exposure.

As previously indicated, fee generated income for the program will increase from \$1,300,000 to \$1,900,000. This is an increase of \$600,000. The Department intends to use the increased fees to fund the 24 current positions in the program. Yearly staffing and program costs for the machine source registration and inspection are as follows:

Ionizing Radiation-Producing Machine Registration and Inspection Staff

Bureau Chief (1)
 Radiation Physicist I (3)
 Radiation Physicist II (4)
 Radiation Physicist III (4)
 Management and Operations Analyst II (1)
 Principal Clerk Typist (3)
 Audit Account Clerk (2)
 Legal (1)
 Administrative Support (2)
 Receptionist (1)
 Enforcement (2)

Estimated Salaries	\$ 792,000
Fringe Benefits	\$ 218,988
Indirect Costs	\$ 330,593
Subtotal	\$1,341,581

Program Costs

Printing and Office Supplies	\$ 20,000
Vehicular (gas/oil)	4,500
Technical Equipment	70,000
Travel	10,000
Telephone	14,400
Postage	4,000
Data Processing Supplies	5,000
Training, Other Services	4,000
Maintenance of Equipment	9,000
Maintenance of Vehicles	4,500
Rent: Buildings and Grounds	40,800
Rent: Central Motor Pool (CMP)	32,400
Data Processing (CDS Lease 70% of cost)	63,000
Technical Supplies	5,000
Subtotal	\$ 286,600
TOTAL	\$1,628,181
Inflation Factor 5.5%	\$ 89,549
GRAND TOTAL	\$1,717,730

These resources will be used by the Department to administer the registration program and to provide the inspection services needed to protect the public from unnecessary exposure to radiation resulting from the use of ionizing radiation-producing machines.

Environmental Impact

The proposed amendment will have a positive environmental impact by reducing the risks to persons posed by the unnecessary exposure to radiation from ionizing radiation-producing machines. The fee increases contained in the proposed amendment will serve to reduce such risks by allowing the program to continue to effectively perform essential registration and inspection services related to ionizing radiation-producing machines. These services ensure compliance with rules designed to prohibit and prevent unnecessary radiation exposure to the public. Additionally, the revenue generated by the increased fees covered by the proposed amendment will facilitate the continuation of the program's training and research activities related to ionizing radiation-producing equipment. The training activities conducted under the registration program will inform and educate the regulated community of the risks and harm posed to the public by the improper use or maintenance of ionizing radiation-producing machines. Continuing research into the control and measurement of the radiation produced by these machines and the impact of such radiation on human health is necessary in order to decrease unnecessary public exposure to radiation.

Regulatory Flexibility Statement

The proposed amendment applies to any manufacturer, dealer, State, county or local government, and any person, including, but not limited to, industry, hospitals, physicians, and dentists having possession, custody or control of any ionizing radiation-producing machine. It is estimated that of the total of 8,645 businesses impacted by this amendment, 8,033 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this amendment, the small businesses will have to pay a fee. The small businesses will incur minimal increased costs as a result of the increased application and annual registration fee. In developing these rules, the Department has balanced the need to protect patients, health workers and the general public from unnecessary radiation against the economic impact of the proposed rule and has determined that to minimize the impact of the rule on small business would endanger the environment, public health and safety. Therefore, no exemption from the proposed rule is provided.

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

- 7:28-3.12 Fees for initial registration application, and annual registration of ionizing radiation-producing machines
 (a) The fees for initial registration applications and for annual registrations are as follows:

Machine Source Category	Initial Registration Application Fee	Annual Registration Fee
1. Dental Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
2. Fixed Radiographic Diagnostic X-ray Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
3. Portable Radiographic Diagnostic X-ray Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
4. Medical Fluoroscopic Units (fixed, under table)	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
5. Medical Fluoroscopic Units (portable)	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
6. Mobile Diagnostic Units (motor vehicle mounted)	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
7. Medical Radiographic-Fluoroscopic Units (fixed, over table combination tube, C-arm unit)	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
8. Medical Radiographic-Fluoroscopic Units (portable, C-arm)	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
9. CAT Scanning Diagnostic X-ray Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
10. Mammography Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
11. Therapeutic Units capable of operation at no more than 60 kVp	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
12. Therapeutic Units capable of operation at no more than 500 kVp	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
13. Therapeutic Units capable of operation at no more than 1 MeVp	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
14. Therapeutic Units including accelerators capable of operating at no more than 25 MeV	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
15. Therapeutic Units delivering a Neutron Beam to 14 MeV	[\$300.00] \$325.00	[\$ 50.00] \$ 75.00
16. Therapeutic Units including accelerators capable of operating at no more than 6 MeV	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
17. Industrial and Research Radiography	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
18. Electron Beam Welding Unit	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
19. X-ray Diffraction Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
20. X-ray Fluorescence Spectroscopy Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
21. Electron Microscope Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
22. Cabinet X-ray Systems	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00
23. X-ray Baggage Inspection Systems or Mailroom Units	[\$ 75.00] \$100.00	[\$ 75.00] \$100.00

PROPOSALS

Interested Persons see Inside Front Cover

HIGHER EDUCATION

24. Industrial Accelerators	\$ 75.00	\$100.00	\$ 75.00	\$100.00
25. Research Accelerators to 1 MeV	[\$100.00]	\$125.00	[\$100.00]	\$125.00
26. Research Accelerators to 100 MeV	[\$100.00]	\$125.00	[\$100.00]	\$125.00
27. Research Accelerators above 100 MeV	[\$100.00]	\$125.00	[\$100.00]	\$125.00

(b) For each additional machine listed in (a)1 to (a)11 above, which is at the same address, the initial registration application fee is [\$75.00] **\$100.00** and the annual registration application fee is [\$75.00] **\$100.00**.
 (c)-(e) (No change.)

HEALTH

(a)

DIVISION OF ALCOHOLISM AND DRUG ABUSE

**Intoxicated Driving Program
 Notice of Reopening of Comment Period
 Proposed Amendment: N.J.A.C. 8:66-1.1**

Take notice that the comment period for the amendments proposed at 22 N.J.R. 1024(a) has been reopened.

The comment period will be open from June 4, 1990 to July 4, 1990.

Submit comments by July 4, 1990 to:

David G. Evans, Esq.
 Intoxicated Driving Program
 Department of Health
 CN 365
 Trenton, N.J. 08530

Economic Impact

As the proposed amendments only allow for certain New Jersey colleges to change their name to university, there is no direct economic impact resulting from these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments contain provisions which allow New Jersey colleges to change their name to university under certain conditions. The institutions of higher education do not qualify as small businesses under the definition of such entities set forth in N.J.S.A. 52:14B-17 as all of the institutions have over 100 full-time employees with the exception of a few colleges which are dedicated primarily to the preparation or training of ministers, priests, rabbis or other professional persons in the field of religion. These religious institutions would not be affected by these amendments because of the narrow focus of their institutional missions.

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

9:1-1.2 Definitions

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

"University" means an [educational] institution of **higher education** which provides a wide range of undergraduate and graduate studies, [programs in two or more professional fields, and operative programs leading to the doctorate or comparable terminal degrees in two or more areas,] whose faculty are involved in extensive research, [and] which clearly identifies graduate studies and programs as distinct elements in its organization[. See N.J.A.C. 9:1-3.1 et seq.], **and meets the criteria set forth in N.J.A.C. 9:1-3.**

9:1-3.1 [Programs] **Academic and other program requirements**

(a) In an atmosphere of freedom of inquiry and expression, a university provides a wide range of undergraduate and graduate studies in the arts and sciences, and programs in [two or more] professional fields such as medicine, law, public administration, engineering, **business**, or education[, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas]. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program.

(b) **An institution of higher education in New Jersey, public or independent, may petition the Board of Higher Education for permission to utilize the university designation if it meets the following criteria:**

1. The institution provides a wide range of undergraduate and graduate degree programs, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas; or

2. The institution:

i. Has a total full-time equivalent student enrollment of at least 2,500;

ii. Has postbaccalaureate enrollments that represent at least 10 percent of the total student headcount;

iii. Has at least 20 separate academic departments; and

iv. Offers baccalaureate degree programs in at least 15 of the 30 broad discipline areas listed in the Classification of Instructional Programs (CIP) published by the Center for Education Statistics of the United States Department of Education.

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

**Characteristics of a University
 Proposed Amendments: N.J.A.C. 9:1-1.2 and 3.1.**

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:67-2.

Proposal Number: PRN 1990-300.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 20 West State Street
 CN 542
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

By statute, the Board of Higher Education is authorized to set standards as to the use of the terms "college" and "university" within the State of New Jersey. Current Board rules require the existence of at least two doctoral or other comparable terminal degree programs at an institution, among other requirements, in order for an institution to utilize the university designation.

The proposed amendments change the requirement that a university in New Jersey offer at least two doctoral or other terminal degree programs and set alternative criteria which would allow certain colleges in New Jersey to become universities without doctoral or other terminal degree programs.

Social Impact

The proposed amendments set forth criteria under which a college in New Jersey could qualify to call itself a university without offering any doctoral or other terminal degree programs. At this time, six State colleges and two private colleges in the State appear to meet the proposed criteria and could apply to change their designation from college to university. Proponents of the modification assert that with university status, their institutions will be more competitive with respect to the recruitment of students.

(c) Once an institution of higher education in New Jersey has received authority from the Board of Higher Education to utilize the university designation, such authority shall not be revoked solely on the basis that the institution temporarily does not meet one or more of the criteria set forth in (b) above.

(d) [Additionally, a] A university also should explore the possibilities of public service.

(a)

BOARD OF HIGHER EDUCATION

Auxiliary Corporations

Organizational Personnel; Purchasing

Proposed Amendments: N.J.A.C. 9:2-13.9 and 13.11

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64-26 et seq.

Proposal Number: PRN 1990-302.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education is responsible for the approval and supervision of auxiliary corporations at State and county colleges. As part of that responsibility, the Board sets forth standards for operations of such entities in several areas, including personnel and purchasing. At the time the rules in this area were originally promulgated, the majority of State college employees were within the unclassified service of the Civil Service. The State College Autonomy Law, P.L. 1986, c.42, removed all such employees from the Civil Service system and placed the authority for such employees with the college boards of trustees and the Board of Higher Education. In keeping with the intent of that legislation, the proposed amendment N.J.A.C. 9:2-13.9 allows the board of directors of the auxiliary corporation to determine and set job titles and salary schedules for its employees rather than placing such employees within the unclassified service of the Civil Service system. Likewise, as companion legislation also removed the State colleges from the State purchasing system and allowed purchases to be made under the State College Contracts Law, N.J.S.A. 18A:64-52 et seq., the proposed amendment to N.J.A.C. 9:2-13.11 changes the guidelines for purchasing from the State's standard to the college's standard. The same change applies to the county college sector due to the passage of the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq.

Social Impact

The proposed amendment to N.J.A.C. 9:2-13.9 will remove employees of State college auxiliary corporations from the Civil Service system and place responsibility for the determination of job descriptions and salary schedules for such employees in the hands of the auxiliary corporation. Although responsibility for such personnel matters will be changed, it is not contemplated that this change will have a major impact on the current job descriptions or salary levels for such employees. The proposed amendment to N.J.A.C. 9:2-13.11 will change the standards by which the organizations carry out their purchasing. Again, it is not contemplated that this will result in drastic changes in the bidding area due to the similarity between the previous and proposed guidelines in this area.

Economic Impact

The proposed amendments modify the responsibility for personnel decisions for auxiliary corporation employees at State and county colleges as well as purchasing guidelines at such organizations. It is not contemplated that the proposed amendments will result in any significant costs to such corporations as the proposed amendments do not require major changes in the organizations but merely modify the responsibility for personnel decisions.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other com-

pliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments contain provisions regarding the responsibility for personnel decisions and purchasing policies at State and county college auxiliary corporations. The auxiliary corporations, as quasi-public entities, do not meet the definition of a small business as defined by N.J.S.A. 52:14B-17 as they are not independently owned and operated.

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

9:2-13.9 Organizational personnel

[(a) Employees of auxiliary organizations are within the unclassified service of the State Civil Service system.

The Department of Civil Service] **The board of directors of the organization** shall establish job titles and salary schedules for such employees.

[(b) Subsection (a) shall not apply to auxiliary organizations at county colleges pursuant to P.L. 1983 c.23.]

9:2-13.11 Purchasing

An auxiliary organization shall make such purchases as are necessary for its operation. Such purchases shall be made through competitive bidding whenever possible. The standards [contained within N.J.S.A. 52:34-6] **of the college** shall serve as general guidelines for competitive bidding.

(b)

BOARD OF HIGHER EDUCATION

Facilities Planning Standards and Approval

Procedures for New Jersey Institutions of Higher Education

Participation of Minority-Owned and Women-Owned Businesses in Construction Contracts of New Jersey Institutions of Higher Education

Proposed New Rules: N.J.A.C. 9:3-4

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14(q); P.L. 1988, c.78.

Proposal Number: PRN 1990-303.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

At the September 22, 1989, meeting of the Board of Higher Education, the Board adopted a policy regarding the application of the joint emergency rules of the Departments of Treasury and of Commerce, Energy and Economic Development which govern the State program for minority-owned and women-owned businesses' participation as subcontractors in State construction projects (see N.J.A.C. 12A:10-2 and N.J.A.C. 17:14-1). The rules were specifically made applicable to the four-year senior public institutions. The Board of Higher Education extended the application to construction projects at county colleges and independent institutions of higher education which require State capital or operating funding, require Board of Higher Education approval and exceed \$500,000 in construction costs.

The proposed new rules accomplish three main goals. First, the provisions set forth the scope of the program to include all construction projects, at both public and private institutions of higher education, which are funded wholly or in part with State capital funds or that require State funding for operational costs, require Board approval and exceed \$500,000 in construction costs.

Second, the proposed new rules incorporate by reference the State rules, N.J.A.C. 17:14-1.1 through 1.12, which are applicable to the senior public institutions, thereby making those rules applicable, as well as to the county community colleges and the independent colleges with projects

which meet the other eligibility criteria set forth in proposed N.J.A.C. 9:3-4.1.

Third, the proposed new rules set forth the responsibilities which the individual governing boards will have for implementation of the program and verification of compliance with program requirements at the time of Board approval of such projects.

Social Impact

The proposed new rules will have a significant beneficial social impact upon the general public. The rules recognize the State's interest in the vitality of all sectors of the economy and the importance of encouraging growth and competitiveness in the small entrepreneurial sector. The rules also recognize the State's interest in eliminating unlawful discrimination based on race and gender and encouraging affirmative action in the construction contracting area. The elimination or reduction of discrimination along with the provision of outreach measures has a positive social impact and fosters equal opportunity.

Economic Impact

The proposed new rules will contribute to the long-term economic growth of the State and help support the State's redevelopment initiatives. The growth potential of businesses taking part in the set-aside program should be enhanced, thereby creating job opportunities and generating additional revenue.

Regulatory Flexibility Analysis

The proposed new rules will establish additional paperwork requirements for construction firms bidding on higher education facilities construction contracts, some of which firms may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Bidders will be required to submit a minimum of two additional forms listing minority and female companies whose price quotes are included in the bid and the market outreach efforts undertaken. Bidders who fail to meet target levels will be required to submit an additional form detailing their solicitation of price quotes from minority and female subcontractors and suppliers. Lesser requirements for small businesses are not provided in the proposed new rules because it is anticipated that the additional time and cost of this required paperwork will be minimal and, in any event, will be far outweighed by the substantial public benefits generated by this program.

Full text of the proposed new rules follows:

SUBCHAPTER 4. PARTICIPATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN CONSTRUCTION CONTRACTS OF NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION

9:3-4.1 Scope

(a) The provisions of this subchapter shall apply to all public and private institutions of higher education within the State of New Jersey for construction projects:

1. Funded wholly or in part with State capital funds or that require State funding for operational costs;
2. That require Board of Higher Education approval; and
3. That exceed \$500,000 in construction costs.

9:3-4.2 Rules incorporated by reference

The part of the New Jersey Administrative Code known as Title 17, Chapter 14, Subchapter 1 (N.J.A.C. 17:14-1.1 through and including 1.12 (as of November 6, 1989)), including all subsequent amendments and supplements, is hereby adopted as rules and incorporated within this subchapter.

9:3-4.3 Institutional responsibilities

(a) The governing body of each institution of higher education shall:

1. Ensure that internal mechanisms are in place at their institution to comply with and report on the goals as described in this subchapter;
2. Set target levels, in consultation with the Division of Building and Construction and the Department of Commerce, Energy and Economic Development, for the participation of minority-owned businesses and women-owned businesses as subcontractors for each construction contract awarded through the public bidding process. These target levels shall be set on an individual basis for each construction contract and shall be based upon the number of minority-

owned and women-owned businesses qualified to participate as subcontractors for such contract;

3. Review, in consultation with the Department of Treasury, the subcontracting practices of the bidder, if the target levels are not satisfied by a bidder, to determine if it is engaging in unlawful race or sex discrimination in the selection of subcontractors and to determine if it is engaged in reasonable outreach efforts. If said review does not indicate that the bidder is engaging in unlawful race or sex discrimination and does indicate that reasonable outreach efforts have been undertaken, the bidder will not be disqualified from bidding on that particular contract on the grounds that it discriminates in IPS selection of subcontractors and/or has not engaged in reasonable outreach efforts;

4. Certify, by resolution, that it has reviewed the data that are the basis for determining a bidder to be a responsible bidder as defined within this subchapter; and

5. Submit the certification required pursuant to (a)4 above to the Department of Higher Education at the time that the bid tabulations for the project are submitted to the Department of Higher Education for approval.

(a)

BOARD OF HIGHER EDUCATION

**County Community Colleges
Alumni Trustee Representatives**

Proposed New Rules: N.J.A.C. 9:4-4

Authorized By: Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-8.
Proposal Number: PRN 1990-301.

Submit comments by July 4, 1990 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education is statutorily charged with the responsibility for prescribing the rights and duties of student alumni trustees on the boards of trustees of county community colleges. The proposed new rules set forth eligibility criteria, participation restrictions, terms of office, selection mechanisms and board of trustee policies which govern such individuals.

Social Impact

The proposed new rules will clarify and standardize the selection and participation of student alumni trustees at county community colleges. Under these rules, such individuals will be able to participate as members of county college boards of trustees as allowed by law.

Economic Impact

The proposed new rules have no economic impact but merely prescribe the selection and participation of student alumni trustees on county community college boards of trustees.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules contain provisions regarding the selection and participation of student alumni trustees at county community colleges.

Full text of the proposed new rules follows:

SUBCHAPTER 4. POLICIES CONCERNING ALUMNI REPRESENTATIVE TRUSTEE

9:4-4.1 Eligibility

(a) Eligibility to sit as the alumni representative on a county community college board of trustees shall be limited to individuals who:

1. Are 18 years of age or older;
2. Are residents of New Jersey;
3. Are associate degree graduates in the academic year immediately preceding service on the board of trustees;
4. Are not registered to take any course work as a student at the college during the term of office; and
5. Are residents in the county or counties where the alumni representative trustee serves.

9:4-4.2 Participation

(a) The alumni representative on a county community college board of trustees shall be a non-voting member of the board.

(b) The alumni representative shall be entitled to all rights afforded other non-voting members of the board of trustees with respect to all open and closed meetings of the board of trustees pursuant to N.J.S.A. 10:4-7, provided, however, that the alumni representative trustee shall not be entitled to participate in closed meetings of the board of trustees dealing with personnel, litigation, and collective bargaining issues.

9:4-4.3 Term of office

The alumni representative shall serve for a term of one year commencing at the next organization of the board following the graduation of the alumni representative's class.

9:4-4.4 Selection

The alumni representative shall be elected in the spring semester, on or by June 1st, by vote of the student body, defined as all full and part-time students registered during the spring semester in which the election is held.

9:4-4.5 Board of trustee policies

The board of trustees of each county community college may promulgate additional policies regarding alumni representative trustees consistent with N.J.S.A. 18A:64A-8 and this subchapter.

(a)

BOARD OF HIGHER EDUCATION

State Colleges

Admissions Policies; Baccalaureate Degree Policies; Definitions; Adjunct Faculty; Visiting Specialist; Academic Rank for Non-Teaching Personnel

Proposed Amendments: N.J.A.C. 9:6-3.2, 3.11, 3.12 and 4.5

Proposed Repeals and New Rules: N.J.A.C. 9:6-1 and 9:6-2

Authorized By: Board of Higher Education, T. Edward

Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64-6 and 18A:3-14.

Proposal Number: PRN 1990-296.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education recently readopted N.J.A.C. 9:6, State Colleges, which was due to expire pursuant to the provisions of Executive Order No. 66 (1978) (see 22 N.J.R. 1598(b)). At that time, the Board's staff was consulting with the State college sector with regard to possible amendments to those rules but could not complete that process in time to include those amendments in the proposed re-adoption of the chapter. These proposed new rules and amendments include the revisions to chapter 6 which have been worked on between Board staff and the State college sector.

The revisions, as reflected in this proposal, include the repeal of the current rules found at N.J.A.C. 9:6-1 and 9:6-2, the proposal of new rules at N.J.A.C. 9:6-1 and 9:6-2 and proposed amendments to the current rules found within N.J.A.C. 9:6-3.2, 3.11, 3.12 and 4.5.

The proposed new rules and amendments cover several areas which stem from changes made necessary as a result of the implementation of State college autonomy. In subchapter 1, the proposed new rules grant authority to each State college to establish admission policies, within certain general guidelines, and report those to the Board. Subchapter 2 accomplishes the same for baccalaureate degrees. In subchapter 3, the proposed amendments delete a definition deemed no longer necessary. The term is currently defined slightly differently at N.J.A.C. 9:6A-2.1 with regard to State college personnel issues. As its use in N.J.A.C. 9:6-3.11 involves personnel matters, it was determined that the inconsistent definition found in this chapter should be deleted. The proposed amendments in subchapter 3 also transfer greater authority for the setting of adjunct faculty salaries and workloads to the State colleges and delete an unnecessary restriction with regard to visiting specialists. In subchapter 4, the proposed amendment makes a technical change with regard to the basis of title designations for librarians.

Social Impact

The proposed new rules and amendments set forth several changes which, consistent with the intent of the State College Autonomy Law, P.L. 1986, c.42, transfer greater authority for several functions from the Board of Higher Education to the boards of trustees of each State college. Those areas include admissions policies, baccalaureate degree standards and adjunct faculty. The result will be greater opportunity for each college to set policies and standards, within general guidelines, which are specifically tailored to the needs and circumstances of the particular college campus. The proposed amendments also contain certain technical changes which have no social impact.

Economic Impact

The proposed new rules and amendments do not have any particular economic impact as they mainly concern a transfer of authority and responsibility for particular academic issues from the Board of Higher Education to the State colleges.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules and amendments contain provisions regarding academic and other programs at State colleges.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 9:6-1 and 9:6-2.

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

SUBCHAPTER 1. ADMISSIONS POLICIES

9:6-1.1 Establishment of admissions policy

Each State college board of trustees shall establish an admissions policy that meets the specific educational objectives of the institution and that provides for equitable educational opportunity. Admissions policies shall include such criteria as minimum numbers of completed units of college preparatory subjects, graduation from an accredited secondary school (or a high school equivalency certificate such as the G.E.D.) and examination scores of the Scholastic Aptitude Test of the College Entrance Examination Board or the American College Testing Program. They shall also provide for exceptions to the regular admissions program for students admitted under the Educational Opportunity Fund program and students admitted through the college's special admissions program.

9:6-1.2 Reporting requirement

The president of the college shall transmit to the Chancellor a copy of the board of trustee's admissions policy upon its initial adoption in fulfillment of N.J.A.C. 9:6-1.1 and whenever amended by the trustees.

SUBCHAPTER 2. BACCALAUREATE DEGREE POLICIES

9:6-2.1 Baccalaureate degree requirements

(a) Each State college board of trustees shall establish requirements for the baccalaureate degree including such factors as minimum numbers of credits to be earned for course work in the major, in general education and in elective subjects, and minimum grade point average or other measure of performance.

(b) Each degree program shall be minimally composed of 120 credits, approximately half of which shall be general education. Within specialized programs, such as the B.F.A., the B. Mus. and programs in the regulated professions, major course requirements may exceed one-half of the total required for the degree.

9:6-2.2 Reporting requirement

The president of the college shall transmit to the Chancellor a copy of the board of trustee's policy on baccalaureate degree standards upon initial adoption in fulfillment of N.J.A.C. 9:6-2.1 and whenever amended by the trustees.

9:6-3.2 [Definitions]

[The following words and terms, when used in the State and county college tenure law, N.J.S.A. 18A:60-6 et seq., shall have the following meanings unless the context clearly indicates otherwise.

"Academic year" means the period from September 1 through June 30.] (Reserved)

9:6-3.11 Adjunct faculty

(a) [The Board of Higher Education] Each State college board of trustees shall establish salary rates for adjunct faculty teaching at the [state] State colleges.

(b) Adjunct faculty shall not teach more than the equivalent of half-time (12 teaching credit hours) at a State college during [any] the college's academic year, nor shall teach any more than eight teaching credit hours in any one semester.

9:6-3.12 Visiting specialist

A visiting specialist who may be appointed to a State [College] college with a rank such as artist- or poet- or composer-in-residence shall be one who has achieved distinction in a field such as the arts, the humanities, the sciences, or public life. While the attainment of academic excellence in a given field is desirable, such appointment shall be made principally on the basis of the distinction the person has achieved in his or her chosen field. [Such an appointment is to be in excess of faculty positions established in the faculty-student ratio.] A visiting specialist may serve at a State [College] college for a period not exceeding three years of consecutive, full-time service.

9:6-4.5 Academic rank for non-teaching personnel

(a) (No change.)

(b) Librarians who meet appropriate qualification requirements and hold State [payroll] College Classification Plan titles of librarian I, librarian II, and librarian III are eligible for concurrent academic rank. Concurrent academic rank equivalencies for librarians I, II and III shall be the following:

State [Payroll] College Classification Plan Title—Concurrent Academic Rank

1. Librarian I—Assistant professor in the library;
2. Librarian II—Assistant professor in the library;
3. Librarian III—Instructor in the library.

(c)-(e) (no change.)

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.5

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1990-299.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund determines the income levels for which eligibility to participate in the program is based. This proposed amendment increases those income levels.

Social Impact

The proposed amendment, by increasing the maximum income levels for participation in the Educational Opportunity Fund Program, recognizes the changes in family income levels in the State. The amendment will enable the Educational Opportunity Fund Program to continue to offer higher educational opportunities to disadvantaged citizens of New Jersey consistent with the spirit and intent of the original legislation.

Economic Impact

The proposed amendment changes eligibility requirements for the Educational Opportunity Fund Program but does not change the amount of aid which each program participant receives. The increase in the income levels will serve to expand the potential pool of applicants to the program and increase the number of current program participants who will have continued eligibility. The proposed amendment does not have a direct economic impact on the total number of awards, and thus total amount of costs, associated with the program. Program funding is dependent upon the amount of funding provided by the Legislature and the Governor. The proposed amendment expands the number of potential program participants but does not necessarily increase the number of actual program participants.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board of Directors has determined that the proposed amendment will not impose reporting, record keeping, or other compliance requirements on small businesses. The proposed amendment provides for increased eligibility requirements for Educational Opportunity Fund Program students attending New Jersey institutions of higher education.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial EOF grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the EOF Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	[\$15,130] \$15,210
3	[17,270] 17,430
4	[19,410] 19,650
5	[21,550] 21,870
6	[23,690] 24,090
7	[25,830] 26,310

2. For each additional member of the household, an allowance of [\$2,140] **\$2,220** shall be added to this amount in order to determine eligibility for EOF for the [1989-90] **1990-91** Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household

size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

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

(d) An independent student is financially eligible for an E.O.F. grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. [\$9,260] **\$9,340** family size (including student) 1;
2. [\$11,400] **\$11,560** family size (including spouse) 2;
3. [\$13,540] **\$13,780** family size (including spouse) 3;
4. [\$15,680] **\$16,000** family size (including spouse) 4;
5. Add [\$2,140] **\$2,220** for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.

6. (No change.)

(e)-(g) (No change.)

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Part-Time Students

Proposed Amendment: N.J.A.C. 9:11-1.23

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1990-297.

Submit comments by July 4, 1990 to:

Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 20 West State Street
 CN 542
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Directors of the Educational Opportunity Fund is responsible for the administration of the Educational Opportunity Fund (EOF) Program which provides financial and other assistance to educationally and economically deprived students. Currently, EOF grants are available for students attending on a full-time basis. In addition, students who have received a minimum of one semester of full-time funds may reduce to part-time attendance and continue to receive funds. The proposed amendment will make it possible for a limited number of students who commence their collegiate education on a part-time basis to receive EOF grant funding on a pilot basis.

Social Impact

The proposed amendment will allow students who have been diagnosed with the greatest educational adjustment needs, and older students who have been away from formal education for an extended period of time, to commence their undergraduate education with financial aid and the academic support services provided by the EOF Program.

Economic Impact

The proposed amendment will provide financial aid awards to EOF students who commence their undergraduate education with part-time status. Such financial aid was previously unavailable, thus causing potential students to enroll with full-time status and placing themselves at the risk of experiencing academic standards of progress problems or not to pursue undergraduate education.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not apply to or impact on small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment relates to the provision of financial aid and academic support services to part-time students through the EOF Program.

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

9:11-1.23 Part-time students

(a) (No change.)

(b) Part-time grant eligibility shall only be available to EOF students attending those institutions approved by the Board of Directors of EOF to award part-time EOF grants [and who change from full-time to part-time] to students pursuant to the provisions of N.J.A.C. 9:11-1.8(a).

(c)-(g) (No change.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Dental Services

HCPCS Codes

Proposed Amendments: N.J.A.C. 10:56-3.1, 3.3, 3.4, 3.10 and 3.12

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

Authority: N.J.S.A. 30:4D-6b(4), 30:4D-7, 7a, b, and c, 30:4D-12; 42 CFR 440.100.

Agency Control Number: 90-P-5.

Proposal Number: PRN 1990-272.

Submit comments by July 4, 1990 to:

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

The agency proposal follows:

Summary

The Department of Human Services proposes to amend the HCPCS (Health Care Financing Administration Common Procedure Coding System) Procedure Codes, which are published full text in the New Jersey Administrative Code at N.J.A.C. 10:56-3.

The proposed amendments are generally designed to facilitate claim processing and, in some cases, are codification of existing agency policy. There is no change in reimbursement associated with these proposed amendments.

The term HCPCS refers to the Health Care Financing Administration Common Procedure Coding System. The Division has added a cross-hatch (#) to denote those procedures for which special authorization requirements exist. Those requirements are listed next to the procedure codes involved.

The specific changes to the HCPCS Codes in these proposed amendments are discussed below.

Providers may submit claims for codes 07310 and 09430 directly to the Fiscal Agent for processing with no corresponding administrative review by the Division (except for a possible post audit review). This change is designed to eliminate an administrative review process by the Division's Dental Consultants and expedite payment to the provider.

A procedure code for crown repair is being added (*02980). The provider submits the claim to the Division dental consultants who determine the amount of payment. The letters "BR" (by report) mean that there is no set fee for this procedure. The "BR" indicator requires the provider to submit complete information as to the dental procedure so that the Division can determine an accurate fee. During the authorization process, the Dental Consultant staff will determine a proper fee for the service rendered. Once the fee has been established the provider must submit the claim to the Fiscal Agent for processing and payment.

There are two changes associated with sealants (procedure code 01351). Sealants can now be applied to all occlusal surfaces that are unfilled and caries free, in bicuspid and permanent molars. The existing rule limited the application of sealants to first and second molars. In addition, application of sealants is limited to Medicaid recipients up to and including

16 years of age. The previous limit had been 13 years of age. The policy of limiting sealants to a one-time application remains in effect.

The procedure codes for "hospital call" (09420-22, 52) are being amended to indicate that a hospital visit can include inpatient or outpatient services, and/or inpatient or same day surgery.

The Division is publishing a procedure code for behavior management (09920) with a corresponding fee of \$15.00 for a specialist and \$13.00 for a non-specialist for each 15-minute unit. This code is designed to be used when the provider is treating a patient who has developmental and other disabilities whose disorders necessitate an excessive amount of time to accomplish treatment. If four or more time units are requested on one date of service, authorization is required.

A procedure code for alveoloplasty in conjunction with extractions is being added. The rate of reimbursement is the same as for alveoloplasty when teeth are not being extracted. Two procedure codes are necessary to indicate whether a patient's teeth are, or are not, being extracted when dentures are being considered.

There are several procedure codes that no longer require prior authorization. The double asterisk (**) in front of these codes is being removed. The codes pertain generally to removal of exposed roots or impacted teeth. Dentists will generally be able to perform the specified procedures when medically necessary and bill the Fiscal Agent directly without obtaining prior authorization from the Division as is the current practice. The procedure codes are 07220, 07230, 07240 and 07250. However, it should be noted that authorization is still required for patients up to and including 17 years of age denoted by the cross-hatch (#) indicator.

The procedure codes for additional scaling (Y2105 and Y2105-52) will no longer require prior authorization, except for patients up to and including 17 years of age as indicated by the cross-hatch (#) indicator.

The proposed amendments contain a technical change to procedure code Y2105, Extra Scaling. The text should indicate the fee for a non-specialist is \$10.00 because this is what is currently being paid. This change does not represent a reduction in the fee schedule.

Social Impact

The proposed amendments impact on Medicaid patients who may require dental services. In some instances, patients will not have to wait for the Division to approve a medically necessary dental service, which could benefit the patient. Prior authorization is still required for patients under age 17 who may need certain types of tooth extraction.

The proposed amendments impact upon dental providers that participate in the New Jersey Medicaid Program. Providers should be alert to the changes in the procedure codes whereby prior authorization is removed either toally or partially. For example, there are authorization requirements related to age factors for sealants, scaling, and tooth extraction. The age of the patient is a significant factor in determining whether the Division requires authorization to pay for certain services.

The Division has developed a procedure code (09920) that allows dentists to bill for additional time when treating patients with developmental and other disabilities whose disorders require an excessive amount of time to accomplish treatment. This code impacts on both disabled Medicaid patients and the dentist who provides treatment.

Economic Impact

There is no cost to the Medicaid patient for dental services.

There is no change in provider reimbursement associated with the proposed amendments.

There is no economic impact upon the Division because the additions to the procedure code listing are included in current appropriations.

Regulatory Flexibility Analysis

Dental providers might be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that many employ less than 100 full time employees. The proposed amendments apply equally to all dentists. There is no differentiation based upon size. Providers are required by State law (N.J.S.A. 30:4D-12) to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, the nature and extent of each service rendered, and any additional information as may be required by regulation. The information that would be entered on the claim form would be that which the provider is required to keep in conformance with the State law cited above, the general practice of dentistry, and necessary for the health, safety and welfare of the Medicaid patient. The "by report" requirement is a necessary reporting requirement in order for the Division to determine an accurate fee.

The Division has endeavored to reduce the adverse economic impact on small businesses by removing an administrative review process and prior authorization for certain procedures when it was appropriate to do so.

There are no capital costs associated with these proposed amendments.

The proposed amendments will not require a dental provider to hire any additional consultants, accountants, or other professional services. Although the proposed amendments seek to simplify certain procedures, dental providers now using professional services may continue to do so.

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

10:56-3.1 Introduction

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

(d) Specific elements of the HCPCS Coding System which require the attention of the dental provider.

The lists of HCPCS code numbers in the 11 separate sections of this subchapter are arranged in tabular form with specific information for a code given under columns with titles such as: "IND", "HCPCS CODES", "MOD", "DESCRIPTION", [AND] and "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

COLUMN TITLE

1. IND—(Indicator) Lists symbols used to refer provider to information concerning the New Jersey Medicaid Program's qualifications and requirements when a procedure or service code is used.

Explanation of indicators used in this column is given below:

i. "*" An asterisk (*) denotes those procedures which normally require prior authorization in order to be eligible for reimbursement under the New Jersey Medicaid Program.

ii. "**" A double asterisk (**) denotes those procedures which may be treated in an emergency situation when prior authorization is not feasible. These procedures must receive authorization prior to payment.

iii. "d" The letter (d) denotes those procedures which require that a diagnosis be entered in the appropriate item on the Dental Services Claim form (MC-10) in order to [the] be eligible for reimbursement.

iv. "#" **The cross-hatch (#) denotes those procedures for which special authorization requirements exist. Those requirements are listed adjacent to the procedure codes involved.**

2.-5. (No change.)

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

10:56-3.3 01000-01999 II. PREVENTIVE

(a) Dental prophylaxis

1. (No change.)

2. Scaling over and above that necessary under prophylaxis (see codes 01110 and 01110 52 above)[,]. [the] **The calculus must be abnormally heavy and visible to the Dental Consultant on radiograph(s). Such scaling must be authorized for those recipients up to and including 17 years of age as denoted by codes with the "#" (cross-hatch) indicator.**

[*]# Y2105	ADDITIONAL SCALING	11.00 [11.00] 10.00
	NOTE: [Patients 16 years of age or older,] Maxillary and mandibular arches.	

[*]# Y2105 52	ADDITIONAL SCALING, ONE ARCH	5.50	5.00
	NOTE[1]: [Patients 16 years of age or older,] Maxillary or mandibular arch.		
	[NOTE 2:] Code to be used if patient is edentulous in one arch.		

(b) Topical fluoride treatment (office procedure)

1. Topical application of stannous fluoride or acid fluoride phosphate—one treatment following a complete prophylaxis (fee includes both services).

i. Reimbursement for topical fluoride treatment shall be limited to once every six months without authorization for those patients up to and including age 17, and once every 12 months for those patients 18 years of age, up to and including 20 years of age. (Not a covered service for persons 21 years of age and over.) A complete

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prophylaxis must be performed immediately prior to the topical fluoride treatment.

01201	Topical Application of Fluoride (Including Prophylaxis)—Child NOTE: Patients up to and including 15 years of age, maxillary and mandibular arches.	14.00	12.00
01202	Topical Application of Fluoride (Including Prophylaxis)—Adult NOTE: Patients age 16, up to and including 20 years of age, maxillary and mandibular arches.	17.00	15.00
01202 52	Topical Application of Fluoride (Including Prophylaxis)—Adult NOTE: Patients age 16, up to and including 20 years of age, maxillary or [and] mandibular arch. Code to be used if patient is edentulous in one arch.	8.50	7.50

(c) Other preventive services:

01351	Sealant—Per Tooth NOTE 1: Application of sealants is limited to a one time application to [caries free and restoration free first and second permanent molars as follows: (a) First molars: Sealants are reimbursable when applied upon eruption at ages six (6) or seven (7); (b) Second molars: Sealants are reimbursable when applied upon eruption, at ages twelve (12) or thirteen (13).] all occlusal surfaces that are unfilled and caries free, in bicuspids and permanent molars. NOTE 2: Application of sealants is limited to recipients up to and including 16 years of age. NOTE [2] 3: Sealants applied other than as detailed above are not reimbursable unless authorized by a Medicaid Dental Consultant. A complete explanation of the request must be attached. NOTE [3] 4: Since the sealants may be reimbursed only once for each tooth, the provider should make certain that sealants have not been applied previously.	7.00	6.00
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(d) (No change.)

10:56-3.4 02000-02999 III RESTORATIVE

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

(h) Other restorative services:

...			
*02980	Crown Repair, By Report	BR	BR
*02999	Unspecified Restorative Procedure By Report	BR	BR

10:56-3.10 07000-07999 IX. ORAL SURGERY

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

(c) Extractions—includes local anesthesia and routine post-operative care:

...			
[**]07130	Root Removal—Exposed Roots NOTE 1: Per tooth. NOTE 2: Root partially imbedded in bone.	15.00	13.00
...			

(d) Surgical extractions—includes local anesthesia and routine post-operative care:

1. Reimbursement will [not] be made for the extraction of impacted teeth [which have not been prior authorized] **only when conditions arising from such impactions warrant their removal. Extraction of asymptomatic impacted teeth or those teeth where dental/medical necessity cannot be demonstrated will not be considered as reimbursable.**

[2. Authorization will be granted only when conditions arising from such impactions warrant their removal. Extraction of asymptomatic impacted teeth or those teeth where dental/medical necessity cannot be demonstrated will not be authorized or accepted for reimbursement.]

[3.]2. In order to qualify for a surgical removal of a tooth with partial or complete bone impaction, the following is required:

- i. Incision of overlying soft tissue;
- ii. Removal of bone; and/or
- iii. Sectioning of tooth.

3. Authorization for the removal of impacted teeth is necessary for those recipients up to and including 17 years of age as denoted by those codes with the “#” (cross-hatch) indicator.

07210	Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of tooth	17.00	15.00
[**]#07220	Removal of Impacted Tooth—Soft Tissue	21.00	18.00
[**]#07230	Removal of Impacted Tooth—Partially Bony	61.00	53.00
[**]#07240	Removal of Impacted Tooth—Completely Bony	61.00	53.00
[**]#07250	Surgical Removal of Residual Tooth Roots (Cutting Procedure) NOTE: Completely covered by bone.	30.00	26.00

(e) Other surgical procedures:

...			
[**]*07280	Surgical Exposure of Impacted or Unerupted Tooth for Orthodontic Reason (Including Orthodontic Attachments)	54.00	47.00
[**]*07281	Surgical Exposure of Impacted or Unerupted Tooth to Aid Eruption	30.00	26.00
...			

(f) Alveoloplasty—surgical preparation of ridge for dentures:

1. Reimbursement will be based upon quadrants, a portion thereof or the equivalent thereof as determined by the Medicaid Dental Consultant.

07310	Alveoloplasty in Conjunction with Extractions—Per Quadrant NOTE 1: In conjunction with extractions of at least three teeth or the roots of at least three teeth in the same quadrant. NOTE 2: Specify quadrant.	43.50	37.50
*07320	Alveoloplasty Not in Conjunction with Extraction—Per Quadrant	43.50	37.50

(g)-(q) (No change.)

10:56-3.12 09000-09999 XI. ADJUNCTIVE GENERAL SERVICES

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

[(d)](e) Professional visits:

...			
09420 52	Hospital Call NOTE 1: Hospital visit, Inpatient or Outpatient , in addition to fee for service provided. NOTE 2: Code 09420 52 will not be reimbursable in conjunction with Code 09310 or Codes 0940 22 or 09420. [Not applicable in	9.00	7.00

conjunction with those services which include follow-up days.]
 NOTE 3: Code 09420 52 is reimbursable only once per trip per facility regardless of the number of patients examined or treated. [NOTE: 4. Code 09420 52 is not reimbursable when Medicaid fee for service exceeds \$25.00.]

09420 22	Hospital Call NOTE 1: Code to be used for Hospital Day—Initial—Inpatient or Same Day Surgery. NOTE 2: Hospital record must include as a minimum: a. Chief [Complaint(s)] complaint(s) ; b.-g. (No change.) NOTE 3: (No change.)	22.00	17.00
...			
09430	Office Visit for Observation (During Regularly Scheduled Hours)—No Other Services Performed. NOTE: Code may also be used when post-operative services are necessary following a major surgical procedure (for example, bony impactions, fractures, etc.). (f) (No change.) (g) Miscellaneous services	9.00	7.00
...			
09910	Application of Desensitizing Medicaments NOTE 1: Application to a tooth, i.e., cervical sensitivity, erosions, etc. NOTE 2: Specify tooth code(s).	6.00	5.00
...			
**09920	Behavior Management, By Report NOTE 1: Code to be used for those recipients with developmental and other disabilities whose disorders necessitate an excessive amount of time to accomplish treatment, for example, mental retardation, neurological disorders, etc. NOTE 2: Payment will be based on 15 minute time units or a major portion thereof. Maximum reimbursement eight time units on a single date of service. NOTE 3: The type of disorder and the number of time units requested must be entered on the Dental Services Claim form (MC-10). NOTE 4: Authorization is required when four or more time units are requested on one date of service. NOTE 5: Code to be used in addition to other procedures performed.	15.00	13.00

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual

Proposed Readoption: N.J.A.C. 10:60

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

Authority: N.J.S.A. 30:4D-6b(2), 7, 7a, b, and c; 30:4D-12; 30:4E-5 et seq.

Agency Control Number: 90-P-8.
 Proposal Number: PRN 1990-281.

Submit comments by July 4, 1990 to:
 Henry W. Hardy, Esq.
 Administrative Practice Officer
 Division of Medical Assistance
 and Health Services
 CN-712
 Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Home Care Services Manual (N.J.A.C. 10:60) expires on August 27, 1990. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. The readoption of this manual is necessary to insure continuation of the Home Care Programs.

N.J.A.C. 10:60, entitled the Home Care Services Manual, describes the services that are available to Medicaid patients that might require nursing care, therapy, and other services to enable them to maintain a degree of self-care in a community setting. Home care programs offer an alternative to institutionalization.

The Manual also describes the provider qualifications for home health agencies that provide home health services.

Within the general scope of home health services, there are some specific programs that should be mentioned.

Home health care services covered by the New Jersey Medicaid program are those provided according to medical, nursing and other health care related needs on the basis of medical necessity. Home health care services can be directed toward one of several goals, including rehabilitation, maintenance or supportive care of the patients. The type of services provided by a home health agency include professional nursing by licensed nursing personnel, homemaker-home health aide services, therapy, medical social services, nutritional services, certain medical supplies, and personal care assistant services.

Personal care assistant services are health related tasks performed by a qualified individual in a recipient's home, including a rooming or boarding home, under the supervision of a registered professional nurse, as certified by a physician. The specific provisions regarding services and reimbursement are contained at N.J.A.C. 10:60-2.2.

The Community Care Program for the Elderly and Disabled (CCPED) was initiated to prevent unnecessary institutionalization by providing health and/or social services in the community. The CCPED program operates under a waiver granted by the United States Department of Health and Human Services.

The Home Care Expansion Program (HCEP) is designed to offer home care services to elderly and disabled persons in New Jersey who are in need of institutionalization, and whose income or resources exceed the financial requirements for Medicaid or CCPED. Proposed new rules regarding this Program were published in the February 20, 1990 New Jersey Register at 22 N.J.R. 597(a). This program is completely State funded.

The following is a summary of some of the amendments made to the Home Care Manual during the last five years.

The previous readoption, which occurred August 27, 1985, added personal care assistant services and recodified the Home Care Manual (see R.1985 d.488 at 17 N.J.R. 2433(a)). The maximum rates for personal care assistant services were increased in 1988 (see R.1988 d.379 at 20 N.J.R. 1945(b)). The requirement for timely claim submittal was consolidated into N.J.A.C. 10:49-1.12 (see R.1987 d.408 at 19 N.J.R. 1800(a)). There is a proposed subchapter describing HCEP, which has not yet been adopted (see 22 N.J.R. 597(a)).

Social Impact

The proposed readoption impacts on those Medicaid patients who require home care services as an alternative to institutionalization. The proposed readoption also impacts upon persons who participate in HCEP. Some of the participants in HCEP may not be eligible for Medicaid. Home care services can be beneficial because they allow the patient the choice of receiving necessary care and services at home.

The proposed readoption impacts upon providers that render home health services, including Home Health Agencies and Homemaker Agencies.

The proposed readoption impacts on county welfare agencies that determine eligibility for the various home care programs.

Economic Impact

There is no economic impact to care recipients associated with this proposed readoption.

Medicaid patients who receive home care services under the basic Title XIX Medicaid program are not required to pay towards the cost of their care. Patients who participate in the Personal Care Assistant Program are not required to pay towards the cost of their care.

Persons who participate in the HCEP program may be required to contribute towards the cost of their care from their available income.

Home Care Programs that are funded jointly by the Federal and State government cost \$43,601,400 (federal-State share combined) for State Fiscal Year 1989.

Regulatory Flexibility Analysis

Some of the requirements in N.J.A.C. 10:60 impact on persons who would be applying for, or receiving services, under Title XIX or the State-funded HCEP. A regulatory flexibility analysis is not required concerning such persons because the individuals are not small businesses. However, the proposed readoption also contains requirements for providers, such as home health agencies and homemaker agencies, that would be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The requirements in this chapter apply equally to all providers regardless of size. Providers are required by law to maintain sufficient records to fully disclose the name of the patient being treated, dates and nature of service, and additional information as may be required by regulation. In addition, providers are required to submit timely and accurate documentation to the Fiscal Agent in order to be reimbursed (see N.J.S.A. 30:4D-12).

These record keeping, reporting, and compliance requirements are necessary to comply with the State law cited above, and for the health, safety and general welfare of persons receiving home care services.

This proposed readoption minimizes the adverse effect on small businesses by requiring no new forms, reporting requirements, etc.

There are no capital costs associated with this proposed readoption.

Home health agencies are already required to complete cost reports for Medicare and the Division uses Medicare principles of reimbursement. Home health agencies may choose to employ professionals, including accountants, to complete these cost reports.

Homemaker agencies, which are paid on a fee for service basis, are not required to complete cost reports. Therefore, they may not need to employ professional services, although they may choose to do so.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:60.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual—Child Support and Paternity

Enforcement of Health Insurance Coverage, Paternity Determinations, Disregarded Child Support Payments, Seeking of Support Orders, Timeframes, Form Utilization, ACSES System, Location Activities, Review of Child Support Orders

Proposed Amendments: N.J.A.C. 10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11, 11.12, 11.13, 11.14, and 11.15

Proposed New Rule: N.J.A.C. 10:81-11.21

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

Authority: N.J.S.A. 44:10-3; Family Support Act of 1988 (Public Law 100-485).

Proposal Number: PRN 1990-274.

Submit comments by July 4, 1990 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:81-11.2(d) provides that Title IV-D child support collection and paternity determination services shall be made available to the Department's Division of Youth and Family Services upon application and referral. County welfare/child support and paternity (CWA/CSP) agencies are to pursue paternity, and establish and enforce support orders against absent parents of foster care placed children, thereby enabling the State to obtain reimbursement for the cost of boarding placements.

The proposed amendment at N.J.A.C. 10:81-11.4(a) provides that a maximum of \$50.00 per month shall be paid to the eligible client in addition to the normal grant. The timeframes for distribution of this payment will be 20 calendar days from the date of initial receipt of the child support collection, unless the amount collected in a particular month is less than \$50.00. In that case, the \$50.00 payment should be sent to the client within 20 calendar days of the end of that month. The proposed amendment deleting N.J.A.C. 10:81-11.4(d)vi and vii reflects the automatic continuation of child support services without time constraints.

The proposed amendments at N.J.A.C. 10:81-11.9(d) and 11.13(a) provide maximum timeframes and steps necessary for absent parent location, establishing paternity, and obtaining a support order to ensure accountability in the IV-D program during each phase of support order establishment. The proposed amendments require that legal action for establishing paternity or obtaining a court order take place within 20 days of location of the absent parent. The proposed amendments also provide that for those cases in which paternity has not been acknowledged by the absent parent, a complaint shall be filed by the CWA/CSP within 20 days of locating the parent. Additionally, if the court dismisses the petition, it should be determined by the CWA/CSP unit when it will be appropriate to seek a support order in the future. The proposed amendment at N.J.A.C. 10:81-11.13(a) requires the CSP Unit to conduct parent location activity within 30 working days of referral or application when no court order exists.

The proposed amendment at N.J.A.C. 10:81-11.9(d)5 deals with the filing and enforcing of interstate orders, as specified in the Family Support Act of 1988 (P.L. 100-485). Those provisions specify a two-day timeframe between location of the absent parent at an out-of-State address and the filing of a complaint. The timely processing of support at an earlier date increases the probability of securing absent parent cooperation and may reduce or eliminate client reliance on assistance. The enforcement transmittal sent to the foreign jurisdiction is standardized and will aid in prompt enforcement through income execution, income tax offset and/or entry of an order for payment on arrears.

The proposed amendments at N.J.A.C. 10:81-11.2, 11.5, 11.7, 11.9 and 11.11 require the securing and enforcement of medical support as a condition of eligibility for IV-D services as specified in the Family Support Act of 1988 (P.L. 100-485). The proposed amendments provide that if health insurance is available to the absent parent at a reasonable cost and has not been obtained when the child support order is entered, steps may be taken by the CWA/CSP Unit to enforce the health insurance coverage required by the support order and provide the Medicaid agency with identifying case information. Health insurance costs incurred by the Medicaid agency will be reduced by the absent parent's insurance coverage for any appropriate costs. Should the family discontinue receiving public assistance, health insurance coverage is required to remain in effect to eliminate unnecessary medical costs to the family.

The proposed amendment at N.J.A.C. 10:81-11.7(a)10, regarding the assessment of a late payment fee of five percent for overdue support, deletes a procedure which is no longer in practice.

The proposed amendments at N.J.A.C. 10:81-11.9(b) and 11.12 delete the use of Form CSP-157 inasmuch as the implementation of the Automated Child Support Enforcement System (ACSES) no longer requires the use of that form.

In the proposed amendments to N.J.A.C. 10:81-11.9(d)2i and ii, the phrase "blood test" is being replaced with "genetic test" in order to conform with the Family Support Act of 1988 (P.L. 100-485), which now characterizes all blood testing as genetic testing.

The proposed amendments at N.J.A.C. 10:81-11.14 and 11.15 align State rules with Federal statutes on the location of absent parents for the purpose of collecting child support, paternity establishment, parental kidnap, and/or child custody cases. The Automated Child Support Enforcement System implemented in all counties will accept, analyze, and process data received from the local IV-D agency and other sources in a timely fashion, storing the information on a database for easy access. The proposed amendments delineate search responsibilities throughout local, State, out-of-State and Federal jurisdictions. The State sources to be utilized in the location process are also reflected.

Under current procedure, support orders are not reviewed or modified unless a specific request with documentation is received from the aggrieved party. Proposed new rule N.J.A.C. 10:81-11.21 provides for the timely review of all child support orders. As such, the applicability and adequacy of the current support order will be determined. The financial status of both the custodial and non-custodial parent will be considered in establishing the need for modification to the order. The criteria for selection of cases to be reviewed will be those cases with active IV-D child support orders. The review will determine if any change in circumstances of the concerned parties warrant that the support obligation be modified. The rule implements compliance provisions of the Family Support Act of 1988 (P.L. 100-485) in regard to reviewing and modifying all child support orders every three years, starting from the date of the initial order.

Additional technical changes were made throughout the text for clarification purposes and in order to reflect procedural changes resulting from the implementation of the ACSES system.

Social Impact

The proposed amendments concerning children in foster care guarantee their legal rights and establish the obligation of the Department's Division of Youth and Family Services to pursue paternity and the security of support for maintenance of those children.

The proposed amendment at N.J.A.C. 10:81-11.4(a) concerning the \$50.00 disregard child support payment will be beneficial to the children of families having entitlement to AFDC as it will make available additional assistance to the family. The first \$50.00 is to be sent to the client without reducing the assistance grant.

The proposed amendments concerning timeframes for paternity establishment will expedite the locating of absent parents process and ultimately the establishment of support orders. The improved response time will favorably impact on the receipt of funds due to client or the welfare agency.

The proposed amendments for filing of URESA complaints and enforcement of interstate orders in an expeditious manner may result in increased collections which may be used to reimburse assistance granted, remove a family from public assistance, or to prevent a family from entering the welfare cycle.

The proposed amendment requiring assignment of medical support as a condition of eligibility enhances existing policy directives by requiring the pursuit and enforcement of medical support from the absent parent. The proposed amendment mandates client cooperation to include the area of Medicaid. Consequently, should an AFDC/Medicaid Only client refuse to cooperate in the pursuit of medical support, and not claim good cause, his or her needs, including Medicaid coverage, will be deleted from the assistance grant.

The proposed amendments are intended to assist in obtaining medical support for individuals other than Medicaid coverage. The absent parent of the child(ren) receiving public assistance may be eligible for or possess employment related health insurance that may be modified to include coverage of his or her children.

The proposed amendments concerning location of absent parents utilizing the ACSES system will increase location of absent parents and result in a corresponding increase in payments, thereby benefiting the children.

The new rule which requires review and modification of child support orders reflects continued public concern for children by providing that a minimum standard of living for the child will continue to increase proportionately to that of the non-custodial parent.

Uniform administration of the child support guidelines mandated by the Family Support Act of 1988 (P.L. 100-485) will ensure equitable treatment of absent parents.

Economic Impact

The proposed amendments concerning foster care will favorably impact on clients and the public by offsetting costs of foster care for child(ren) in boarding placements through the timely collection of support from absent parents.

The proposed amendment providing an additional cash benefit of up to \$50.00 a month when current child support obligations are met will assist the AFDC family in meeting financial commitments without adversely affecting the assistance grant. This disregard payment should also act as an incentive to the assistance client in providing information regarding the location and employment status of the absent parent in order to facilitate the establishment of child support orders.

The proposed amendments concerning paternity timeframes will be beneficial as collections will be received sooner and in some cases may preclude the necessity of custodial parent from seeking public assistance. The proposed amendments concerning paternity timeframes and URESA cases, improve the potential to expedite payment, increase collections and may contribute to reducing the possibility of the custodial parent seeking, or needing public assistance in these cases in which the absent parent resides out-of-State.

The proposed amendments requiring the absent parent to provide medical support is anticipated to significantly reduce Medicaid costs. The absent parent's employment related or group health insurance will be used to pay for medical costs formerly reimbursed through the Medicaid Program.

The proposed amendments concerning location of absent parents are expected to favorably impact by reducing the turnaround time for location, enforcement and retrieval of case information in child support cases and in validating the ACSES system operation.

The review and modification of child support orders is expected to have a positive economic impact by preventing erosion of the support order as is often the case due to time and inflation. In a pilot study, completed by the Department's Office of Child Support and Paternity Programs, a review of 2,585 AFDC cases, approximately 26 percent (670 cases) no longer required public assistance due to increased support collections. These collections were a direct result of the review and modification of support orders.

Regulatory Flexibility Statement

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no reporting, record keeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program by a governmental agency rather than a private business establishment.

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

10:81-11.2 Eligibility requirements.

(a) In addition to the eligibility requirements contained in N.J.A.C. 10:81-3 and 5, requirements for AFDC eligibility shall include the following:

1.-2. (No change.)

3. Cooperation: The AFDC/Medicaid Only applicant shall be required to cooperate in obtaining support **and medical insurance** to which members of the eligible unit are entitled (see N.J.A.C. 10:81-11.5).

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

(d) Title IV-D support collections and paternity determination shall be made available to the Division of Youth and Family Services (DYFS) upon application and referral.

10:81-11.4 Assignment of support rights

(a) State law provides that application for or receipt of AFDC shall automatically operate as an assignment to the county welfare agency of any rights to support under Titles IV-A and IV-D of the SSA, except in those cases in which the only legally responsible relative is a member of the eligible unit or is the incapacitated parent in an AFDC-C case. **Any support collections assigned to the CWA are subject to the provisions at N.J.A.C. 10:82-4.17 concerning the disregard payment. Effective October 1, 1990, new timeframes for the distribution of the disregard payment will be as follows: The first \$50.00 of support collected in a month shall be sent to the client within 20 calendar days of the date of initial receipt. If less than \$50.00 of support is collected in a month, the disregard payment shall be sent to the client within 20 calendar days of the end of the month.**

(b) (No change.)

(c) Applicability: The assignment of support rights applies [only] to the AFDC program[;] **and AFDC/Medicaid Only.** [it] It is not an eligibility requirement for [AFDC Medicaid Only, Cuban/Haitian Entrant Program, or] the Refugee Resettlement Program.

(d) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC **or AFDC/Medicaid Only**, he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C **or Medicaid Only**, shall complete the appropriate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, **or determination of eligibility, but no later than 45 days of initial application.**

i. Relationship to application process: The fact that eligibility is not immediately established shall not delay routing of the IV-D referral document to the IV-D Unit. However, when a case is determined ineligible the IM worker shall notify the IV-D Unit [promptly] **immediately, or within 24 hours of such determination.**

ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the client shall, upon receipt, be forwarded to the CWA/IV-D Unit. If the IV-D Unit discovers that directly received support payments are being, or have been retained by the client, it shall immediately notify the IV-A Unit in writing.

(1) The client shall be [requested] **required** to remit the support payment to the CWA. If the client fails to comply, the amount of the direct support, less the \$50.00 disregarded child support payment, shall be counted as unearned income received in the budget month and used to determine the amount of the assistance payment to be issued for the corresponding payment month as set forth at N.J.A.C. 10:90-4.3(c)2ii.

(2) (No change.)

iv. (No change.)

v. Continuing IV-D services for families that lose AFDC eligibility: [The IV-D agency is required to collect support payments for a period of five months after the final AFDC payment the family receives under the Title IV-A program.] The IV-D agency is required to pay all amounts collected representing support to the family. A IV-D agency may not recover costs from either parent [during this period].

(1) **If collection services are terminated, the IV-D agency may require that a IV-D application be filed for services if the family requests these services to be reinstated.**

(2) **The application for non-AFDC services will require a \$5.00 fee on all cases where an application is filed on or after October 1, 1985.**

[vi. After the five-month continued IV-D service of collections: If the IV-D agency is authorized by the individual to collect current support payments from the absent parent, the IV-D agency collects such support amounts and pays the net amount collected to the family after deducting (optional) any costs incurred in making the collection from the amount of any recovery made. The IV-D agency is permitted to recover costs from either the custodial or the absent parent.

vii. Application fee for continuation of services: The IV-D agency is prohibited from requiring any formal application or imposing any application fee in cases where the IV-D agency is authorized to continue to collect and distribute support payments after a family ceases to receive AFDC payments. The IV-D agency is permitted to recover costs incurred in the collection of such support from either the absent parent or the custodial parent as specified in Section 457(C)(2) of the Social Security Act as modified by Section 7 of P.L. 98-378; amounts collected must be paid to the family on the same basis as they are paid in other non-AFDC IV-D cases.

(1) If collection services are terminated by the family after the five-month time period for continuation of IV-D collection services, the IV-D agency may require that a IV-D application be filed for services if the family requests these services to be reinstated.

(2) The application for non-AFDC services will require a \$5.00 fee on all cases where an application is filed on or after October 1, 1985.]

10:81-11.5 Cooperation in establishing paternity and obtaining support

(a) Cooperation in obtaining support **and medical insurance** and establishing paternity whenever necessary is a condition of eligibility for AFDC for each applicant recipient. The IM worker [(and supervisor) has] **have** responsibility for the determination of whether or not good cause for refusal to cooperate exists. This determination shall be based on evidence provided by the client and on consultation, where appropriate, with the CSP Unit.

(b) Notice to applicant or recipient: At the time of application, the IM worker will explain to the client the requirements for cooperation in connection with establishment of paternity [and], collection of support, **and medical insurance.** The worker shall also provide a written notice (PA-46) of the client's right to claim good cause for refusal to cooperate. Should the client claim to have good cause for noncooperation or request further clarification, he or she shall be given a further written notice (PA-47) describing the circumstances and evidence necessary for a finding of good cause.

1. (No change.)

(c) Cooperation requirements: Each applicant/recipient is required to cooperate with the CWA/CSP Unit, probation department, county prosecutor's office and other child support agencies in the following:

1.-2. (No change.)

3. Assisting in obtaining support payments **and medical insurance** for each individual for whom aid is requested; and

4. Assisting in obtaining any other payments, **including medical support**, or property due any individual for whom aid is requested.

(d) Cooperation explained: The term "cooperation" includes the following actions by the client:

1. Appearing at the offices of the appropriate child support agencies as necessary to provide oral or written information, or documentary evidence relevant to, obtaining support **and medical insurance**, which is known to, possessed by, or reasonably obtainable by the client;

2.-3. (No change.)

4. After receipt of a grant, paying to the CWA any child support payments which are received directly from [either] the absent parent, **whether voluntary or court ordered**, or through the probation department.

(e) Good cause for refusal to cooperate: A client who claims to have good cause for refusal to cooperate has the burden of establishing the existence of a good cause circumstance.

1. (No change.)

2. Good cause circumstances: Only when **at least** one of the following circumstances exists will the CWA determine that the client's cooperation is against the best interests of the child and there is good cause for refusal to cooperate:

i.-ii. (No change.)

iii. Proceeding to establish paternity or collect support **and medical insurance** in the particular case would be detrimental to the child because:

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

3. Physical and emotional harm: Physical and emotional harm must be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment which substantially affects the individual's functioning.

i. Anticipated emotional harm: When the good cause determination is based in whole or in part upon anticipated emotional harm to the child, parent or parent-person, the CWA will consider the following:

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

(4) The extent to which the child will be involved in [the] paternity establishment, **court proceedings, and/or** [or] support collection **and medical insurance** activity.

(f)-(g) (No change.)

(h) Refusal to cooperate: If the CWA determines that no good cause exists for the client's refusal to cooperate, the client shall be notified of the determination and given an opportunity to cooperate, withdraw the application for assistance, or have the case closed. The client shall also be advised of his or her rights to a fair hearing to appeal this adverse decision in accordance with N.J.A.C. 10:81-7.1(c).

1.-2. (No change.)

3. Maintenance of CSP effort: The deletion of the AFDC parent or parent-person from the eligible unit shall not be construed as a bar to continuing effort by the CSP Unit to establish paternity or obtain support **and medical insurance** for the AFDC children.

(i) (No change.)

(j) Enforcement without parent's cooperation: When the CWA makes a determination that good cause for refusal to cooperate exists, it will also determine whether or not child support enforcement and/or establishment of paternity **and medical insurance** can proceed without risk of harm to the child or parent with whom he or she lives if the enforcement or collection activities do not involve their participation. This decision, with the basis for the determination, will be recorded in the case record.

1. CSP recommendation: The CSP Unit will be given the opportunity to review the proposed determination and will be notified [promptly] **immediately or within 24 hours** regarding the decision.

2. Notification of client: The client will be notified that child support enforcement or establishment of paternity **and medical support** will proceed without the client's cooperation. The client may choose to withdraw his or her application of have the case closed. The client must also be advised of his or her rights to appeal this decision in accordance with N.J.A.C. 10:81-7.1(c).

(k) (No change.)

10:81-11.7 Responsibilities of the State agency

(a) The State [Bureau] **Office** of Child Support and Paternity Programs, located in the Division of Economic Assistance, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the [Bureau] **Office** of CSP Programs. Responsibilities of the [Bureau] **Office** of CSP Programs include, but are not limited to, the following:

1. The coordination of activities involving CWA/CSP Units, the county probation departments, county prosecutor's offices, [the county adjuster's offices (for URESA activity), the] county sheriff's offices, the State Attorney General's Office, and the Administrative Office of the Courts;

2.-8. (No change.)

9. Transmittal of all health benefits information, both voluntary and/or on support orders for AFDC **and Medicaid Only** clients, to the State's Division of Medical Assistance and Health Services.

[10. The assessment of a late payment fee of five percent for overdue support, to be applied the first day of the month following the month in which the support was due.]

[11.]10. (No change in text.)

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) This unit shall be responsible for taking appropriate action to locate obligors, to establish paternity and/or secure child support **and medical insurance** due AFDC **and Medicaid Only** recipients and non-AFDC persons; to annually send a notice of the amount of support payments collected during the preceding year to individuals who have assigned rights to support, as per N.J.A.C. 10:81-11.2(a)2; for securing and timely transmittal of all health benefits information, both voluntary and from new or modified court orders for support of AFDC and non-AFDC clients to the State [Bureau] **Office** of Child Support and Paternity and the State Division of Medical Assistance and Health Services; for referral of cases, when the whereabouts of the obligor is unknown, to the State Parent Locator Service; for providing services for location, filiation and obtaining and enforcing support for non-public assistance persons; and for referral of requests from consumer reporting agencies, concerning the amount of overdue

support owed by an obligor, to the State [Bureau] **Office** of Child Support and Paternity, via Form CSP-166. (See N.J.A.C. 10:81-11.7(a)1xii) regarding responsibilities of the State agency.)

(b) Notification to remit support payments to the CWA [- Form CSP-157, Case Information Exchange Notice]:

1. Purpose: All support rights due AFDC-C recipients are assigned to the CWA and paid through the appropriate county probation department. [Form CSP-157, Case Information Exchange Notice, shall be used to facilitate notification to the county probation department.

2. Completion and routing of Form CSP-157: Form CSP-157 must be completed in duplicate by the CSP Unit for any case in which a court order for child support exists and the beneficiary listed is someone other than the CWA. The original of this form shall be immediately forwarded to the appropriate probation department responsible for collection of the support order and the copy placed in the CSP Unit's case file.]

[3.] 2. (No change in text.)

[4. Return receipt of Form CSP-157 from the probation department: Upon return of Form CSP-157 from the county probation department, the CWA/Fiscal Unit shall be notified to initiate an account.]

(c) Investigative interview: In cases where a court order does not exist and sufficient current information is not already available, the CSP Unit shall arrange for an interview with the AFDC recipient **or IV-D applicant** no later than [10 working] **20 calendar** days after receipt of the referral document.

1. Purpose of interview: The purpose of the interview shall be to obtain any information which may be necessary to assist the CSP Unit in the establishment of paternity and/or support **and medical insurance** and/or in its search for an absent parent (see N.J.A.C. 10:81-11.13 through 11.14). Such information shall be recorded in the case record [(see (e)5 below] **as specified in (e) below**.

2. Action resulting from the interview:

i. If the information provided by the AFDC recipient is sufficient to warrant legal action, such action shall be taken in accordance with (d) below. **If information provided by the non-AFDC client is sufficient to warrant legal action, the non-AFDC client will be referred to the county family intake unit to file a paternity or non-support complaint and schedule a consent conference.**

ii. (No change.)

iii. If the probation department refers an AFDC parent or parent-person to the CSP Unit for refusal to cooperate (see N.J.A.C. 10:81-11.5), the CSP Unit shall conduct an interview with such client **within 10 working days** to ascertain if there exists actual refusal to cooperate[.]. [the] **The CSP Unit shall proceed in accordance with (c)2ii above.** If it is determined that such person has cooperated, any pertinent information shall be forwarded to the probation department **immediately**.

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support **and medical insurance within 20 working days of location**.

1. Consent process: For all cases in which sufficient information is available to initiate proceedings for the purpose of establishing paternity and/or obtaining support **and medical insurance**, a consent order will be attempted in accordance with individual county procedures **within 90 calendar days**.

i. Purpose: The consent process is to facilitate time efficient and cost effective methods to establish paternity and/or support **and medical support** orders.

ii. (No change.)

iii. Results: If paternity is acknowledged and/or support **and medical insurance** are [is] agreed upon, an order [is] **shall be established and forwarded to the appropriate court for review and approval by the judge within 90 calendar days**.

2. Filiation proceedings: With regard to **all IV-D** cases in which paternity has not been acknowledged, the CSP Unit shall file a complaint to establish paternity in a court of competent jurisdiction **within 20 working days of locating the alleged father**.

i. [Blood] **Genetic** test scheduling: If paternity is denied and the court orders [blood] **genetic** tests, the CWA/CSP Unit shall schedule the test at [the appropriate facility] **a legally and medically acceptable facility within one year of successful service or the child reaching six months of age.**

ii. Payment for [blood] **genetic** test: The CWA/CSP Unit shall have the court stipulate that the defendant is responsible for payment of the [blood] **genetic** test. The only exceptions would be for the following reasons:

(1) **The defendant is excluded and the court specifies that the defendant is not financially responsible** [, if he is excluded].

(2) **The defendant has been declared indigent by the court.**

(A) **Note: Defendant can be held liable for the cost and possible future payment** in cases where he is found indigent [, for possible future payment].

iii. **Legal proceedings waived: Filiation proceedings [may] shall be waived when good cause is established as per section 402(a)(26)(B) of the Social Security Act. [in] Good cause includes any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the judgment of the CWA, it would not be in the best interest of the child to [establish] pursue the establishment of paternity.**

iv. **Order of filiation: If the court finds that the person charged is the father, an order of filiation is made which also specifies the amount of support and medical coverage to be [paid] provided by the father for the maintenance of the child.**

v. (No change.)

vi. **Order of filiation denied: If a court of competent jurisdiction denies an order of filiation against an individual, the CSP Unit shall take no further action with regard to that alleged absent parent, except for appeal of the decision of the court, if warranted. If the court or administrative authority dismisses a petition for a support order without prejudice, the CWA/CSP unit shall examine the reasons for dismissal, determine when it would be appropriate to seek a support order in the future, and seek a support order at that time.**

3. **Support proceedings: In cases where paternity has been legally established through marriage and an agreement cannot be reached at the consent conference, [a nonsupport complaint shall be filed in a court of competent jurisdiction] the defendant will be brought before a hearing officer the same day.**

4. **Filing of complaint: The applicant/recipient is not required, as a condition of eligibility for assistance, to sign a complaint to establish paternity or obtain support and medical insurance. Such complaints shall be filed in the name of the CWA by the director or his or her authorized representative within 30 calendar days. Whenever possible, the complaints should be filed in the name of both the CWA and the client to ensure continuation of the court action should the client's assistance be terminated. In non-AFDC cases only the custodial parent will sign the complaint.**

5. **Treatment of cases in which the absent parent resides out-of-[state] State: In cases where the absent parent resides out-of-[state] State, proceedings to establish paternity and/or secure child support and medical insurance shall be in accordance with the Uniform Reciprocal Enforcement of Support Act (1968) (URES A). [The CWA shall file a URES A nonsupport complaint in accordance with individual county procedure (see (d)4 above).] Within two days of locating the absent parent the CWA, with the client's cooperation, will complete Uniform Support Petition (OS550) and General Testimony For URES A (OS548).**

i. **Where an order for support exists, the CWA will request payment enforcement through the local County Probation Department (CPD) by use of URES A Action request (OS546-01).**

6.-9. (No change.)

10. **Treatment of a case in which the absent parent is in the military: In cases where the absent parent is serving in the military, formal legal proceedings should be initiated (see (d)1 through 5 above).**

i. **If the absent parent is temporarily stationed out of the country and New Jersey does not have reciprocity with the particular country, the absent parent's commanding officer shall be contacted to obtain a voluntary admission of paternity and/or a military allotment for child support and medical coverage.**

ii. **In cases where the absent parent is serving in the military and there is a valid court order under the jurisdiction of a probation department within the State, a request for an allotment shall be made through the appropriate probation department [, provided the absent parent has failed to make payments equal to the support payable for two months or longer].**

(e) (No change.)

(f) **Application for IRS full collection: Application for full collection by the IRS may be made only in those cases which involve a delinquent amount of a child support obligation under the order of a court of competent jurisdiction. Applicants/recipients of AFDC may be eligible for this service under Section 402(a)26 of the Social Security Act and 45 CFR 232.11 since the application for assistance assigns support rights to the State. Under Section 454(6) of the Social Security Act, non-AFDC families may also be eligible for this service when a signed "Application for IV-D Services" is obtained from the client.**

1.-3. (No change.)

4. **Approval or disapproval of application: If the [Bureau] Office of CSP Programs approves the application, it will then be submitted to the DHHS Regional Office of Child Support Enforcement, which will approve or disapprove the application. The CWA or county probation department (CPD) will be notified, in writing, by the Bureau of CSP Programs with regard to approval or rejection of the application.**

5. (No change.)

6. **Form CSP-109, Application for IRS Full Collection: Application for such services is made via Form CSP-109, Application for IRS Full Collection [of Child Support]. Applications may be submitted by the director of the CWA or his or her designee or the chief probation officer or his or her designee. Certification and authorization of pertinent court order information and arrearage amounts must also be signed by the chief probation officer or any individual so designated by the chief. The application shall be submitted to the [Bureau] Office of CSP Programs and a copy retained in the case record.**

(g) **Access to IRS data for child support enforcement: Upon written request, the IRS is authorized to disclose individual income tax return information to State and local child support enforcement agencies. The State CSP Unit has been designated the single State unit responsible for requesting information and ensuring adequate safeguards against wrongful disclosure in accordance with Federal requirements. Records that may be accessed include master file information and tax return information.**

1.-4. (No change.)

5. **Security requirements: The Federal Government has issued the following security requirements for IRS tax information.**

i. (No change.)

ii. **An access list of persons authorized to process and request IRS data must be submitted to the New Jersey [Bureau] Office of Child Support and Paternity Programs [(State CSP Bureau)] before any information can be released. Access to areas where IRS information is stored or processed must be controlled to the degree that unauthorized personnel, to include janitorial staff, must be escorted there by an authorized individual during non-working hours. Locks or combination to the security container must be changed yearly or upon departure or reassignment of authorized personnel. When written material containing IRS data is no longer needed, it must be returned to the State CSP [Bureau] Office. No information provided by IRS may be copied in any manner. Records must be maintained as to the disposition of such material. Periodic inspections of State and local facilities by the IRS will be conducted to ensure that security precautions and confidentiality requirements are being met.**

6.-8. (No change.)

(h)-(k) (No change.)

(1) **Title IV-D services available to non-public assistance persons: Appropriate child support services are to be made available to non-public assistance persons upon application filed by such individual with the IV-D Agency. These services shall include locating obligors, establishing paternity and securing support and medical insurance.**

1. **Form CSP-111, Application for Non-Public Assistance Child Support and Paternity Services: Non-public assistance individuals**

requesting services from the CWA shall apply for such services by signing Form CSP-111. This form shall be executed in duplicate. (See N.J.A.C. 10:81-11.2(c) regarding application fee.) **The CWA will provide applications on the day an individual requests an application for services. Information describing services, rights and responsibilities, fees, cost recovery and distribution policies must accompany all applications for services. An application must be accepted on the day it is received.**

i.-ii. (No change.)

2.-3. (No change.)

4. Obtaining an order: Non-public assistance persons seeking support payments **and medical insurance** shall be referred to the county intake unit responsible for initiating consent conference.

5. (No change.)

10:81-11.11 Good cause determination

(a) The CSP Unit shall not undertake to establish paternity or secure child support **and medical insurance** when the unit has received notice from the income maintenance unit that there has been a finding of good cause for noncooperation (N.J.A.C. 10:81-11.5), except as noted in N.J.A.C. 10:81-11.5(j)2.

1. Activities suspended: Upon receipt of notice from the IM Unit that an applicant/recipient has claimed good cause (see N.J.A.C. 10:81-11.5(i)2), the CSP Unit will, until notified of a final determination, suspend all activity in regard to [collection of support and/or establishment of paternity] **establishment of paternity, and collection of support and/or medical insurance.**

2. CSP activity without client participation: When there has been a finding that good cause exists but the IM Unit notifies the CSP Unit that child support enforcement may proceed without participation of the applicant/recipient, the CSP Unit will undertake to establish paternity **and/or secure child support and medical insurance** without involvement in any way of the applicant/recipient (see N.J.A.C. 10:81-11.5(j)).

10:81-11.12 Notification of deletions, terminations, suspension or transfer of case/individual

[(a) In the case of termination, deletion or transfer, the appropriate probation department shall be notified of such action no later than 10 days after the effective date via Form CSP-157, Case Information Exchange Notice. In the event of a case suspension beyond three months, the appropriate probation department shall likewise be notified.

1. Completion and routing of Form CSP-157, Case Information Exchange Notice: The appropriate Section(s) of Form CSP-157 shall be completed in duplicate and the original of this form shall be forwarded to the appropriate probation department responsible for collection of the support order and the copy placed in the CSP Unit's case file (see N.J.A.C. 10:81-11.9(b)3).

2. Return receipt of Form CSP-157: Upon return receipt of Form CSP-157 from the probation department a copy shall be forwarded to the CWA/Fiscal Unit, if appropriate, and a copy shall be placed in the CSP case file.]

[(b)](a) In the case of termination of AFDC assistance, the IV-D agency will notify the family that it will continue to collect and distribute current child support payments. The appropriate IV-D agency collecting support must be notified of the continuation of IV-D services for families that lose AFDC eligibility.

10:81-11.13 Parent Locator Service

(a) The locating of absent parents for the purpose of establishing paternity and enforcing child support **and medical insurance** obligations is a CWA responsibility. To fulfill this requirement, the CWA shall establish a parent locator service within the CSP Unit to perform parent locator services as described in N.J.A.C. 10:81-11.14.

1. The CSP Unit will conduct parent location activity in all cases for which no court order exists **within 30 working days of application or referral.** In cases where a court order does exist, the probation department has responsibility for parent location activities; however, it is recommended that on cases where court ordered support is not being received the CWA notify the probation department of the need for enforcement.

10:81-11.14 CWA parent locator responsibilities

[(a) Form PA-450A, Parent Locator Request Form: Referrals to the State PLS and Federal PLS for parent location activity are accomplished via Form PA-450A.

1. Completion of Form PA-450A: When the whereabouts of a parent are unknown, the CSP Unit shall complete a PA-450A from information obtained during the investigative interview and ensure that the six critical data elements described in the data entry guide are completed.

2. Routing Form PA-450A: The CSP Unit shall immediately transmit PA-450As to the State PLS. Batches will contain no more than 40 cases. Bundles should contain no more than 20 batches.

3. Updated PA-450As: When additional location information is obtained by the CSP Unit after the original Form PA-450A has been forwarded to the State PLS, an updated Form PA-450A shall be sent.]

(a) **The CSP Unit shall conduct ongoing investigations to locate the absent parent at the local, State and Federal levels as necessary based on information obtained during the investigative interview or other leads. The opening of a case and referral for location must take place within 20 calendar days. All locate sources are required to be accessed and responses verified within 75 calendar days of determining that location is necessary. CWA/CSP shall utilize the Automated Child Support Enforcement System (ACSES) to do searches and appropriate systems-generated forms. When the absent parent is believed to be in another county within the State, the CSP Unit shall access ACSES to obtain all necessary information to pursue location.**

(b) Local investigation: The CSP Unit shall conduct a concurrent investigation with the State PLS in an effort to locate the absent parent at the county level. The State PLS shall be notified immediately if the absent parent is located after such referral. If the investigation reveals additional location information, such new information shall be forwarded to the State PLS.

1. Sources: The following sources are to be used by the CWA/CSP Units during its investigation, as appropriate. All of these sources may not be available in every county. This list of sources is not exclusive.

i.-iii. (No change.)

iv. Last known employer of absent parent regarding:

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

(3) Social Security number **and date of birth;**

(4) (No change.)

v.-ix. (No change.)

x. County court house records:

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

(4) **Other family court matters;**

xi.-xii. (No change.)

xiii. Credit bureaus and credit reporting agencies **and the ACSES Find Screen to determine if the absent parent is connected to any other AFDC case.**

(c) Inter-county cooperation requirement:

1. (No change.)

[2. The CSP Unit must take action (including contact of sources enumerated in (b)1 above) as appropriate in response to direct requests received from other counties within the State when the requesting county has reason to believe that the absent parent may be located in that county.]

2. **Counties are directed to share known information on an absent parent even when it is not requested by another county, or the requesting county has changes. The information will be entered as an update to the absent parent screen and known system-wide via ACSES.**

(d) (No change.)

(e) **The following State sources are to be utilized by CWA/CSP for absent parent searches via automated interfaces on ACSES. This list is not all inclusive:**

1. State Division of Motor Vehicles;

2. State Department of Labor;

3. Records of Public Assistance Agencies;

4. State Department of the Treasury;

5. State Department of Corrections; and

6. Parent Locator Services of other states (where appropriate).

(f) Federal PLS is to be utilized via tape interface to check the following sources:

1. National Personnel Records Commission (NPRC);
2. Department of Veterans Affairs (DVA);
3. Social Security Administration (SSA);
4. Internal Revenue Service (IRS); and
5. Department of Defense (DOD).

(g) If the Federal PLS is unsuccessful in the location process, cases which meet the minimum data requirements shall be resubmitted at least annually.

10:81-11.15 State/Federal Parent Locator Service (PLS)

(a) The State PLS shall be responsible for absent parent searches at the State agency level, coordination of interstate location activities, and referrals to the Federal PLS. This includes the Division of Youth and Family Services (DYFS), parental kidnapping, Administrative Office of the Courts (AOC) referrals, out-of-State and out-of-county locate requests.

1. (No change.)

[2. Notification of results of State PLS efforts: The State PLS will notify the CSP Unit immediately via Form PA-450A and PA-450B Parent Locator Source Response Form, of information obtained on a case.]

(b) All State PLS cases, excluding AOC and out-of-country, will access Federal PLS via PC to search the following sources:

1. National Personnel Records Commission (NPRC);
2. Department of Veterans Affairs (DVA);
3. Social Security Administration (SSA);
4. Internal Revenue Service (IRS); and
5. Department of Defense (DOD).

(c) The State PLS will notify the requesting office immediately via form PA-450A, Source Response Form, or other hard copy, of information obtained on a case.

10:81-11.21 Modification of support orders

(a) The criteria for the selection of cases for review, regarding modifications, will be active IV-D child support orders that are three years or older from the date of the initial order or review.

1. The county probation department will supply the county welfare agency with a list of all support orders that are three years or older from the date of the initial order or last review. Included in this list will be the defendant's name and social security number, the amount of the support order and the date of the support order.

2. The county welfare agency will review the listing and determine the last known place of employment for the absent parent accessing the IAPI screen of the ACSES system.

3. If the ACSES system does not contain a place of employment for the absent parent, the case will be submitted to the Office of Child Support and Paternity Programs for further efforts in locating the place of employment via credit reporting, integrity control, and so forth.

i. The State Office of Child Support and Paternity Programs will document the last place of employment reported and forward this information back to the appropriate county welfare agency. The CSP worker(s) involved will examine the information and prepare a subpoena and a cover letter to all employers.

4. The child support worker will review all returned wage verifications and compute the child support guidelines worksheet to determine the weekly child support amount. The support amount will be computed in accordance with New Jersey Court Rule 5:6A.

5. When a determination is made that an adequate change has occurred in the defendant's salary, circumstances which warrant an increase in the support obligation, an application for an increase in the support order will be initiated on behalf of the plaintiff. Adequate change is determined by the defendant's ability to pay. A monetary increase of \$15.00 per week in the formulated support order is considered an adequate change.

6. Those cases requiring hearings will be scheduled before a court-appointed child support hearing officer. Court dates will be listed in advance.

7. The county welfare agency will prepare a certification in support of the application for increase and attach to it the wage verification and the child support worksheet. The entire packet will be photostated

for the county welfare agency file with the original packet being forwarded for service as per New Jersey Court Rule 4:4-4.

8. The county welfare agency attorney will represent the agency at all modification hearings and will be responsible for recording the results of the hearing.

9. Each case reviewed pursuant to this section shall be reviewed again every three years.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Annual Adjustments to the Maximum Coupon Allotments, Maximum Net and Gross Income Limits, 165 Percent Poverty Level Table, and Income Deductions

Proposed Amendments: N.J.A.C. 10:87-5.10, 6.15, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, and 12.7

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

Authority: N.J.S.A. 30:4B-2, Food Stamp Act of 1977 as amended (7 U.S.C., Sections 3 and 5), 7 CFR Parts 273.2, 9 and 10, and United States Department of Agriculture Notice No. 79-47.

Proposal Number: PRN 1990-275.

Submit comments by July 5, 1990 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed amendments is to facilitate and incorporate changes to the New Jersey Food Stamp Program so that it may be administered in the most effective manner possible.

The Food Stamp Act of 1977 as amended (7 U.S.C.) contains provisions which mandate that the income and deduction standards utilized to determine the eligibility and level of benefit of applicants for the Federal Food Stamp Program be revised annually. Those standards are based either on the Poverty Guidelines issued by the United States Department of Health and Human Services, or methodologies described in the Food Stamp Act of 1977 itself and promulgated by the United States Department of Agriculture (USDA) through publication of General Notices in the Federal Register. Specifically, the standards in question are the Net and Gross Income Eligibility Standards, the Maximum Coupon Allotment, the 165 Percent of Poverty Standard, and the Standard and Shelter Deductions. Adjustments to those standards are effective each October 1, as prescribed by the Food Stamp Act of 1977.

The New Jersey Department of Human Services is reliant on USDA to publish the above-mentioned standards in the Federal Register before those amounts can be incorporated into the New Jersey Food Stamp Program. Upon issuance of the revised standards, the Department's Division of Economic Assistance (DEA) is required, under the New Jersey Administrative Procedure Act, to publish emergency rulemaking in the New Jersey Register so that the Federally mandated tables are incorporated into the New Jersey Food Stamp Program in accordance with the mandatory October 1 effective date. The USDA releases those standards in General Notices published in the Federal Register, but not before the deadline for filing a proposal in the New Jersey Register has passed. Thus, DEA has been required to utilize the emergency rulemaking process in order to enact the new standards into the New Jersey Food Stamp Program. Under the proposed amendments, the Income Deduction Table, the Maximum Coupon Allotment Table, the Maximum Allowable Net and Gross Income Standards (N.J.A.C. 10:87-12.1 through 12.4, respectively) and the 165 Percent of Poverty Level table (N.J.A.C. 10:87-12.7) will be incorporated into the New Jersey Food Stamp Program through reference to General Notices published in the Federal Register. The issuance of Public Notices in the New Jersey Register will announce the revised standards, thus alleviating further need to utilize emergency rulemaking.

The Food Stamp Allotment Proration and Monthly Coupon Allotment tables at N.J.A.C. 10:87-12.5 and 6 presently reflect their "parent" Federal regulations, and are being amended to reflect only the Federal regulatory citations from which they are derived.

The Department of Human Services also proposes to effect the annual adjustments to the Standard and Heating Utility Allowances (SUA and HUA, respectively) and the Uniform Telephone Allowance (UTA) so that those revised amounts are implemented in concert with the October 1 change in the Federal standards discussed above. Since both the Federally mandated standards and the SUA, HUA, and UTA are programmed into New Jersey's automated food stamp issuance system (FAMIS), the concurrent enactment of the new SUA, HUA, and UTA amounts on October 1 of each year with the Federally mandated adjustments is a cost-effective method of incorporating those deductions into the New Jersey Food Stamp Program.

Unlike the Federally mandated coupon allotment, income level and deduction amounts, the SUA, HUA, and UTA are deductions which are issued as a result of research by DEA. In accordance with 7 CFR 273.9(d)(6)(iv), DEA is permitted to develop those deductions so that they might reflect the utility expenses which food stamp recipients in New Jersey might incur. USDA retains the authority of reviewing and approving New Jersey's annual utility and telephone allowances prior to their implementation. DEA utilizes the "Texas" methodology described by USDA in its Notice No. 79-47 to calculate its annual SUA and HUA. The 1989-1990 SUA and HUA calculated by DEA was approved by USDA's Mid-Atlantic Regional Office on August 7, 1989. The proposed amendment provides a detailed description of the methodologies employed in the calculation of New Jersey's SUA and HUA, and states that those allowances are adjusted on October 1 of each year to reflect recent changes in regional utility expenses. Copies of USDA Notice No. 79-47 will be provided to interested parties who submit a written request to DEA.

In New Jersey Food Stamp households which incur a major utility expense (that is, a utility expense other than water, sewerage, garbage or telephone) are entitled to either the SUA (for households which incur a major utility expense other than heating) or the HUA (for households which incur a heating utility expense). While the DEA utility allowance methodology varies from those described in 7 CFR 273.9(d)(6)(i), it has not contributed to the food stamp payment error rate, and has proven to be a simple means of administering adjustments to the utility allowances. In his July 28, 1986 correspondence to DEA, USDA Regional Director Peter Santos approved DEA's policy of utilizing two separate annualized utility allowances (SUA and HUA). Under the proposed amendment, the annual adjustments to the SUA and HUA will be noticed in the New Jersey Register.

New Jersey's utilization of the Uniform Telephone Allowance (UTA) is based upon 7 CFR 273.9(d)(6)(v)(C). Under that Federal regulation, New Jersey may create such an allowance which may be utilized by food stamp households as a shelter expense, provided that households incur a monthly telephone expense. Since the UTA is also a component of the SUA and HUA, households which elect to receive either allowance are not additionally entitled to the UTA. The UTA is formulated from the above cited Federal regulation, as well as from the guidelines issued by USDA's Program Development Division in its November 24, 1986 memorandum. The latter communication states that only those costs associated with basic telephone service may be utilized in creating a telephone utility allowance. USDA's Mid-Atlantic Regional Office approved New Jersey's present UTA in its August 7, 1989 letter to DEA. Under the proposed amendment, future adjustments to the UTA will be noticed in the New Jersey Register. The proposed amendment also identifies the specific methodology utilized to derive the UTA. Copies of the above-mentioned USDA Office of Program Development Division memorandum will be provided to interested parties who submit a written request to DEA.

The proposed amendments would also divorce the Food Stamp Dependent Care Deduction from N.J.A.C. 10:87-12. Unlike the other standards and allowances described above, the Dependent Care deduction is enacted through a specific act of Congress and is not subject to annual revision through the issuance of a General Notice. Under the proposed amendment, the Dependent Care deduction will be specifically cited at N.J.A.C. 10:87-5. Any required adjustment to it will be instituted through the normal rulemaking process.

Finally, technical recodification corrections are being proposed to N.J.A.C. 10:87-5.10 and 6.15, so that those sections are aligned with the changes to N.J.A.C. 10:87-12.

Social Impact

The proposed amendments will have no impact on the recipients of the New Jersey Food Stamp Program. The proposed amendments will streamline the means by which DEA enacts annual adjustments to the income eligibility, deduction, and coupon allotment amounts, but will not alter the method by which those standards are created. Food stamp recipients will benefit because DEA and county welfare agencies will have adequate time to ensure that the annual changes are properly provided to all households.

Economic Impact

No significant economic impact is expected as a result of the proposed amendment. The proposed amendment will ensure that required adjustments to the New Jersey Food Stamp Program are performed in a manner consistent with Federal statute and regulations, thereby reducing the risk of possible imposition of fiscal sanctions by USDA. The proposed amendment ensures a cost-effective means of administering required adjustments to the Food Stamp Program.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, record keeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Food Stamp Program to a low-income population by a governmental agency rather than a private business establishment.

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

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1. Standard deduction: The standard deduction, specified at N.J.A.C. 10:87-12.1(a), shall be deducted from income, whether earned or unearned.

2.-3. (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, but shall not exceed [the amount in N.J.A.C. 10:87-12.1] **\$160.00** per each dependent for whom the household pays dependent care.

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1(b) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. Allowable shelter costs: Only the following shall be considered in determining the shelter cost deduction:

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

(3) Utilities: The costs of heating and cooking fuel; cooling and electricity; water and sewage; garbage and trash collection fees; the basic service fee, plus tax, for one telephone (the uniform telephone rate is found in N.J.A.C. 10:87-12.1(c)) and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

ii.-iii. (No change.)

iv. Utility standard: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1(d) or (e)) in accordance with the following provisions:

(1)-(7) (No change.)

10:87-6.15 Calculating net and gross income and benefit levels

(a) (No change.)

(b) Net and gross monthly income: To determine a household's net monthly income, the CWA shall follow steps (b)1 through 8 below. To determine a household's total gross income, the CWA shall add, after rounding (according to procedures at (c)1 below), each individual's monthly earned and unearned income(s). This total, minus income exclusions (see N.J.A.C. 10:87-5.9), provides the sum total gross monthly income figure which shall be used to determine the household's eligibility in accordance with (d)1 or 2 below.

1.-3. (No change.)

4. Step 4: Subtract the standard deduction (see N.J.A.C. 10:87-12.1(a)).

5.-7. (No change.)

8. Step 8: Subtract the excess shelter cost up to the maximum (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly net income after all other applicable deductions. The maximum amount allowed for shelter (for those households subject to a shelter maximum) is the maximum in N.J.A.C. 10:87-12.1(b). Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income now has been determined.

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

10:87-12.1 Income [deduction table] deductions

[TABLE I

Income Deductions

Standard Deduction	\$112.00
Shelter Deduction	\$177.00
Dependent Care Deduction	\$160.00
Uniform Telephone Allowance	\$ 15.00
Standard Utility Allowance	\$112.00
Heating Utility Allowance	\$182.00]

(a) The Standard Deduction shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.9(d)(7), published annually in the Federal Register, pursuant to 7 CFR 273.9(d)(1), and effective October 1 of each year.

(b) The Shelter Deduction shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.9(d)(8), published annually in the Federal Register, pursuant to 7 CFR 273.9(d)(5), and effective October 1 of each year.

(c) The Uniform Telephone Allowance shall be calculated by totaling the New Jersey Bell Telephone Company highest regional Flat Rate Service charge, the FCC subscriber line charge, applicable Federal Tax and the monthly A.T. and T. monthly leasing charge for a rotary dial telephone. As required by 7 CFR 273.9(d)(6), DEA shall review and adjust the Uniform Telephone Allowance on July 1, to be effective October 1 of each year.

(d) The Standard Utility Allowance shall be recalculated annually by DEA effective October 1, in accordance with 7 CFR 273.9(d) and the "Texas" methodology described in USDA Notice No. 79-47, issued May 25, 1979 and shall be the sum of the following:

1. The Major Non-Heating Utility component shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the non-heating utility expenses which those households incurred. The data shall be arranged to project what the 95th percentile of such monthly costs are, thus arriving at a Base Period amount of \$49.00 per month. The Base Period amount shall be updated to reflect projected non-heating major utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "Fuels" item for the New York/Northern New Jersey and Philadelphia metropolitan regions to create an average "New Jersey Consumer Price Index" (NJCPI-U) which represents major non-heating utility costs incurred in New Jersey urban areas. The 12 NJCPI-U statistics representing July of the previous year through June of the current year shall be trended (straight line, least squares method) to project the average non-heating index amounts for November of the current year to October of the following

year. The comparison of this average to that which existed in 1977 shall produce an inflation adjustment factor to be applied to the average monthly non-heating base cost figure of \$49.00.

2. The Minor Non-Heating Utility component (representing sewerage, garbage, water, and trash) shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the minor non-heating utility expenses which those households incurred. The data shall be arranged to project what the 95th percentile of such costs are, thus arriving at a Base Period amount of \$1.34 per month. The Base Period amount shall be updated to reflect projected minor non-heating utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "All items" item for the New York/Northern New Jersey and Philadelphia metropolitan regions to create an average "New Jersey Consumer Price Index" (NJCPI-U) which represents minor non-heating utility costs incurred in New Jersey urban areas. The 12 NJCPI-U statistics representing July of the previous year through June of the current year shall be trended (straight line, least squares method) to project the average minor utility index amounts for November of the current year to October of the following year. The comparison of this average to that which existed in 1977 shall produce an inflation adjustment factor to be applied to the average monthly minor non-heating Base Period amount of \$1.34.

3. The Uniform Telephone Allowance described at N.J.A.C. 10:87-12.1(c) shall be a component of the SUA.

(e) The Heating Utility Allowance shall be recalculated annually by DEA effective October 1, in accordance with 7 CFR 273.9(d) and the "Texas" methodology described in USDA Notice No. 79-47, issued May 25, 1979 and shall be the sum of the following:

1. The Major Heating Utility component shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the heating utility expenses which those households incurred. The data shall be arranged to project what the 75th percentile of such monthly costs are, thus arriving at a winter Base Period amount of \$128.00 to represent November through April monthly utility costs, and a summer Base Period amount of \$44.00 to represent May through October monthly utility costs. Each base period amount shall be updated to reflect heating utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "Fuels" item for the New York/Northern New Jersey and Philadelphia metropolitan regions. The six NJCPI-U statistics for July through December of the previous year shall be trended (straight line, least squares method) to project the average heating index amounts for November of the current year through April of the following year. The six NJCPI-U statistics for January through June of the following year shall be trended (straight line, least squares method) to project the average heating index amounts for May through October of the following year. Each amount shall be compared to the 1977 base data, thus creating an inflation adjustment factor. Each inflation adjustment factor shall be applied to the appropriate winter or summer Base Period amount. The totals shall be averaged to arrive at the annual Heating Utility component.

2. The Minor Non-Heating Utility component described at N.J.A.C. 10:87-12.1(d)2 shall be included in the HUA.

3. The Uniform Telephone Allowance described at N.J.A.C. 10:87-12.1(c) shall be a component of the HUA.

10:87-12.2 Maximum coupon allotment [table]

[TABLE II

Maximum Coupon Allotment (MCA)

Household Size	MCA
1	\$ 99
2	182
3	260
4	331
5	393
6	472
7	521
8	596
9	671
10	746
Each Additional Member	+75]

The Maximum Coupon Allotment shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.10(e)(4), published annually in the Federal Register, pursuant to 7 CFR 273.9(e)(4), and effective October 1 of each year.

10:87-12.3 Maximum allowable net income standards

[TABLE III]

Maximum Allowable Net Income

Household Size	Maximum Allowable Income
1	\$ 499
2	669
3	839
4	1009
5	1179
6	1349
7	1519
8	1689
9	1859
10	2029
Each Additional Member	+170]

The Maximum allowable net income standards shall be those calculated by the United States Department of Agriculture and published annually in the Federal Register, pursuant to 7 CFR 273.9(a) and effective October 1 of each year.

10:87-12.4 Maximum allowable gross income standards

[TABLE IV]

Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	\$ 648
2	869
3	1090
4	1311
5	1532
6	1753
7	1974
8	2195
9	2416
10	2637
Each Additional Member	+221]

The Maximum allowable gross income standards shall be those calculated by the United States Department of Agriculture and published annually in the Federal Register, pursuant to 7 CFR 273.9(a) and effective October 1 of each year.

10:87-12.5 Food stamp allotment proration

(a) In accordance with 7 CFR 273.10(a)(1)(iii), the [The] formula for determining food stamp proration is as follows:

$$\frac{\text{Full month's benefits} \times (31 \text{ minus date of application})}{30} = \text{prorated allotment}$$

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

10:87-12.6 Monthly coupon allotment

(a) In accordance with 7 CFR 273.10(e)(2)(ii), the [The] formula for determining the monthly coupon allotment is as follows:

- 1. (No change.)

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII

165% of Poverty Level

Household Size	Maximum Allowable Income
1	\$ 823
2	1103
3	1384
4	1664
5	1945
6	2225
7	2506
8	2786
9	3067
10	3348
Each Additional Member	+281]

The 165 percent of poverty level amounts shall be that established and published annually as required by 7 U.S.C. 2014(c).

INSURANCE

(a)

THE COMMISSIONER

Insurance Group

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

11:2

Proposed Repeal: N.J.A.C. 11:2-8

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

Authority: N.J.S.A. 17:1C-6(e).

Proposal Number: PRN 1990-290.

Submit comments by July 5, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), the Commissioner of Insurance proposes to readopt N.J.A.C. 11:2, concerning insurance group rules, with certain technical and substantive amendments and the repeal of rules concerning mid-term substitutions of insurance policies by mortgagors. This chapter is due to expire on December 2, 1990.

This chapter includes rules related to different areas of insurance, including life and health, property and casualty and the financial integrity of insurers. Rules concerning the following subjects are codified in this chapter.

1. Insurance on financed automobiles.
2. Credit life and health insurance.
3. Electronic data processing equipment.
4. Proxies, consents and authorizations.
5. Information required in proxy statement.
6. Information required by participants in proxy solicitation in election contests.
7. Mid-term substitution by mortgagor of insurance policies.
8. Insider trading of domestic stock insurance company equity securities.
9. Advertisement of health insurance.
10. Mass marketing of property and liability insurance.
11. Group coverage discontinuance and replacement.
12. Insolvent insurers.
13. Guaranteed arrest bond certificates of automobile club under-taking.
14. Unfair claims settlement practices.
15. Readable policies.
16. Advertisement of life insurance and annuities.
17. Annual audited financial reports.

The rules in this chapter were promulgated to implement many of the statutory requirements in Titles 17 and 17B of the New Jersey Statutes.

The Department has undertaken a review of these rules at several levels to determine their current effectiveness and viability. This review has included the Divisions of Enforcement and Consumer Protection, Actuarial Services, Financial Examinations, Public Affairs and Legislative and Regulatory Affairs.

With the exception of subchapter 8, concerning mid-term substitutions of insurance policies by a mortgagor, the rules continue to provide the insurance industry and the consumer with vital information and useful standards concerning many aspects of insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist.

The Department is proposing to repeal the rules concerning mid-term substitutions of insurance policies by mortgagors since this rule is a banking rule originally enacted in 1965, when the Department of Insurance was the Department of Banking and Insurance.

The Department is proposing to amend several provisions of the rules for both technical and substantive reasons. These reasons include correcting outdated mailing addresses, deleting references to the term "solicitor," since this type of insurance representative no longer exists, and amending rules concerning readable policies and guaranteed arrest bonds to conform to statutory changes. A reference to the defunct Automobile Insurance Plan (AIP) is proposed for deletion as is an unnecessary reference to the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA). The rules concerning readable policies are amended to include reference to the requirement in Section 13 of the "Fair Automobile Insurance Reform Act of 1990" (First Reprint), that the automobile insurance Buyer's Guide and Coverage Selection Form be written in plain language. Additionally, pursuant to N.J.S.A. 17:31-6, the amount of a guaranteed arrest bond certificate which can be issued by an automobile club or association has increased from \$200.00 to \$500.00. Finally, the Department proposes to change the rule concerning the cost of equipment as an admitted asset to eliminate the current \$100,000 threshold and 10-year amortization requirement. This amendment is considered to be necessary since the passage of time has introduced smaller, less expensive computer units to service an insurer's needs. Moreover, the current 10-year amortization requirement does not recognize the fact that new systems become outdated more quickly.

The rules in this chapter primarily serve two general purposes in implementation of statutory law. First, they protect the consumer by addressing issues such as unfair claims settlement practices, advertising, readability of insurance policies and forms and mass marketing of property and liability insurance. Secondly, they provide guidance to the insurance industry respecting such business-related matters as insolvency, proxies, insider trading of stock, and annual audited financial reports. Several rules, of course, serve both purposes (for example, advertising; unfair claims settlement practices).

The public is further advised that the Department has proposed rules for this chapter which have been published in the New Jersey Register but which have not yet been adopted.

Social Impact

As noted above, the rules address several areas of concern to the consumer and protect them from potential unfair trade practices concerning insurance. Rules concerning advertising help ensure that consumers are fully informed about the various insurance products so that they can choose the products best suited to their needs. The rules concerning unfair claims settlement practices ensure that insureds receive prompt, efficient and appropriate consideration of their claims. The rules concerning readable policies enable insureds and prospective insureds to more easily understand the highly technical aspects of insurance and insurance contracts. The rules concerning mass marketing of property and liability insurance prevent abuses in the sale of personal property/liability insurance pursuant to mass marketing plans, while preserving for consumers the benefits of this form of marketing.

The insurance industry has also come to rely on the presence and viability of these rules in its operation. Insurers are provided with standards concerning certain trade practices as noted above, and with information concerning annual audited financial reports, insolvency and cancellation of property/liability policies, insider trading, proxies and the sale of credit life and health insurance. The industry's current accommodation to these requirements provides a necessary stability for the insurance regulatory system in New Jersey.

The rules in this chapter enable the Department of Insurance to fulfill its regulatory duties under law. Failure to readopt these rules would

impair the Department's regulatory powers and would unsettle established relations between insurers and the general public and between these two groups and the Department of Insurance.

The protections that these rules afford the consumer and the operational guidance that they afford the insurance industry mandate their continued existence both to implement statutory provisions and to foster and promote a sound regulatory policy.

The amendment to the rule concerning the cost of equipment as an admitted asset will enable smaller companies, which need only smaller systems, to receive asset credit for them.

Economic Impact

The failure to readopt this chapter would require the insurance industry to perform many significant statutory functions without guidance from the Department. This would impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring it to implement procedures which may or may not be acceptable to the Department. The industry has invested a great amount of time and resources in operating in compliance with the Department's current procedures. Several rules, such as those concerning insider trading and annual audited financial reports, help ensure financial stability and proper business practices among insurers. This inures to the benefit of both the insurer and the general public.

The rules may impose significant costs on insurers who aggressively advertise their products by requiring that such advertisements comply with certain minimum standards for accuracy. The rules concerning unfair claims settlement practices impose time and behavioral strictures upon insurers which undoubtedly require the expenditure of funds to accommodate. The Department's standards and requirements concerning readable policies also impose on insurers costs in the preparation of their policies.

The rules clearly impact on the consumer public. As previously noted, several rules address industry trade practices which directly relate to a consumer's use of his limited insurance dollars. Thus, rules concerning advertising protect the consumer and his insurance budget by ensuring that he chooses only those coverages that are truly necessary. The rules concerning unfair claims settlement practices help ensure that a consumer receives the claim settlement to which he is entitled.

The readoption of the current rules will enable the Department to continue to monitor insurance matters in a manner which appropriately meets its current fiscal resources and capabilities. The use of current procedures that have been proven effective over time has economies of procedure for the Department.

Throughout the years, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the insurance industry and the public. The Department is unaware of any provisions of these rules that impose untoward or unnecessary and onerous financial burdens on the insurance industry.

Regulatory Flexibility Statement

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined at N.J.S.A. 52:14B-16 et seq. Several rules (for example, replacement of life insurance) relate to the conduct of insurance producers, most of whom are "small businesses."

Significant record keeping and reporting requirements imposed by the chapter include the requirement concerning annual audited financial reports and the requirement that insurer maintain files for the Department's review concerning their advertising activities. The rules enable insurers to comply with the Plain Language Law, N.J.S.A. 56:12-1 et seq., by providing minimum readability standards.

The compliance, record keeping and reporting requirements imposed by the rules are clearly defined in the rules themselves and are too extensive to reproduce herein. The Department has determined that they continue to be necessary. The rules apply to all insurers or insurance producers, as the case may be, without regard to size since they implement statutory provisions and/or regulatory tenets which allow for no such exceptions. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary.

Future annual costs of compliance with these rules are not expected to differ from current annual costs. The use of professional services currently required by the rules (for example, actuaries; claims professionals; underwriting professionals) will continue to be necessary.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:2.

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

11:2-4.1 Cost of equipment as admitted asset

In determining the financial condition of a domestic or foreign insurance company or the United States branch of an alien insurance company, there shall be allowed as admitted assets the cost of electronic data processing equipment (**hardware**) purchased by the company, provided [the cost of such purchase is at least \$100,000, and provided further that such cost shall be amortized in full over a period not to exceed ten calendar years] **that such cost shall be amortized in full over a period not to exceed five calendar years, and provided further that where software is necessary to operate the system, such software shall be included as an asset.**

SUBCHAPTER 8. [MID-TERM SUBSTITUTION BY MORTGAGOR OF INSURANCE POLICIES] (RESERVED)

[11:2-8.1 Substitution in mid-term by mortgagor of an insurance policy.

(a) No lender or other legal entity servicing mortgages shall make any charge in excess of \$5.00 for the substitution in mid-term by the mortgagor of an insurance policy or policies.

(b) The effective date of this regulation is July 21, 1965]

11:2-9.24 Form A

For copies of Form A, write to the Department of Insurance, [201 East State Street] **20 West State Street, CN 325**, Trenton, New Jersey 08625.

11:2-9.25 Instructions to Form B

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

(c) One signed copy of each statement shall be filed with the Commissioner of [Banking and] Insurance, [State House Annex] **20 West State Street, CN 325**, Trenton, New Jersey 08625.

(d)-(m) (No change.)

11:2-9.26 Form B

For copies of Form B, write to the Department of Insurance, [201 East State Street] **20 West State Street, CN 325**, Trenton, New Jersey 08625.

11:2-12.7 Producers

No person shall act as an insurance agent or an insurance broker in connection with a mass marketing plan for any kind of insurance unless such person is duly licensed, under N.J.S.A. 17:22A-1 et seq. [of the insurance law], as an **insurance agent or broker** for such kind of insurance in such insurance plan.

11:2-16.1 General provisions

(a) Whenever a domestic or foreign surety company which has qualified to transact surety business in this State, in any year, becomes surety in an amount not to exceed [\$200.00] **\$500.00** with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association by filing with the Commissioner of Insurance an undertaking thus to become surety, such undertaking shall state:

1. (No change.)

2. The unqualified obligation of the surety company to pay the fine or forfeiture in an amount to exceed [\$200.00] **\$500.00** of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, failed to make the appearance for which the guaranteed arrest bond certificate was posted.

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

11:2-17.6 Rules for replying to pertinent communications

(a) All claims must be reported to the designated insurer by a broker no later than three working days following receipt of notification of claim by the broker. For the purposes of this subsection, "broker" shall include a producer of record with respect to [the New Jersey Automobile Insurance Plan and the New Jersey Insurance Underwriting Association] **any residual market mechanism created by statute.**

(b)-(e) (No change.)

11:2-18.1 Purpose

The Plain Language Law (N.J.S.A. 56:12-1 et seq., as amended) requires certain insurance policies to be written in a "simple, clear, understandable and easily readable way." N.J.S.A. 39:6A-23 **requires that each buyer's guide and coverage selection form required by that section to be issued to insureds and prospective insureds for automobile insurance be written in plain language.** This subchapter provides rules for the implementation of [the Act] **these provisions.**

11:2-18.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise: "Buyer's Guide" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides a brief description of all available policy coverages and benefit limits, identifies which coverages are optional and mandatory, and identifies all options offered by the insurer.

"Coverage Selection Form" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides information required by the Commissioner pursuant to N.J.A.C. 11:3-15.7.

"Text" means all printed matter in a policy, except the name and address of the insurer; the name, number and title of the policy; the table of contents or index, captions or subcaptions; applications; specification or declarations pages; and schedules or tables. "Text" does not include the Coverage Selection Form or specific language required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency.

11:2-18.4 Minimum readability standards

(a) (No change.)

(b) A policy, **Buyer's Guide and Coverage Selection Form** shall be printed in legible type style with adequate contract between paper and ink. Captions, headings and spacing shall be used to increase overall readability.

(c) A policy **and Buyer's Guide** shall be printed in not less than 10 point type, one point leading. This rule shall not apply to schedules and tables; specification or declaration pages; or applications.

(d) (No change.)

(e) Policies **and Buyer's Guides** with 3,000 or more words, or with four or more pages, shall contain a table of contents or alphabetical index.

(f) (No change.)

(g) Each section of a policy, **Buyer's Guide and Coverage Selection Form** shall be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(h) (No change.)

(i) Policies, **the Buyer's Guide and the Coverage Selection Form** shall be written in everyday, conversational language with a personal style, and technical terms or words with a special meaning shall be avoided wherever possible.

(j) The text of a policy **and Buyer's Guide** shall achieve a score of at least 40 on the Flesch reading ease test or an equivalent score on a comparable test authorized for use by the Commissioner.

1. For the purpose of [(j) of] this subsection, a Flesch reading ease test score shall be measured by the following method:

i. For policy forms **and Buyer's Guides** containing 10,000 words or less of text, the entire form shall be analyzed. For policy forms **and Buyer's Guides** containing more than 10,000 words, the readability of two 200 word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

ii.-iii. (No change.)

iv. The sum of the figures computed under ii and iii above subtracted from 206.835 equals the Flesch reading ease score for the policy form **or Buyer's Guide.**

v. (No change.)

2.-3. (No change.)

INSURANCE

PROPOSALS

11:2-18.5 Procedures for requesting an opinion of compliance with the Plain Language Law

(a) An insurer may request an opinion from the Commissioner as to whether an insurance policy and related "writings required to complete the consumer transaction", a Buyer's Guide and a Coverage Selection Form are in compliance with the Plain Language Law. The Commissioner shall consider the Law's provisions and the implementing provisions of this subchapter in responding to such requests.

(b) For each policy form and related writings, Buyer's Guide and Coverage Selection Form for which an opinion is desired, an insurer shall prepare the Request for Opinion shown in Exhibit A of the Appendix to this subchapter. For related writings (including riders and endorsements) submitted separately from a basic contract to which they will apply, one Request for Opinion Form shall be prepared for each writing or group of writings applicable to one policy form. The insurer shall also provide two copies (where possible, "specimen" or "proof" copies) of the policy and related writings, Buyer's Guide and Coverage Selection Form to be reviewed.

(c) An officer of the insurer shall complete and submit the Affidavit of Compliance shown in Exhibit B of the Appendix to this subchapter for each [contract] policy and related writings, or for each separately submitted writing or group of writings applicable to one policy form. An officer of a rating organization which requests an opinion as to compliance may complete and sign the affidavit on behalf of the member companies of the rating organizations.

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

(f) Any insurance policy, Buyer's Guide and Coverage Selection Form whose language is revised for any reason, including compliance with the Plain Language Law, must be approved by the Commissioner pursuant to insurance laws and regulations before it can be issued:

1. The Commissioner's opinion as to compliance with the Plain Language Law is distinct from his or her approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

2. Filings for review and approval of policies, Buyer's Guides and Coverage Selection Forms pursuant to insurance laws and regulations should be prepared in accordance with existing filing procedures.

3. Ordinarily, a request for an opinion as to a [policy] policy's, Buyer's Guide's or Coverage Selection Form's compliance with the Plain Language Law and a filing for approval pursuant to insurance laws and regulations should be submitted to the Commissioner at the same time and in the same package.

4. If an insurer has already received approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations, and believes that the policy [compliance], Buyer's Guide and Coverage Selection Form complies with the Plain Language Law without further revision, it may resubmit [the policy] it for the sole purpose of requesting an opinion as to compliance with the Plain Language Law. In completing the Request for Opinion Form (Exhibit A), [it] an insurer should provide information necessary to confirm the previous approval of the policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

AGENCY NOTE: Exhibits A and B, which comprise the Appendix to N.J.A.C. 11:2-18, are currently located in the New Jersey Administrative Code at the end of N.J.A.C. 11:2. By this proposal, this Appendix will be relocated in the New Jersey Administrative Code to directly follow subchapter 18.

APPENDIX EXHIBIT A

REQUEST FOR OPINION AS TO COMPLIANCE WITH PLAIN LANGUAGE LAW

(N.J.S.A. 56:12-1 et seq., as amended)

NAME OF INSURER: _____ FORM NUMBER: _____

ADDRESS: _____ DATE OF SUBMITTAL: _____

TELEPHONE: _____

I. PURPOSE OF [POLICY] SUBMISSION

1. Is an opinion as to whether the form, Buyer's Guide or Coverage Selection Form complies with the Plain Language Law being requested pursuant to N.J.S.A. 56:12-8?

YES NO

2. Is filing and approval pursuant to insurance laws and regulations by the Department of Insurance also being requested?

YES NO

Note: Filings for approval of policies pursuant to insurance laws and regulations should be prepared in accordance with the Department's existing procedures. Requests for readability certification should include Exhibits A and B; two copies of the policy (including related writings), Buyer's Guide or Coverage Selection Form to be reviewed; and any appropriate attachments.

3. If the form, Buyer's Guide or Coverage Selection Form you are submitting has already been approved by the Department of Insurance pursuant to insurance laws and regulations, please indicate the following information:

DEPARTMENT FILE NUMBER: _____

DATE OF DEPARTMENT OF INSURANCE APPROVAL: _____

II. REFERENCE TO OTHER FORMS

Pursuant to N.J.S.A. 56:12-5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurers or rating organization or if, in the case of a Buyer's Guide and Coverage Selection Form, the language does not differ from N.J.A.C. 11:3-15.6 or N.J.A.C. 11:3-15.7.

1. If a policy, Buyer's Guide or Coverage Selection Form, is similar but not identical to a previously certified policy, Buyer's Guide or Coverage Selection Form, please identify the previously certified policy, Buyer's Guide or Coverage Selection Form, as specifically as possible. Include the following information if available.

FILER: _____

FORM NUMBER: _____

DEPARTMENT FILING NUMBER: _____

DATE OF CERTIFICATION: _____

2. [Describe] Indicate how the [policy] material now submitted for review differs from the previously certified [form] materials by the use of brackets for deleted material and underlining for new material.

III. FLESCH READING EASE TEST

1. Identify any language not considered "text" as defined in N.J.A.C. 11:2-18.3 of the regulation on policy readability. This language may be identified by reference to the policy section numbers.

2. If any of the language identified in item 1 is required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency, identifying both the language and the law, rule or interpretation.

3. If the text of the policy or Buyer's Guide does not score at least 40 on the Flesch reading ease test, provide an explanation to enable the Commissioner to determine whether the lower score is warranted by the nature of the policy form (N.J.A.C. 11:2-18.4(i)3 of the regulation). A lower score will be accepted only in exceptional circumstances.

Name and Title of Person Completing Form

Signature

EXHIBIT B

AFFIDAVIT OF COMPLIANCE

NAME OF INSURER: _____ FORM NUMBER: _____

I certify that this contract and related writings comply with the Plain Language Law (N.J.S.A. 56:12-1 et seq.) and with N.J.A.C. 11:2-18.

I certify that the score of the text of the form on the Flesch reading ease test is _____ and that the test score has been accurately calculated as required by N.J.A.C. 11:2-18.

I also certify that the form(s) or Buyer's Guide is printed in not less than 10 point type, one point leading and/or the application is not less than 8 point type, one point leading as required by N.J.A.C. 11:2-18.4 and N.J.A.C. 11:3-15.6.

I also certify that any Coverage Selection Form submitted is not less than 12 point type, as required by N.J.A.C. 11:3-15.7.

Date: _____
Name and Title of Insurer's Officer
Signature

11:2-26.3 Definitions

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

... "Insurer" means any person, association, partnership or corporation licensed, authorized or eligible to transact the business of insurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 3 of Title 17B of the Revised Statutes of the State of New Jersey including, but not limited to, eligible surplus lines insurers, inter-insurance exchanges and all risk retention groups as defined in 15 U.S.C. section 3901 doing business in New Jersey. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to [the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq. and] municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices
Payment of PIP Claims

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

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

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

Proposal Number: PRN 1990-291.

Submit comments by July 5, 1990 to:

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

The agency proposal follows:

Summary

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

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

Social Impact

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

Economic Impact

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

Regulatory Flexibility Statement

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

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

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

(a) (No change.)

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

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

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

2.-3. (No change.)

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

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

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

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

(a)

**THE COMMISSIONER
Automobile Insurance**

**Proposed Readoption with Amendments: N.J.A.C.
11:3**

Proposed Repeals: N.J.A.C. 11:3-2, 3, 4 and 5

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

Authority: N.J.S.A. 17:1C-6(e).

Proposal Number: PRN 1990-292.

Submit comments by July 5, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order 66 (1978), the Commissioner of Insurance proposes to readopt N.J.A.C. 11:3, concerning automobile insurance, with certain technical and substantive amendments and the repeal of rules concerning the defunct Automobile Insurance Plan (AIP). This chapter is due to expire on January 6, 1991.

It should be noted that this proposed readoption does not include any changes to the rules which will be separately proposed later this year in implementation of "The Fair Automobile Insurance Reform Act of 1990" ("Act"). This bifurcation is necessary since the rules required to implement the Act cannot be prepared in time to accommodate the readoption requirements imposed on the Department by Executive Order No. 66 (1978).

This chapter includes rules related to automobile insurance and, specifically, the following subjects:

1. Commercial Automobile Insurance Plan (CAIP).
2. Rating Rules Concerning the Automobile Insurance Plan (AIP).
3. Automobile Insurance Identification Cards.
4. Automobile Reparation Reform Act.
5. Nonrenewal of Automobile Insurance Policies.
6. Rating Information: Automobile Insurance on Private Passenger Cars.
7. Auto Physical Damage Claims.
8. Moped Insurance.
9. Unsatisfied Claim and Judgment Fund (UCJF): Flattening of Premium Taxes.
10. Deductibles for Private Passenger Auto Collision and Comprehensive Coverages.
11. PIP Options.
12. Buyer's Guide and Coverage Selection Form.
13. Rate Filing: Voluntary Market Private Passenger Automobile.
14. Flex Rating.
15. Private Passenger Auto: Rate Filing Reviews.
16. Reporting Financial Disclosure and Excess Profits.
17. Negative Excess Investment Insurance in the Computation of Excess Profits.
18. PIP: Reduced Premiums for Additional Autos in One Household.
19. Coverage Option Survey.
20. Dangerous Drivers or Drivers with Excessive Claims.
21. Policy Constants.
22. Residual Market Equalization Charges (RMECs).
23. Accident Claims.
24. Unsatisfied Claim and Judgment Fund (UCJF) Board.
25. UCJF Reimbursement of Excess Medical Expense Benefits.
26. Motor Vehicle Self-Insurance.
27. Examination of Financial Experience of Private Passenger Automobile Insurers.

The rules in this chapter were promulgated to implement statutory requirements in Titles 17 and 39 of the New Jersey Statutes.

The Department has undertaken a review of these rules at several levels to determine their effectiveness and viability. This review has included the Property/Liability Division and the Division of Legislative and Regulatory Affairs.

With the exception of subchapters 2 through 5, concerning the defunct Automobile Insurance Plan (AIP), and until the independent and subsequent promulgation of new rules and amendments in implementation of the Act, the rules provide the insurance industry and the consumer with information and useful standards concerning many aspects of automobile insurance.

The Department is proposing to repeal the rules concerning rating under the AIP since the AIP no longer exists and because these rules do not apply to the Commercial Automobile Insurance Plan, rules for which were recently adopted and codified at N.J.A.C. 11:3-1.

The Department is proposing to amend several provisions of the subchapter for both technical and substantive reasons. These reasons include: correcting outdated addresses; eliminating references to the AIP or New Jersey Automobile Full Insurance Underwriting Association (JUA), and replacing it with a more general reference to "residual market mechanism" in implementation of the Act; amending the Department's Automobile Insurance Coverage Option Survey consistent with the Act; deleting the allowance for rating organization filings, pertaining to physical damage coverages for dangerous drivers or drivers with excessive claims, to be applicable to organization members, in accordance with the Act; and amending certain requirements concerning accident claims filed with the Unsatisfied Claim and Judgment Fund (UCJF), which are intended to provide the UCJF with additional claim information necessary for it to better fulfill its statutory function.

Social Impact

The rules address all aspects of automobile insurance in New Jersey. For example, they apprise insurers writing automobile insurance of their obligations concerning claims, ratemaking and filing and coverage requirements. The rules also provide consumers with a compendium of rights concerning claims settlement for auto physical damage and with the written notice required by law concerning coverages and auto insurance generally (for example, Buyer's Guide; Coverage Selection Form).

Until such time as the Department promulgates new rules in implementation of the Act, these rules provide standards that are necessary to the proper functioning of the auto insurance industry in New Jersey.

Economic Impact

The failure to readopt this chapter would require the insurance industry to perform many statutory functions without guidance from the Department. This would impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring it to implement procedures which may or may not be acceptable to the Department. The industry has invested a great amount of time and resources in operating in compliance with the Department's current procedures.

The rules specifically require insurers to maintain and file with the Department a significant amount of financial rating-oriented data to supplement various provisions of Title 17 of the New Jersey Statutes, with attendant costs. The rules also establish a minimum of \$300,000 surety bond requirement for motor vehicle self-insurance.

Rules concerning claims filing and settlement procedures and the requirements concerning the Buyer's Guide and Coverage Selection Form directly inure to the consumer's economic benefit by ensuring the prompt and proper settlement of claims and by providing consumers with the information necessary to make appropriate choices concerning the insurance options available for their limited resources.

The readoption of the current rules will enable the Department to continue to monitor insurance matters in a manner which appropriately meets its current fiscal resources and capabilities. The use of current procedures that have proven effective over time have economics of procedure for the Department.

Throughout the years, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the insurance industry and the public.

Regulatory Flexibility Statement

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Several rules (for example, replacement of life insurance) relate to the conduct of insurance producers, most of whom are "small businesses."

The compliance, record keeping and reporting requirements imposed by the rules are clearly defined in the rules themselves and are too extensive to reproduce herein. Examples of reporting requirements include the requirements that automobile insurers submit to the Com-

missioner extensive rate information pursuant to N.J.A.C. 11:3-12.5, 13.4, 13.7 and subchapters 16 and 16A. Additionally, automobile insurers must submit reports concerning non-renewal of automobile insurance policies pursuant to N.J.A.C. 11:3-8.5, and concerning excess profits pursuant to N.J.A.C. 11:3-20. Automobile insurers must also furnish reports concerning coverage options chosen by insureds pursuant to N.J.A.C. 11:3-22. Significant compliance requirements include the preparation of a Buyer's Guide and Coverage Selection Form for transmission to insureds for private passenger automobile insurance, and the preparation and filing with the Department of the above-mentioned reports. Record keeping requirements include the requirement that automobile insurers prepare and file with the Department a financial data report concerning private passenger automobile insurance to enable the Department to evaluate more completely financial data filed pursuant to Title 17.

The Department has determined that such requirements continue to be necessary. The rules apply to all insurers or insurance producers, as the case may be, without regard to size. The Department considers the requirements imposed to be the minimum necessary to implement the applicable statutory provisions. As such, no differentiation requirements can be provided based upon business size. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary.

Future annual costs of compliance with these rules are not expected to differ from current annual costs. The use of professional services currently required by the rules (for example, actuaries; claims professionals; underwriting professionals) will continue to be necessary.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:3.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-2, 3, 4 and 5.

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

11:3-1.2 Definitions

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

... "Eligible applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is not in good faith qualified for automobile insurance coverage in [the New Jersey Automobile Full Insurance Underwriting Association as defined in N.J.S.A. 17:30E-3m] **any residual market mechanism created by statute**. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. Members of the United States military forces with vehicles registered in other states shall be deemed eligible applicants if they are otherwise eligible; are stationed in New Jersey; and the vehicle is garaged in New Jersey at the time application is made. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

... ["New Jersey Automobile Full Insurance Underwriting Association" (NJAFIUA) means the private passenger automobile insurance residual market established pursuant to N.J.S.A. 17:30E-1 et seq.]

... "Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through [the New Jersey Automobile Full Insurance Underwriting Association] **any residual market mechanism created by statute**, and is owned by an individual or husband and wife.

... "Voluntary All Other Automobile Direct Written Premiums" means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. (No change.)
2. Any direct written premiums included in the figures from insureds who are eligible applicants for [the New Jersey Full Insurance

Underwriting Association as defined in N.J.S.A. 17:30E-3m] **any residual market mechanism created by statute**.

3.-4. (No change.)

11:3-6.2 Permanent identification card (form IV-1)

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

(d) Servicing carriers of [the New Jersey Automobile Full Insurance Underwriting Association] **any residual market mechanism authorized by statute** shall issue an insurance identification card in accordance with (b) and (c) above. Provided, however, that the card shall indicate that coverage is being issued by the servicing carrier on behalf of the [New Jersey Automobile Full Insurance Underwriting Association] **residual market mechanism**.

11:3-6.3 Temporary identification card (form IV-2)

(a) The specifications for temporary insurance identification cards [for motor vehicles not insured through the New Jersey Automobile Insurance Plan] are set forth below:

1.-5. (No change.)

[(b) The specifications for temporary identification cards for motor vehicles insured through the New Jersey Automobile Insurance Plan are set forth below:

1. The size shall be the same as the permanent identification card;
2. The weight shall be 24 pound white stock (minimum);
3. The color shall be the same as the permanent identification card;
4. Number of copies: Original and one duplicate;
5. The content of the temporary card shall be the same as the permanent identification card except as noted below:

i. Title: "Temporary" to precede heading on card;

ii. Two check-off boxes with the following legend: 999 New Jersey Automobile Insurance Plan on behalf of an insurer to be designated by the plan. An authorized New Jersey insurer will issue an owner's policy of liability insurance, in accordance with the provisions of the New Jersey Automobile Insurance Plan. If this vehicle is being added to or is replacing a vehicle presently insured in the plan, the name of the existing insurance company and policy number must be set forth as indicated below. Next to the second check-off box, space for the company code number, the name of the insurance company and the policy number;

iii. Effective Date: Month, day and year that coverage becomes effective;

iv. Expiration: The card shall contain the following statement: "This card expires 60 days after the effective date shown above."

11:3-8.2 General provisions

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

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. (No change.)

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i[.] below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Each notice of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew (or conditionally renew, as appropriate) your policy is not in compliance with [New Jersey Regulation] N.J.A.C. 11:3-8, you should file a written complaint immediately with the New Jersey Department of Insurance, Division of [Licensing and] Enforcement and Consumer Protection, 20 West State Street, CN 325, Trenton, New Jersey 08625."

3. The notice of nonrenewal shall also include or be accompanied by a statement advising the insured of his possible eligibility for coverage through [the New Jersey Automobile Full Insurance Underwriting Association] **a residual market mechanism created by statute**.

11:3-9.1 Rating information; private passenger cars; automobile insurance

(a) (No change.)

[(b) Information submitted in compliance with the New Jersey Automobile Insurance Plan on cars insured through that plan shall constitute compliance with this regulation.]

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

INSURANCE

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11:3-10.5 Unreasonable delay

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

(d) A copy of the second update letter sent 60 days after the date of receipt of notice of loss, and all thereafter sent to any New Jersey insured, shall be mailed simultaneously to the insured and the Division of [Licensing and] Enforcement and Consumer Protection, [201 East State Street] **20 West State Street**, CN 325, Trenton, New Jersey 08625.

11:3-20.3 Definitions

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

“Insurer” means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within the insurance holding company system as defined in N.J.S.A. 17:27A-1 et seq. Insurer does not include [the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.] **any re-**

sidual market mechanism for automobile insurance for the purposes of this subchapter.

11:3-22.3 Coverage option survey requirements

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

(c) Completed coverage option survey forms shall be submitted to:

Director of [Consumer] **Public Affairs**
 State of New Jersey, Department of Insurance
 [201 East State Street,] **20 West State Street**
 [P.O. Box] CN 325
 Trenton, New Jersey 08625

(d) (No change.)

(e) Insurers which act as servicing carriers for [for New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA)] **a residual market mechanism created by statute** shall report directly to the Department only the coverage options selected by their voluntary policyholders. The options selected by [Association insured should] **residual market mechanism insureds** shall be reported directly to the [NJAFIUA] **residual market mechanism**.

(f) (No change.)

Form A
 STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
 AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19 _____

Options

	Number of Automobiles
PIP Coverages for Medical Expenses Only	_____
PIP Medical Expense Benefits Deductible:	_____
\$ 250	_____
500	_____
\$1,000	_____
\$2,500	_____
Excess of \$250,000	_____
Health Insurance Primary for PIP	_____
Auto Insurance Primary for PIP	_____
Tort Threshold	_____
Lawsuit Threshold	_____
No Threshold	_____

Form B
 STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
 AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19 _____

PIP [Deductible] Option	Auto Insurance Primary Full PIP with [Lawsuit/No Threshold]		Auto Insurance Primary Medical PIP Only With [Lawsuit/No Threshold]		Health Insurance Primary Full PIP with	
	Lawsuit Threshold	No Threshold	Lawsuit Threshold	No Threshold	Lawsuit Threshold	No Threshold
\$250 deductible						
\$500 deductible						
\$1,000 deductible						
\$2,500 deductible						
Excess \$250,000						

11:3-23.1 Purpose

The purpose of this subchapter is to implement N.J.S.A. 17:29C-2.1 (P.L. 1985, c.520) which authorizes insurers in the voluntary market to refuse to issue or nonrenew physical damage coverages to drivers who are identified as dangerous drivers or drivers with excessive claims. The statute permits voluntary market insurers[, and requires the New Jersey Automobile Full Insurance Underwriting Association,] to issue physical damage coverages to drivers identified as dangerous drivers or drivers with excessive claims on the basis of their experience. N.J.S.A. 17:29C-2.1 requires that the Commissioner adopt standards and guidelines for the identification of dangerous drivers and drivers with excessive claims which take into consideration the total driving record of the driver including serious driving offenses and at-fault accidents occurring within a three-year period.

11:3-23.2 Scope

This subchapter shall apply to all insurers authorized to write private passenger automobile insurance in this State [including the New Jersey Automobile Full Insurance Underwriting Association, and to all policies covering automobiles as defined in N.J.S.A. 39:6A-2 or N.J.S.A. 17:30E-3].

11:3-23.3 Definitions

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

...
 ["Association" means the New Jersey Automobile Full Insurance Underwriting Association and its servicing carriers.]

...
 "Insurer" means an insurance company authorized to write private passenger automobile insurance in this State, including [the New Jersey Automobile Full Insurance Underwriting Association] **any residual market mechanism created by statute.**

...
 "Voluntary market insurer" means an insurance company authorized to write private passenger automobile insurance in this State, except [the New Jersey Automobile Full Insurance Underwriting Association] **any residual market mechanism created by statute.**

11:3-23.4 Availability of physical damage coverages for dangerous drivers or drivers with excessive claims

(a) (No change.)

(b) Any voluntary market insurer may issue or renew physical damage coverages for any policy covering a driver who is identified as a dangerous driver or driver with excessive claims pursuant to N.J.A.C. 11:3-23.5 at rates based on their experience and approved by the Commissioner. Any voluntary market insurer wishing to impose higher rates for physical damage coverage for dangerous drivers and drivers with excessive claims shall submit to the Commissioner filings of rates and manual rules prepared in accordance with N.J.S.A. 17:29A-1 et seq., N.J.A.C. 11:1-2 and any applicable insurance laws, rules and the Department's current filing procedures. [The filing of a rating organization shall be applicable to the members of the organization who have authorized the organization to file on their behalf.]

(c) [The New Jersey Automobile Full Insurance Underwriting Association] **Any residual market mechanism created by statute** shall issue physical damage coverages to its insureds identified as dangerous drivers and drivers with excessive claims pursuant to the requirements and procedures found in its Plan of Operation[, Operating Principles, Part IV, Association Rates, Section 2, Driver Improvement Plan].

11:3-26.1 Claim information

(a) Notice of intention to make claim under N.J.S.A. 39:6-55 [as amended by P.L. 1958, c.99, approved July 1, 1958,] shall contain the following information:

1. The claimant's name [and], address **and date of birth**;
2. The time and place of the accident, **the municipality and county in which the loss occurred and the date of loss**;

3. The identity of the operators and vehicles involved in the accident, **including the name and address of the owner and operator and the license plate number of the vehicle**;

4. (No change.)

5. A short description of the accident, **including the claimant's role or position therein**;

6. A description of the injuries then known, and attached thereto a medical certificate if then available. In any event the medical certificate shall be filed as soon as available; [and]

7. A description of the damage sustained to property, and attached thereto an estimate of the cost of repairs if then available[.]; **and**

8. **The policy number of any insurance applicable to the accident, including the name and address of all insurance companies involved.**

11:3-26.2 Claim filing; form

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

(c) **A notice of intention to make a claim that does not contain the items identified in N.J.A.C. 11:3-26.1(a)1 through 8 shall be returned to the sender and deemed to be unfiled with the Unsatisfied Claim and Judgment Fund (UCJF) for the purpose of complying with N.J.S.A. 39:6-65.**

11:3-28.5 Insurer's continuing obligation to investigate claims

(a) An automobile liability insurer shall be required to discharge its duty of investigating claims where the potential exposure to the insurer exceeds \$75,000. Said insurer's duty and obligation with regard to claim handling shall exist and continue to exist notwithstanding this rule. The Executive Director may direct such investigations as often as he or she deems necessary. All expenses relating to the investigation of claims, including expenses for medical examinations and file maintenance, are the responsibility of the automobile liability insurer.

(b) **The failure to properly discharge the duty of investigating a claim may result in the imposition of a penalty, to be determined by the UCJF Board of Directors, against the insurer's request for reimbursement.**

11:3-31.3 Definitions

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

...
 "Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within that insurance holding system. Insurer does not include [the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.] **any residual market mechanism created pursuant to statute.**

(a)

DIVISION OF PUBLIC AFFAIRS

**Automobile Insurance Written Notice
 Buyer's Guide and Coverage Selection Form**

**Proposed Amendments: N.J.A.C. 11:3-7.2, 7.4 and
 7.5, 14.2, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7 and 15.9
 Proposed New Rule: N.J.A.C. 11:3-14.5**

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

Authority: N.J.S.A. 39:6A-23, P.L. 1990, c.8; and N.J.S.A. 17:1C-6(e).

Proposal Number: PRN 1990-293.

Submit comments by July 5, 1990 to:

Verice M. Mason
 Assistant Commissioner
 Legislative and Regulatory Affairs
 Department of Insurance
 CN-325

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and new rule primarily implement the changes to the Coverage Selection Form (Form) and Buyer's Guide required by P.L. 1990, c.8 ("The Fair Automobile Insurance Reform Act of 1990"—"Act"). The Form and Guide comprise and provide the written notice required to be received by all named insureds on at least an annual basis, and to all prospective insureds upon making application (see N.J.S.A. 39:6A-23, as amended by P.L. 1990, c.8). In addition to amending the Buyer's Guide and Form themselves, the proposed amendments and new rule also amend related provisions of the Department's rules, in implementation of the Act. The Buyer's Guide is rewritten consistent with the Act's requirement that it be written in plain language (effective January 1, 1991). In addition to changes made in the Form to comply with the requirements of the Act, certain provisions of the current Form and related rules are proposed for clarification purposes unrelated to the new legislation. Thus, for example, the amendments clarify that, for renewals, a new Form, or parts thereof, need not be completed if an insured wishes to maintain a present coverage, the requirements concerning which are not otherwise fixed by law.

The following is a section-by-section summary of the proposed amendments and new rule, including the reasons therefor. References to the Act refer to A-1 of 1990 (First Reprint).

N.J.A.C. 11:3-7.2, 7.4 and 7.5 are proposed for amendment to accommodate the provision in the Act enabling insurers to make available additional first party medical expense benefit coverage in excess of \$250,000 (see section 11 of the Act).

N.J.A.C. 11:3-14.2 is amended to extend the applicability of the subchapter to all residual market mechanisms created by New Jersey statutory law. This amendment is consistent with the provisions of the Act creating certain residual market mechanisms and eliminating, over time, the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) (see sections 34 and 88 of the Act). The rule is also amended to delete reference to rating organizations pursuant to section 69 of the Act.

N.J.A.C. 11:3-14.5 is proposed to incorporate language in the Act enabling insureds to choose a health insurer as the primary carrier for PIP medical expense benefits coverage and to provide proof of such coverage (see section 6 of the Act).

N.J.A.C. 11:3-15.1, 15.2 and 15.3 are amended to delete reference to the NJAFIUA and to substitute therefor a general reference to residual market mechanisms created by New Jersey statute. This is consistent with the Act, which phases out the NJAFIUA and introduces other residual market mechanisms over time. The general term "residual market mechanism" is therefore more appropriate.

N.J.A.C. 11:3-15.5 is amended to clarify when a Buyer's Guide and Coverage Selection Form are required to be received by the public, and, for convenience to the reader, to reference the rules concerning the use of the Coverage Selection Form (see section 13 of the Act).

N.J.A.C. 11:3-15.6 is amended consistent with N.J.A.C. 11:3-15.6, and for clarification. Most significantly, subsection (n) of this section is amended to delete in its entirety the current text of the Buyer's Guide and to substitute new text therefor. The new text is written in plain language pursuant to the requirement of section 13 of the Act, and incorporates several changes required to be made in the Coverage Selection Form by the Act (for example, health insurer option; additional medical expense benefits coverage option). This section is also amended to delete the provision that the Department, upon request from an insurer, will prepare a coverage-ready final page of the Buyer's Guide. The Department considers this to be unnecessary.

N.J.A.C. 11:3-15.7 is amended consistent with N.J.A.C. 11:3-15.6. Additionally, the text of the Coverage Selection Form is amended both to clarify the current Form and requirements and to respond to changes required by the Act. Thus, the proposed new Form includes a section concerning the health insurer option and additional medical expense benefits coverage. Additionally, in response to comments from several insurers respecting the current Form, it is proposed for amendment to delete the provision allowing changes required to be made on the Form (for renewals and mid-term policy changes) to become effective upon the date of execution by the insured if it is received by the insurance company or insurance producer with binding authority within seven calendar days of the date of completion. The Department agrees with the comments stating that this procedure encourages fraud by allowing insureds to alter their coverage without first contacting their company or insurance producer. The amendatory language would require that changes upon renewal required to be made on the Form are effective on the date of the next policy renewal if the Form is timely received by the insurance

company or by an insurance producer with the company's binding authority. The amendments also provide that mid-term changes required to be made on this Form are effective upon its receipt by the insurance company or by an insurance producer with the company's binding authority.

N.J.A.C. 11:3-15.9 is amended to clarify when a Coverage Selection Form must be used and when the changes made thereon become effective. The requirement that an insurer provide a special notice to insureds upon renewal concerning the use of the Form is deleted since this requirement is unnecessary in light of the fact that the Buyer's Guide and Coverage Selection Form provide such notice.

The public is advised that the Department intends to make operative (see N.J.A.C. 1:30-1.2) the provisions of these proposed amendments and new rule in accordance with the table appearing below. The operative dates are in all cases responsive to statutory mandate.

PROPOSED OPERATIVE DATES**Section—Date**

1. N.J.A.C. 11:3-7.2, 7.4 and 7.5—January 1, 1991
2. N.J.A.C. 11:3-14.2—Upon promulgation
3. N.J.A.C. 11:3-14.5—January 1, 1991
4. N.J.A.C. 11:3-15.1, 15.2, 15.3 and 15.5—Upon promulgation
5. N.J.A.C. 11:3-15.6(n)—January 1, 1991
6. N.J.A.C. 11:3-15.6(a), (b), (d), (e), (g), (j), (l) and (m)—Upon promulgation
7. N.J.A.C. 11:3-15.6(c) concerning the deletion of reference to NJAFIUA—Upon promulgation
8. N.J.A.C. 11:3-15.6(c) concerning the reference to Buyer's Guide text—January 1, 1991
9. N.J.A.C. 11:3-15.6(o), (p), (q), (r) and (s) concerning deletion of reference to NJAFIUA—Upon promulgation
10. N.J.A.C. 11:3-15.6(o), (p), (q), (r) and (s) concerning Buyer's Guide reference—January 1, 1991
11. N.J.A.C. 11:3-15.7(b), (c), (f) and (g)—Upon promulgation
12. N.J.A.C. 11:3-15.7(h) (Text of Coverage Selection Form: References to health insurer option and additional PIP medical expense benefit coverage)—January 1, 1991
13. N.J.A.C. 11:3-15.7(h) (Text of Coverage Selection Form: All changes other than reference to health insurer option and additional PIP medical expense benefit coverage)—Upon promulgation
14. N.J.A.C. 11:3-15.9—Upon promulgation

NOTE: AS AN ECONOMIC CONVENIENCE TO INSURERS, THE DEPARTMENT WISHES TO ADVISE INSURERS THAT CHANGES ON THE COVERAGE SELECTION FORM WHICH ARE EFFECTIVE UPON PROMULGATION PRIOR TO JANUARY 1, 1991, NEED NOT BE MADE UNTIL JANUARY 1, 1991, AT THE INSURER'S OPTION.

Social Impact

The proposed amendments and new rule provide the public with the updated and necessary information identified in the Summary of this notice and the rules reproduced herein. In doing so, the Department is fulfilling its mandate under the law.

Insurance companies will be providing to their policyholders and prospective policyholders, accurate, current information, thus reducing the incidence of consumer confusion and misunderstanding, which ultimately manifests itself in telephone calls and letters to the insurance company and its agents. The proposed amendments concerning the use of the Coverage Selection Form should clarify for insurance companies their obligations under law.

There will be no social impact upon the Department of Insurance other than the expectation that the clarification and publication of the procedures and requirements concerning the Buyer's Guide and Coverage Selection Form will reduce the Department's need to inform consumers about their choices and insurers about their obligations on a per capita basis.

Economic Impact

Insurance companies will be required to amend the current Coverage Selection Form and Buyer's Guide, at their cost. However, the clarification and updating of the Coverage Selection Form and the preparation of a new Buyer's Guide in plain language will require insurers and insurance producers to devote less staff time to answering consumer questions. Companies will also be required to prepare their own final page of the Buyer's Guide rather than be able to avail themselves of a camera-ready page provided by the Department. This will shift an expense from the Department to the company.

Because of the explanatory, simplified information provided in the Buyer's Guide and the Coverage Selection Form, the public will be able to spend their insurance dollars in the most efficient fashion. They will be better able to eliminate spending for unnecessary coverages while devoting their insurance dollars to desirable coverages.

The economic impact on the Department should be insignificant. The Department already has the equipment for producing the camera-ready typeset for the Buyer's Guide. No additional staff or budget is needed to produce the materials or review the filings required by the rules.

Regulatory Flexibility Analysis

The proposed amendments and new rule will primarily affect insurers authorized to write private passenger automobile coverage in New Jersey. It is the Department's belief that most, if not all, such insurers are not "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, it is possible that some such insurers are small businesses, as so defined, and, accordingly, a regulatory flexibility analysis is provided below (see N.J.S.A. 52:14B-19).

The proposed amendments and new rule continue the current reporting requirements concerning that both the Buyer's Guide and the Coverage Selection Form used by an insurer be filed with the Department. No additional record keeping requirements are imposed by the proposed amendments and new rule. The current compliance requirement that insurers distribute to private passenger automobile insureds the Buyer's Guide and Coverage Selection Form is continued, pursuant to the Fair Automobile Insurance Reform Act of 1990.

Since all insurance companies authorized to sell private passenger automobile coverage in New Jersey already are required to prepare and transmit to policyholders and applicants a Coverage Selection Form and Buyer's Guide, professional services other than those already utilized will not likely be required. These services include those of a professional printer.

The initial capital cost should be less than that associated with reproducing the current Coverage Selection Form, since the Form need only be modified. Annual costs of compliance are not a relevant factor since the currently proposed changes need only be made initially. The Buyer's Guide will require an initial expense for printing and distribution and thereafter for distribution.

The proposed amendments are applicable to all insurers authorized to sell private passenger automobile insurance without exception based on size or any other characteristic, since the statutory provisions being implemented require universal application.

The proposed amendments do not impose any record keeping, reporting or compliance requirements on insurance producer "small businesses" other than those currently required by the Buyer's Guide, Coverage Selection Form and related rules of the Department. Thus, insurance producers will continue to be contacted by insureds or prospective insureds for information concerning policies and coverages.

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

11:3-7.2 General requirements applicable to additional personal injury protection benefits

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

(h) **Insurers may also make available to named insureds covered under N.J.S.A. 39:6A-4, and at their option, to resident relatives in the household of the named insured or to other persons provided medical expense coverage pursuant to this statutory provision, or both, additional first party medical expense benefit coverage pursuant to N.J.S.A. 39:6A-10.**

11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits

(a) Every rate filer's schedule of rates for additional personal injury protection benefits, **other than medical expense benefits**, shall provide at least the benefit schedules set forth in Table I in (b) below.

(b) (No change.)

11:3-7.5 Notice requirements

(a) Additional personal injury protection benefits **that are required to be offered by an insurer** shall be offered by the insurer at least annually [on a form prescribed by the Commissioner of Insurance] **as part of the Coverage Selection Form required pursuant to N.J.S.A. 39:6A-23 and N.J.A.C. 11:3-15.**

1. (No change.)

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

11:3-14.2 Scope

This subchapter applies to every insurer, **including any residual market mechanism created by any New Jersey statute**, authorized to transact the business of automobile insurance in this State [and every rating organization engaged in the business of rate-making for such insurers].

11:3-14.5 [Reserved] Option to choose health care insurance coverage as primary coverage

(a) Pursuant to N.J.S.A. 39:6A-4.3, for policies issued or renewed on or after January 1, 1991, an insurer shall provide the option that **other health insurance coverage or benefits of the insured, including health care services provided by a health maintenance organization and any coverage or benefits provided under any Federal or State program, are the primary coverage for medical expense benefits for personal injury protection coverage.**

(b) **The Coverage Selection Form (see N.J.A.C. 11:3-15.7) shall require insureds or prospective insureds to identify the health insurer(s) providing primary personal injury protection medical expense benefits. This identification shall fulfill the requirement in N.J.S.A. 39:6A-4.3 that named insureds provide proof that they and members of their family residing in the household are covered by health insurance coverage or benefits.**

11:3-15.1 Purpose

(a) N.J.S.A. 39:6A-23 requires the Commissioner of the Department of Insurance to promulgate standards for the written notice to be provided to applicants for automobile insurance and to policyholders seeking renewal of coverage. This written notice includes a Buyer's Guide and a Coverage Selection Form as required by N.J.S.A. 39:6A-23. This subchapter implements this statutory requirement and establishes the necessary minimum standards insurance companies authorized to transact the business of private passenger automobile insurance [and New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) servicing carrier], **including any residual market mechanism created by any New Jersey statute**, shall use in giving notice of available coverages, options and rate credits.

(b) (No change.)

11:3-15.2 Scope

This subchapter applies to every insurance company authorized to transact the business of private passenger automobile insurance in this State and to [the servicing carriers for the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA)] **any residual market mechanism created by any New Jersey statute.**

11:3-15.3 Definitions

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

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract of **private passenger automobile** insurance, including [the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA).] **any residual market mechanism established pursuant to any New Jersey statute.** As appropriate, "insurance company" shall also mean a servicing carrier for a residual market mechanism.

11:3-15.5 Content of written notice; receipt by public

(a) The written notice shall include the New Jersey Auto Insurance Buyer's Guide **and the Coverage Selection Form** as [it] they appear[s] in this subchapter.

[(b) The written notice shall include the Coverage Selection Form as it appears in this subchapter.]

(b) **Each named insured of an automobile insurance policy shall receive a Buyer's Guide and a Coverage Selection Form:**

1. **When application is made for a new policy;**
2. **As part of a notice of renewal; and**
3. **When mid-term changes are requested which require the use of a Coverage Selection Form (see N.J.A.C. 11:3-15.9).**

(c) **The Coverage Selection Form shall be used in accordance with the requirements of N.J.A.C. 11:3-15.9.**

11:3-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

(a) Any insurance company [or NJAFIUA servicing carrier] may comply with this subchapter by using a camera-ready typeset Buyer's Guide produced by the Department. To obtain this camera-ready Buyer's Guide, an insurance company [or NJAFIUA servicing carrier] may contact the Division of Public Affairs, Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625-0325.

(b) Insurance companies [or NJAFIUA servicing carriers] that wish to produce their own plates may do so according to the requirements prescribed in this subchapter.

(c) In preparing the Buyer's Guide, insurance companies [or NJAFIUA servicing carriers] shall use the text provided in this subchapter. [The text shall be used in its entirety without changes, except where specific alterations are permitted as indicated by ****1****, ****2****, ****3****, ****4**** and ****5**** (see (o) through (s) below).] Insurance companies which do not offer all the coverages described in the Buyer's Guide may eliminate those sections and shall indicate clearly that they do not offer those coverages. Insurance companies [or NJAFIUA servicing carriers] may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d) To assure conformity with this subchapter, each insurance company [and NJAFIUA servicing carrier] shall file its Buyer's Guide with the Division of Public Affairs. The filing shall include a sample copy of the insurance company's [or NJAFIUA servicing carrier's] Buyer's Guide and a letter listing all alterations, if any, made from the text appearing in this section. The filing shall be made once when the first Buyer's Guide is issued by the insurance company [or NJAFIUA servicing carrier] and again whenever changes are made.

(e) Changes made pursuant to this subchapter as effective February 21, 1989 shall be implemented by May 1, 1989, affecting notices for policy renewals effective June 1, 1989.]

[1.](e) When changes are made in a **Buyer's Guide**, the new Buyer's Guide shall be filed with the Division of Public Affairs within seven days of its use, and the bottom of the last page shall clearly state the month and year in which the changes were implemented.

(f) (No change.)

(g) An insurance company [or NJAFIUA servicing carrier] which uses the Department's camera-ready Buyer's Guide shall not reduce the image or the size of its pages. The [14-page booklet] **Buyer's Guide** shall be bound by glue or staples. If an insurance company [or NJAFIUA servicing carrier] intends to fit this printed booklet in a common-size four-inch by nine-inch business envelope, the booklet may be folded once lengthwise.

(h)-(i) (No change.)

(j) The type style used shall be within the discretion of the insurance company [or NJAFIUA servicing carrier], but it shall be suitable for the use of italics or boldface type for emphasis. In the text required by this subchapter, material which is underlined shall be printed in italics or boldface type. The type style used in the camera-ready material provided by the Department shall be New Century Schoolbook.

(k) (No change.)

(l) The Buyer's Guide shall have a cover with the following title in large type: "New Jersey Auto Insurance Buyer's Guide." In regular type, the cover shall state, "This contains only general information and is not a legal document." An insurance company [or NJAFIUA servicing carrier] may include its name and/or company logo on the cover.

(m) An insurance company which writes at least two percent of the New Jersey private passenger automobile market[, and each NJAFIUA servicing carrier,] shall print its name and toll-free telephone number on the last page of the Buyer's Guide. [To facilitate compliance with this requirement, the Department shall, upon request, provide a camera-ready final page of the Buyer's Guide with the insurance company's name and toll-free telephone number.]

(n) The text of the New Jersey Auto Insurance Buyer's Guide follows:

AGENCY NOTE: The text of the current Buyer's Guide is proposed for deletion in its entirety. The text is currently reproduced in the New Jersey Administrative Code. The text reproduced below entirely replaces the current text and will become operative on January 1, 1991. For purposes of this publication in the New Jersey Register, those words appearing in the following proposed new text in boldface appear as they should in the actual Buyer's Guide, and do not signify proposed additions.

New Jersey Auto Insurance Buyer's Guide

This contains only general information
and is not a legal document

Summary

There have been several important changes in New Jersey law that affect your insurance coverage.

The changes give New Jersey consumers additional rights.

For instance, if the company you choose won't sell you insurance, it has to tell you why, and, if you request it, the company has to respond in writing. If you're not satisfied, you can ask the insurance department for help. You can also ask for a hearing.

The insurance agent or company also must tell you whether you may be eligible for insurance from one of its other companies or affiliates.

You also have the right to receive from your agent premium rates from **all** the companies he represents.

The law requires that you maintain liability coverage, which protects you in case you are sued, and pays for damages that you cause to someone else's property. **Please see page XX.**

You are also required to purchase personal injury protection, which pays the auto accident-related medical bills of you and your family. **Please see page XX.**

Effective immediately, you can choose whether your health insurance will pay for injuries stemming from auto accidents, or whether to keep the coverage with your auto insurer. You may save on your auto premiums by choosing the health insurance option. **To find out more about your medical benefits and options, please see the section beginning on page XX.**

Your medical benefits are now capped at \$250,000. That means your auto insurer can only pay up to \$250,000 for any one accident, per person injured. But, for an additional premium, you may be able to purchase more coverage for yourself or your family.

You must also carry uninsured/underinsured motorist coverage, which pays for damages caused by a driver who has no insurance. **Please see page XX.**

If you want additional coverage, you can buy collision or comprehensive, which pay for damages to your own car or for auto theft. These will add to your total insurance cost. You can save on your collision or comprehensive coverage by choosing higher deductibles. **Please see page XX.**

The law also allows you to choose whether you want an unlimited right to sue for auto-related damages—the "no threshold" option—or to save money by limiting your right to sue for serious injuries only—the "lawsuit threshold" option (also known as the "verbal threshold"). **Please see page XX.**

The Buyer's Guide will explain each of these terms. It will also help you fill out the coverage selection form. You can also learn how to get a comparison of premiums for all auto insurers (**page XX**). There is also a survey to let the department of insurance know what you think of your company's service (**page XX**).

Explanation of Coverages

Your auto insurance policy is actually several kinds of policies, or **coverages**, rolled into one.

For each coverage, you are charged a separate price, which is known as the **premium**.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

Use your Coverage Selection Form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

- LIABILITY
- PERSONAL INJURY PROTECTION
- UNINSURED/UNDERINSURED MOTORIST
- COLLISION
- COMPREHENSIVE

Use these explanations to help you complete the Coverage Selection Form.

**Liability Coverage
(Required by Law)**

Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property, if you are legally responsible for their losses. The company will pay only as much in damages as the amount of coverage you have chosen.

There are two kinds of liability coverages:

Bodily injury coverage involves cases in which another person is hurt or dies as a result of an auto accident. If you are legally responsible, it will compensate for pain, suffering or other personal hardships, and will also pay for some economic damages, such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company will pay the legal bills.

Under state law, you must buy coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Some companies sell a combined, single limit, which must be at least \$35,000 per accident.

Higher limits of liability coverages are available at relatively low cost.

If you cause an accident and don't have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

**COST SAVER: Lawsuit Threshold (Verbal Threshold)
Item 2 on the Coverage Selection Form**

In order to hold down insurance premiums, New Jersey motorists may choose to limit when they may sue for non-economic loss, which means pain, suffering and inconvenience resulting from an auto accident.

The "Lawsuit Threshold" option, also known as the "Verbal Threshold," uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

"death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment."

(N.J.S.A. 39:6A-8, effective January 1, 1989)

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called "No Threshold", will increase the price of your insurance policy.

Under state law, you must choose either the **Lawsuit Threshold** or the **No Threshold** option. The same choice should be made under all policies that you have. **If you do not choose one of these options, you are considered by law to have selected the Lawsuit Threshold option.**

**Personal Injury Protection (PIP)
(Required by Law)**

Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills up to a maximum of \$250,000 per person, per accident regardless of who caused an auto accident.

However, you may also have the option to select your health insurer or health maintenance organization to pay your auto accident no-fault claims.

In addition to paying medical bills, the Basic PIP Coverage provides these benefits:

- **Income Continuation:** If you can't work because of an auto accident injury, you can collect up to \$100 a week for one year for lost wages.

- **Essential Services:** You can collect as much as \$12 a day for one year to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.

- **Death Benefit:** If you die from auto accident injuries, your family or estate will receive any benefits you haven't already collected under the income continuation and essential services coverages.

- **Funeral Expense Benefit:** In addition to the death benefit, reasonable funeral expenses are covered up to \$1,000.

Regardless of whether you select your auto or health insurer as primary, your auto insurer will still provide income continuation, essential services, death benefits, and funeral expense benefits under basic PIP coverage.

COST SAVER: PIP Medical Expenses Only

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP Medical Expenses Only.

You might want this cost-saving option if you and relatives who live with you wouldn't lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these PIP benefits, or you drop them all. You can't pick and choose.

Additional PIP Coverage

On the other hand, you and relatives who live with you might want **higher** benefits for income protection and essential services than the amounts provided in the basic PIP plan.

If you buy these additional benefits, including medical benefits higher than \$250,000, the price of your insurance will be higher.

**PIP Medical Expenses Deductible
Auto Insurer Option**

Item 4 on Coverage Selection Form

This option involves only the medical bills paid by PIP, not the income continuation, essential services or funeral expense benefits.

Under New Jersey law, unless you choose otherwise, your auto insurance policy will cover your medical bills up to a maximum of \$250,000 per person, per accident if you are injured in an auto accident.

However, for the first \$5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a \$250 deductible, meaning the first \$250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment, which means that for the bills from \$251 to \$5,000, the policy will pay only 80 percent. Medical bills above \$5,000 are paid in full by the policy.

A way to lower the price of your auto insurance is to have a large PIP deductible. You can choose a \$250 deductible, a \$500 deductible, a \$1,000 deductible or a \$2,500 deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and \$5,000.

You should consider the \$2,500 PIP deductible if you are already covered by a health insurance policy, Medicare and a Medicare supplement policy, or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance won't pay.

Before taking this option, ask your Medicare or Medicaid office, your health insurance company or HMO two things:

- **Will your health policy or HMO cover auto-related medical bills not paid by auto insurance?** The state Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group based out of state or an employer self-insurance plan. Find out.

- **What are your health policy's or HMO's own deductible, co-payments and exclusions?** Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the \$2,500 PIP deductible.

**Personal Injury Protection (PIP)
Health Insurance Option (Cost Saving Option)
Item 5 on Coverage Selection Form**

Most New Jersey residents now have the option of selecting their health insurance company, rather than their auto insurance company, to pay for their no-fault claims.

If you select your health insurer, HMO, or government-sponsored health insurance program to be the primary payer of auto no-fault claims, you will save on your auto premium.

Deductibles and co-pays of your health insurer or HMO still apply. And coverage limits of your health insurer or HMO will be in effect.

Most HMOs offer unlimited coverage. Most health insurers offer lifetime benefit limits of \$1 million.

That means the insurer will pay all eligible health claims, as long as they do not total more than \$1 million during your lifetime. **Be sure to ask your insurer what limits apply under your policy.**

If your employer supplies your health insurance, check with your health benefits officer at work. Be sure your plan will cover auto accident injuries. If you are covered by an employer's self-insurance plan or out of state group, you may not be eligible to choose this option.

And, your health insurer or HMO may not cover all procedures or treatments. Exclusions listed in your policy will apply. But your auto insurer should pay for necessary expenses not covered by your health policy or HMO.

If you choose your health insurer or HMO to be responsible for paying auto accident-related medical bills, you must provide proof that you have the necessary coverage. You must also maintain your health insurance or HMO coverage.

If you are in an accident and your coverage is no longer in effect, your auto insurer must pay PIP medical benefits. However, you will be required to pay any deductibles and co-payments as well as a \$750 additional deductible.

**Uninsured/Underinsured
Motorist Coverage
(Required by Law)**

Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which don't require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to you, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

You must by law purchase coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Many companies sell a combined, single limit, which must be at least \$35,000. The property damage coverage has a basic \$500 deductible, which means you pay the first \$500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits, but only as high as the liability coverages you have purchased. Most companies sell up to \$250,000/\$500,000/\$100,000 coverage or a combined single limit of \$500,000.

A higher limit of uninsured/underinsured motorist coverage may help if damages are caused by a motorist who has insurance, but not enough insurance to pay all of your damages—in other words, an "underinsured" motorist. In such an accident, your policy will pay the uncompensated damages up to the dollar difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

**Collision and Comprehensive Coverages
(Optional)**

Items 7 and 8 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are **not** required by law. But, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages.

Collision pays for damage to your car caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

COST SAVER: No Collision or No Comprehensive

If your car is older and is paid for, consider eliminating collision or comprehensive coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive coverage will reimburse you only for the actual cash value of your car. This is the maximum payout you will ever receive from any collision or comprehensive claim. The insurance payment probably will be less than the actual cash value because of deductibles.

Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.

COST SAVER: Collision and Comprehensive Deductibles

If you decide that you need collision or comprehensive coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company starts paying. Deductibles are a way of controlling insurance company costs, and thereby reducing the price of your insurance policy.

For example, during the late 1970s and early 1980s, the "basic" deductibles were \$200 for collision coverage and \$100 for comprehensive coverage. Now, to hold down auto insurance prices, New Jersey law says the "basic" deductible for each coverage is \$500.

You still have the right to buy collision or comprehensive coverage with small deductibles, but the lower the deductible, the higher the price of your insurance policy.

It may be a more efficient use of your insurance dollar to pay for coverage for large losses—for such things as auto theft or a major wreck—than to pay extra for deductibles less than \$500.

Your insurance policy will cost even less if you have deductibles of \$1,000, \$1,500 or \$2,000. But only you can decide whether you can afford to pay that much if you have an accident. Also if you

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

are paying a car loan or are leasing your car, you should check if your contract requires certain deductibles.

In deciding what to do, think about how much collision and comprehensive coverages cost and about what would happen if you file a claim.

Please note: If you are applying for a new insurance policy, your insurance company **cannot** issue comprehensive or collision coverage before it inspects your car.

If you are **renewing** your policy, the company **may** require an inspection of your vehicle.

If you **replace** your car, or **add** another car to an existing policy, the company **must** inspect the car before the collision and comprehensive coverage becomes effective. **New cars do not have to be inspected.**

During its inspection, the insurance company may take photographs of your car.

For your convenience, the insurance company must conduct the inspection at a time and place reasonably convenient to you. However, if you do not make your car available for inspection, the company can refuse to provide physical damage coverage.

Inspecting cars before they are insured for collision and comprehensive coverage makes it harder to file fraudulent insurance claims.

By fighting fraud, rates can be kept down for drivers who obey state laws. Drivers who break fraud laws can face up to a \$5,000 fine for a first offense, or time in jail.

**Price Comparison
Filing Complaints**

If you have any questions about your insurance policy, call your company, agent or broker.

If you would like a copy of the **annual auto insurance premium comparison** published by the New Jersey Department of Insurance, please send a stamped, self-addressed envelope to:

**Auto Comparison
Division of Public Affairs
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325**

If you want to file a complaint against your insurance producer or company, please call the Department of Insurance for a complaint form at: (609) 984-2426.

Questionnaire

The insurance department wants to know how you feel about your insurance company. Please help the insurance department and answer the few questions below. **However, you are under no legal obligation to complete the survey. Whether you send it to the insurance department or not, your insurance coverage will not be affected.** Please complete the short questionnaire and mail it to:

**Division of Public Affairs
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325**

Insurance Company Name _____

On a scale of 1 to 5, with 1 being excellent and 5 being poor, please circle the number that best answers how your company performs.

Question	Excel- lent	Very Good	Good	Fair	Poor
1. Has your agent clearly explained your auto policy, including all the options available to you?	1	2	3	4	5
2. Did you get enough advance notice to pay your premium?	1	2	3	4	5

3. Has your company promptly sent an adjuster to examine your car in the event of a claim?	1	2	3	4	5
4. Has your company promptly paid your claim?	1	2	3	4	5
5. Has your company accurately paid your claim?	1	2	3	4	5
6. How would you rate your company overall?	1	2	3	4	5

(o) [Where ****1**** appears in (n) above] **As appropriate**, an insurance company [or NJAFIUA servicing carrier] may substitute its name in the **Buyer's Guide**.

(p) [Where ****2**** appears in (n) above,] **As appropriate**, an insurance company [or NJAFIUA servicing carrier] which offers only split limits may delete language in the **Buyer's Guide** explaining combined limits, and an insurance company which offers only combined limits may delete language regarding split limits. If an insurance company does not offer limits as low as the minimums required by law, that information may be inserted in this paragraph.

(q) [The symbol ****3**** appears twice in (n) above, forming a bracket around the explanation of Additional PIP benefits.] An insurance company which offers higher benefits than described in the text of the **Buyer's Guide** may modify [this] the **relevant** paragraph to explain those higher benefits.

(r) [Where ****4**** appears in (n) above, an] **An** insurance company [or NJAFIUA servicing carrier] which uses only one term, "Comprehensive" or "Other Than Collision,"[,] to describe this coverage, may delete reference to the inappropriate term.

(s) [Where ****5**** appears in (n) above, the] **The last** paragraph of the "**Cost Saver: No Collision or No Comprehensive**" section may be deleted by an insurance company [or NJAFIUA servicing carrier] if it [provides] **permits** collision coverage without the purchase of comprehensive coverage [as well].

11:3-15.7 Minimum standards for Coverage Selection Form

(a) (No change.)

(b) The insurance company [or NJAFIUA servicing carrier] may include additional lines for application number, policy number or other necessary information.

(c) An insurance company [or NJAFIUA servicing carrier] may expand the form to solicit additional information, including, but not limited to, the names of resident relatives eligible for PIP benefits, or different collision and comprehensive deductibles applying to different vehicles covered by the same policy.

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

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company [or NJAFIUA servicing carrier] shall determine the numbers for use in these sections. When the numbers on the Coverage Selection Form change for any reason, including, but not limited to, rate changes, a new Coverage Selection Form with the current numbers shall be printed.

(g) The Coverage Selection Form shall include the language in (h) below, except the language marked ("NOTE"), which describes language which the insurance company [or NJAFIUA servicing carrier] shall insert.

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, [or is a NJAFIUA servicing carrier,] it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name:

For new policies, you must choose one option for each item below. For **changes upon** renewal[s] and mid-term policy changes, you must use this Form when you (1) elect the "No Threshold" option; (2) change from the "No Threshold" option to the "Lawsuit Threshold" option; (3) desire collision or comprehensive deductibles other than \$500.00; [or] (4) desire to change to the \$500.00 deductible for collision or comprehensive coverage[.]; or (5) desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills.

The item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

-
-
-
-

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered.)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

___ Yes. I want the Lawsuit Threshold.

___ No. I want No Threshold. My bodily injury liability premium will be ___% to ___% higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be \$___ to \$___ higher on each ___ renewal of my policy if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contact my insurance company or my insurance producer for specific details.

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual."[.])

(Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

- Basic PIP Coverage
- PIP Medical Expenses Only coverage, for a ___% to ___% savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.)
- Additional PIP coverage, including medical benefits, at an extra cost. Contact your insurance company or insurance producer for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.) You must select Basic PIP Coverage if you choose Additional PIP Coverage.

4. PIP Deductible. Choose only one:

- \$250 deductible, minimum required by law.
- \$500 deductible, for a ___% to ___% reduction in the _____ premium.
- \$1,000 deductible, for a ___% to ___% reduction in the _____ premium.
- \$2,500 deductible, for a ___% to ___% reduction in the _____ premium.

5. PIP Health Insurer Option. Choose if you want your health insurer to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible. To choose this option your health insurance coverage must cover the named insured and members of his family residing in the household. For policies issued or renewed before January 1, 1992, you will save at least 25% on your PIP medical expense benefits

coverage. For policies issued or renewed after January 1, 1992, you will receive an appropriate discount on your PIP medical expense benefits coverage.

___ Yes, I choose the PIP health insurer option.

The name of my health insurer(s) is (are):

- 1. _____
Policy, Membership or Certificate Number (circle appropriate choice)
- 2. _____
Policy, Membership or Certificate Number (circle appropriate choice)

___ No, I do not want the PIP health insurer option.

[5.]6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself?

-
-
-
-

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

[6.]7. Do you choose "collision" coverage?

- No. I do not wish to be covered for collision damage.
- Yes, with the basic \$500 deductible.
- Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).
- Yes, with the deductible circled here: \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

[7.]8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

- No. I do not wish to be covered for comprehensive damage.
- Yes, with the basic \$500 deductible.
- Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).
- Yes, with the deductible circled here: \$50, \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the \$200 deductible or \$250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option[.]; [If] if I carry collision or comprehensive coverage without making a written choice for item [6] 7 or Item [7] 8, I will receive the \$500 deductible [unless this is a policy renewal and my previous deductible was higher.]; and if I do not make a written choice for the PIP health insurer option in Item 5, my auto insurer will be the primary health insurer for PIP medical expense benefits. [For the other items,] I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except where changes are set by a law becoming effective after the effective date of my previous policy.

I understand that these choices take effect in the following manner: (1) for new policies, the choices on this Form are effective upon receipt of this Form by the insurance company or by an insurance producer with the company's binding authority; (2) for [renewals and] mid-term policy changes, the choices required to be made on this Form are effective upon receipt of this Form by the insurance company or an insurance producer with the company's binding authority[, except that the changes required to be made on this Form will become effective upon the date that I complete and sign this Form (see below) if this Form is received by the insurance company or an insurance producer with the company's binding authority within seven calendar days of the date of completion.]; and (3) for changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if timely received by the insurance company or by an insurance producer with the company's binding authority.

SIGNATURE _____ DATE _____

(i) To assure conformity with this subchapter, each insurance company [and NJAFIUA servicing carrier] shall file its Coverage Selection Form with the Division of Public Affairs. Whenever the Coverage Selection Form is changed, the new form shall be filed, and the month and year the changes were implemented shall be clearly stated at the bottom of the revised form. Deadlines for implementation and filing requirements regarding the Coverage Selection Form shall be the same as for the Buyer's Guide. See N.J.A.C. 11:3-15.6(e).

(j) Insurance company [and NJAFIUA servicing carriers] shall be required to calculate the percentage and dollar change in premium (or rate) arising from the selection of the No Threshold option as indicated in (j)1 through 4 below. In these calculations, premium (or rate) shall include any expense fee, but shall not include any policy constant or RMEC.

1.-4. (No change.)

(k) (No change.)

11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, [an NJAFIUA servicing carrier,] an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating the prospective insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the insured, unless otherwise authorized by law.

(b) For all policy renewals [and mid-term changes], the insurance company [or NJAFIUA servicing carrier] shall provide its Coverage Selection Form to the insured with the notice of renewal. [or] **For mid-term policy changes, the insurance company shall provide its Coverage Selection Form to the insured upon his request for a mid-term change where the change is required to be made on the Form.** Coverage may be renewed or amended, with or without the signed Coverage Selection Form from the insured, in accordance with the requirements of (b)1i through iv below.

1. An insurance company may require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance company shall require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any of the coverage changes in (b)1i to iv below. [The coverage changes in (b)1i to iv below shall become effective upon receipt of the Coverage Selection Form, or, if said Form is received by the insurer or insurance producer with binding authority within seven calendar days of execution by the policyholder, then the changes shall be effective upon the date of said execution.]

- i. The election of the "No Threshold" option;
- ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;
- iii. Where the insured desires collision or comprehensive deductibles other than \$500.00; [or]
- iv. Where the insured desires to change to the \$500.00 deductible for collision or comprehensive coverage[.]; or
- v. **Where the insured desires his health insurance carrier to be the primary insurer for PIP medical expense coverage benefits.**

[(c) With every notice of renewal, an insurance company or NJAFIUA servicing carrier shall provide to an insured a clear and simple notice explaining the use of the Coverage Selection Form consistent with the requirements of this section.]

(c) **The coverage changes in (b)1i through v above shall become effective in the following manner:**

1. **For all new policies and mid-term policy changes required to be made on the Coverage Selection Form, the choices on the Coverage Selection Form shall be effective upon receipt of the Form by the insurance company or an insurance producer with the company's binding authority;**

2. **For changes upon renewal, the changes required to be made on the Coverage Selection Form shall be effective on the date of the next policy renewal if timely received by the insurance company or by an insurance producer with the company's binding authority.**

(a)

THE COMMISSIONER

Actuarial Services

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

11:4

Proposed Repeal: N.J.A.C. 11:4-1

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

Authority: 17:1C-6e.

Proposal Number: PRN 1990-294.

Submit comments by July 5, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order 66 (1978), the Commissioner of Insurance proposes to readopt N.J.A.C. 11:4, concerning actuarial services, with certain technical amendments and the repeal of rules concerning contracts on a variable basis. This chapter is due to expire on December 2, 1990.

This chapter primarily but not exclusively includes rules concerning life and health insurance. Rules concerning the following subjects are codified in this chapter.

- 1. Contracts on a variable basis.
- 2. Replacement of life insurance policies.
- 3. Coupon policies and policies containing guaranteed annual endowment benefits.
- 4. Passbooks used in connection with coupon policies or policies containing guaranteed annual endowment benefits.
- 5. Life, accident and health annual statement.
- 6. Reserve standards for individual health insurance policies.
- 7. Policies concerning consent to higher rate filings.
- 8. Charitable annuities.
- 9. Expense experience.
- 10. Life insurance solicitation.
- 11. Student life insurance.
- 12. Group student health insurance.
- 13. Home health care insurance coverage.
- 14. Alcoholism benefits.
- 15. Minimum standards
- 16. Health insurance solicitation.
- 17. Individual health insurance rate filings.
- 18. Optional coverage for pregnancy and childbirth benefits.
- 19. Blindness, partial blindness or other physical or mental impairment; unfair discrimination.
- 20. Limited death benefit forms.
- 21. Individual life insurance: Use of gender blended mortality tables.
- 22. Medicare supplement policies and contracts.
- 23. Smoker and nonsmoker mortality tables.
- 24. Annuity mortality tables.
- 25. Liquor law liability loss experience statistics.
- 26. Group coordination of benefits.

27. Homeowners insurance comparison survey.
28. Term life insurance comparison survey.
29. Health services corporation notice of increased rates.
30. Excess interest reserve adjustment.
31. Long-term care insurance.

The rules in this chapter were promulgated to implement many of the statutory requirements in Titles 17B and 17 of the New Jersey Statutes.

The Department has undertaken a review of these rules at several levels to determine their current effectiveness and viability. This review has included the Division of Actuarial Services and the Division of Legislative and Regulatory Affairs.

With the exception of subchapter 1, concerning contracts on a variable basis, the rules continue to provide the insurance industry and the consumer with vital information and useful standards concerning many aspects of life and health and other insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist.

The Department is proposing to repeal the rules concerning contracts on a variable basis since these rules were adopted in 1959, pursuant to and in implementation of statutory provisions which have been repealed. The Department has determined that there is currently no need for replacement rules concerning this matter.

The Department is proposing to amend several provisions of the rules for purely technical reasons. These reasons include correcting an outdated mailing address, deleting references to the term "solicitor", since this type of insurance representative no longer exists, and deleting references to the defunct Assigned Risk Plan (AIP).

The rules in this subchapter primarily serve two general purposes in implementation of statutory law. First, they protect the consumer by addressing issues such as unfair discrimination, minimum standards for health insurance coverage, solicitation of life and health insurance, replacement of life insurance coverage, coordination of health benefits and homeowners and term life price comparisons. Secondly, they provide guidance to the insurance industry respecting such business-related matters as reserve standards, reporting of expense experience and completing the Annual Statement. Several rules, of course, serve both purposes (for example, coordination of benefits; solicitation).

The public is advised that the Department has proposed rules for this chapter which have been published in the New Jersey Register but which have not yet been adopted.

Social Impact

As noted above, the rules address several areas of concern to the consumer and protect them from potential unfair trade practices concerning life and health insurance. The rules also include requirements for insurers to submit data concerning homeowners and term life insurance to enable the Department to compile annual comparison guides for use by the general public. The provisions concerning coordination of benefits ensure that consumers receive health benefits efficiently and quickly. The rules concerning long-term care insurance and Medicare supplement insurance both promote the availability of such insurance and protect applicants for such insurance. The benefits derived by the public from these rules continue to be significant and the rules are, therefore, necessary.

The insurance industry has also come to rely on the presence and viability of these rules in its operation. As previously noted, insurers are provided with standards concerning certain trade practices and with information concerning health insurance rate filings, reserve standards for individual health insurance policies and minimum standards for coverages and benefits. Their current accommodation to these requirements provides the necessary stability for the insurance regulatory system in New Jersey.

The rules in this chapter enable the Department of Insurance to fulfill its regulatory duties under law. Failure to readopt these rules would impair the Department's regulatory powers and would unsettle established relations between insurers and the general public and between these two groups and the Department of Insurance.

The protections that these rules afford the consumer and the operational guidance that they afford the insurance industry mandate their continued existence both to implement statutory provisions and to foster and promote a sound regulatory policy.

Economic Impact

The failure to readopt this chapter would require the insurance industry to perform many significant statutory functions without guidance from the Department. This would impose significant costs on the industry since current compliance requirements should not be readily available to the

industry, requiring it to implement procedures which may or may not be acceptable to the Department. The industry has invested a great amount of time and resources in operating in compliance with the Department's current procedures.

The requirement that insurers maintain and file with the Department certain information concerning homeowners and term life insurance may impose minimal costs to insurers. The rules concerning minimum standards mandate minimum loss ratios, outlines of coverage and benefit levels which impose costs upon insurers. The rules concerning life insurance replacement require the replacing and existing insurers to provide to an insured informational statements.

The rules clearly impact on the consumer public. As previously noted, several rules address industry trade practices which directly relate to a consumer's use of his limited insurance dollars. Thus, rules concerning replacement of life insurance and life insurance solicitation protect the consumer by ensuring that the consumer chooses only those coverages that are necessary. The rules requiring the promulgation of a homeowners and term life comparison guide serve to inform the insured or prospective insured of the best insurance value for his insurance dollars.

The readoption of the current rules will enable the Department to continue to regulate life and health and other insurance matters in a manner which appropriately meets its current fiscal resources and capabilities. The use of current procedures that have been proven effective over time has economies of procedure for the Department.

Throughout the years, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the insurance industry and the public. The Department is unaware of any provisions of these rules that impose untoward or unnecessary and onerous financial burdens on the insurance industry.

Regulatory Flexibility Statement

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined in N.J.S.A. 52:14B-16 et seq. Several rules (for example, replacement of life insurance) relate to the conduct of insurance producers, most of whom are "small businesses."

The compliance, record keeping and reporting requirements imposed by the rules are clearly defined in the rules themselves and are too extensive to reproduce herein. Examples of reporting and record keeping requirements imposed by this chapter include the requirements that liquor law liability loss experience statistics be reported in a certain manner and by a certain time, and the requirements that term life and homeowners information be reported to the Department for its preparation of an annual price comparison guide. Compliance requirements are imposed in the nature of minimum standards, life and health insurance solicitation and life insurance replacement, pursuant to specific statutory mandate, and group coordination of benefits.

The Department has determined that such requirements continue to be necessary. The rules apply to all insurers or insurance producers, as the case may be, without regard to size. The Department considers the requirements imposed to be the minimum necessary to implement the applicable statutory provisions. As such, no differentiation in requirements can be provided based upon business size. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary.

Future annual costs of compliance with these rules are not expected to differ from current annual costs. The use of professional services currently required by the rules (for example, actuaries; underwriting professionals) will continue to be necessary.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:4.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:4-1.

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

11:4-7.1 Filing requirements

(a) Every application must be filed with the Commissioner of Insurance within 20 working days after the insured has signed it or within 20 working days of the inception of the policy, whichever is earlier.

(b) Each application shall show the following information:

1.-8. (No change.)

9. Underwriting information in support of the additional premium under (a)8ii[.] above. In the case of automobile insurance, liability

and physical damage, a copy of the abstract of driving record from the Division of Motor Vehicles shall be submitted. Such abstract is not required if the coverage applied for is excess coverage over the coverages and limits available under [the New Jersey Automobile Insurance Plan] **any residual market mechanism providing automobile insurance pursuant to statute.** In the case of fire insurance, an inspection report, based upon an inspection performed by a qualified person, shall be submitted.

10.-11. (No change.)

11:4-7.2 Premium charges

(a) Premium charges in excess of those produced by the rating system approved for the submitting company shall be reasonable and adequate and not unfairly discriminatory, and shall be proportionate to the additional hazard, subject to the following provisions on business for which coverage is available under [the New Jersey Automobile Insurance Plan, or from] **any residual market mechanism created by statute, including, but not limited to,** the New Jersey Underwriting Association under the Fair Plan and the Crime Indemnity Plan:

1. Insurance available from these plans shall be rated in accordance with the rating systems approved for these facilities and the procedures applicable to such business shall be followed, if written under the Consent to Higher Rate provision. Any surcharges to be applied to such business must be documented by [copies of the motor vehicle report in the case of automobile insurance and] any required inspection report [in the case of fire or crime insurance].

2.-3. (No change.)

11:4-7.3 Approval of applications

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

(f) Nothing in this regulation shall prevent a company from filing a rate that produces a premium lower than that produced by the approved rating system, including the rating systems applicable under [the New Jersey Automobile Insurance Plan,] **any residual market mechanism created by statute, including, but not limited to,** the Fair Plan and the Crime Indemnity Plan.

11:4-17.3 Definitions

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

...
 "Licensee" means any person licensed as an **insurance agent, broker or [solicitor] consultant** pursuant to N.J.S.A. [17B:22-1 et seq. and N.J.S.A. 17:44A-29.] **N.J.S.A. 17:22A-1 et seq.**
 ...

11:4-17.7 Penalties

(a) Any person who, after notice and hearing, is determined by the Commissioner to be in violation of this regulation shall be liable to a penalty not exceeding \$2,000 for each violation. In addition to, or in lieu thereof, the Commissioner may revoke or suspend the license or certificate of authority of any such agent, broker, [solicitor] **consultant,** or insurer.

(b) (No change.)

11:4-27.4 Schedule and procedures for reporting liquor law liability loss experience statistics

(a) (No change.)

(b) Each insurer authorized to do business in New Jersey, which issues policies covering liquor law liability for insureds in New Jersey, shall segregate, for each calendar-accident year, the data required in (a) above for those insureds which have an alcohol breath analyzer machine on their premises from those insureds which do not.

1. The data required by this subchapter shall be indicated on Forms A and B, appended to this subchapter, and shall be submitted to:

[Chief of Statistical Services
 State of New Jersey]
 Department of Insurance
Property/Liability
 [201 East State Street]
20 West State Street
 CN 325
 Trenton, New Jersey 08625

(a)

DIVISION OF ACTUARIAL SERVICES

Hospital/Medical-Dental Services

Proposed Readoption: N.J.A.C. 11:10

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:48D-1 et seq., and P.L. 1983, chapters 142-145 (17B:26-44.4 et seq., 17:48D-9.1 et seq., 17:48C-18.1 et seq., and 17B:27-51.10a et seq.).

Proposal Number: PRN 1990-295.

Submit comments by July 5, 1990 to:

Verice M. Mason
 Assistant Commissioner
 Department of Insurance
 20 West State Street
 CN 325
 Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:10 expires on July 15, 1990. As required by the Executive Order, the Department of Insurance (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Dental Plan Organization Act, N.J.S.A. 17:48D-1 et seq., became effective on June 1, 1980. The Act required the Commissioner of Insurance (Commissioner) to regulate persons and corporations who offer plans for the prepayment or postpayment of dental services, and to promulgate rules to effectuate the purposes of the Act. Accordingly, subchapter 1 of N.J.A.C. 11:10, entitled "Dental Plan Organizations," was adopted on June 24, 1985, and became effective July 15, 1985.

The rules provided in subchapter 1 have had the effect of exposing and weeding out criminal activity, self-dealing and other undesirable practices in the marketplace. For example, misuse of a capitated program by a dental plan organization (DPO), when it is also a provider, occurs through misrepresentation of its usual, customary and reasonable fee schedule thereby effecting illegal reimbursement of coinsurance under a service and indemnity plan. Without these rules, such practices which are contrary to public policy would not have been easily identified. Most significantly, these rules have helped bring a degree of order to the marketplace with the result that effective dental programs are offered under prepayment plans so that individual consumers are receiving basic comprehensive dental care more economically in a risk sharing context. Another result has been to reduce overall costs to employers. The existence of the Act and these rules have permitted the Department to identify DPOs experiencing financial problems and to interact in a meaningful way so as to avoid ongoing financial jeopardy or insolvency.

Public Law 1983, chapters 142 through 145, was enacted on April 20, 1983 to supplement the Dental Plan Organization Act and the Dental Service Corporation Act of 1968 and other insurance laws relating to individual and group health insurance. The supplementary statutes apply to every employer or other organization which has 25 or more employees or members and contributes to a dental contract requiring covered persons to obtain dental services from a single provider or limited number of providers. These statutes require that such persons also be offered the option of selecting alternate coverage which permits dental services to be obtained from any licensed dentist. The new statutes required the Commissioner to promulgate rules necessary to effectuate the purpose

of the act including procedures for appropriate notice to covered persons, employers and other organizations. Accordingly, subchapter 2 of N.J.A.C. 11:10, entitled "Employee's Dental Benefit Plans: Alternate Coverage," was adopted on March 19, 1984 and became effective April 2, 1984. Clarifying amendments were adopted on April 15, 1985 and became effective May 6, 1985.

The rules provided in subchapter 2 prescribe the means for employers and organizations to notify covered persons of their rights under the statutes, including requirements specifying the time of notice and that the notice is to be in writing. Inquiries received periodically by the Department indicate that the intended purposes of these provisions are being effectively achieved.

With regard to N.J.A.C. 11:10 as a whole, however, the Department is considering several amendments to the rules which will be formally proposed at a later date. No modifications to the chapter are required at the present time in connection with this re-adoption.

Social Impact

The compliance efforts of all DPOs are facilitated by the rules set forth in subchapter 1 which clarify the requirements of the Act. The specific standards prescribed ensure that the purposes of the Act are fulfilled and that enrollees being served are protected. For example, the rules stipulate minimum requirements that must be met in contracts with dentists including assurance of quality dental care. These contracts are reviewed by the Department on initial filing and at time of modification so that systemic problems are identified and appropriate changes made. Quarterly financial statements are reviewed for financial solvency and factors or arrangements which may indicate abuse of the program.

These rules have helped bring order into the marketplace. Criminal activity and financial arrangements which are clearly contrary to public policy are more easily identified and eliminated. Abuses are prevented but where they exist, remedies are provided. The consuming public has benefited from the oversight that now exists as to the propriety of financial arrangements, the soundness of financial practices and the appropriateness of dental care coverages. Without these rules, some undesirable practices would undoubtedly reenter the marketplace.

Subchapter 2 ensures that persons entitled to select alternate coverage are notified of their option to choose dental care coverage which permits them to use any licensed dentist. The subchapter addresses the responsibilities of health insurers, DPOs and dental service corporations; and employers and other organizations having 25 or more employees or members to which a dental plan contract has been or is to be issued.

Economic Impact

The costs incurred by DPOs in complying with the rules in subchapter 1 are not appreciably more than the costs required to comply with the provisions of the Act. The costs to the Department of implementing these rules are only a small part of the costs incurred by the Department in its review and compliance operations overall.

The economic impact these rules have on DPOs and persons served by them can best be understood in terms of the Department's regulatory role which includes:

1. Monitoring the DPOs generally and their arrangements for producing services in particular;
2. Examining contract filings and subsequent modifications including rates;
3. Responding to consumer complaints; and
4. Reviewing quarterly financial statements and annual reports.

The result of such activity is to assure financial solvency, eliminate fraudulent or illegal activity and other abuses and to produce order in the marketplace.

Re-adoption of subchapter 2 will have little economic effect on the health insurers, DPOs or dental service corporations to which it applies. The cost of complying with required notice provisions is negligible since the companies affected already send premium and other notices to the insured groups. No additional expense will be incurred by the Department.

Regulatory Flexibility Analysis

Some businesses affected by this proposed re-adoption are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses include the 17 DPOs presently authorized to operate in New Jersey.

Reporting, record keeping and compliance requirements of these rules are substantially set forth in the statutes on which these rules are based. In instances where this is not the case, the requirements are minimal and simply reflect good business practices. Included in this category are re-

quirements that DPOs prepare and submit quarterly reports and reduce their agreements with participating dentists to writing. Individual dentists who capitate their services are exempt from the requirements of subchapter 1.

The notice requirements of subchapter 2 are not considered burdensome since the businesses subject to these requirements already send premium and other notices to the insured groups.

Full text of the re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:10.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES DIVISION OF ELECTRIC

Notice of Pre-Proposal Regulations on Conservation

Authorized By: New Jersey Board of Public Utilities,

Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13.

Preproposal Number: PPR 1990-7.

Take notice that the Divisions of Electric and Gas will hold a public hearing on Monday, June 25, 1990, at 10:00 A.M. at:

New Jersey Board of Public Utilities

Hearing Room

Two Gateway Center

Newark, New Jersey 07102

Subject: Limiting Barriers to Effective Conservation Progress and Implementing Conservation Ratemaking Incentives

Conservation provides an opportunity to lower both ratepayer and utility costs, can result in significant economic and environmental benefits, and reduces dependence on imported or more expensive fuels. Conservation can also limit the need for new baseload and peak electric generating plant, increased natural gas storage contracts and spot purchases, as well as transmission and distribution facilities otherwise required to meet customers' energy and demand needs, and therefore reduce the attendant construction costs and siting difficulties.

Pursuant to the New Jersey Board of Public Utilities Order of April 1, 1982, in Docket No. 8211-1032, the seven investor-owned electric and gas utilities of New Jersey were required to increase their conservation, load management and cogeneration activities. As a result of the various subsequent Orders and Docket No. 8211-1032, a wide range of conservation programs were implemented by the utilities. While the utilities are responsible for effective program implementation both the program design and level of financial recovery must be approved by the Board.

These program costs are recoverable expenses within the utilities' base rates. The current ratemaking treatment of conservation programs provides for the use of a deferred account to allow the utilities full recovery of actually incurred program costs from ratepayers, subject to prudence review within a base rate proceeding. At present, interest is not permitted on the balance in the deferred account.

Subsequently, in August, 1988, the Board approved the implementation of an annual procedure whereby the electric utilities would solicit competitive bids from cogenerators, small power producers, and conservation developers in order to meet projected capacity needs (BPU Docket No. 8010-687B). This process requires that power from cogeneration and independent power producers and savings from conservation projects be evaluated on an equal basis. Ratemaking for the bidding process allows for full and timely recovery of all approved costs.

It has been widely suggested that the current ratemaking treatment for conservation programs does not provide adequate incentive to encourage the utilities to aggressively pursue conservation. In fact, traditional ratemaking regulation may actually provide an economic disincentive to implementation of conservation measures by the utilities. This results from several factors. No matter how cost-effective, each unit of energy saved via conservation, at least in the short run, results in a reduction in utility revenues and concomitant profits, to the extent that lost revenues exceed reductions in variable costs. Conversely, to the extent that the marginal revenues resulting from increased sales exceed variable expenses, there exists a profit incentive for utilities to actively pursue increased sales. As a result, utilities' earnings are reduced in the short term to the extent

that sales decline via conservation. Conversely, increased sales lead to increased earnings. Both of these factors create disincentives to conservation. For example, the loss of revenues due to declining sales may create a bias towards the implementation of programs by utilities which target primarily peak demand reductions only instead of overall energy usage reductions. Indeed, some peak load targeted programs may actually be designed in such a manner as to increase overall usage.

Moreover, several informational, marketing and financial barriers to consumer investment in conservation have been identified which result in a suboptimal level of investment in conservation. These barriers include:

1. The lack of information on the cost effectiveness or availability of conservation investments;
2. The lack of an aggressive marketing based approach to selling conservation so that it can compete with other consumer products and investment options;
3. Budget constraints that prevent consumers from taking advantage of conservation investments which are otherwise cost effective from both a consumer and utility's standpoint. The budgets of many consumers are so limited that they can make no conservation investments while many businesses have a natural preference to invest in improving their own product line;
4. A differential between the discount rate applied and payback required by residential, commercial and industrial consumers in analyzing the feasibility of conservation investments and the discount rates used to analyze supply and demand side options from the utilities' perspective; and
5. That there are public benefits associated with conservation, that is, cleaner air, reduced siting problems for production plants and transmission lines and increased economic activity, which are not taken into account by either consumers considering a conservation investment or a utility purchasing avoided energy and capacity;

The electric and natural gas utilities have a central role to play in promoting energy conservation based on their unique contact with virtually every energy consumer in the State. This pre-proposal outlines ratemaking treatment that will provide incentives for increased utility participation in conservation activities, as well as other initiatives which will foster the expanded implementation of cost-effective conservation measures.

Moreover, in light of the foregoing considerations, the following regulatory policy goals designed to provide incentives for conservation may be appropriate:

1. The incentives should be performance based. That is, the utilities should be rewarded for actual conservation delivered to the system and should not be rewarded on the magnitude of dollars expended.
2. Reasonable and easily understood measurement criteria should be utilized to measure savings.
3. Utility incentives should be sufficient to provide motivation for utilities to expand their involvement and creatively develop ways to reach all customer groups, and to reduce the level of regulatory cost and oversight.
4. The utility should be compensated for income lost through conservation and not have a financial incentive to increase its sales base.
5. The non-utility sectors of the energy market must be provided additional support to improve the energy efficiency of the State.

The purpose of the hearing and this notice is to elicit specific oral and written comments on:

1. The appropriateness of the aforementioned policy goals;
2. The ratemaking treatment necessary for utilities to pursue and actively market conservation; and
3. The informational, marketing and financial barriers to consumer investment in conservation.

Interested persons should submit comments by July 9, 1990 to:

Robert Chilton, Acting Director
Division of Electric
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

This pre-proposal addresses the Board's broad goal of encouraging the full development of cost-effective conservation in New Jersey. In addition to other conservation incentive program issues, comment upon the following initiatives is specifically invited, including an assessment of the benefits and drawbacks, and underlying support provided:

I. A number of proposals aimed at providing utilities with financial incentives to actively pursue conservation have been suggested in various

forums. Should utility ratemaking be structured to eliminate the incentive to increase utility sales and alternatively provide utilities with incentives to encourage conservation?

A. One incentive mechanism is simply to transfer utility expenditures on conservation programs into rate bases, and allow the utility to earn a return thereon. Possible benefits of this approach include a better matching of pass-through in rates and ultimate savings to ratepayers than simple expensing provides. One potential downside is that the return on conservation investments to the utility does not depend on performance, or actual success in terms of achieved energy savings.

B. Another alternative is to provide incentives by adjusting the utility's allowed rate of return in relation to some specific achievement, such as reduction in usage per customer, reduction in customer bills, a specified amount of energy saved, or others. Such a bonus rate of return could be applied to total rate base or simply to investment in conservation and load management measures.

C. Another incentive method is to implement some form of a shared savings mechanism, whereby the savings related to conservation and load management measures are shared between consumers and utility shareholders. In this manner incentives are directly proportional to the success in achieving energy savings.

- (i) What is the appropriate methodology for measuring savings?
- (ii) Should the savings being split be based on estimates or actual measurements of reduced energy consumption?
- (iii) If estimated savings are to be used, specifically what mechanisms should be employed? For instance, engineering estimates, others?
- (iv) If actual measurements are to be used, specifically what mechanisms should be employed? For instance, if metered usage is utilized, how would corrections for changes in consumption not related to conservation measures be made. The plans submitted in conjunction with recent utility demand side bids may be helpful in this regard.
- (v) Should the savings be measured by some other means, such as customer bill savings?
- (vi) Should utilities receive any portion of the savings related to conservation measures undertaken by third parties or customers themselves, or should utility incentives be limited to savings related to utility expenditures on existing approved conservation programs such as energy audits, seal-ups, rebates and the like?
- (vii) A specific sharing formula of 25 percent to 35 percent of the net benefits of conservation programs to utilities was recommended in the CIC Report. Is this or some other formula appropriate?
- (viii) What type of sharing mechanism if any is appropriately applied to savings realized via conservation and load management projects procured via the annual supply and demand side bidding filings of the New Jersey electric utilities?
- (ix) How can environmental as well as other externalities be incorporated into the savings calculation?

D. A critical issue related to topic c) above is whether utilities should serve primarily as facilitators of conservation investment. In this case they would utilize their unique access to energy consumers and usage information to facilitate the development of conservation ventures by third parties at utility customer sites. As an alternative, the utilities could play an active role in seeking out applications and competing with third parties to install conservation materials and equipment. This approach raises questions regarding the ability of such a conservation service supplier market to function competitively, given the unique access to customers and information which the utilities enjoy.

(i) Should utilities be permitted to enter the market for sales and installation of conservation materials and equipment?

(ii) Should utilities be required to share customer demographic and billing data with all energy service companies?

(iii) Would different sharing formulae be required for the facilitator versus conservation-measure-supplier role, given the apparent risk differential associated with the two endeavors.

E. Should certain conservation program expenditures, such as costs related to informational and conservation advertising activities, continue to simply be expended and receive deferred accounting treatment, since direct performance measurement related to these expenses is difficult if not impossible?

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¹These initiatives have been excerpted from the July 1989 report entitled "Conservation: A Review and Analysis of Regulatory Incentives" prepared by the New Jersey Board of Public Utilities Conservation Incentive Committee (CIC). The CIC report can be obtained from the New Jersey Board of Public Utilities' Electric Division.

F. Should the deferred conservation account accrue interest at the utility's net of tax overall rate of return on the over/under recovered balance or should alternative methods for computing interest be utilized?

G. If the net program benefit is negative, should a penalty be instituted?

H. Over what time frame should the net program benefit be calculated? (that is, over the average life of the investment or an alternative time frame)

I. The prior proposed initiatives A-H dealt with mechanisms to provide utilities with a profit on conservation installations. Another issue critical to the creation of the proper regulatory environment for full development of cost-effective conservation is the revenue erosion/sales growth problem. Mechanisms may be necessary to insulate utilities from revenue erosion related to conservation and to decouple profits from sales growth. A mechanism proposed in the CIC Report is an annual revenue adjustment mechanism, which would eliminate the financial effects related to changes in sales relative to the test year. The proposed adjustment mechanism would reflect in rates the change in sales multiplied by the utility's rates less the cost of fuel, gross receipts and franchise taxes and any operating and maintenance expenses which vary directly with utility sales on the margin.

(i) Would such a mechanism adequately eliminate revenue erosion and decouple profits from sales?

(ii) Given the historic test year approach employed in this State, would any further adjustments be required to compensate the utility for expenditures related to incremental plant and expenses required to hook up new customers?

II. What is the role of utility rate design in promoting conservation and protecting utility earnings?

A. Should utilities be allowed to offer discounted rates, in order to retain and attract customers?

III. Should the natural gas utilities institute a bidding system to procure conservation capacity?

A. How would such a system be instituted?

B. What similarities and what differences exist between the existing bidding system for electric conservation projects and a similar system for gas utilities?

IV. Should the current Board policy providing parity natural gas rates for industrial customers, which allow the natural gas companies to continue to serve those customers and not lose them to alternative fuels, be accompanied by a requirement that the customer undertake independent energy conservation audits and implement those cost effective measures identified?

A. Should the serving utility require an assessment of the comparative energy consumptions of various energy sources at the facility?

V. To what extent should consideration be given to establishing conservation brokers, non-utility ventures which create and organize conservation activities? This would most likely take place in lieu of utility participation in the energy service market.

A. Should seed money be used to fund conservation brokers?

B. How active a role should the conservation broker take?

C. What potential sources for seed money exist?

D. What are the ramifications of utilities providing customer data to conservation brokers?

VI. Before commercial and industrial customers break ground for new or additional facilities, electric and gas utilities should encourage them to fully assess the implementation of conservation measures, and provide financial assistance to undertake the assessment and the recommended measures.

A. What are the barriers to requiring utility customers to fully assess the implementation of conservation measures before breaking ground?

B. What mechanisms exist or can be developed to ensure that utilities can be involved in the design stage of new customer facilities planned to be constructed in their territories?

C. Should utilities provide incentives to builders for fully assessing and implementing conservation measures?

D. Should utilities provide incentives, such as reduced rates, to developers/builders who design and construct buildings which exceed the thermal and equipment performance standards mandated by the New Jersey Uniform Construction Code?

E. At what thermal and equipment performance levels would incentives be appropriate?

F. Should the serving utility require an assessment of the comparative energy consumptions of various energy sources at the proposed facility?

The foregoing pre-proposal is intended to stimulate, rather than limit, dialogue for the development of the proposed rulemaking on conservation

rulemaking incentives. Additional issues beyond those set forth herein can be raised. All comments should address feasibility and administrative efficiency associated with the various options.

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 42:14B-1, et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

PUBLIC ADVOCATE

(a)

THE PUBLIC ADVOCATE

Notice of Comment Period Extension Procedure for Filing a Rulemaking Petition

Proposed New Rule: N.J.A.C. 15A:2-1.2

Take notice that the Department of the Public Advocate is extending the public comment period for its proposed new rule, N.J.A.C. 15A:2-1.2, Procedure to petition for a rule, published in the February 20, 1990 New Jersey Register at 22 N.J.R. 620(a), until June 13, 1990.

Submit comments by June 13, 1990 to:

Alma L. Saravia, Director
Legislative/Regulatory Affairs
Department of the Public Advocate
CN 850
Trenton, NJ 08625

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 9 in Cape May County; N.J. 54 in Atlantic County; U.S. 130 in Camden County and N.J. 47 in Cumberland, Gloucester and Camden Counties

Proposed Amendments: N.J.A.C. 16:28-1.41, 1.55, 1.69 and 1.132

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-308.

Submit comments by July 4, 1990 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

The agency proposal follows:

Summary

The proposed amendments will establish revised "speed limits" zones along Route U.S. 9 in the Townships of Lower, Middle, Upper, and Dennis, Cape May County; N.J. 54 in Folsom Borough and the Town of Hammonton, Atlantic County; U.S. 130 in the City of Camden, Pennsauken Township, and Collingswood Borough Camden County and N.J. 47 in Maurice River Township and the Cities of Millville and Vineland, Cumberland County; the Townships of Franklin, Washington and Deptford and the Boroughs of Clayton, Glassboro and Westville, Gloucester County and Brooklawn Borough, Camden County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs

conducted traffic investigations. The investigations proved that the revisions to current "speed limit" zones along Routes U.S. 9 in Cape May County; N.J. 54 in Atlantic County; U.S. 130 in Camden County and N.J. 47 in Cumberland, Gloucester and Camden Counties were warranted.

The Department, therefore, proposes amendments to N.J.A.C. 16:28-1.41, 1.55, 1.69 and 1.132 based upon the traffic investigations.

The Department is proposing to amend the speed zones on Route U.S. 9, N.J. 54, U.S. 130 and N.J. 47, changing their locations and designating them by mileposts in addition to other landmarks. Additionally, the Department proposes to add or revise school zones on Route U.S. 9 for the Cape May Christian School and the Middle Township Elementary School. Codification has been changed to clarify the rules in N.J.A.C. 16:28-1.41(a)ii. N.J.A.C. 16:28-1.41(a)iv through vi have been deleted as unnecessary, as the provisions were added to N.J.A.C. 16:28-1.41(a)2 in a prior rulemaking. In N.J.A.C. 16:28-1.55, speed zones in Folsom Borough and the Town of Hammonton have been added (also see adoption elsewhere in this issue of the New Jersey Register). The rules regarding Route 47 have been amended at N.J.A.C. 16:28-1.132(a) to designate the direction of traffic and the county, and to add zones in Cumberland County, designated by municipality, with school zones for Maurice River Elementary, Culver, Caroline Reutter and Glassboro Intermediate schools.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Routes U.S. 9 in Cape May County; N.J. 54 in Atlantic County; U.S. 130 in Camden County and N.J. 47 in Cumberland, Gloucester and Camden Counties for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The revised speed zones provide the motoring public specific areas and locations within the various municipalities to which they are applicable and provide some clarity within the rule. 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, which will total approximately \$117 plus \$7 per square foot for each sign installed. The Department will bear the costs for the installation of any additional "speed limit" zones signs, as necessary. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued pursuant to New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, record keeping 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 rules primarily affect the motoring public.

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

16:28-1.41 Route U.S. 9

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

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

i. Lower Township:

(1) Zone 1: 50 miles per hour between Route 109 and [Creese] **Cresse Lane** (mileposts [3.06 to 5.83] **3.00 to 3.81**); thence

(2) Zone 2: 40 miles per hour between [Creese] **Cresse Lane** and the Lower Township-Middle Township **corporate** line (mileposts [5.83 to 6.53] **3.81 to 6.63**); thence

ii. Middle Township:

(1) **Zone 1**: 40 miles per hour between Lower Township-Middle Township line and 100 feet south of the exit from the Garden State Parkway **except for 25 miles per hour when passing through the Cape May County Christian School zone (mileposts 10.508 to 10.572) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours** (mileposts [6.53] **6.63** to 10.90); thence

(2) Zone [3] **2**: 35 miles per hour between 100 feet south of the exit from the Garden State Parkway and Locust Lane (mileposts 10.90 to [11.90] **11.94**); thence

(3) Zone [4] **3**: 30 miles per hour between Locust Lane and 1000 feet north of Orbit Drive **except [with a 25 miles per hour School**

Speed Zone in Middle Township Elementary School Zone during recess when the presence of children is clearly visible from the roadway] for 25 miles per hour when passing through the Middle Township Elementary School Zone (mileposts 12.249 to 12.421) while "25 MPH when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (mileposts [11.90] **11.94** to 13.34); thence

(4) Zone [5] **4**: 40 miles per hour between 1000 feet north of Orbit Drive and 1000 feet north of **Crest Haven Boulevard (Co. Rd. 609)** [County Road 609] (mileposts 13.34 to 14.34); thence

(5) Zone [6] **5**: 50 miles per hour between 1000 feet north of [County Road 609] **Crest Haven Boulevard (Co. Rd. 609)** and the Middle Township-Dennis Township **corporate** line (mileposts 14.34 to [17.96] **17.97**); thence

iii. Dennis Township:

(1) 50 miles per hour between the Middle Township-Dennis Township **corporate** line and the Dennis Township-Upper Township **corporate** line (mileposts [17.96] **17.97** to [22.30] **22.36**); thence

iv. Upper Township:

(1) **Zone 1**: 50 miles per hour between the Dennis Township-Upper Township **corporate** line and 700 feet south of Route N.J. 50 (**approximate** mileposts [22.30] **22.36** to 23.46); thence

(2) Zone [7] **2**: 40 miles per hour between 700 feet south of Route N.J. 50 and 1350 feet north of Route N.J. 50 (**approximate** mileposts 23.46 to 23.86); thence

(3) Zone [8] **3**: 50 miles per hour between 1350 feet north of Route N.J. 50 and [Milepost #28] **Run Creek (approximate** mileposts 23.86 to [28.00] **28.05**); thence

(4) Zone [9] **4**: 45 miles per hour between [Milepost #28] **Run Creek** and 800 feet south of **Tuckahoe Road-Marmora Road** (County Road 631) (**approximate** mileposts [28.00] **28.05** to 28.35); thence

(5) Zone [10] **5**: 40 miles per hour between 800 feet south of **Tuckahoe Road-Marmora Road** (County Road 631) and 100 feet north of Lenape Lane (**approximate** mileposts 28.35 to 29.40); thence

(6) Zone [11] **6**: 45 miles per hour between 100 feet north of Lenape Lane and 200 feet south of Harbor Road (**approximate** mileposts 29.40 to 30.50); thence

(7) Zone [12] **7**: 40 miles per hour between 200 feet south of Harbor Road and the southernmost end of the Beesley's Point Bridge (**approximate** mileposts 30.50 to [30.70] **30.72**).

[v. 50 miles per hour from the Garden State Parkway connection at Port Republic to Brook Layne, Galloway Township; thence

vi. 45 miles per hour to the intersection of Route 157, Absecon; thence

vii. 35 miles per hour to the intersection of Ohio Avenue; thence

viii. 50 miles per hour to the intersection of West California Avenue; thence

ix. 40 miles per hour to the intersection of Adams Avenue, Pleasantville; thence

x. 30 miles per hour to the intersection of Noahs Road; thence

xi. 35 miles per hour to the intersection of Tilton Road;

xii. 40 miles per hour through Northfield to the intersection of Monroe Avenue, in Linwood City, Atlantic County; thence

xiii. 45 miles per hour to a point 100 feet south of the intersection of Connecticut Avenue, Somers Point; thence

xiv. 40 miles per hour to the intersection of Somers Point-Mays Landing Road; thence

xv. 45 miles per hour to the Atlantic County-Cape May County corporate line;

xvi. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes, except:

(1) A 35 mph school speed limit within the Oceanville school zone during recess or while children are going to or leaving school, during opening or closing hours; and

(2) A 35 mph school speed limit within the Holy Spirit High School zone, city of Absecon, during recess or while children are going to or leaving school, during opening or closing hours.]

2. (No change.)

(b) No change.)

16:28-1.55 Route 54

(a) The rate of speed designated for the certain parts of State highway Route 54 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-2. (No change.)

3. In Folsom Borough, Atlantic County:

i. For both directions of traffic:

(1) Zone 1: 55 miles per hour between the Buena Vista northerly line and Town of Hammonton southerly line (approximate mileposts 6.10 to 8.20).

4. In the Town of Hammonton, Atlantic County:

i. For both directions of traffic:

(1) Zone 1: 55 miles per hour between the Folsom Borough northerly line and 200 feet south of the center of the bridge over Penny Pot Stream (approximate mileposts 8.20 to 8.257); thence

(2) Zone 2: 50 miles per hour between 200 feet south of the center of the bridge over Penny Pot Stream and 500 feet south of Chews Road (Co. Rd. 559) (approximate mileposts 8.257 to 9.944); thence

(3) Zone 3: 35 miles per hour between 500 feet south of Chews Road (Co. Rd. 559) and Madison Avenue (approximate mileposts 9.944 to 10.318); thence

(4) Zone 4: 25 miles per hour between Madison Avenue and Tilton Street (approximate mileposts 10.318 to 10.988); thence

(5) Zone 5: 35 miles per hour between Tilton Street and Route U.S. 30 (approximate mileposts 10.988 to 11.88).

16:28-1.69 Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206

(a) The rate of speed designated for State highway Route [US] U.S. 130, including parts of Route I-295, Route [US] U.S. 30 and Route [US] U.S. 206 described in this [section] subsection are established and adopted as the maximum legal rate of speed for both directions of traffic:

1.-2. (No change.)

3. Camden County:

i.-ii. (No change.)

iii. Haddon Township, City of Camden, Collingswood Borough, Woodlynne Borough and Pennsauken Township:

(1) (No change.)

(2) Zone 11: [40 mph from Route 168 to Federal Street] 45 mph to the Camden Airport Circle (includes Route U.S. 30): (milepost 28.2 to 31.9); thence

(3)-(5) (No change.)

4.-6. (No change.)

(b) (No change.)

16:28-1.132 Route 47

(a) The rate of speed designated for the certain part of State highway Route 47 described [herein below] in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat :] for both directions of traffic:

1. [For both directions of traffic:] In Cape May County:

i.-viii. (No change.)

[(b) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be and hereby is established and adopted as the maximum legal rate of speed thereat.

1. For both directions of traffic:

i. Zone 1: 50 mph from the intersection with West Creek (also Cape May County line) to a point 420 feet south of Whitney Point Road, Maurice River Township (mileposts 24.50 to 25.40); thence

ii. Zone 2: 45 mph to a point 560 feet north of Glade Road (milepost 26.65); thence

iii. Zone 3: 50 mph to a point 575 feet south of Ferry Lane (milepost 33.25); thence

iv. Zone 4: 45 mph to a point 500 feet north of Fries Mill Road (milepost 34.15); thence

v. Zone 5: 50 mph to a point 150 feet north of Lilac Avenue, City of Millville (milepost 38.66); thence

vi. Zone 6: 40 mph to the intersection with Whitall Avenue (milepost 39.25); thence

vii. Zone 7: 35 mph to the intersection with Buck Street (milepost 39.88); thence

viii. Zone 8: 30 mph to the intersection with D Street (milepost 40.60); thence

ix. Zone 9: 35 mph to a point 300 feet north of Foundry Street (milepost 40.90); thence

x. Zone 10: 45 mph to the intersection with Chestnut Street, City of Vineland (milepost 46.05); thence

xi. Zone 11: 40 mph to the intersection with Park Avenue (milepost 46.92); thence

xii. Zone 12: 45 mph to the intersection with Oak Road (milepost 47.70); thence

xiii. Zone 13: 50 mph to the Franklin Township line (also Gloucester County line, milepost 51.93);

xiv. School zones: 35 mph in the Maurice River Township Elementary School zone, and 25 mph in the Culver School zone, City of Millville, during recess or while children are going to or leaving school, during opening or closing hours.

(c) The rate of speed designated for the certain part of State Highway 47 described herein below shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. Zone 1: 50 mph between Cumberland County-Gloucester County Line (also Vineland-Franklin Twp. Line) and a point 675 feet south of Colucci Road (signed New Rd.), Franklin Twp. (mileposts 51.93 to 52.25); thence

ii. Zone 2: 40 mph (including coincident Rt. US 40 section) to a point 550 feet north of Marshall Mill Road (milepost 53.30); thence

iii. Zone 3: 50 mph to a point 200 feet south of Pine Street (milepost 56.15); thence

iv. Zone 4: 40 mph to a point 500 feet north of MacArthur Avenue (milepost 56.95); thence

v. Zone 5: 50 mph to a point 165 feet north of Hickory Lane, Clayton Borough (milepost 58.50); thence

vi. Zone 6: 40 mph to Linden Street (milepost 59.10); thence

vii. Zone 7: 30 mph to Howard Street (milepost 59.75); thence

viii. Zone 8: 40 mph to a point 500 feet north of Costill Avenue (milepost 60.00); thence

ix. Zone 9: 50 mph to a point 1,950 feet south of Grove Street, Glassboro (milepost 61.80); thence

x. Zone 10: 45 mph to a point 175 feet south of Grove Street (milepost 62.20); thence

xi. Zone 11: 35 mph (including coincident Rt. US 322 section) to a point 150 feet north of Greentree Road (milepost 63.40); thence

xii. Zone 12: 45 mph to Heston Road (milepost 63.90); thence

xiii. Zone 13: 50 mph between Heston Road, (Glassboro and Pitman Boroughs, and a point 200 feet north of Bethel Mill Road, Washington Township (milepost 66.10); thence

xiv. Zone 14: 45 mph to a point 275 feet north of Salina Road (milepost 67.10); thence

xv. Zone 15: 50 mph to Essex Boulevard, Deptford Township (milepost 71.60); thence

xvi. Zone 16: 40 mph to Ladner Avenue (milepost 72.10); thence

xvii. Zone 17: 50 mph to Deptford Avenue-Caulfield Avenue (milepost 72.85); thence

xviii. Zone 18: 45 mph to Burr Avenue, Westville Borough (milepost 74.20); thence

xix. Zone 19: 35 mph to the Brooklawn Borough Line (also Gloucester County-Camden County Line, milepost 75.13) and within the Brooklawn Borough corporate limits (mileposts 75.13 to 75.24).

xx. School Zones: The following maximum legal rates of speed during recess or while children are going to or leaving school, during opening or closing hours:

(1) Intermediate School zone, Glassboro, 25 mph;

(2) Central School zone, Deptford Township, 30 mph.]

2. In Cumberland County:

i. Maurice River Township:

(1) Zone 1: 50 miles per hour between the Dennis Township (Cape May County) northerly line and Whitney Point Road (approximate mileposts 24.45 to 25.48); thence

(2) Zone 2: 45 miles per hour between Whitney Point Road and 1,100 feet north of Glade Road (approximate mileposts 25.48 to 26.748); thence

(3) Zone 3: 50 miles per hour between 1,100 feet north of Glade Road and Front Street (approximate mileposts 26.748 to 32.752); thence

(4) Zone 4: 45 miles per hour between Front Street and Tralinger Road (AKA Fries Mill Road), except for 30 miles per hour when passing through the Maurice River Township Elementary School zone (mileposts 33.186 to 33.283) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 32.752 to 34.061); thence

(5) Zone 5: 50 miles per hour between Tralinger Road (AKA Fries Mill Road) and the City of Millville southerly line (approximate mileposts 34.061 to 36.08).

ii. The City of Millville:

(1) Zone 1: 50 miles per hour between the Maurice River Township northerly line and Jupiter Drive (approximate mileposts 36.08 to 38.008); thence

(2) Zone 2: 45 miles per hour between Jupiter Drive and Myrtle Avenue (approximate mileposts 38.008 to 38.644); thence

(3) Zone 3: 40 miles per hour between Myrtle Avenue and Whitall Avenue (approximate mileposts 38.644 to 39.207); thence

(4) Zone 4: 35 miles per hour between Whitall Avenue and Ware Avenue (approximate mileposts 39.207 to 39.848); thence

(5) Zone 5: 30 miles per hour between Ware Avenue and "E" Street, except for 25 miles per hour when passing through the Culver School zone (mileposts 40.005 to 40.150) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 39.848 to 40.638); thence

(6) Zone 6: 35 miles per hour between "E" Street and Harrison Street (approximate mileposts 40.638 to 41.027); thence

(7) Zone 7: 45 miles per hour between Harrison Street and the City of Vineland southerly line (approximate mileposts 41.027 to 42.36).

iii. Vineland City:

(1) Zone 1: 45 miles per hour between the City of Millville northerly line and Chestnut Avenue (approximate mileposts 42.36 to 45.881); thence

(2) Zone 2: 40 miles per hour between Chestnut Avenue and Park Avenue (approximate mileposts 45.881 to 46.754); thence

(3) Zone 3: 45 miles per hour between Park Avenue and Oak Road (approximate mileposts 46.754 to 47.511); thence

(4) Zone 4: 45 miles per hour between Oak Road and the Franklin Township (Gloucester County) southerly line (approximate mileposts 47.511 to 51.79).

3. In Gloucester County:

i. Franklin Township:

(1) Zone 1: 50 miles per hour between City of Vineland (Cumberland County) northerly line and Malaga Terrace (approximate mileposts 51.79 to 51.96); thence

(2) Zone 2: 40 miles per hour between Malaga Terrace and Malaga Branch Creek (approximate mileposts 51.96 to 53.188); thence

(3) Zone 3: 50 miles per hour between Malaga Branch Creek and Pine Street, except for 35 miles per hour when passing through the Caroline Reutter School zone (mileposts 55.46 to 55.70) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 53.188 to 53.973); thence

(4) Zone 4: 40 miles per hour between Pine Street and 500 feet north of MacArthur Avenue (approximate mileposts 53.973 to 56.725); thence

(5) Zone 5: 50 miles per hour between 500 feet north of MacArthur Avenue and the Clayton Borough southerly line (approximate mileposts 56.725 to 58.17).

ii. Clayton Borough:

(1) Zone 1: 50 miles per hour between the Franklin Township northerly line and Hickory Lane (approximate mileposts 58.17 to 58.263); thence

(2) Zone 2: 40 miles per hour between Hickory Lane and Linden Street (approximate mileposts 58.263 to 58.902); thence

(3) Zone 3: 30 miles per hour between Linden Street and Howard Street (approximate mileposts 58.902 to 59.525); thence

(4) Zone 4: 35 miles per hour between Howard Street and 612 feet north of Costill Street (approximate mileposts 59.525 to 59.788); thence

(5) Zone 5: 45 miles per hour between 612 feet north of Costill Street and Sienna Drive (approximate mileposts 59.788 to 60.10); thence

(6) Zone 6: 50 miles per hour between Sienna Drive and Glassboro Borough southerly line (approximate mileposts 60.10 to 60.65).

iii. Glassboro Borough:

(1) Zone 1: 50 miles per hour between the Clayton Borough northerly line and the roadway to M. Jetter & Son (approximate mileposts 60.65 to 61.58); thence

(2) Zone 2: 45 miles per hour between the roadway to M. Jetter & Son and Grove Street (approximate mileposts 61.58 to 61.988); thence

(3) Zone 3: 35 miles per hour between Grove Street and Bristol Drive (including coincident Route U.S. 322 section mileposts 62.20 to 62.22), except for 25 miles per hour when passing through the Glassboro Intermediate School zone (mileposts 62.675 to 62.806) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 61.988 to 63.308); thence

(4) Zone 4: 45 miles per hour between Bristol Drive and the roadway to Autumn Ridge Homes (approximate mileposts 63.308 to 64.298); thence

(5) Zone 5: 50 miles per hour between the roadway to Autumn Ridge Homes and Washington Township southerly line (approximate mileposts 64.298 to 64.86).

iv. Washington Township:

(1) Zone 1: 50 miles per hour between the Glassboro Borough northerly line and Bethel Mill Road (approximate mileposts 64.86 to 65.86); thence

(2) Zone 2: 45 miles per hour between Bethel Mill Road and Grenlock-Salina Road (approximate mileposts 65.86 to 66.818); thence

(3) Zone 3: 50 miles per hour between Grenlock-Salina Road and the Deptford Township southerly line (approximate mileposts 66.818 to 68.16).

v. Deptford Township:

(1) Zone 1: 50 miles per hour between Washington Township northerly line and Essex Boulevard-Harriticon Parkway (approximate mileposts 68.16 to 71.377); thence

(2) Zone 2: 45 miles per hour between Essex Boulevard-Harriticon Parkway and Westville Borough southerly line, except for 30 miles per hour when passing through the Central School zone (mileposts 71.351 to 71.637) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 71.377 to 73.77).

vi. Westville Borough:

(1) Zone 1: 45 miles per hour between the Deptford Township northerly line and Harvard Avenue (approximate mileposts 73.77 to 73.964); thence

(2) Zone 2: 35 miles per hour between Harvard Avenue and Brooklawn Borough (Camden County) line (approximate mileposts 73.964 to 74.89).

4. In Camden County:

i. Brooklawn Borough:

(1) 35 miles per hour between the Westville Borough (Gloucester County) line and the southerly approach to Route U.S. 130 circle (approximate mileposts 74.87 to 74.98).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 10 in Morris and Essex Counties

Proposed Amendments: N.J.A.C. 16:28-1.94

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-289.

Submit comments by July 4, 1990 to:
 Charles L. Meyers
 Administrative Practice Officer
 Bureau of Policy and Legislative Analysis
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules will revise "speed limit" zones along Route N.J. 10 in the Townships of Roxbury, Randolph, Denville, Parsippany-Troy Hills, Hanover and East Hanover and Morris Plains Borough, Morris County, Livingston Township, and the Town of West Orange, Essex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the revision of current "speed limit" zones along Route N.J. 10 in Morris and Essex Counties was warranted.

The Department therefore proposes amendments to N.J.A.C. 16:28-1.94, based upon the traffic investigations. The amendments do not change the rate of speed permitted, but change the delineation of the zones to show the mileposts and the specific municipalities.

Social Impact

The proposed amendments will revise "speed limit" zones along Route N.J. 10 in the Townships of Roxbury, Randolph, Denville, Parsippany-Troy Hills, Hanover and East Hanover and Morris Plains Borough, Morris County, Livingston Township, and the Town of West Orange, Essex 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

Planning, engineering and installation of any necessary additional signs will cost approximately \$117.00 and production of the signs will cost approximately \$7.00 per square foot. The Department will bear the costs for the installation of "speed limit" signs, where additional signs are needed. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued pursuant to New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, record keeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

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

16:28-1.94 Route 10

(a) The rate of speed designated for the certain part of State highway [route number] **Route 10** described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:
 - [i. 50 miles per hour from the Route U.S. 46-Route 10 traffic circle, Ledgewood to the underpass at County Road number 511; thence
 - ii. 40 miles per hour to a point one-half mile west of the center of the Black Brook-Whippany River Bridge; thence
 - iii. 50 miles per hour to the Northfield Avenue traffic circle; thence
 - iv. 45 miles per hour to the intersection of Mitchell Avenue, Livingston Township; thence
 - v. 40 miles per hour to the intersection of Tudor Avenue; thence
 - vi. 45 miles per hour to the intersection of Pleasant Valley Way; thence
 - vii. 40 miles per hour to the intersection of Prospect Avenue, West Orange;
 - viii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

i. In Morris County:

(1) **Roxbury Township:**

(A) 50 miles per hour between Ledgewood Circle and the westerly line of Randolph Township (Black River) (approximate mileposts 0.00 to 1.74); thence

(2) **Randolph Township:**

(A) 50 miles per hour between the easterly line of Roxbury Township (Black River) and the westerly line of Denville Township (approximate mileposts 1.74 to 7.54).

(3) **Denville Township:**

(A) 50 miles per hour between the easterly line of Randolph Township and the westerly line of Parsippany-Troy Hills Township (approximate mileposts 7.54 to 9.29).

(4) **Parsippany-Troy Hills Township:**

(A) 50 miles per hour between the easterly line of Denville Township and the southwesterly line of Morris Plains Borough (approximate mileposts 9.29 to 10.46); thence

(B) 50 miles per hour between the southeasterly line of Morris Plains Borough and the westerly line of Hanover Township (approximate mileposts 11.62 to 12.13).

(5) **Hanover Township:**

(A) **Zone 1:** 50 miles per hour between the easterly line of Parsippany-Troy Hills Township and the Morristown-Erie Railroad track (approximate mileposts 12.13 to 14.327); thence

(B) **Zone 2:** 40 miles per hour between the Morristown-Erie Railroad track and Algonquin Parkway (approximate mileposts 14.327 to 15.205); thence

(C) **Zone 3:** 45 miles per hour between Algonquin Parkway and the westerly line of East Hanover Township (Black Brook) (approximate mileposts 15.205 to 15.70).

(6) **East Hanover Township:**

(A) 45 miles per hour between the easterly line of Hanover Township and the westerly line of Livingston Township (Passaic River) (approximate mileposts 15.70 to 17.708).

ii. In Essex County:

(1) **Livingston Township:**

(A) **Zone 1:** 45 miles per hour between the easterly line of East Hanover Township (Passaic River) and Mitchell Avenue (approximate mileposts 17.708 to 19.942); thence

(B) **Zone 2:** 40 miles per hour between Mitchell Avenue and Shrewsbury Drive (Co. Rd. 635), except for 25 miles per hour when passing through the Mount Prospect Middle School zone (mileposts 20.617 to 20.839) during recess, when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours, (approximate mileposts 19.942 to 21.05); thence

(C) **Zone 3:** 45 miles per hour between Shrewsbury Drive and the westerly line of the Town of West Orange (approximate mileposts 21.05 to 21.61).

(2) **In the Town of West Orange:**

(A) **Zone 1:** 45 miles per hour between the easterly line of Livingston Township and Pleasant Valley Way (Co. Rd. 636) (approximate mileposts 21.61 to 22.65); thence

(B) **Zone 2:** 40 miles per hour between Pleasant Valley Way and Prospect Avenue (Co. Rd. 577 Spur) (approximate mileposts 22.65 to 23.47).

2. For westbound direction of traffic:

i. In Morris County:

(1) **Parsippany-Troy Hills Township:**

(A) 50 miles per hour between the southwesterly line of Morris Plains Borough and the southeasterly line of Morris Plains Borough (approximate mileposts 10.46 to 11.62).

3. For eastbound direction of traffic:

i. In Morris County:

(1) **Morris Plains Borough:**

(A) 50 miles per hour between the southeasterly line of Parsippany-Troy Hills Township and the southwesterly line of Parsippany-Troy Hills Township (approximate mileposts 11.04 to 11.62).

(a)

**DIVISION OF SYSTEMS PLANNING
BUREAU OF ACCESS AND DEVELOPMENT IMPACT
ANALYSIS**

**Notice of Comment Period Extension
State Highway Access Management Code**

Proposed New Rules: N.J.A.C. 16:47

Take notice that on April 2, 1990 the Department of Transportation proposed new rules N.J.A.C. 16:47, State Highway Access Management Code, which appeared at 22 N.J.R. 1061(b).

The Department, having received a request for extension of comment period from the New Jersey Builders Association, 101 Morgan Lane, Plainsboro, New Jersey 08536, granted a comment period extension for a period of 60 days to June 6, 1990, a notice of which appeared at 22 N.J.R. 1347(a).

In view of the series of public hearings held and the time element required to review and consider the comments made at these hearings, the Department proposes to further extend the comment period from June 6, 1990 to July 6, 1990.

Submit comments by July 6, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
CN 600
Trenton, N.J. 08625

OTHER AGENCIES

(b)

**HACKENSACK MEADOWLANDS DEVELOPMENT
COMMISSION**

Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authorized By: Hackensack Meadowlands Development

Commission, Anthony Scardino, Jr., Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1990-277.

A public hearing concerning this proposed amendment will be held on June 19, 1990 at or after 10:00 A.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by July 4, 1990 to:

Thomas R. Marturano, P.E., P.P., Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands Development Commission Official Zoning Map consists of a change in zoning designation of the following parcels which are all located within the Borough of Ridgefield:

Portion of Block 4004, Lot 4, from Marshland Preservation to Heavy Industrial;

Portion of Block 4010, Lot 3, from Waterway to Heavy Industrial; Block 4010, Lot 2, from Light Industrial "B" and Railroad Right-of-Way to Heavy Industrial;

Portion of Block 4007, Lot 1, from Railroad Right-of-Way to Heavy Industrial;

Block 4008, Lot 1, from Light Industrial "B" to Heavy Industrial.

In addition, the Commission is proposing to change the designations of separate parcels owned by Consolidated Rail Corporation (Conrail) within the Borough of Ridgefield, because of common site characteristics and unique circumstances. These parcels are identified as follows:

Portions of Block 168, Lot 1, from Light Industrial "B" to Heavy Industrial;

Block 167, Lot 1B, from Light Industrial "B" to Heavy Industrial; Portion of Block 167, Lot 1C, from Light Industrial "B" to Heavy Industrial.

It should be noted that the block and lot numbers for the Conrail parcel have been changed by the Borough of Ridgefield as follows:

Portions of Block 168, Lot 1 and Block 167, Lot 1C, have the new designation of Block 4011, Lot 3, and Block 167, Lot 1B, have the new designation of Block 4013, Lot 1.

Social Impact

The proposed zoning changes would bring developed sites, owned by Conrail and CSX/Sea-Land, into conformance with the zoning regulations. All of the parcels have been and are currently utilized for heavy industrial uses; these uses came into being prior to the establishment of the HMDC zoning regulations in 1972. The parcels are isolated from surrounding uses by waterways, rights-of-way, and utility easements. The traffic impact of the proposed rezoning has been reviewed and it does not appear to present any problems. The property owners would be able to develop their land in accordance with heavy industrial use provisions; current rules would require a variance prior to their doing so.

Economic Impact

The proposed rezoning of the subject parcels will allow continued development of both sites, CSX/Sea-Land and Conrail, in conformance with the District's zoning regulations, without the necessity of acquiring a variance. Continued development of these sites will not cause undue hardship to the Borough of Ridgefield.

Regulatory Flexibility Statement

The effect of this proposed amendment would be to rezone certain properties in the Borough of Ridgefield, which are owned by two large businesses, Conrail and CSX/Sea-Land. The amendment will not have an impact on small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There being no regulation over small businesses, no regulatory flexibility analysis is required.

19:4-6.28 Official Zoning Map

Change the current zoning designation of the following parcels listed below to Heavy Industrial; all are located in the Borough of Ridgefield:

Portion of Block 4004, Lot 4, from Marshland Preservation to Heavy Industrial;

Portion of Block 4010, Lot 3, from Waterway to Heavy Industrial; Block 4010, Lot 2, from Light Industrial "B" and Railroad Right-of-Way to Heavy Industrial;

Portion of Block 4007, Lot 1, from Railroad Right-of-Way to Heavy Industrial;

Block 4008, Lot 1, from Light Industrial "B" to Heavy Industrial; Portions of Block 168, Lot 1, from Light Industrial "B" to Heavy Industrial;

Block 167, Lot 1B, from Light Industrial "B" to Heavy Industrial; Portion of Block 167, Lot 1C, from Light Industrial "B" to Heavy Industrial.

It should be noted that the Block and Lot numbers for the Conrail parcel have been changed by the Borough of Ridgefield as follows:

Portions of Block 168, Lot 1 and Block 167, Lot 1C, have the new designation of Block 4011, Lot 3, and Block 167, Lot 1B, have the new designation of Block 4013, Lot 1.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(a)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Procedure for Accepting, Verifying and Accounting
For Wire Transfers

Proposed Amendment: N.J.A.C. 19:45-1.24A

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

Authority: N.J.S.A. 5:12-69, 5:12-70g, l and m and 5:12-99.

Proposal Number: PRN 1990-285.

Submit comments by July 4, 1990 to:

Mary S. LaMantia, Assistant Counsel
 Casino Control Commission
 3131 Princeton Pike Office Park
 Building No. 5, CN-208
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Casino Control Commission (Commission) rules at N.J.A.C. 19:45-1.24A permit a casino licensee to accept a wire transfer of funds to establish a cash deposit pursuant to N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.24; redeem outstanding counter checks pursuant to N.J.S.A. 5:12-101c and N.J.A.C. 19:45-1.26 and 1.27; or pay a returned counter check pursuant to N.J.S.A. 5:12-101e and N.J.A.C. 19:45-1.29. In providing notice of the receipt and deposit of a wire transfer, the casino licensee's bank must transmit specified information to the casino licensee, including the name of the patron for whose benefit the transfer was made.

On December 15, 1989, Boardwalk Regency Corporation filed a petition for rulemaking pursuant to N.J.S.A. 5:12-69c, requesting that the Commission promulgate an amendment to N.J.A.C. 19:45-1.24A, to permit acceptance of a wire transfer if the casino licensee is provided with either the name or the casino identification number of the patron on whose behalf the funds are transferred (see 22 N.J.R. 565(d)). To ensure that the regulatory agencies would immediately be able to identify the beneficiary of a wire transfer using a casino identification number, the requested proposal has been modified to require that a record of the patron's name and casino identification number be on file in a location approved by the Commission, prior to the acceptance of such a transfer.

Social Impact

The proposed amendment will benefit the casino industry and patrons by facilitating prompt receipt and crediting of wire transfers where a patron prefers to designate funds for deposit by reference to his or her casino identification number. The proposed amendment thus protects the patron's right to privacy in those instances where the patron does not wish to disclose his or her identity to the intermediary banks in the chain of transfer of funds.

Economic Impact

The proposed amendment will not have any significant economic impact since implementation of the revised wire transfer procedures should not involve any additional costs for the casino industry, the regulatory agencies or the public.

Regulatory Flexibility Statement

The proposed amendment affects only the operation of casino licensees, and, therefore, does not impact on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers

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

(c) Upon notification in accordance with (b) above that a wire transfer of funds has been credited to the casino licensee's operating account, the cage employee who received the notice shall record, at a minimum, the following information in the notification section of a Wire Transfer Log maintained in the main bank of the cashiers' cage:

1.-4. (No change.)

5. The name or casino identification number of the patron for whose benefit the funds were transferred, provided, however, that the casino licensee shall not accept a wire transfer which identifies the patron by casino identification number unless a record of the patron's name and casino identification number is on file in a location approved by the Commission;

6.-7. (No change.)

(d)-(h) (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT
Neighborhood Preservation Balanced Housing
Program

Proposed Readoption: N.J.A.C. 5:14

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

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1990-288.

Submit comments by July 4, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Neighborhood Preservation Balanced Housing Program rules, N.J.A.C. 5:14, are scheduled to expire on December 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary to implement section 20 of the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-320), which established the Neighborhood Preservation Nonlapsing Revolving Fund. Grants and loans are made to municipalities from this fund to assist in the production of housing affordable to households of low income (that is, less than 50 percent of median income for the region) and moderate income (that is, not more than 80 percent of median income for the region).

These rules include standards for determining eligibility of applicants and of activities for funding, for funding cycles and application procedures, for funding criteria and for affordability controls. The rules on affordability controls have been designed to be consistent with rules adopted by the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80-26 and by the Council on Affordable Housing at N.J.A.C. 5:92-12.

The Department is currently preparing a proposal for amendments to subchapters 1 through 3 of this chapter and will consider any recommendations for such amendments that may be submitted as comments on this proposed readoption. That proposal will, however, be separate from this readoption proposal.

Social Impact

Failure to readopt these rules would eliminate standards that are needed for the proper utilization of balanced housing funds allocated by the Department under N.J.S.A. 52:27D-320. The absence of affordability controls would make it difficult to ensure that the affordable housing that is produced will continue to be affordable to households of low and moderate income for the periods of time prescribed by the Fair Housing Act.

Economic Impact

Failure to readopt these rules would jeopardize the availability of balanced housing funds for affordable housing projects, thereby frustrating the statutory intent by preventing the production of affordable units.

Regulatory Flexibility Analysis

The proposed readoption places requirements on municipalities for determining eligibility of applicants and funding activities, for funding cycles, criteria, and affordability controls for the use of balanced housing funds granted through the Neighborhood Preservation Balanced Housing Program. The municipalities then issue grants to builders, some of whom

may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, some of the assisted properties may be owned by small businesses, which rent to eligible applicants. No special professional services are required to comply with the provisions of the chapter proposed for readoption. The application procedure does not include any requirements which should prove burdensome to a small business. The Department has not provided any differential requirements for small businesses, since to do so would allow unequal treatment of applicants and would be in conflict with the provisions of N.J.A.C. 5:92.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:14.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
New Home Warranties and Builders' Registration
Proposed Readoption with Amendments: N.J.A.C.
5:25**

Authorized By: Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.
Authority: N.J.S.A. 46:3B-10.
Proposal Number: PRN 1990-287.

Submit comments by July 4, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Regulations Governing New Home Warranties and Builders' Registration, N.J.A.C. 5:25, are scheduled to expire on March 1, 1991. The Department has reviewed these rules and finds that they continue to be necessary to implement the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et seq., (Act) by establishing standards for the warranty required by statute to be given by the builder to new homebuyers and for the registration of new home builders. Certain minor changes of a technical nature are, however, necessary. The rules include provisions dealing with builder registration (required as a precondition for doing business as a builder of new homes in New Jersey), for warranty coverage and standards, for private alternative new home warranty security plans, and for the State new home warranty security plan.

Social Impact

Failure to readopt these rules would make it impossible to enforce the New Home Warranty and Builders' Registration Act, since specific warranty standards are set forth in the rules, rather than in the statute. This would make the Department unable to ensure that homebuyers get the level of protection against defects intended by the statute. The minor technical changes are necessary in order to update references to the Division and Bureau charged with enforcement responsibility, as well as allocation of responsibilities.

Economic Impact

Failure to readopt these rules would create uncertainty and give rise, as a result, to the very litigation concerning allegations of new home defects that the Act was intended to make unnecessary. This would inevitably be costly for both owners and homebuyers.

Regulatory Flexibility Analysis

The proposed readoption places registration and design requirements on builders of new homes which assure warranty protection to the owners, pursuant to the requirements of N.J.S.A. 46:3B-1 et seq., the New Home Warranty and Builders' Registration Act. Many of the builders may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department, however, has determined that no differentiation in the rules should be provided for small businesses, since to do so could result in unequal treatment of the buyers and would not conform to the provisions of the New Home Warranty and Builders' Registration Act.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:25.

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

5:25-1.3 Definitions

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

...
"Director" means the Director of the Division of Housing and [Urban Renewal] **Development**.

"Division" means the Division of Housing and [Urban Renewal] **Development** in the Department of Community Affairs.

...

5:25-1.4 Administration and enforcement

(a) The Division of Housing and [Urban Renewal] **Development** in the Department of Community Affairs shall administer and enforce this chapter. All the powers, duties, and responsibilities vested in the Commissioner by the New Home Warranty and Builders' Registration Act are hereby delegated to and vested in the Director of the Division of Housing and [Urban Renewal] **Development** except the power to adopt, amend, or repeal regulations and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Within the Division of Housing and Development, responsibility for the administration and enforcement of these regulations shall be vested in the Bureau of [Construction Code Enforcement] **Homeowner Protection**. All powers and responsibilities delegated by the Director, Division of Housing and Development by this chapter shall be executed, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, by the Chief, Bureau of [Construction Code Enforcement] **Homeowner Protection** [except the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) which power shall be vested in the Commissioner].

5:25-2.5 Denial, suspension or revocation of registration

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

(c) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may, at the purchaser's option, and under the supervision of the Bureau of [Construction Code Enforcement] **Homeowner Protection**, require the builder to complete the work. The warranty plan under which the home is covered or required to be covered at the time of closing[,] shall cover said home for the length of the warranty.

5:25-5.1 Fund administrator

Responsibility for administering the State Plan is hereby delegated to the Director, Division of Housing and [Urban Renewal] **Development**. The Director shall establish such procedures and controls as may be necessary to account for the fund and shall approve all payments from the fund.

5:25-5.5 Claims procedure

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

(c) Rules concerning [departmental] **Departmental** responsibilities[,] and formal claims resolution process are:

1.-2. (No change.)

3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:

i. (No change.)

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of [Construction Code Enforcement] **Homeowner Protection** shall thoroughly review the matter and shall make a decision on the merits of the claim. This decision shall be binding on both parties[,] provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision[. The], the Division shall then provide an administrative

hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Planned Real Estate Development Full Disclosure
Regulations**

**Proposed Readoption with Amendments: N.J.A.C.
5:26**

Authorized By: William M. Connolly, Director, Division of
Housing and Development, Department of Community
Affairs.

Authority: N.J.S.A. 45:22A-35.

Proposal Number: PRN 1990-286.

Submit comments by July 4, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Planned Real Estate Development Full Disclosure Act Regulations, N.J.A.C. 5:26, are scheduled to expire on March 1, 1991. The Division of Housing and Development has reviewed these rules and finds that they continue to be necessary to implement the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., by establishing standards for the information required to be given by developers to purchasers of units or interests in planned real estate developments. A planned real estate development is any residential real property located in the State of New Jersey and consisting of separately owned units, lots or interests offered or sold as part of a common promotional plan and providing for common or shared elements or interests in real property. Condominiums, cooperatives and planned unit developments are included within the definition of "planned real estate development."

The chapter proposed for re-adoption includes subchapters dealing with general provisions, registration, application for registration, public offering statements, advertising, contracts, warranties, community associations, conversions, nonbinding reservation agreements, and administration and enforcement. The amendments proposed include a change in administration of the rules from the Bureau of Construction Code Enforcement to the Bureau of Homeowner Protection, and a clarification of hearing provisions.

Social Impact

Failure to re-adopt these rules would make it impossible to enforce the Planned Real Estate Development Full Disclosure Act, since the specific requirements as to the content of documents filed with the Division and given to prospective purchasers are set forth in the rules. Planned real estate development has been a popular form of housing in recent years because it tends to be more affordable than detached single family homes. Much of the newly-constructed housing built in compliance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. is in planned real estate developments. Thus, a failure to re-adopt these rules would disrupt the market for planned real estate development units and thereby interfere with the production of housing affordable both to persons of middle income and to persons of low and moderate income.

Economic Impact

Failure to re-adopt these rules would disrupt the market for planned real estate development units and would consequently have an extremely adverse economic impact upon developers of these units and upon prospective purchasers who may be prevented from buying a unit they can afford.

Regulatory Flexibility Analysis

The proposed re-adoption imposes requirements upon planned real estate developers, many of whom may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq. The chapter includes record keeping, reporting and other compliance requirements in the areas of registration, advertising, contracts and agreements, administration and enforcement. The rules impose no additional capital costs or expenses for professional or other services beyond those ordinarily required for such businesses. However, N.J.A.C. 5:26-2.2(a)10 allows an exemption from the requirements of the rules, where the Division finds that enforcement of the Act is not required due to the small amount of the purchase price, the limited nature of the offering or the limited nature of the common or shared elements. Developers of small projects, who are often small businesses, can avail themselves of this provision.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:26.

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

5:26-1.4 Administration

The Act shall be administered by the Division of Housing and Development of the State Department of Community Affairs, through the Bureau of [Construction Code Enforcement] **Homeowner Protection**. All correspondence and inquiries may be addressed to the Bureau of [Construction Code Enforcement] **Homeowner Protection**, CN 805, Trenton, New Jersey 08625.

5:26-2.11 Order of revocation

(a) The Agency may revoke a registration after notice and 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 and upon finding of fact that the developer has:

- 1.-7. (No change.)
(b) (No change.)

5:26-9.3 Public Offering Statement

(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.

1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:

THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF HOUSING AND DEVELOPMENT, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THIS BUILDING TO A CONDOMINIUM OR COOPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS [FOR A PERIOD OF 45 DAYS] CONCERNING THIS STATEMENT FOR A PERIOD OF 45 DAYS. ALL COMMENTS SHOULD BE ADDRESSED TO:

Department of Community Affairs
Planned Real Estate Development Section
Bureau of [Construction Code Enforcement] **Homeowner Protection**
CN 805
Trenton, NJ 08625

THIS DOCUMENT IS NOT THE NOTICE OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTS (N.J.S.A. 2A:18-61.1 et seq.).

5:26-11.1 Administration

The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these regulations. Within the Division, [responsibilities] **responsibility** for administration and enforcement of these regulations shall be vested in the Bureau of [Construction Code Enforcement] **Homeowner Protection**. All powers and responsibilities vested in the Director, Division of Housing and Development, shall be executed by the Chief, Bureau of [Construction Code Enforcement] **Homeowner Protection**, **subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement**, with the exception of the power to make rules and the power to make final determinations resulting from any hearing required or permitted pursuant to law.

5:26-11.5 Penalties

(a) The Commissioner, through the Agency, may levy and collect the penalties set forth in the Act after affording the person allegedly in violation an opportunity [to appear before the Commissioner or his designee or as provided by law to be heard personally or through counsel] **for a hearing, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on the alleged violations, and after a [finding] final determination** that said person is guilty of the violation.

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

(a)

COUNCIL ON AFFORDABLE HOUSING**Controls on Affordability; Compensation for Central Air Conditioning****Proposed Amendments: N.J.A.C. 5:92-12.13, 12.15, 12.16 and Appendix**

Authorized By: New Jersey Council on Affordable Housing,
William A. Angus, Jr., Acting Chairman.

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

Proposal Number: PRN 1990-284.

Submit comments by July 5, 1990 to:

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

The agency proposal follows:

Summary

When a low or moderate income sales unit is created, it is accompanied by restrictions on the maximum price an income-qualified owner may receive upon resale. The maximum resale price is indexed over time, based on increases in regional income. With the exception of home improvements that allow a housing unit to be resold to a larger household (adding a bedroom), all home improvements are made at the owner's expense.

It has come to the Council's attention that central air conditioning is an option in many units, including low and moderate units. Thus, many low and moderate income units have been produced without air conditioning. In addition, many home owner associations have adopted covenants prohibiting window air conditioners. Thus, if an owner of a low or moderate income unit wants (or needs) air conditioning, he or she must purchase central air conditioning.

Such a purchase is not viewed as a luxury by the Council. The Council believes that home owners should be able to receive compensation for central air conditioning installed subsequent to the initial purchase of a low or moderate income housing unit. However, the Council does not believe that the cost of installation should be permanently added to the maximum allowable resale price. Therefore, the Council is proposing an amendment to its affordable housing agreement and N.J.A.C. 5:92-12.16 that would allow central air conditioning to be sold separately from the housing unit at a price approved by the authority (the entity administering controls on affordability). The purchase of central air conditioning may be a condition of sale between the parties in the housing unit transaction. The sale of any other property shall not be a condition of sale between the parties in the housing unit transaction.

This amendment will allow home owners to be reimbursed fairly for an investment in central air conditioning without permanently affecting the affordability of the housing unit. The amendment also allows the authority to depreciate the value of the central air conditioning system over time.

The Council is also proposing the following amendments to its rules and/or deed restriction:

1. Language would be added to the affordable housing agreement and N.J.A.C. 5:92-12.13 to clarify that the maximum allowable resale price shall not be established at a lower level than the last recorded purchase price.

2. N.J.A.C. 5:92-12.15 would be amended to indicate that initial sales (sale from the developer) of low and moderate income units shall not be offered to non-income eligible households without prior approval of the Council. N.J.A.C. 5:92-12.15 would also be amended to require Council approval before rental units are offered to non-income eligible households.

Social Impact

The proposed amendment to N.J.A.C. 5:92-12.16 will have a positive social impact in that it will encourage low and moderate income households that want or need air conditioning to purchase it. By allowing the central air conditioning unit to be sold in a separate, regulated, transaction, home owners may be reimbursed fairly without causing a long term negative impact on the housing unit's affordability. The proposed amendment to N.J.A.C. 5:92-12.15 will have a positive impact because it provides a procedure whereby low and moderate income interests can be considered before affordable housing can be offered to non-income-eligible households.

Economic Impact

The proposed amendment to N.J.A.C. 5:92-12.16 will have a positive economic impact in that it will encourage investment (air conditioning) in low and moderate income units without having a long term impact on the affordability of those units. The amendment also fosters the sale of affordable units by clarifying that, although the maximum allowable resale price is controlled, units shall not be required to be sold at a lower level than the last recorded purchase price. The amendment to N.J.A.C. 5:92-12.15 will have a positive impact in that it will serve to protect the economic interests of low and moderate income households.

Regulatory Flexibility Analysis

The proposed amendments will have no impact on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except the amendment to N.J.A.C. 5:92-12.15. This amendment requires that potential sales to non-income-eligible individuals be reported to the Council and that such sales have prior approval from the Council. Some of the sellers of such units may be considered small businesses. In accordance with N.J.S.A. 52:27D-301 et seq., units have been created for low and moderate income people. While the Council recognizes that there may be circumstances which would cause the units to be offered to people who are not income-eligible, the Council views such cases as extraordinary. Therefore, the Council chooses to review each case on its merits to determine if there is a hardship that merits relief. A small business could utilize this provision. For this reason, the Council does not believe that any additional provision for differentiation based upon business size is necessary.

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

5:92-12.13 Annual indexed increases while controls are in place

The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, as defined in N.J.A.C. 5:92-1.3 (see Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit. **However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.**

5:92-12.15 [Procedures of resale prior to the expiration of controls]
Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) **Low and moderate income units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-13.**

(b) Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. If the request is granted, the seller may offer low income housing units to moderate income households and moderate income housing units to households earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall

a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, are not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-13.

5:92-12.16 Eligible capital improvements prior to the expiration of controls

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

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the Authority at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale, provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser shall personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
AFFORDABLE HOUSING AGREEMENT

Prepared by: _____

A DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this _____ day of _____, _____ between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and _____ thereafter "AUTHORITY", _____ both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/

or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units (unit) remain(s) affordable to low and moderate income-eligible households for that period of time described in Section III TERM OF RESTRICTIONS.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income-eligible households at a maximum resale price determined by the Authority for the specified period of time.

I.-III. (No change.)

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. *However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.*

B.-D. (No change.)

V.-VII. (No change.)

VIII. OWNER RESPONSIBILITIES

A.-G. (No change.)

H. [At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally purchased (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. The Owner must personally certify that all other items of unaffixed personal property to be included in the resale are also included in the maximum allowable Resale Price or sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. Such transfer of funds shall also be certified by the Purchaser at the time of closing. In no event shall the purchase of any personal property be made a condition of unit resale.]

At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was initially restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I.-M. (No change.) _____

EDUCATION

(a)

STATE BOARD OF EDUCATION

Vocational and Technical Education Programs and Standards

Proposed Repeal: N.J.A.C. 6:42

Proposed Readoption with Amendments: N.J.A.C. 6:43

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54-1 et seq., N.J.S.A. 34:2-21 et seq., 29 C.F.R. Subpart C of Part 570, P.L. 97-300 and P.L. 98-324.

Proposal Number: PRN 1990-298.

Submit comments by July 4, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:43, Program Services, is due to expire on April 7, 1991. The Department of Education has reviewed these rules and finds that they are necessary and therefore they are being proposed for readoption with additions and amendments. The chapter has been renamed "Vocational and Technical Education Programs and Standards." The proposed rules specify standards and procedures regarding vocational and technical education program requirements, instruction, contracting between district boards of education, programs for disadvantaged or handicapped pupils, participation of pupils in private nonprofit schools, job placement standards, and program and course approval.

In 1987, N.J.A.C. 6:43-1.2, Program requirements, was amended to correct the code citation for vocational education safety standards. In 1986, amendments were made to N.J.A.C. 6:43-1.3, Schools designated as other than full-time day schools, which specified criteria for designation to allow for distribution of state aid for support and maintenance.

The proposed amendments clarify existing language, incorporate and update requirements which are currently located in N.J.A.C. 6:42, Special Needs and Cooperative Programs. N.J.A.C. 6:42 was last adopted in 1969 without an expiration date and is being proposed for repeal as part of this rulemaking. New rules proposed for N.J.A.C. 6:43 will implement the Commissioner's recommendations contained in the November 1989 report to the State Board of Education on accountability for student achievement and job placement, *The Commissioner's Response to the Recommendations of the Panel on Secondary Vocational Education in New Jersey*. The Panel reported to the State Board of Education in April 1989.

A review of the subchapters follows:

Words and phrases used in the chapter are defined in N.J.A.C. 6:43-1. This is a new subchapter which defines the various vocational education programs and terms used in the proposed new rules.

Revisions and clarifications of language are proposed throughout N.J.A.C. 6:43-2, which applies to general program requirements, expenditures of funds for vocational activities and schools designated as "other than full time day schools."

The proposed amendments to N.J.A.C. 6:43-3 include minor revisions concerning vocational instruction; vocational education for paid or unpaid employment; advanced, skilled vocational and technical education; career orientation and technology education; access to vocational instruction offered; content of vocational instruction; adequate facilities and material for instruction; and qualified teachers and supervisors. N.J.A.C. 6:43-3 as proposed also clarifies language pertaining to vocational student organizations and evaluation of vocational education programs. New language regulating the operation of cooperative vocational education and work study programs, establishing occupational competencies and tests and requiring the establishment of a Statewide data bank is included in this subchapter.

Rules regarding vocational instruction under contract are clarified in N.J.A.C. 6:43-4.1 in terms of program arrangements and contracts with

private vocational schools. New provisions in N.J.A.C. 6:43-4.2 specify the requirement for tuition contracts between vocational schools and sending districts.

Further clarification of language is made in N.J.A.C. 6:43-5, Vocational Education for Academically or Economically Limited or Handicapped Pupils, regarding special educational programs and services. N.J.A.C. 6:43-6, Participation of Pupils in Private Nonprofit Schools, also contains clarified language.

N.J.A.C. 6:43-7, is a proposed new subchapter which requires the establishment of annual minimum job placement standards and outlines procedures to be followed when district boards of education do not meet minimum job placement standards.

New rules pertaining to vocational education programs and course approval appear in another new subchapter, N.J.A.C. 6:43-8, which includes the requirement for a vocational education program review panel, its membership and responsibilities.

The substantive provisions of both amendments and new rules are summarized as follows:

Proposed N.J.A.C. 6:43-1.1, Scope and purpose, includes a brief summation of the scope and purpose of these rules.

N.J.A.C. 6:43-1.2 provides definitions and introduces words and terms which pertain to the rules concerning vocational education programs. The major vocational education program area definitions are found in N.J.A.C. 6:46-1.2. Terms and definitions new to vocational education rules refer to academically or economically limited pupils, alternate plan, career orientation education, handicapped individuals, occupational competencies, related instruction, review panel, technology education, vocational/career guidance and counseling, vocational education, and vocational pupils.

Existing Subchapter 1 is proposed to be recodified as Subchapter 2.

Proposed N.J.A.C. 6:43-2.1 through 6:43-2.3 clarify language related to vocational and technical education programs, general program requirements and schools designated as other than full-time day schools.

Proposed N.J.A.C. 6:43-2.5, Noneligible instruction, is proposed to be deleted because the rules repeat language in an expired Federal vocational education law.

Proposed N.J.A.C. 6:43-3.1 clarifies arrangements for instruction and N.J.A.C. 6:43-3.2 has been rewritten to clarify what is included in vocational education for paid or unpaid employment.

Proposed N.J.A.C. 6:43-3.4 retitles the area of "prevocational instruction" to "career orientation and technology education programs," so as to reflect contemporary language in vocational education.

Proposed N.J.A.C. 6:43-3.5 through 3.9 promulgates as rules existing Federal and State child labor laws and guidelines regarding cooperative vocational education programs, employment, related training and program standards, training site assignment and supervision, and general cooperative vocational education program standards. The proposed rules ensure protection of pupils Statewide from exploitation and exposure to hazardous employment situations.

Proposed N.J.A.C. 6:43-3.10 contains and updates rules on state sponsored vocational work study programs which currently exist in N.J.A.C. 6:42-3. N.J.A.C. 6:42 became effective in 1969 and is proposed for repeal. The proposed rules delete the existing limitation made on the maximum amount of pupil earnings during the school year and clarify eligibility for enrollment.

Proposed N.J.A.C. 6:43-3.11 includes the deletion of language formerly at N.J.A.C. 6:43-2.6(a) because it repeats nearly verbatim requirements already contained in N.J.S.A. 18A:54-23.2 through N.J.S.A. 18A:54-23.4.

Proposed N.J.A.C. 6:43-3.13 is a new rule. N.J.A.C. 6:43-3.13 requires the Commissioner to establish competencies for occupations in the major vocational education program areas based upon pupil enrollment and labor market demand factors.

Proposed N.J.A.C. 6:43-3.13(b) provides that occupational competencies will be developed beginning November 30, 1991, with the direct assistance of representatives from business, industry and education.

Proposed N.J.A.C. 6:43-3.13(c) requires the Department to disseminate the competencies to all secondary schools offering vocational education programs which prepare vocational pupils. The subsection provides that schools have options to select strategies and course content to teach the competencies.

Proposed N.J.A.C. 6:43-3.13(d) establishes annual occupational competency testing by June 1, 1993 on a Statewide testing schedule to be established by the Department. The tests will be developed by the Department to provide district boards of education with a means to assess pupil mastery of occupational competencies and scores which can be used as indicators for modifying instructional programs as necessary. The tests

will include performance and/or written responses, will not be required for high school graduation and results will be sent to the State data bank in the Division of Vocational Education. The Department will provide districts with Statewide testing data analyses of pupil achievement in mastering occupational competencies.

Proposed N.J.A.C. 6:43-3.15 clarifies that vocational instruction be conducted by persons meeting minimum academic qualifications and minimum occupational experiences as established by the State Board of Education.

Proposed N.J.A.C. 6:43-3.17 establishes requirements for the administration of vocational student organizations and for the operation of activities.

Proposed N.J.A.C. 6:43-3.19 establishes a Statewide data bank within the Division of Vocational Education, including sources from which specific information will be collected, types of data to be collected and requires district boards of education to provide data to the Department of Education according to data collection forms and instructions to be established.

Proposed N.J.A.C. 6:43-4.1(a) clarifies language pertaining to conditions under which the State Board of Education or district boards of education may enter into contracts for vocational instruction and directs responsibility to district boards of education for determining approval status of private vocational schools prior to entering into contracts, by contacting the Division of Vocational Education.

Proposed N.J.A.C. 6:43-4.2 requires that vocational school districts receiving pupils from other district boards of education enter into tuition contracts in order to facilitate timely payments.

Proposed N.J.A.C. 6:43-7.1(a) requires the Commissioner to establish annual minimum job placement standards by July 1, 1992 based upon recommendations of the Commission on Employment and Training.

Proposed N.J.A.C. 6:43-7.1(c) requires the Commissioner to notify districts of annual minimum job placement standards and of any revisions.

Proposed N.J.A.C. 6:43-7.2(a) establishes districts' responsibility for meeting minimum job placement standards.

Proposed N.J.A.C. 6:43-7.2(b) designates categories of vocational pupils which shall count as job placements.

Proposed N.J.A.C. 6:43-7.2(c) designates categories of vocational pupils which shall not count as job placements.

Proposed N.J.A.C. 6:43-7.2(e) requires district boards of education to annually report job placement rates of vocational pupils to the Department of Education beginning July 1, 1993.

Proposed N.J.A.C. 6:43-7.3(a) requires district boards of education which report placement rates below the minimum job placement standards for two consecutive years to submit program improvement plans covering at least a two-year period to overcome program deficiencies and outlines procedures for remediation.

Proposed N.J.A.C. 6:43-7.3(c) allows the Commissioner to order districts to show cause as to why a program should not be discontinued if districts fail to implement program improvement plans or to overcome program deficiencies.

Proposed N.J.A.C. 6:43-7.3(d) assures districts of rights to appeal final action on the operation of vocational education programs.

Proposed N.J.A.C. 6:43-8.1 establishes a vocational education program review panel to assess the State's need for new programs based upon local, regional and State labor market supply and demand, to review requests for approval or disapproval of programs not meeting job placement standards, and to advise the Assistant Commissioner of Vocational Education of areas of Statewide occupational supply and demand. The rule also outlines membership and responsibilities.

Proposed N.J.A.C. 6:43-8.2(a) directs the Commissioner to establish procedures for a system for vocational education program and course approval, including major steps and timelines in the process.

Proposed N.J.A.C. 6:43-8.2(b) assures districts of rights to appeal final decisions on their requests for program or course approvals.

Social Impact

Amended N.J.A.C. 6:43 will have a beneficial social impact in that the rules have been clarified regarding general requirements for vocational and technical education programs, vocational instruction, instruction under contract, vocational education for academically or economically limited or handicapped pupils and participation of pupils in private nonprofit schools.

The proposed new rules for N.J.A.C. 6:43-3.5 through 3.9 will benefit pupils enrolled in cooperative vocational education programs by requiring that standards be consistent Statewide and that district boards of educa-

tion ensure that programs comply with Federal and State child labor laws. The 13,500 pupils enrolled in cooperative vocational education programs during the 1988-89 school year earned wages in excess of \$48 million and were provided with 11,900,000 hours of New Jersey industry-sponsored training.

The proposed new rules at N.J.A.C. 6:43-3.13 will have a positive social impact on pupils enrolled in secondary vocational programs in that they will be offered the opportunity to master competencies needed for entry level employment in the occupation for which they are being trained. Mastery of State developed or endorsed uniform competencies will ensure that all pupils have equal opportunity to compete for job openings in an occupation in any part of the State. Requiring districts to assess pupil achievement through uniform written and/or performance-based occupational competency tests will provide information about how well pupils are performing in different areas of the State and allow for program modification as necessary. In the 1988-89 school year, 26,166 pupils graduated from secondary occupational programs.

The proposed new rule at N.J.A.C. 6:43-3.19 will have a positive social impact upon pupils, parents, employers and district boards of education by establishing a Statewide data bank allowing analysis to strengthen vocational education instruction and to improve pupil achievement. The data bank will contain follow-up information and longitudinal profiles of occupational program graduates, and information on placements, earnings, promotions, employer satisfaction with job performance of vocational school graduates and employer and business or industry training needs. These requirements for improved data are in line with currently proposed Federal vocational education legislation.

The proposed new rules regarding minimum job placement standards in N.J.A.C. 6:43-7 will have a positive social impact on the public in that district board of education job placement rates will be reviewed to determine placements of graduates of secondary occupational programs in jobs for which they were trained or in related fields, the military or postsecondary education. The pupils will benefit positively by knowing that, upon graduation, they will have a high probability of being placed in jobs related to their occupational preparation. By holding district boards of education accountable for meeting minimum job placement standards and for developing program improvement plans if necessary, the public will benefit by knowing that districts are not providing over-supplies of graduates in occupations where employment demand is low.

The proposed new rules at N.J.A.C. 6:43-8.1 and 6:43-8.2 will have a positive social impact on the public in that requests by district boards of education to establish new vocational programs and courses will be considered by a review panel which will assess the State's labor market demand for workers trained in the specific occupational programs or course.

Economic Impact

Implementation of the proposed amendments and new rules for vocational education will provide for increased efficiency for tracking cost effectiveness of vocational programs.

As with current implementation of N.J.A.C. 6:43-2.3, the Department will support other than full-time day schools with funds from the State budget. Annual requests for such funds will be made by the Department.

No adverse economic impact is anticipated by the proposed cooperative vocational education program rules, N.J.A.C. 6:43-3.5 through 3.9. Employers will continue to pay pupil wages and benefits. The Department will not be required to reimburse employers or pupils for any costs incurred for their voluntary participation in cooperative vocational education programs.

State funds will also continue to be requested annually for State-sponsored work study programs regulated by N.J.A.C. 6:43-3.10. State funds pay for 50 percent of the pupil's wages, and district boards of education which participate in State-sponsored work study programs contribute the other 50 percent.

The proposed new rules at N.J.A.C. 6:43-3.13 will have little economic impact on district boards of education other than staff time dedicated to inservice training to learn procedures for implementation of occupational competencies and to administer occupational competency tests. The Department of Education will support the development of competencies and tests with Federal vocational education funds.

Costs to establish the proposed Statewide data bank in N.J.A.C. 6:43-3.19 will have no adverse economic impact upon the public or upon those individuals or agencies responding to survey requests. The Department of Education will pay expenses from its existing vocational education budget for administering the surveys, analyzing data and disseminating results.

The proposed new rule for tuition contracts at N.J.A.C. 6:43-4.2 will facilitate timely tuition payments to vocational school districts receiving pupils from other district boards of education. The new regulation will have a positive economic impact on county vocational school districts and local area vocational school districts. The current practice has been problematic for vocational schools which charge low tuition and maintain little surplus funds. Funding sources—county taxes, tuition payments and State aid—do not satisfy the needs of vocational schools in terms of payment periods. The new rule will establish a schedule and accelerate payments.

The proposed new rules at N.J.A.C. 6:43-7 which establish minimum job placement standards will have no adverse economic impact. To the contrary, the State's employers and the overall economy will benefit by an accountability system which ensures that graduates of secondary vocational programs are placed in jobs for which they were trained, or in a related job. Review of program costs can result in improved cost efficiency.

N.J.A.C. 6:43-8.1 and 6:43-8.2 will also benefit the State economically by eliminating the unnecessary duplication of programs, the costs associated with duplicative program operation and by ensuring that only those secondary occupational programs and courses will be approved in which current or projected job openings exist.

Regulatory Flexibility Analysis

The proposed readoption with amendments is designed to maintain adequate standards for vocational education programs throughout the State.

The proposed readoption with amendments will have little or no adverse economic impact upon the 230 individual private vocational school sites which are considered small businesses. Private vocational schools may provide instruction for pupils through written contracts with district boards of education or the State Board of Education which describe the portion of instruction to be provided by the private agency. The contract must also incorporate the standards and requirements of vocational instruction set forth in this chapter.

The Department maintains that no differing compliance and record keeping standards are necessary for these private vocational schools in that the maintenance of basic, minimal education standards is at stake and that the vast majority of these schools are small businesses as defined by the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.).

Participation by small businesses in cooperative vocational education programs, local occupational advisory committees, development of occupational competencies, surveys of employer and business or industry training needs is entirely voluntary. Employers who decide to participate in cooperative vocational education programs will be required to provide supervision of pupils at the training site by qualified and trained personnel and to following existing Federal and State child labor laws regarding hours, wages, safety and employment in hazardous occupations. Employers who participate in cooperative vocational education programs will assume responsibility for training the pupil on the job, meet with the cooperative vocational education teacher once every two weeks during the pupil's employment to discuss the pupil's training progress and complete paperwork for each pupil (working papers, payroll information, workers' compensation).

In the instance of participation of these small businesses in the cooperative vocational education programs, the compliance requirements are necessary to maintain the health, safety and welfare of student employees and as such cannot and should not be altered to accommodate the size of the business. The record keeping and reporting requirements are viewed as not overly burdensome and for the most part represent regular workplace practices.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:42.

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

CHAPTER 43 [PROGRAM SERVICES]

[FOREWORD]

[The rules and regulations pertaining to program services are pursuant to the State Plan for Vocational Education; the State Board rules and regulations; Title 18A of the New Jersey Revised Statutes. The rules and regulations enumerated in this Chapter apply to the

following program services areas: Agricultural Education; Business Education; Distributive Education; Health Occupations; Consumer and Homemaking Education; Industrial Arts Education; Technical Education; and Vocational Industrial Education.]

VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS AND STANDARDS

SUBCHAPTER 1. DEFINITIONS

6:43-1.1 Scope and purpose

This chapter specifies standards and procedures regarding vocational and technical education programs, specifically in the areas of: instruction; contracting between district boards of education; programs and services for handicapped pupils and for pupils whose achievement in vocational education programs is limited because of temporary academic or economic factors; private nonprofit school pupil participation; an accountability system including competencies, testing and job placement standards; improved planning; and program and course approval. To assure standards and procedures, the Commissioner of Education and the State Board of Education have developed these rules in conformity with relevant Federal and State statutes concerning public education, vocational education, county vocational schools, child labor, private industry councils and the Commission on Employment and Training.

6:43-1.2 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:

"Academically or economically limited pupil" means a pupil (other than a handicapped pupil) who, because of economic or academic reasons, requires temporary special services and assistance in order to succeed in vocational education programs, including:

1. Pupils who are members of economically limited families;
2. Migrants;
3. Pupils who have limited English proficiency; and
4. Pupils who are dropouts from, or who are identified as potential dropouts from, secondary school.

"Act" means the Carl D. Perkins Vocational Education Act, P.L. 98-524.

"Agriculture/agribusiness education" means a program of instruction that provides pupils with the skills and knowledge for entry-level employment in horticulture, production agriculture, agribusiness, agricultural processing, agricultural mechanics, natural resources and small animal care occupations.

"Alternate plan" means an educational plan prepared by the district board of education responsible for the pupil, and shall include educational activities in replacement of the on-the-job training portion of cooperative vocational education during a temporary period of unemployment.

"A temporary period of unemployment" is a period of time that will not exceed 20 school days.

"Apprentice" means an employee of legal working age who meets the qualifications established by the apprentice sponsor and who is employed under a written agreement which provides that related training and on-the-job experience received be in accordance with approved standards of apprenticeship.

"Business education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in a business career and the basic business skills and knowledge needed by all individuals in order to function effectively in society.

"Career orientation education" means programs such as employment orientation, industrial arts and other programs which assist students to clarify career goals, explore career possibilities, develop employability skills and make the transition between school and work. Emphasis is on awareness of self, careers, technology, problem solving, consumerism and preparation for appropriate career and education-related decision making.

"Commissioner" means the Commissioner, New Jersey State Department of Education.

"Commission on Employment and Training" means the State commission established under P.L. 1989 c.295 to develop and assist in the implementation of a State employment and training policy with the goal

of creating a coherent, integrated system of employment and training programs and services which, in concert with the efforts of the private sector, will provide each citizen of the State with equal access to the learning opportunities needed to attain and maintain high levels of productivity and earning power.

“Cooperative vocational education program” means a method of instruction by which pupils, through a written training agreement between the school and employers, receive on-the-job training and related vocational instruction, by the alternation of related classroom instruction with regularly scheduled part-time paid employment in an approved occupational field.

“Course” means an organization of subject matter and related learning experiences designed to meet a vocational objective provided for the instruction of pupils on a systematic basis, usually for a predetermined period of time.

“Handicapped individual” means a pupil who requires special education and related services and who cannot succeed in the regular vocational education programs without special educational assistance.

“Health occupations education” means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in the health care industry, including skill development in direct patient care, health maintenance and supportive service occupations.

“Home economics and consumer education” means a program of instruction that provides pupils with the skills and knowledge needed for the unpaid occupation of homemaking and skills and knowledge needed for entry level paid employment in home economics-related occupations.

“Local area vocational school district” means a school district which complies with the requirements set forth in N.J.A.C. 6:46-2.

“Marketing education” means a program of instruction that provides pupils with the skills and knowledge needed for entry level employment in management, merchandising and marketing of goods and services.

“Occupational competencies” means the essential elements of vocational programs, the knowledge and skills pupils must master for specific entry level jobs in the fields of their choice.

“Postsecondary educational institution” means an institution legally authorized to provide postsecondary education within the State.

“Private industry council” means the council established under the Job Training Partnership Act (P.L. 97-300) to provide policy guidance for, and exercise oversight with respect to, all employment and training programs within its labor market area in partnership with units of local government. The private industry council includes representatives of private sector businesses, educational agencies, organized labor, rehabilitation agencies, community-based organizations, economic development agencies and the public employment service.

“Private vocational school” means a business enterprise operated either for profit or not-for-profit which maintains a place of business within the State of New Jersey and which:

1. Solicits pupils from the general public;
2. Charges tuition and/or other fees;
3. Offers instruction to a group or groups of four or more pupils at one time; and

4. Offers preparatory instruction to pupils for entry level employment or for upgrading in a specific occupational field. The occupational fields include those listed in the Classification of Instructional Programs (C.I.P.) requiring less than a baccalaureate degree. This document is available from the United States Department of Education, Office of Educational Research and Improvement, Center for Educational Statistics, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

“Program improvement plan” means a written document covering a two-year period describing how the district will mobilize resources and act to overcome program deficiencies which have resulted in below minimum job placement rates.

“Related instruction” means one or more courses in a school in which the cooperative vocational education pupil acquires concepts, competencies, understanding, and attitudes appropriate to training station assignments, occupational program areas and career objectives.

“Review panel” means the Vocational Education Program Review Panel established by the Commissioner of Education to assess the State’s needs for new programs based upon labor market demand,

advise on the continuation of programs, review job placement standards, and provide recommendations for the State Plan.

“State Council” means the New Jersey Council on Vocational Education established in accordance with the Carl D. Perkins Vocational Education Act, P.L. 98-524.

“State Plan” means the State Plan for Vocational Education.

“Technical education” means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment and/or entry into post-high school education programs which require relatively complex and detailed information, considerable proficiency in college preparatory mathematics and the extensive application of laboratory physical science.

“Technology education” means a comprehensive action-based educational program concerned with the evolution, utilization, and significance of technology and its impact on industry, including its organization, personnel, systems, techniques, resources, products, and sociocultural aspects. Technology education emphasizes career and self-awareness, consumer knowledge, consequences of technology, creative problem-solving techniques, understanding of technical systems, application of science, mathematics and computers, activity oriented experiences in technology, and an interdisciplinary approach to education.

“Trade and industrial education” means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in a specific trade or service occupation.

“Unemployed individual” means a vocational pupil who is not working.

“Vocational/career guidance and counseling” means those programs which pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision making, placement skills, and knowledge and understanding of local, State and national occupational, educational, and labor market needs, trends, and opportunities which assist them in making and implementing informed educational and occupational choices.

“Vocational education” means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment in such fields as agriculture/agribusiness, business occupations, health occupations, home economics, marketing occupations, technical occupations, and trade and industrial occupations or for additional preparation for a career in such fields and in other occupations requiring less than a baccalaureate or advanced degree. Vocational student organization activities are an integral part of the programs.

“Vocational pupil” means that pupil enrolled in a sequence of vocational education courses leading to certification of competencies for occupational placement.

“Vocational student organizations” means those organizations for pupils enrolled in vocational education programs and industrial arts/technology education programs which engage in activities as integral parts of the appropriate instructional programs. Such organizations may have State and national units which complement the development of leadership and career-related competencies in vocational education at the local level.

SUBCHAPTER [1.]2. VOCATIONAL AND TECHNICAL EDUCATION

6:43-[1.1]2.1 Vocational and technical education programs

(a) Any vocational and technical education program of less than college grade shall be conducted within the framework of a State Plan for Vocational [and Technical] Education approved by the State Board of Education and accepted by the United States [Office] Department of Education.

(b) The [Balances] balance of vocational funds, which [are] is matched [by the] with State funds and [which are on hand] is available at the close of the school year, shall [be available] only be expended for [expenditures for work] support in the particular field for which such [moneys] funds were originally appropriated.

(c) State and Federal funds for activities in any [field] program of [Vocational Education] vocational education included in N.J.S.A. 18A:54 shall be withheld from local school districts when it appears to the satisfaction of the Commissioner [of Education] that any of the following conditions [obtain] exist:

1. The approved courses of study are not carried out;
2. There is exploitation of pupils participating in [part-time] cooperative **vocational education** programs, or pupils in [part-time] cooperative **vocational education** programs are illegally employed or employed under conditions which do not safeguard the pupils;
3. Teachers are not properly [certified] **certificated** for the subject they are teaching;
4. The program is not operated in conformity with the current State Plan for Vocational Education which has been [approved] **adopted** by the State Board of Education.

6:43-[1.2]2.2 General [Program] program requirements

(a) The proceeds from [sales] **the sale or resale** of any articles, [and] materials or services produced in the various classes and shops maintained under [the] a vocational program of any district shall be accounted for and credited to the vocational account of that district.

(b) (No change.)

(c) No application for State or Federal aid shall be approved until the annual financial and statistical reports on activities in any [field] **program** of vocational education [shall be] **have been** filed with the Commissioner [of Education].

(d) No application for State or Federal aid shall be approved unless the adequacy and suitability of the equipment for carrying out the courses of study in any [field] **program** of vocational education [shall have] **has been** approved by the Commissioner [of Education].

(e) It shall be the duty of every **district** board of education maintaining courses in any [field] **program** of vocational education to provide all equipment, **mechanical and electrical**, now in service or which may hereafter be placed in service in such courses, with guards or other protective devices which shall meet the safety standards specified in N.J.A.C. 6:53[-1.1 et seq].

(f) (No change.)

(g) [Local] **District** boards of education shall not establish or conduct any courses included in the State Plan for Vocational Education unless such courses conform to the requirements included in the current approved State Plan for Vocational Education and are approved by the State Board of Education.

(h) In any school district in which there is a plan of cooperation whereby the pupils spend part time in school and part time in employment, the **district** board of education shall submit for the approval of the Commissioner [of Education] plans for protecting the pupils [in such a cooperative program] from illegal employment and exploitation. Pupils participating in these [part-time] cooperative **vocational education** programs shall receive wages commensurate with wages paid to other employees for similar work, and shall be protected by provisions of the [Workmen's] **Workers' Compensation Act** and any other acts of the State pertaining to such training and employment.

(i) School districts in which [all-day and part-time trade and industrial preparatory schools and] **shared-time and full-time vocational education** classes are in operation shall maintain an approved medical inspection service for applicants for admission to such schools and classes.

(j) It shall be the duty of the medical inspector to report immediately to the principal of any [all-day or part-time trade and industrial] school [or class] in the district **on** any pupil whose physical condition may affect [his] **the pupil's** safety or health while [engaged] **enrolled** in [trade learning] **vocational education**, or which may prevent [him] **the pupil** from obtaining regular employment [in his vocation].

(k) (No change.)

6:43-[1.3] 2.3 Schools designated as other than full-time day schools
(a) **When any school established as other than a full-time day school meets the criteria in (b) below, it will be eligible for State aid pursuant to N.J.S.A. 18A:54-9 and 18A:54-32.**

[(a)] (b) Schools [designated] **established** as [“]other than full-time day schools [”are defined as an entity which must] **shall** meet the following criteria:

1. The school [must] **shall** be designated by the district board of education as an entity separate and distinct from any and all other schools within the district.

2. The school [must] **shall** have a curriculum approved by the district board of education and the county superintendent of schools

for each program offered. Each program [must] **shall** have as its objective the preparation of shared-time secondary [students] **pupils** or adults for gainful employment.

3. The school [must] **shall** maintain a separate register. The school may use either the Department of Education's New Jersey School Register or the New Jersey Adult High School Register format.

4. The building(s) [must] **shall** be approved by the New Jersey State Department of Education, Bureau of Facility Planning Services. When the district board of education has designated a facility other than a school building approvable by the [New Jersey Department of Education,] Bureau of Facility Planning Services, the county superintendent of schools [must] **shall** approve the off-site facility for training **in accordance with N.J.A.C. 6:22-3.1.**

5. Each school [must] **shall** have the services of a certificated supervisor or administrator who [must] **shall** be present while the school is in session.

[(b) When an “other than full-time day school” meets the definition in (a) above it will be eligible for state aid pursuant to N.J.S.A. 18A:54-9 and 18A:54-32 provided that:]

[1.] 6. The program(s) **shall** provide for the preparation of individuals for gainful employment requiring other than a baccalaureate or advanced degree.

[2.] 7. Buildings approved as either full-time or shared-time day schools [are] **shall not be** subdivided within the same time frame for funding purposes.

[3.] 8. The laboratory portion of an existing instructional program housed apart from the basic program [is] **shall not be** designated as a separate school.

SUBCHAPTER [2.]3. VOCATIONAL INSTRUCTION

6:43-[2.1]3.1 Arrangements for instruction

(a) Vocational instruction shall be provided either under public supervision [or] **and** control meeting the criteria [of] below, or under contract with the State [board] **Board of Education** or a [local educational agency] **district board of education.**

(b) To be under “public supervision and control,” a school or class [must] **shall** meet the following criteria:

1. It is organized and operated under the direction of the State [board] **Board of Education** or a [local educational agency] **district board of education** responsible for expenditure of public school funds for vocational education in the State; [and]

2. [Officials of the staff of] **Staff of the Department of Education** [the State board] or a [local educational agency] **district board of education** responsible for vocational education have full charge of:

i. (No change.)

ii. Determining whether [students] **pupils** qualify for admission to classes; and

iii. Determining content and organization of courses and curricula[.]; **and**

3. Vocational instruction shall be designed to: prepare individuals for [gainful] **paid or unpaid** employment, as semiskilled or skilled workers or technicians or semiprofessionals in recognized occupations and in new or emerging occupations; [or] prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; [or] assist individuals in the making of informed and meaningful occupational choices; or achieve any combination of the above objectives.

6:43-[2.2]3.2 Vocational education for [gainful] **paid or unpaid** employment

(a) Vocational education for [gainful] **paid or unpaid** employment includes:

[1. Instruction related to the occupation or occupations for which the students are training, that is, instruction which is designed upon its completion to fit individuals for employment in specific occupation or a cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations and which shall include classroom related academic and technical instruction and field, shop, laboratory, cooperative work, apprenticeship or other occupational experience, and may be provided either to those preparing to enter an occupation upon the

completion of the instruction, or those who have already entered an occupation but desire to upgrade or update their occupational skills and knowledge in order to achieve stability or advancement in employment.

2. Instruction necessary for a vocational student to benefit from instruction, that is, remedial or other instruction which is designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefiting from such instruction must be provided in courses which are an integral part of the vocational education program for which the students are being enrolled.]

1. **Instruction related to paid or unpaid employment in the occupation or occupations for which the pupils are being trained;**

2. **Classroom related academic and technical instruction, field, shop, laboratory, cooperative vocational education, apprenticeship or other occupational experiences;**

3. **Instruction provided for entry level employment or instruction designed to upgrade or update workers in occupational skills and knowledge in order to enhance stability or upward mobility in employment; and**

4. **Remedial or other instruction designed to correct educational deficiencies or handicaps which prevent pupils from benefiting from instruction designed to teach competencies in occupations.**

6:43-[2.3]3.3 Advanced, skilled vocational and technical education

(a) [Pretechnical, vocational instruction need not] **Vocational instruction shall be primarily designed to [fit] prepare individuals for employment in a specific occupation[, but must be primarily designed to]. It may also prepare individuals for enrollment in advanced or highly skilled postsecondary vocational and/or technical education programs.**

[(b) It shall not include instruction which is primarily designed to prepare individuals for higher education, or for professional training which is generally considered to be professional or as requiring a baccalaureate or higher degree and which is only incidentally designed for individuals preparing for technical education.]

(b) **An approved secondary technical education program includes three years of college preparatory mathematics, two one-year laboratory science courses and a technical laboratory course which is conducted a minimum of 400 minutes per week for a period of not less than two years.**

6:43-[2.4]3.4 [Prevocational instruction] **Career orientation and technology education programs**

[Prevocational instruction] **Career orientation and technology education shall include instruction designed to familiarize individuals with the broad range of occupations for which special skills are required and the [requisite] requisites for careers in such occupations, including employability skills.**

[6:43-2.5 Noneligible instruction]

[Funds under the Act shall not be available for instruction in general education subjects; provided, however, a program of vocational instruction under the State Plan may be supplemented with such other general education subjects supported with funds from other sources as may be necessary to develop a well-rounded individual. Funds under the Act shall not be available for instruction which is designed to fit individuals for employment in recognized occupations which are generally considered to be professional or as requiring a baccalaureate or higher degree.]

6:43-3.5 **Cooperative vocational education programs**

(a) **Cooperative vocational education programs recognized by the U.S. Department of Education and by the State Board of Education may be offered in the following areas:**

1. **Agriculture/agribusiness education;**
2. **Business education;**
3. **Health occupations education;**
4. **Home economics related occupations education;**
5. **Marketing education; and**
6. **Trade and industrial education.**

6:43-3.6 **Related training standards for cooperative vocational education programs**

(a) **Related class instruction shall develop competencies in each of the following:**

1. **Areas that are occupationally-general and needed by all workers;**
2. **Areas that are industry-specific and needed by all workers in the industry;**
3. **Areas that are occupationally-specific and needed by workers of a specific occupation only; and**
4. **Areas that are training site-specific and needed by individual pupils in their specific place of employment only.**

(b) **Safety instruction shall be taught by the teacher and coordinated with on-the-job training experiences.**

(c) **The cooperative vocational education teacher shall meet every pupil for related instruction a minimum of 200 minutes per week.**

(d) **A maximum of 15 credits and one final grade shall be earned in a 10-month period (September through June) for satisfactory completion of the combined on-the-job training and related instruction.**

(e) **Academic credit shall be awarded for no more than a two-year sequence of instruction or training for cooperative vocational education pupils.**

6:43-3.7 **Program procedures which apply to all cooperative vocational education programs**

(a) **The prospective cooperative vocational education pupil shall apply to and be interviewed by the cooperative vocational education teacher to define those occupations which are suited to the career objectives of the pupil.**

(b) **The pupil shall comply with rules established by the district board of education and the Department of Education.**

(c) **Each program shall provide on-the-job training which:**

1. **Conforms with Federal, State, and local laws, in a manner not resulting in the exploitation of the pupil;**
2. **Assures that the pupil may not displace a full-time worker;**
3. **Provides the pupil with training site experiences for not more than five hours per school day and that the combination of school and work does not exceed eight hours on any one day. The pupil shall not work for more than six consecutive days and the combination of hours for school instruction and employment training during this period may not exceed 40 hours per week. An average of 15 hours per week shall be worked during the approved period of the program; and**
4. **Provides work periods and school attendance that may be on alternate half-days, full-days, weeks, or other periods of time in fulfilling the cooperative vocational education program.**

6:43-3.8 **Training site assignment and supervision standards which apply to all cooperative vocational education programs**

(a) **The teacher shall have total responsibility for the pupil's on-the-job placement to ensure that employment is appropriate to the pupil's skills, abilities and career goals. The job assignment shall constitute a training and learning situation, be absent of pupil exploitation and comply with applicable safety standards.**

(b) **Transportation of the pupil to and from the cooperative vocational education training site shall be the responsibility of the pupil.**

(c) **Pupils under 18 years of age shall not drive as part of their job responsibility according to the Federal Fair Labor Standards Act, Hazardous Order No. 2 (29 C.F.R. Subpart C of Part 570). If a licensed (driver) pupil, 18 years of age or older, drives on an incidental basis only as part of the job responsibility, insurance shall be provided by the employer.**

(d) **Specific training site identification shall be developed with the following provisions:**

1. **Training site development and pupil placement shall be the responsibility of the teacher;**
2. **Training sites at which pupils are employed in occupations identified as hazardous by either State or Federal child labor laws or standards, and for which an exemption is granted pupils, shall be registered with the Division of Vocational Education.**

(e) **The teacher, in conjunction with the employer, shall determine the pupil's continuation, termination or change in job assignment. An alternate plan shall be developed for use when any cooperative vocational education pupil is temporarily unemployed.**

(f) Assignments of pupils shall include assurances that:

1. Training site selection provides opportunity for a progressive structured training environment;
2. Training is free of pupil exploitation and provides a safe environment for the duration of the pupil's training;
3. Exposure of the pupil to hazardous conditions shall be limited to minimum exposure with proper safeguards;
4. All pupils are employed with a training agreement signed by the employer, the teacher, the pupil and the parent/guardian or, in cases where pupils are 18 years of age or older (unless prohibited by existing law), a training agreement which may be signed by the pupil;
5. Training of all pupils shall be developed with a training plan that identifies training site experiences, program objectives, individual responsibilities and measurable outcomes; and
6. The related vocational instruction and the regularly scheduled part-time paid employment are planned and supervised by a teacher who holds the appropriate teaching endorsement.

(g) The following standards for supervision of pupils on the training site shall apply to all cooperative vocational education programs:

1. All pupils shall be provided direct and close employer supervision at the training site by qualified and trained personnel.
2. The cooperative vocational education training plan shall provide for planned supervision of the pupil by the teacher during the hours of the pupil's work experiences, to assure that the pupil is free from exploitation and pupil safety is guaranteed.
3. When the pupil is employed in a hazardous occupation governed by State and Federal exemptions to the child labor laws, such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person.
4. Minors at least 16 years of age may be employed in restaurants, but not in the preparation, sale or serving of alcoholic beverages.
5. Minors at least 16 years of age may be employed in video stores, but not in the viewing, handling, sale or rental of adult videos.

6:43-3.9 General program standards which apply to all cooperative vocational education programs

(a) A program specific advisory committee shall be established and maintained for each cooperative vocational education program offered. Advisory committee members shall represent local business, industry, labor, management and other community agencies knowledgeable about the occupational program area.

(b) Teachers shall be appropriately certificated for the program area in which pupil placements are made.

(c) Teachers shall supervise pupils on the job for a minimum of 30 minutes every two weeks.

(d) The State Board of Education does not make provision for reimbursement to employers or to pupils for additional costs incurred for the operation of or participation in cooperative vocational education programs.

6:43-3.10 Vocational work study programs

(a) The vocational work study program provides wages for vocational pupils between the ages of 15 and 20 who work outside of school hours for public agencies. No educational credits are awarded for participation in this program.

(b) The following eligibility requirements apply to all State sponsored vocational work study programs and employment under the work study program shall be furnished only to a pupil who:

1. Has been accepted for enrollment or is already enrolled and in full-time attendance in a vocational education program which meets the standards prescribed by the State Board of Education and the district board of education;

2. Is between the ages of 15 and 20 at the date of the commencement of employment and is capable in the opinion of the appropriate school authorities of maintaining good standing in the school program while employed under the work study program; and

3. Is handicapped or economically limited according to one or more of the following indicators:

- i. The pupil is eligible for free or reduced price school lunch;
- ii. The pupil is eligible for participation in programs supported under Title II of the Job Training Partnership Act, P.L. 97-300;
- iii. The pupil has or is a member of a family which receives a total family income at or below the official poverty level determined in

accordance with criteria established by the Director of the Office of Management and Budget; and/or

iv. The pupil is eligible or is a member of a family which is eligible to receive Aid to Families with Dependent Children or other public welfare assistance.

(c) No pupil shall be employed during the school year for more than 15 hours in any week during which classes in which the pupil is enrolled are in session. For the purposes of this subsection, school year work study programs shall operate for a period of 10 months, from September through June.

(d) Pupils employed in summer work study programs operating during July and August may work up to eight hours in one day and up to 40 hours in one week. The total of the pupil's summer earnings shall not be limited by or have the effect of limiting compensation paid during the school year work study program.

(e) Employment under work study programs shall be for the district board of education or for some other public agency or institution, Federal, State, or local, pursuant to a written arrangement between the district board of education and such other agency or institution, and work so performed will be adequately supervised and coordinated and will not supplant present employees of such agency or institution who ordinarily perform such work. In those instances where employment under work study programs is for a Federal agency or institution, the written arrangement between the district board of education and the Federal agency or institution will state that pupils so employed are not Federal employees for any purpose.

6:43-[2.6]3.11 Access to vocational instruction offered

[(a) In determining which individuals shall have access to programs of vocational instruction offered within the State, consideration will be given to all individuals residing in the State who are available to receive such instructions in accordance with the standards and requirements in the State Plan. If it is not economically or administratively feasible to provide each type of program in all areas and communities of the State served by a local educational agency individuals residing in an area or community served by one local educational agency shall be permitted to enroll, in accordance with policies and procedures established by the State Board or the local educational agencies involved, in a program of instruction offered by another local educational agency, so long as:

1. The local educational agency serving the area or community in which the individual resides does not offer a reasonably comparable type of program.

2. The student is otherwise available to receive such instruction; and

3. Facilities are reasonably available for additional enrollees in the program offered by the receiving local educational agency.]

(a) Pupils shall be permitted to enroll in programs of vocational instruction offered by district boards of education other than their resident district so long as the resident district board of education does not offer a comparable type of program and space is available for additional enrollees in the programs offered by the receiving district board of education.

(b) To the extent that [facilities are] space is available, each type of program of vocational instruction offered by the State Board shall be made available to all [individuals] pupils residing in the State, and each program of instruction offered by a [local education agency] district board of education shall be made available to all [individuals] pupils residing in the district or community served by the [local educational agency] district board of education offering such instruction[, if such individual is otherwise available to receive such instruction in accordance with the standards and requirements in the State Plan. The fact that an individual resides in a certain attendance area within such district or community shall not preclude his access to a program of instruction available to other individuals residing in other attendance areas within the district or community, if access to a reasonably comparable program is not otherwise available to him].

(c) [Individuals] Pupils shall be admitted for enrollment in classes and provided instruction on the basis of their potential for achieving the occupational or other objective of such instruction.

EDUCATION

PROPOSALS

(d) Rules concerning vocational program services includes:

1. Every county vocational school district board of education providing post secondary vocational-technical education shall, to the extent its facilities permit and subject to rules prescribed by the Commissioner and approved by the State Board, accept for post secondary vocational-technical education students who are residents of any other county in the State.

2. Any person desiring to enroll in a post secondary vocational-technical program in a county vocational school district as a nonresident student shall apply to the chief fiscal officer of his county of residence for a certificate of residence (forms and instructions immediately follow this Section) showing that said person is a resident of said county. The chief fiscal officer shall, upon application and submission to him of satisfactory evidence of such residence, issue said certificate provided that the county does not maintain a vocational school providing such a program, or the county vocational school district board of education certifies to the chief fiscal officer that it does not offer the particular course or curriculum desired by the applicant, or the county vocational school cannot admit the applicant into a particular course or curriculum desired by the applicant pursuant to rules approved by the State Board of Education. If the chief fiscal officer refuses to issue such a certificate, the applicant may appeal to the board of chosen freeholders within ten days of the receipt of notice of such refusal. The board of chosen freeholders shall hold a hearing on such appeal within a reasonable time, but not less than ten days after notice is given to the chief fiscal officer and the applicant. The board of chosen freeholders shall notify the applicant of its decision within ten days after such hearing.

3. Upon his registration for each school year, the nonresident student shall file with the county vocational school district board of education such a certificate of residence issued not more than two months prior thereto and such a certificate of residence shall be valid for the current year or the academic year next succeeding the date of issuance.

4. Any county vocational school district board of education admitting nonresident students shall annually charge to, and collect from each county of residence for each such student \$200.00 to be applied to the county's share of the vocational school district's capital expenses and the average county share of budgeted operating cost per full-time student as certified by the Commissioner; provided however, that the said board of education may, with the approval of the Commissioner, charge and collect a higher annual amount or amounts when high-cost or high-priority programs are provided.

5. Each county vocational school district board of education shall notify the Department of Education of the names and addresses of all nonresident students and the courses and programs in which they are enrolled as of the second week of each term. Such notification shall be made in writing no later than the end of the fourth week of each term.

6. The standard form for chief fiscal officer is as follows:

Standard Form for Chief Fiscal Officer

CERTIFICATION OF RESIDENCE FOR PURPOSES OF CHARGEBACK PURSUANT TO CHAPTER 333 OF THE LAWS OF NEW JERSEY 1973.

On the basis of sworn statements and evidence submitted to me, I hereby certify that _____, residing at _____, and signify _____ county's acceptance of responsibility for paying the fee as described in Senate No. 736, Chapter 333 Laws of New Jersey 1973.

7. The standard form for certification of eligibility is as follows:

Standard Form for Certification of Eligibility

CERTIFICATION OF ELIGIBILITY FOR CHARGEBACK ASSISTANCE PURSUANT TO CHAPTER 333 OF THE LAWS OF NEW JERSEY 1973.

Name of Student _____

Home Address _____ (Street)
_____ (City)
_____ (County)

The above named student will be attending (School name) _____ for the _____ term of 19 _____.

Signed _____

Title _____

DIRECTIONS TO THE STUDENT

I. If a county vocational school offering post-secondary education is in operation in your county of residence:

A. Go to the admissions office and request certification of eligibility for chargeback.

B. When you receive it, you may then apply to the out-of-county vocational school in which you are interested.

C. When you receive evidence of admission from the out-of-county vocational school, take it with the certificate of eligibility to your county's chief fiscal officer, and request a certificate of residence. (The school will direct you to these officials.)

D. Upon receipt of the certificate of residence, you may register at the out-of-county vocational school.

II. If a county vocational school is not operating in your county of residence:

A. Gain admission to any county vocational school.

B. Take evidence of this admission to your home county's chief fiscal officer and request a certificate of residence.

C. At registration, present this certificate of residence to the county vocational school which has accepted you.]

6:43-[2.7]3.12 Content of vocational instruction

(a) The content of vocational instruction shall be developed and conducted in accordance with the following standards to assure soundness and quality [in such instruction].

1. The program of instruction shall [be based on a consideration of the] emphasize the most contemporary skills[, attitudes,] and knowledge required to [achieve] master the occupational [or other objective] competencies [of such instruction, and includes a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve such objective].

2. The program of instruction shall be developed and conducted in consultation with employers and other individuals or groups of individuals (such as local advisory committees) having skills in and substantive knowledge of the occupations or the occupational [fields] programs included in the instruction.

[3. The program of instruction shall include the most up-to-date knowledge, attitudes, and skills necessary for competencies required to meet the occupational or other objective of such instruction.]

[4.]3. The program of instruction shall be sufficiently extensive in duration and intensive within a schedule unit of time to enable the [student to achieve] pupil to master the occupational competencies [or other objective of the instruction].

[5.]4. The program of instruction shall:

i. [combine] Combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, apprenticeship, or other [occupational experience] experiences which [is] are appropriate to the [occupational or other objective of the instruction] competencies of the occupation;

ii. [is] Be of sufficient duration to develop occupational competencies [necessary for the student to achieve such objective]; and

iii. [is] Be supervised, directed, or coordinated by persons [qualified under the State Plan] meeting teacher preparation and

certification requirements in N.J.A.C. 6:11, Teacher Preparation and Certification.

6:43-3.13 Occupational competencies and tests

(a) The Commissioner shall establish competencies for occupations in the following major vocational education program areas:

1. Agriculture/agribusiness education;
2. Business education;
3. Health occupations education;
4. Home economics related occupations education;
5. Marketing education;
6. Technical education; and
7. Trade and industrial education.

(b) Occupational competencies shall be developed beginning November 30, 1991 and annually thereafter in accordance with the following:

1. The priority order for which competencies shall be developed for specific occupations will be determined by pupil enrollment and labor market demand factors.

2. The occupational competencies shall be developed and recommended to the Commissioner through a collaborative process which shall include:

- i. Occupational Competency Liaison Committees, composed of representatives from business, industry, labor and education;
- ii. Occupational Competency Industry Panels, composed of representatives from business, industry and labor;
- iii. Occupational Competency Educators Panels, composed of outstanding educators;
- iv. Reviews by employers throughout the State; and
- v. Reviews by educators throughout the State.

3. Competencies for entry level occupational skills shall be developed and revised in five-year cycles or, more frequently, should an industry require standards revision.

(c) The Department of Education will disseminate occupational competencies to all secondary schools offering vocational education programs which prepare vocational pupils for entry level employment.

1. The Department of Education will provide implementation training for school district staff.

2. Schools shall have the option to select strategies and course content to teach the occupational competencies.

(d) The Commissioner shall be responsible for determining which occupational competency tests will be used for the State's assessment of vocational pupil mastery of occupational competence and shall provide boards of education with test results which may be used by districts as indicators for modifying instructional programs, as necessary.

1. Occupational competency tests shall be designed to measure performance in a fair manner Statewide, giving attention to equitable pupil rating, reliability of data, testing security and administration.

2. Occupational competency tests shall be administered by June 1, 1993 and annually thereafter according to a specific Statewide testing schedule established by the Department.

i. Tests shall be required for all vocational pupils enrolled in secondary occupational programs;

ii. Districts shall be instructed in using uniform standards for test administration and shall administer the tests;

iii. Districts shall certify proper administration of the tests to the Department of Education and shall contribute testing results to the State data bank, Division of Vocational Education; and

iv. The Department of Education shall provide districts with Statewide testing data analyses of pupil achievement in mastering occupational competencies, allowing comparisons of how well pupils are performing in different areas of the State.

3. Occupational competency tests shall require performance and/or written responses.

6:43-[2.8]3.14 Adequate facilities and material for instruction

Classrooms, libraries, shops, laboratories, and other facilities (including instructional equipment, supplies, teaching aids and other materials) shall be adequate in supply and quality to meet the occupational or other objectives of the vocational instruction offered. If the [State Board or local education agency] district board of education cannot provide such facilities and materials, but they are available

in a business, industrial, service, or other establishment, vocational instruction may be [provided] conducted in such establishment provided that such instruction meets the standards and requirements of the Act, [the regulations of] this [Chapter] chapter, [and] the State Plan and N.J.A.C. 6:22-3.1.

6:43-[2.9]3.15 Qualified teachers and supervisors

[The vocational] Vocational instruction shall be conducted and supervised by teachers, teacher aides, supervisors, and other supporting personnel[. To the extent necessary to provide for a sufficient supply of teachers, teacher aides, supervisors, and other supporting personnel in the State, the program of instruction shall be accompanied by a teacher-training program.] meeting minimum academic qualifications and minimum occupational experiences as established by the State Board of Education in N.J.A.C. 6:11, Teacher Preparation and Certification.

6:43-[2.10]3.16 Vocational/career guidance and counseling

The program of instruction shall provide for vocational guidance and counseling personnel and services sufficient to enable [such a] the program to achieve and continue to meet its objectives, [and the] standards and requirements [of this Section].

6:43-[2.11]3.17 Vocational [youth] student organizations

(a) The program of instruction may include activities of vocational education [youth] student organizations which are an integral part of the vocational instruction offered and which are supervised by persons who are qualified as vocational education teachers or supervisors in the State.

(b) Payment of State and national dues shall be a requirement for membership in a New Jersey or National vocational student organization.

(c) Membership in the appropriate vocational student organization and adherence to published deadlines shall be requirements for participation at State and national vocational student organization competitive events. The Commissioner shall publish deadlines by September 1 of each school year in accordance with planned State and national activities.

(d) The operation of a vocational student organization shall be in accordance with the organization's State and national constitution, bylaws, published rules and regulations.

(e) The local chapter advisor shall be responsible for the operation of the local chapter activities and for meeting membership and other eligibility requirements for State and national vocational student organization activities.

6:43-[2.12]3.18 Evaluation

Evaluation of the results of the program of instruction will be made periodically on the State level by the State Board of Education and the State [Advisory] Council on Vocational Education and continuously on the local level, with [the] results being used for necessary change or improvement in [the] vocational education [program] programs through experimentation, curriculum development, training of vocational education personnel, or other means.

6:43-3.19 Statewide data bank

(a) The Commissioner shall establish a comprehensive Statewide data bank within the Division of Vocational Education to include information collected from district board of education and other deliveries of vocational education, employers, graduates and other State agencies. These data will include information on:

1. Enrollments;
2. Program completions;
3. Job placements;
4. Employer satisfaction with job performance of vocational school program completers;
5. Salaries;
6. Promotions;
7. Employer and business or industry training needs; and
8. Such other data as necessary to strengthen vocational education instruction and to improve pupil achievement.

(b) District boards of education shall provide such data to the Department of Education on forms provided by the Department.

SUBCHAPTER [3.]4. VOCATIONAL INSTRUCTION UNDER CONTRACT

6:43-[3.]4.1 Program arrangements

(a) Arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or nonpublic agencies or institutions [(other than the State Board or [local educational agency]) **district board of education** through a written contract with [a] **the State Board of Education** or a [local educational agency] **district board of education**. Such contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in this [Chapter] **chapter**. Such a contract shall be entered into only upon a determination by the State Board of Education or [local educational agency] **district board of education** of satisfactory assurance that:

1. The contract is in accordance with State or local law; [and]
2. **The instruction being sought is not offered at a comparable cost by a district board of education within reasonable proximity of the district board of education seeking the vocational instruction; and**
3. The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of [funds available] **available funds** [under the State Plan].

(b) [Arrangements] **Contracts** with private [postsecondary] vocational [training] **schools** [institutions: Arrangements with private postsecondary vocational training institutions provided in other than public institutions] may be [provided only through arrangements with private postsecondary vocational training institutions] entered into where the State Board of Education or [local educational agency] **district board of education** determines that such private institutions can [make a significant contribution to attaining] **achieve** the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions. [A "private postsecondary vocational training institution" means a private business or trade school, or technical institution or other technical vocational school providing postsecondary education in any state which meets the requirements set forth in subparagraphs (A) through (D) of section 108 (11) of the Act.]

(c) **Prior to entering into the contract the district board of education shall be responsible for determining that the private vocational school is currently approved by the Department of Education to enroll students in the subject to be taught, by contacting the Division of Vocational Education.**

6:43-4.2 Tuition contracts for vocational schools

(a) **To facilitate timely tuition payments, vocational school districts receiving pupils from other district boards of education shall enter into written contractual agreements for estimated tuition rates not to exceed the limitations imposed by N.J.S.A. 18A:54-23.**

(b) **The method of determining tuition rates shall be that as specified in N.J.A.C. 6:20-3, Tuition for Public Schools.**

SUBCHAPTER [4.]5. VOCATIONAL EDUCATION FOR ACADEMICALLY OR ECONOMICALLY [DISADVANTAGED] LIMITED OR HANDICAPPED [PERSONS] PUPILS

6:43-[4.]5.1 Special educational programs and services

(a) Vocational education for **academically or economically** [disadvantaged] **limited** or handicapped [persons] **pupils** shall include special educational programs and services designed to enable [disadvantaged or handicapped persons] **them** to achieve vocational education objectives that would otherwise be beyond their reach as a result of their [disadvantaged or handicapping condition] **limitations**.

(b) Funds available for vocational education for [disadvantaged] **academically or economically limited** or handicapped [persons] **pupils** may not be used to provide food, lodging, medical and dental services [and other services which may be necessary for students enrolled in such programs but which are not] **unless** directly related to the provision of vocational [education to such students] **instruction**. However, the State Board of Education or [local educational agency]

district board of education conducting [such] **vocational** programs shall encourage the provision of such services through arrangements with other agencies [responsible for such services].

(c) [To the extent feasible] **Insofar as possible**, [disadvantaged] **academically or economically limited** or handicapped [persons] **pupils** shall be placed in regular vocational education programs to the extent that they are able to benefit [from such programs], and provided only with those supplementary special educational services [which are] necessary to enable them to so benefit. [In these cases, funds available for vocational education for disadvantaged or handicapped persons may only be used to pay that part of the cost of such supplementary special educational services that is reasonably attributable to providing vocational education to disadvantaged or handicapped persons.]

(d) If certain [disadvantaged] **academically or economically limited** or handicapped [persons] **pupils** cannot benefit from regular vocational education programs to any extent, even with the provisions of supplementary special educational services, then [these persons] **they** shall be provided with special programs of vocational instruction which meet the standards and requirements of regular vocational education programs and which, in addition, include such special instructional devices and techniques and such supplementary special educational services as are necessary to enable those [persons] **pupils** to achieve their vocational objective. [In these cases, funds available for vocational education for the disadvantaged or the handicapped may be used to pay that part of the total cost of the instructional program and supplementary special educational services that are reasonably attributable to the vocational education of disadvantaged or handicapped persons.]

(e) Vocational education programs and services for [disadvantaged] **academically or economically limited** or handicapped [persons] **pupils** shall be planned, developed, established, and administered by **the State Board[s] of Education** and [local educational agencies] **district boards of education** in cooperation with other public or private agencies, organizations, and institutions having responsibility for the education of [disadvantaged] **academically or economically limited** or handicapped persons in the area or community served by such programs or services[, such as]. **They may include** community agencies, vocational rehabilitation agencies, [and] special education[, department] **divisions or offices of State agencies** and [local educational agencies] **district boards of education**, and other agencies, organizations, and **public or private** institutions[, public or private,] concerned with the problems of [such persons] **academically or economically limited or handicapped individuals**.

SUBCHAPTER [5.]6. PARTICIPATION OF [STUDENT] PUPILS IN PRIVATE NONPROFIT SCHOOLS

[The participation of students enrolled in private nonprofit schools in vocational education programs or projects under part B supported with funds allocated under section 102(b) and under parts D and G of the Act (see 102.66, 102.79, and 102.101) shall be in accordance with the requirements set forth in Section 5.1 (Private nonprofit school program participation requirements) of this Chapter.]

6:43-[5.]6.1 Private nonprofit school program participation requirements

(a) Each program and project carried out with funds allotted under the Act shall be designed to include, to the extent consistent with the number of [students] **pupils** enrolled in private nonprofit schools in the geographic area served by the program or project, vocational education services which will meet the vocational education needs of such [students] **pupils**.

(b) The vocational education needs of [students] **pupils** enrolled in private nonprofit schools located within the geographic areas served by the program or project, the number of such [students] **pupils** who will participate in the program or project, and the types of vocational education services which will be provided for them shall be determined, after consultation with persons knowledgeable of the needs of those [students] **pupils**, on a basis comparable to that used in providing such vocational education services to [students] **pupils** enrolled in public schools **and as specified in the State Plan as adopted by the State Board of Education**. Each application submitted by the

[local educational agency] district board of education to the State Board of Education shall indicate the number of [students] pupils enrolled in private nonprofit schools who are expected to participate in each program and project proposed by such agency and the degree and manner of their expected participation.

(c) Public school personnel may be made available on other than public school premises [only] and to the extent necessary to provide vocational education services required by the [students] pupils for whose needs such services were designed, and only when such services are not normally provided at the private school. The State Board of Education or [local educational agency] district board of education providing such vocational education services to [students] pupils in private nonprofit schools shall maintain administrative control and direction over such services, and each application from a [local educational agency] district board of education providing such services shall so provide. Vocational education services provided with Federal funds shall not include the payment of salaries of teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the use of equipment, other than mobile or portable equipment, on private school premises or the construction of private school facilities. Mobile or portable equipment may be used on private school premises for such period of time within the life of the current program or project for which the equipment is intended to be used as is necessary for the successful participation in that program or project by [students] pupils enrolled in private schools.

(d) Any program or project to be carried out on public premises and involving joint participation by [students] pupils enrolled in private nonprofit schools and [students] pupils enrolled in public schools shall include such provisions as are necessary to avoid forming classes that are separated by school enrollment or religious affiliation.

SUBCHAPTER 7. JOB PLACEMENT STANDARDS

6:43-7.1 Establishing job placement standards

(a) The Commissioner shall establish annual minimum job placement standards by July 1, 1992 for district boards of education whose pupils are being trained for paid occupations.

(b) Prior to establishing minimum job placement standards, the Commissioner shall seek job market placement data recommendations from the New Jersey Commission on Employment and Training.

(c) The Commissioner shall notify district boards of education of annual minimum job placement standards.

6:43-7.2 Meeting job placement standards

(a) Districts shall be responsible for meeting minimum job placement standards for vocational pupils.

(b) Vocational pupils in the following categories will be considered job placements:

1. Vocational pupils who have been placed full-time in the occupation or related field in which they were trained;
2. Vocational pupils who have passed occupational competency tests for entry level employment skills and have entered the military service;
3. Vocational pupils entering full-time postsecondary education in the program area or related field in which they were trained;
4. Special needs pupils who have met alternative assessments for occupational competencies or individualized education program (IEP) assessments established by the district board of education;
5. Vocational pupils who are employed a minimum of 20 hours per week in the occupation or related field in which they were trained and who are enrolled in postsecondary education for a minimum of 12 credit hours per academic year in the program area or related field in which they were trained; and
6. Vocational pupils who are employed part-time an average of 20 hours per week or more in the occupation or related field in which they were trained.

(c) Vocational pupils not considered placements include:

1. Vocational pupils who are unemployed;
2. Vocational pupils who work fewer than 20 hours per week; and
3. Vocational pupils who are employed in an occupation or field not related to their training.

(d) All other pupils shall not be included in calculations for job placements.

(e) Beginning July 1, 1993 and annually thereafter district boards of education shall report job placement rates of vocational pupils to the Department of Education on forms provided by the Department.

6:43-7.3 Failure to meet minimum job placement standards

(a) If the district reports placement rates below the established job placement standards for two consecutive years, the district board of education shall be required to submit a two-year program improvement plan to overcome program deficiencies.

1. Occupational competency assessment data shall be included in the development of the program improvement plan.

2. The program improvement plan shall be submitted within 90 days following written notification by the Commissioner that such a plan is required.

3. Prior to the submission of the program improvement plan to the Commissioner, the plan shall be approved by the district board of education and submitted to the county superintendent for review and approval.

4. The county superintendent shall periodically review the progress of the district in meeting the objectives and in implementing the program improvement plan.

5. The district shall have two years following approval of the plan by the Commissioner to complete remediation and to overcome program deficiencies.

(b) In preparing the program improvement plan, the district shall review its programs based upon factors including, but not limited to, vocational pupil mastery of occupational competencies, inappropriate or inadequate training, pupil recruitment, placement deficiencies, market sensitivity and program cost effectiveness. Other indicators which might influence job placement which could be cited might include, but not be limited to, inadequate pay scales, economic trends and fluctuations, transportation difficulties, existing and anticipated local or regional occupational supply and demand.

(c) If the district fails to implement the program improvement plan and/or fails to overcome program deficiencies for meeting minimum job placement standards, within two years of approval of the plan by the Commissioner, the county superintendent, in consultation with the Assistant Commissioner for Vocational Education and the Vocational Education Program Review Panel may recommend that the Commissioner issue an order requiring the district to show cause as to why the program should not be discontinued (see N.J.A.C. 6:24-3.1). However, the county superintendent, Assistant Commissioner for Vocational Education and the Vocational Education Program Review Panel shall also consider vocational pupil mastery of occupational competencies, pupil recruitment, placement deficiencies, market sensitivity, program cost effectiveness, inadequate pay scales, inappropriate/inadequate training, economic trends and fluctuations, transportation difficulties, existing local or regional demands and anticipated local or regional demands.

(d) Any district board of education may appeal the decision of the Commissioner as set forth in N.J.A.C. 6:24, Controversies and Disputes.

SUBCHAPTER 8. VOCATIONAL EDUCATION PROGRAM AND COURSE APPROVAL

6:43-8.1 Vocational education program review panel

(a) The Commissioner shall establish and appoint a review panel to be known as the Vocational Education Program Review Panel to assess the State's needs for programs based upon local, regional and statewide labor market supply and demand, to review requests for approval or disapproval of those programs not meeting job placement standards and to advise the Assistant Commissioner for Vocational Education of Statewide occupational supply and demand which could be used by district boards of education for planning purposes.

1. The Assistant Commissioner for Vocational Education or the Assistant Commissioner's designee shall chair the Vocational Education Program Review Panel.

2. The Vocational Education Program Review Panel shall include three representatives from business and industry and one representative from each of the following:

- i. The New Jersey Occupational Information Coordinating Committee;
- ii. The New Jersey Department of Commerce;
- iii. The New Jersey Department of Labor;
- iv. The New Jersey Department of Higher Education;
- v. County vocational schools;
- vi. Local area vocational school districts;
- vii. Comprehensive high schools;
- viii. The Governor's Office of Management and Planning; and
- ix. The Commission on Employment and Training.

6:43-8.2 Program and course approval process

(a) The Commissioner shall establish a system for vocational education program and course approval in accordance with the following:

1. District boards of education seeking to establish any new vocational courses or programs shall request planning recommendations from the private industry council to eliminate unnecessary duplication of programs and to foster a unified delivery system in the labor market area.

2. Upon verification of the program need and recommendation from the private industry council, district boards of education shall submit the request for the new course or program to the county superintendent of schools.

3. The county superintendent of schools shall review the course or program request and the verification and recommendation of the private industry council and submit a recommendation to the Vocational Education Program Review Panel within 30 days of receipt of the request.

4. The Vocational Education Program Review Panel shall review the county superintendent's recommendation based upon a review of the occupational supply and demand needs and local or regional availability of the proposed courses or programs. The panel shall recommend approval or disapproval within 45 days of receipt of the county superintendent's recommendation and submit to the Assistant Commissioner of Vocational Education.

5. The Assistant Commissioner of Vocational Education shall review the panel's recommendation and approve or disapprove the course or program request. The district board of education, the county superintendent, the local private industry council and the Vocational Education Program Review Panel will be notified of the decision within 10 days.

(b) District boards of education dissatisfied with the final decision on the request for program or course approval may appeal the decision to the Commissioner. The Commissioner's decision may be appealed as set forth in N.J.A.C. 6:24, Controversies and Disputes.

LAW AND PUBLIC SAFETY

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Employee Compensation Insurance

Proposed Amendment: N.J.A.C. 13:70-3.41

Authorized By: New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1990-283.

Submit comments by July 4, 1990 to:

Charles K. Bradley, Deputy Director
c/o New Jersey Racing Commission
CN 088, 200 Wolverton St.
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment would provide that an individual or entity shall provide adequate proof of worker's compensation insurance coverage for his, her or its employees before such person or entity will be licensed by the New Jersey Racing Commission. Such proof can be in the form of a certificate of insurance issued by an insurance company authorized to do business in the State of New Jersey or by proof of

payment of the required premium in a worker's compensation insurance group program. The amendment further provides that in the event a certificate of insurance is found not to be valid, disciplinary action may result against the person who submitted the invalid certification.

Social Impact

The social impact of the proposed amendment is to ensure that all employees working on the grounds of a racetrack in New Jersey are provided workmen's compensation's coverage during their term of employment.

Economic Impact

The proposed amendment would not have any impact on the racing industry as the laws of the State of New Jersey require an employer to secure worker's compensation for his employees.

Regulatory Flexibility Statement

The proposed amendment imposes a compliance requirement on horse owners, trainers and track concessionaires, many of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This requirement is to provide adequate proof of worker's compensation insurance coverage for employees prior to licensure or at the time of license renewal. As this insurance is required under New Jersey law, providing proof of such insurance will impose no capital costs nor require professional services to be engaged. Therefore, differentiation in requirements or exemptions therefrom are not provided based upon business size.

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

13:70-3.41 Employee compensation insurance

(a) All owners and trainers shall carry compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by owners and trainers in the training and racing of horses. All concessionaires shall carry compensation insurance covering all their employees.

(b) An individual or entity shall provide adequate proof of compliance with (a) above before he or she will be licensed as an owner, trainer, and/or concessionaire by the New Jersey Racing Commission. Such proof shall be in the form of:

1. A certificate of insurance, valid for the year (for which licensing is sought), issued by an insurance company authorized to do business in the State of New Jersey; or

i. A certificate, if offered and found not to be valid, may result in penalties provided in N.J.A.C. 13:70-23 up to and including revocation of license of the person who submitted the certificate; or

2. Proof of payment of the required premium entitling an individual or entity to participate in a workmen's compensation insurance group program.

i. Any group or organization sponsoring such a program shall guarantee worker's compensation coverage for those eligible individuals or entities which pay the required premium. A copy of the worker's compensation insurance group program and eligibility requirements shall be filed by the sponsoring group or organization with the New Jersey Racing Commission each year.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rule

Administering Medication To Respiratory Bleeders

Proposed Amendment: N.J.A.C. 13:70-14A.9

Authorized By: Charles K. Bradley, Deputy Director New Jersey Racing Commission.

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

Proposal Number: PRN 1990-305.

Submit comments by July 6, 1990 to:

Charles K. Bradley, Deputy Director
c/o New Jersey Racing Commission
CN 088, 200 Wolverton Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will provide for horses that are certified as respiratory bleeders to receive authorized medication in the stalls assigned to them on the grounds of a racetrack or receiving barn instead of the detention barn. The proposed amendment also provides that the dosage be limited to 250 milligrams (five cubic centimeters (cc)) in a 1,000 pound horse at least four hours before post-time instead of the present five hours before post-time. This dosage level and time requirement are recommended by the Association of Racing Commissioners International (ARCI). Since furosemide serves to mask the presence of other medications for a time period depending on the furosemide dose, the setting of a maximum dosage allows for a reduction in detention time. The proposed amendment also provides for disciplinary action in the event a post-race test shows a level exceeding 50 nanograms per milliliter of plasma.

Social Impact

The social impact of the proposed amendment would also be positive in that the horses would be allowed to remain in their own stall instead of having to report to a detention barn. Some horses tend to become fractious when subjected to a strange environment, and the quality of competition may thus be enhanced by elimination of the detention barn requirement. The proposed penalty scheme provides an enforcement mechanism to ensure proper medicating of respiratory bleeders. The State Veterinarian and his or her staff are relieved of responsibility for direct supervision of the detention barn.

Economic Impact

The proposed amendment would have a positive economic impact on the racing industry. The track associations would not be required to provide additional stabling for a detention barn for respiratory bleeders and the trainers of these horses would not have to employ additional grooms to be in attendance in the detention barn during the horses' five-hour stay. The grooms can be used to fulfill their other responsibilities. The generic drug furosemide specified in the amended rule, marketed under brand names such as Lasix®, is the greatly predominant diuretic medication for respiratory bleeders, and its exclusive use under the amended rule should have no economic impact on manufacturers or sellers of the drug. Trainers and veterinarians who violate proposed subsection (c) will be subject to the penalties in subsection (e).

Regulatory Flexibility Analysis

The proposed amendment imposes no additional reporting or record keeping requirements upon owners or licensed veterinarians, any of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Regarding compliance requirements, the acceptable diuretic and maximum dosage are established, the allowable pre-race administration time is reduced, the need for a separate administration facility is eliminated, and penalties for violation of the rule's requirements are set forth. No increased capital costs or need for professional services are anticipated from this amendment. No differentiation in requirements or exemptions are, therefore, provided based upon business size.

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

13:70-14A.9 Administering medication to respiratory bleeders

(a) (No change.)

(b) All horses that are placed on the veterinarian's list shall be required [to be brought to the detention barn no later than five hours prior to race time and shall remain in said detention barn until race time] **to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn.** During [the said five hour] **this period** the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. [Any] **Furosemide**, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian [in said detention barn under the direct supervision of the State veterinarian or an Associate State Veterinarian five hours prior to race time] **and shall be limited to an intravenous dose of 0.25 milligrams (mg) per pound of body weight (0.50 mg per kilogram) or 250 milligrams (five cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time.** Said practicing veterinarian shall make daily reports of **all said treatments and file said reports with the State Veterinarian each day.**

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with

[diuretic medication] **furosemide** to control respiratory bleeding pursuant to the requirements set forth above. **In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 50 nanograms per milliliter of plasma (50 ng/ml), the trainer and/or the practicing veterinarian shall be liable to the penalties as set forth in (e) below.**

(d) (No change.)

(e) **Should the stewards determine that any person or persons have violated (c) above, they shall punish the offending party as follows:**

1. **A trainer and/or veterinarian shall receive a warning for the first time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma.**

2. **A trainer and/or veterinarian shall receive a fine not to exceed \$500.00 for a second time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma.**

3. **Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time the trainer and/or veterinarian shall be suspended, fined or both.**

4. **Repeated violations of (c) above by a trainer and/or veterinarian for any horse under their care may subject said trainer and/or veterinarian to fine and/or suspension regardless of whether or not the same horse is involved.**

(a)

NEW JERSEY RACING COMMISSION**Harness Rules****Employee Compensation Insurance****Proposed Amendment: N.J.A.C. 13:71-6.1**

Authorized By: New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1990-282.

Submit comments by July 4, 1990 to:

Charles K. Bradley, Deputy Director

c/o New Jersey Racing Commission

CN 088, 200 Woolverton Street

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would provide that an individual or entity shall provide adequate proof of worker's compensation insurance coverage for his, her or its employees before such person or entity will be licensed by the New Jersey Racing Commission. Such proof can be in the form of a certificate of insurance issued by an insurance company authorized to do business in the State of New Jersey or by proof of payment of the required premium in a worker's compensation insurance group program. The amendment further provides that in the event a certificate of insurance is found not to be valid, disciplinary action may result against the person who submitted the invalid certification.

Social Impact

The social impact of the proposed amendment is to ensure that all employees working on the grounds of a racetrack in New Jersey are provided workmen's compensation's coverage during their term of employment.

Economic Impact

The proposed amendment would not have any economic impact on the racing industry as the laws of the State of New Jersey require an employer to secure worker's compensation for his employees. The cost of providing proof of insurance is insignificant.

Regulatory Flexibility Analysis

The proposed amendment imposes a compliance requirement on horse owners, trainers and track concessionaires, many of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This requirement is to provide adequate proof of worker's compensation insurance coverage for employees prior to licensure or at the time of license renewal. As this insurance is required under New Jersey law, providing proof of such insurance will impose no capital costs nor require professional services to be engaged. Therefore,

differentiation in requirements or exemptions therefrom are not provided based upon business size.

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

13:71-6.1 Compensation insurance

(a) Associations are required to carry adequate compensation insurance covering all persons in their employ.

(b) All owners and trainers shall carry compensation insurance covering all their employees, including drivers, grooms and all others acting in the capacity of training horses.

(c) All concessionaires shall carry compensation insurance covering all their employees.

(d) An individual or entity shall provide adequate proof of compliance with (b) and (c) above before he or she will be licensed as an owner, trainer, and/or concessionaire by the New Jersey Racing Commission. Such proof shall be in the form of:

1. A certificate of insurance, valid for the year (for which licensing is sought), issued by an insurance company authorized to do business in the State of New Jersey.

i. A certificate, if offered and found not to be valid, may result in penalties provided in N.J.A.C. 13:71-2.3 up to and including revocation of license of the person who submitted the certificate; or

2. Proof of payment of the required premium entitling an individual or entity to participate in a workmen's compensation insurance group program.

i. Any group or organization sponsoring such a program shall guarantee worker's compensation coverage for those eligible individuals or entities which pay the required premium. A copy of the worker's compensation insurance group program and eligibility requirements shall be filed by the sponsoring group or organization with the New Jersey Racing Commission each year.

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

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Administering Medication to Respiratory Bleeders

Proposed Amendment: N.J.A.C. 13:71-23.8

Authorized By: New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1990-304.

Submit comments by July 6, 1990 to:

Charles K. Bradley, Deputy Director

c/o New Jersey Racing Commission

CN 088, 200 Woolverton Street

Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment provides for horses that are certified as respiratory bleeders to receive authorized medication (furosemide) in the stalls assigned to them on the grounds of a racetrack or receiving barn instead of the detention barn. The proposed amendment also provides that the dosage be limited to 250 milligrams (five cubic centimeters (cc)) in a 1,000-pound horse at least four hours before post-time instead of the present five hours before post-time. This dosage level and time requirement are recommended by the Association of Racing Commissioners International (ARCI). Since furosemide serves to mask the presence of other medications for a time period depending on the furosemide dose, the setting of a maximum dosage allows for a reduction in detention time. The proposed amendment also provides for disciplinary action in the event a post-race test shows a level exceeding 50 nanograms per milliliter of plasma.

Social Impact

The social impact of the proposed amendment would be positive in that the horses would be allowed to remain in their own stalls instead of having to report to a detention barn. Some horses tend to become

fractious when subjected to a strange environment, and the quality of competition may thus be enhanced by elimination of the detention barn requirement. The proposed penalty scheme provides an enforcement mechanism to ensure proper medicating of respiratory bleeders. The State Veterinarian and his or her staff are relieved of responsibility for direct supervision of the detention barn.

Economic Impact

The proposed amendment would have a positive economic impact on the racing industry. The track associations would not be required to provide additional stabling for a detention barn for respiratory bleeders and the trainers of these horses would not have to employ additional grooms to be in attendance in the detention barn during the horses five-hour stay. The grooms can be used to fulfill their other responsibilities. The generic drug furosemide specified in the amended rule, marketed under brand names such as Lasix®, is the greatly predominant diuretic medication for respiratory bleeders, and its exclusive use under the amended rule should have no economic impact on manufacturers or sellers of the drug. Trainers and veterinarians who violate proposed subsection (c) will be subject to the penalties in subsection (e).

Regulatory Flexibility Analysis

The proposed amendment imposes no additional reporting or record keeping requirements upon owners or licensed veterinarians, any of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Regarding compliance requirements, the acceptable diuretic and maximum dosage are established, the allowable pre-race administration time is reduced, the need for a separate administration facility is eliminated, and penalties for violation of the rule's requirements are set forth. No increased capital costs or need for professional services are anticipated from this amendment. No differentiation in requirements or exemptions are, therefore, provided based upon business size.

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

13:71-23.8 Administering medication to respiratory bleeders

(a) (No change.)

(b) All horses that are placed on the veterinarian's list shall be required [to be brought to the detention barn no later than five hours prior to race time and shall remain in said detention barn until race time] **to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn.** During [the said five-hour] **this** period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. [Any] **Furosemide, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian [in said detention barn under the direct supervision of the State Veterinarian or an Associate State Veterinarian five hours prior to race time] and shall be limited to an intravenous dose of 0.25 milligrams (mg) per pound of body weight (0.50 mg per kilogram) or 250 milligrams (five cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time.** Said practicing veterinarian shall make daily reports **of all said treatments and file said reports with the State Veterinarian each day.**

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with [diuretic medication] **Lasix® (furosemide) to control respiratory bleeding pursuant to the requirements set forth above. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 50 nanograms per milliliter of plasma (50 ng/ml) the trainer and/or the practicing veterinarian shall be liable to the penalties as set forth in (e) below.**

(d) (No change.)

(e) **Should the stewards determine that any person or persons have violated (c) above, they shall punish the offending party as follows:**

1. A trainer and/or veterinarian shall receive a warning for the first time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma.

2. A trainer and/or veterinarian shall receive a fine not to exceed \$500.00 for a second time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma.

PROPOSALS

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3. Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time, the trainer and/or veterinarian shall be suspended, fined or both.

4. Repeated violations of (c) above by a trainer and/or veterinarian for any horse under their care may subject said trainer and/or veterinarian to fine and/or suspension, regardless of whether or not the same horse is involved.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding House Standards

Readoption: N.J.A.C. 5:27

Proposed: December 18, 1989 at 21 N.J.R. 3871(a).
Adopted: April 24, 1990 by Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.

Filed: May 2, 1990 as R.1990 d.275, **without change**.

Authority: N.J.S.A. 55:13B-4.

Effective Date: May 2, 1990.

Expiration Date: May 2, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from a legal services representative urging that procedural safeguards be added to N.J.A.C. 5:27-3.3(c), which deals with eviction of residents, without judicial proceedings, upon the direction or authorization of the Bureau of Rooming and Boarding House Standards.

RESPONSE: This comment is understood by the Department to be not an objection to the readoption of the chapter but, rather, a request for future rulemaking. In response, the Department points out that a resident faced with nonjudicial eviction under this rule still has the protection of prior review of the case by a public agency, the Bureau, and has the right to appeal the Bureau's action in accordance with N.J.A.C. 5:27-1.8. However, inclusion of additional notice requirements in the rules might well be appropriate and will be considered by the Bureau.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:27.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding House Standards

Licensing; Nonprofit Religious Drug and Alcohol Rehabilitation Facilities

Adopted Amendments: N.J.A.C. 5:27-1.6, 1.9, 2.1 and 8.1

Proposed: March 19, 1990 at 22 N.J.R. 912(a).

Adopted: April 24, 1990 by Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.

Filed: May 2, 1990 as R.1990 d.274, **without change**.

Authority: N.J.S.A. 55:13B-4.

Effective Date: June 4, 1990.

Expiration Date: May 2, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:27-1.6 Licenses

(a) (No change.)

(b) There shall be five classes of licenses, which shall be as follows:

1.-3. (No change.)

4. Class D license: Valid only for facilities operated under contract with an agency of the State of New Jersey; and

5. Class E license: Valid only for alcohol and drug rehabilitation facilities owned and operated by non-profit religious organizations.

(c) The annual fee for licenses shall be as follows:

1.-3. (No change.)

4. Class E license: \$75.00;

Recodify 4.-6. as 5.-7. (No change in text.)

(d)-(l) (No change.)

(m) No license to operate a rooming or boarding house shall be issued until the applicant has provided proof of local zoning approval. No increase in the number of residents living in a rooming or boarding house shall be permitted without the applicant first providing proof of local zoning approval.

5:27-1.9 Exceptions and exemptions

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

(e) Owners and operators who have been issued Class E licenses are, with respect to drug or alcohol rehabilitation facilities owned or operated under such licenses, exempt from the following requirements of this chapter:

1. N.J.A.C. 5:27-1.6(i), with respect to creed only;

2. N.J.A.C. 5:27-1.7(a)5 through 8;

3. N.J.A.C. 5:27-3.1(a)1 through 4, 9, 13 and 14;

4. N.J.A.C. 5:27-3.2(d);

5. N.J.A.C. 5:27-3.3(c);

6. N.J.A.C. 5:27-3.4(b);

7. N.J.A.C. 5:27-3.10;

8. N.J.A.C. 5:27-8.1(b)2;

9. N.J.A.C. 5:27-8.2;

10. N.J.A.C. 5:27-8.3;

11. N.J.A.C. 5:27-8.4(a); and

12. N.J.A.C. 5:27-9.2(a).

5:27-2.1 Definitions

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

...
"Non-profit religious organization" means an organization that has tax-exempt status as a nonprofit religious organization in accordance with section 501(c)(3) of the Internal Revenue Code and that owns and operates a boarding house that is exempt from local property taxation.
...

5:27-8.1 Residents' records

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

(e) An owner or operator of a boarding house owned and operated under a Class D or E license shall be permitted to develop and follow a method that will permit that the resident may remain anonymous when it is necessary to do so for rehabilitative purposes.

(c)

DIVISION ON AGING

County Offices on Aging

Adopted New Rules: N.J.A.C. 5:71

Proposed: April 2, 1990 at 22 N.J.R. 1016(b).

Adopted: May 3, 1990 by Joan Mintz, Acting Director, Division
on Aging, Department of Community Affairs.

Filed: May 4, 1990 as R.1990 d.282, **without change**.

Authority: N.J.S.A. 40:23-6.44.

Effective Date: June 4, 1990.

Expiration Date: June 4, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 5:71.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Administrative Policies

Minority Faculty Advancement Loan and Loan Redemption Program; Fund for the Improvement of Collegiate Education; Early Retirement Program for Tenured Faculty, Participant Rehiring as Adjunct Faculty; Alternate Benefit Program; Management of Computerized Information; Rules for Appeals to the Chancellor of Higher Education; Rules for Appeals to the Board of Higher Education; Procedure to Petition for a Rule; Board of Higher Education and Department of Higher Education Structure and Functions; Guidelines on Outside Employment for Public Institutions of Higher Education and the Department of Higher Education and the Code of Ethics; Standards for Baccalaureate Teacher Education Programs at Public Colleges and Universities; Auxiliary Corporation Regulations

Readoption with Amendments: N.J.A.C. 9:2

Adopted Repeal: N.J.A.C. 9:2-2

Proposed: March 5, 1990 at 22 N.J.R. 749(a).

Adopted: May 4, 1990 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: May 4, 1990 as R.1990 d.280, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72F-11, N.J.S.A. 18A:62-12, N.J.S.A. 18A:66-204, N.J.S.A. 18A:66-170, N.J.S.A. 18A:3-13, N.J.S.A. 18A:3-14(1), N.J.S.A. 18A:3-15, N.J.S.A. 18A:6-26, N.J.S.A. 18A:3-1, N.J.S.A. 18A:3-3, N.J.S.A. 52:14B-4(b), N.J.S.A. 52:13D-12 et seq., N.J.S.A. 18A:3-14(h), N.J.S.A. 18A:3-14(e) and N.J.S.A. 18A:64-26 et seq.

Effective Date: May 4, 1990, Readoption; June 4, 1990, Amendments.

Expiration Date: May 4, 1995.

Summary of Public Comments and Agency Responses:

The Board received three comments with regard to the proposal, two on subchapter 1 and one on subchapter 9. The specific comments and responses thereto are set forth below:

COMMENT: Drew University objected to the inclusion of fees in the institutional support required by N.J.A.C. 9:2-1.7(a)2 as their institutional policies do not provide for aid to graduate students for fees but only for tuition.

RESPONSE: The proposed amendment only requires that the minimum amount of the institution's grant should be no less than the sum of half of the tuition and fees charged to the student. The actual grant can be applied solely to tuition, thus obviating a conflict between Drew's policy and the regulation.

COMMENT: Seton Hall University, in commenting on N.J.A.C. 9:2-1, stated that the proposal should prohibit program participants from engaging in full-time employment and that if such employment is allowed, the income should be considered in determining award amounts.

RESPONSE: The Board believes that there should be no prohibition against full-time employment as long as the student is a full-time student and makes satisfactory academic progress, both of which are program requirements. As the program is not based upon financial need, there is no reason to consider such income in making award amounts.

COMMENT: The Association of Independent Colleges and Universities in New Jersey commented that the language of N.J.A.C. 9:2-9.1(a) regarding that organization's representative to the Board of Higher Education was not consistent with the wording of N.J.S.A. 18A:3-6.

RESPONSE: The rule has been changed to reflect the statutory language.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:2.

Full text of the amendments to the readoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

9:2-1.1 Definitions

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

...

"Faculty member" means any person employed full-time by a New Jersey institution of higher education to perform primarily teaching or research duties for a full academic year.

...

"Full-time student" means one who, in each semester, quarter or equivalent thereof, is engaged in coursework or research necessary to constitute full-time graduate student status as defined by the host institution attended.

...

9:2-1.2 Degree requirements

(a) Each program participant must pursue doctoral studies as a full-time student at an approved host institution.

(b) Eligible disciplines shall be determined by the Chancellor.

9:2-1.3 Program participation eligibility

(a) (No change.)

9:2-1.5 Participation in program

(a) The nomination of eligible candidates for participation in the program after institutional admission shall be determined by the Department of Higher Education Minority Faculty Advancement Program Advisory Committee, established pursuant to N.J.A.C. 9:2-1.15.

(b) (No change.)

9:2-1.6 Sponsoring institution responsibilities

(a) (No change.)

(b) A sponsoring institution may nominate a member of the non-teaching professional staff or any other recipient of a baccalaureate or master's degree to participate in the program under the following conditions:

1. The sponsoring institution will appoint said person to the faculty of the institution upon completion of the doctorate; and

2. (No change.)

(c) Prior to a minority faculty member's entrance into the program pursuant to the provisions of the section, the sponsoring institution and the program participant shall execute a written agreement, consistent with existing applicable statutes and regulations, which shall set forth the program participant's employment rights, including, but not limited to, the areas of tenure, seniority, salary and promotion, upon reemployment by the institution.

9:2-1.7 Host institution responsibilities

(a) A host institution shall:

1. Offer a doctoral degree in at least one of the eligible disciplines designated in the program;

2. Provide to each program participant an annual grant of at least \$5,000 or 50 percent of total full-time tuition and fees, whichever is greater and which may include tuition remission, each year for up to four years;

3. Recruit candidates for the program from among minority faculty members who are currently teaching in New Jersey institutions of higher education and minority graduates of baccalaureate and masters programs both in and out of state;

4. Make available appropriate support services.

9:2-1.9 Source of loan funds

(a) The eligible student will be considered for two loan sources: the Stafford Loan and the Minority Faculty Advancement Loan, in

that order. The type and amount of loan(s) will depend on the student's eligibility, in accordance with the policies and procedures set forth by the Stafford Loan and the Minority Faculty Advancement Loan. Regardless of the loan(s) for which the recipient qualifies, these loans will be eligible for loan redemption upon qualifying service as set forth in N.J.A.C. 9:2-1.14.

(b) The maximum loan amount received shall not exceed \$10,000 annually and \$40,000 aggregate for any combination of Stafford Loan and Minority Faculty Advancement Loan.

(c) Sequence of funding will be:

1. Subsidized Stafford Loan;
2. Non-subsidized Stafford Loan;
3. Minority Faculty Advancement Loan.

9:2-1.10 Loan application process

(a) (No change.)

(b) Each academic year, the borrower will obtain a Stafford Loan application from the Direct Loan Office which will be used to process a subsidized and/or non-subsidized Stafford Loan, and a Minority Advancement Loan.

(c) As required by Federal rules, an origination fee will be levied on the subsidized and/or non-subsidized Stafford Loan and will be deducted from the proceeds of the loan disbursement.

9:2-1.11 Redemption

(a) Borrowers with earned doctoral degrees will be eligible for redemption of their Stafford Loan(s) and Minority Faculty Advancement Loan(s) over a four-year period of qualifying service as defined by N.J.A.C. 9:2-1.14.

(b) The principal balance of each loan account will be cancelled at an annual rate of 25 percent, in return for each full academic year of service as set forth in N.J.A.C. 9:2-1.14.

(c) Total cancellation of loan indebtedness will not exceed the maximum of \$40,000 per student. Any previous loans obtained by the borrower will not be eligible for loan redemption under this program.

(d) Prior to the annual redemption of loan indebtedness, participants shall submit institutional certification of qualifying service to the Department of Higher Education.

(e) If the borrower is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest at the prevailing rate for Stafford Loans and Minority Faculty Advancement Loans at the time the loans were made on the portion of loans not already redeemed will be converted to an installment contract and serviced by the Direct Loan Office of the Authority.

9:2-1.12 Terms of repayment

(a) Repayment of loans under the program shall be governed under the following conditions:

1. For subsidized Stafford Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Stafford Loan program.

ii. Interest shall be at the prevailing rate established for the Stafford Loan program at the time the loan is made, and will be paid by the Federal government during at least half-time enrollment and grace periods and authorized periods of deferment.

iii. Interest will begin accruing at the time of repayment, which will commence six months following less than half-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

2. For non-subsidized Stafford Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Stafford Loan program.

ii. Interest shall be at the prevailing rate established for the Stafford Loan program at the time the loan is made and will be waived during at least half-time enrollment periods, grace period, and authorized periods of deferment.

iii. Interest will begin accruing at the time of repayment which will commence six months following less than half-time enrollment, withdrawal, or graduation or thereafter in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

3. For Minority Faculty Advancement Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Stafford Loan program.

ii. Interest shall be at the prevailing rate established for the Stafford Loan program at the time the loan is made, and will be waived during at least half-time enrollment, grace period and authorized periods of deferment.

iii. Interest will begin accruing at the time of repayment which will commence six months following less than half-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

(b) The Stafford Loan and Minority Faculty Advancement Loan will be converted to repayment simultaneously.

9:2-1.13 Loan forgiveness

(a) In the case of a program participant's death or total and permanent disability, the loan will be forgiven pursuant to the guidelines set forth under the Stafford Loan program.

(b) Requests for deferment, forbearance or forgiveness of loans must be made by the borrower to the Authority's Direct Loan Office.

9:2-1.14 Faculty service requirements

(a) Faculty service requirements for loan redemption purposes shall be satisfied:

1. For those program participants nominated by a sponsoring institution, by faculty service at the sponsoring institution unless otherwise mutually agreed upon by the president of the institution and the program. A sponsoring institution must reemploy a program participant who successfully completes the program and was nominated by that institution. Exceptions to this requirement may be made only under extreme circumstances and with the approval of the Chancellor; or

2. By faculty service in an appropriate position, as determined by the Chancellor of Higher Education, at an institution of higher education within New Jersey; or

3. If no faculty position is available at a New Jersey college or university, by service in an appropriate position, as determined by the Chancellor of Higher Education, in an agency of State government.

(b) Host institutions shall be responsible for assisting program participants not nominated by a sponsoring institution who successfully complete the program in obtaining an appropriate position to fulfill faculty service requirements.

9:2-1.16 Exceptions to rules

An exception to these rules, on a case by case basis, may be granted by the Chancellor of Higher Education in cases where application of these rules, inasmuch as they might conflict with host institution policies, would not be in the best interests of, or would result in financial hardship to, program participants.

9:2-5.3 Protection of privacy rights

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

(d) Upon written application to the Chancellor, individualized student records may be made available to statutorily authorized non-DHE staff with legitimate educational interests. Such application shall summarize the objectives of the research, methodology and projected date for completion. An agreement that the applicant will not permit any other party to have access to such information without the written consent of the student and that a report on the study results will be forwarded to DHE must be provided. Individualized records that are made available to non-DHE staff shall not contain the student's name, social security number, and zip code of home address, unless the student has given consent for such release.

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

9:2-6.4 Filing, service of answer and extensions of time to answer

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

(e) Extension of the time in which to answer will be granted in the discretion of the Chancellor only if exceptional reasons are presented to justify such request. Requests for an extension of the time in which to answer shall be submitted in writing to the Chancellor at least five days before the 20-day answering period has expired. At the same time a request is made to the Chancellor, a copy of such

ADOPTIONS

HIGHER EDUCATION

request shall be served on the other party or parties. The Chancellor will notify all parties of the decision with respect to the request.

(f) (No change.)

9:2-6.18 Report of hearing officer

(a) (No change.)

(b) The Chancellor shall adopt, reject or modify the recommendations contained in the Report of the Hearing Officer within 45 days of the Report.

(c) (No change.)

9:2-6.20 Effective date of Chancellor's decision

Except where otherwise provided by law, the administrative adjudication of the Chancellor shall be effective on the date of delivery or on the date of mailing of the final decision to the parties of record, whichever shall occur first or shall be effective on any date after the date of delivery or mailing, as the Board of Higher Education or the Chancellor may provide by general rule or by order in the appeal.

9:2-7.4 Extensions of time

Extensions of time for filing by the parties of points of appeal, answering points, memoranda and objections or exceptions to a report and replies thereto will not be granted unless exceptional reasons are presented by the parties to justify such a request. Requests for extensions of time shall be submitted in writing to the secretary to the Board for Appeals, with a copy to the other party or parties. The secretary to the Board for Appeals will notify all parties of the committee's or board's decision with respect to the request.

9:2-7.5 Committee on appeals

(a) (No change.)

(b) The Committee on Appeals shall consist of not less than three members of the Board of Higher Education appointed by the chairman from among the members of the board, which members shall serve in such capacity until replacements are appointed.

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

9:2-7.6 Functions of Committee on Appeals

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

(h) The Committee on Appeals, considering a given appeal, shall set forth its determination thereon in a written report which shall include findings of fact, conclusions of law, and recommendations of appropriate action to be taken in the matter. If, after reviewing the record and the oral arguments presented, if any, the Committee on Appeals is in agreement with any or all of the findings of fact and conclusions of law contained in the Chancellor's decision, it may specifically adopt those findings and conclusions as its own and make a written report containing recommendations based thereon.

(i) (No change.)

9:2-7.7 Decision of the Board of Higher Education

(a) After receiving the report of the Committee on Appeals, the Board of Higher Education, in open meeting, shall adopt, reject, or modify the findings of fact, conclusions of law, and recommendation of the Committee on Appeals and shall thereafter make a final determination with respect to such controversy. Such final determination shall be embodied in a written decision and shall include an appropriate order disposing of the matter. Such written decision and order shall be delivered or mailed to the parties of record affected thereby or their attorney of record.

(b) (No change.)

9:2-8.1 Public petitions regarding Board of Higher Education rulemaking

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

(c) Petitions for the promulgation, amendment or repeal of a rule of the Board of Higher Education shall be addressed to:

Office of Governmental Affairs
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

(d) (No change.)

9:2-9.1 Board of Higher Education structure

(a) The Board of Higher Education consists of 18 members, of which nine are citizen members. Seven are representatives of higher education institutions: the chairman of the Board of Governors at Rutgers, The State University, the chairman of the Board of Trustees of the University of Medicine and Dentistry of New Jersey, the chairman of the Board of Trustees of New Jersey Institute of Technology, the chairman of the New Jersey State College Governing Boards Association, the chairman of the Council of County Colleges, the president of the State Board of Education, and *[the]* *a* representative of the private colleges and universities of New Jersey *to be designated by the Association of Independent Colleges and Universities in New Jersey, with the approval of the Governor*. The Chancellor and the State Commissioner of Education are non-voting, ex-officio members.

(b) Institutional representatives may designate, in writing, alternate members to attend meetings of the Board.

9:2-9.5 Public information

A member of the public may obtain information in accordance with all applicable Federal or State laws and rules by contacting the Office of the Chancellor, Department of Higher Education, 20 West State Street, CN 542, Trenton, New Jersey 08625.

9:2-10.1 Code of ethics; Department of Higher Education

(a) The following code of ethics is applicable to employees paid from Federal, State or county funds and who are employed in the New Jersey Department of Higher Education, public colleges and universities under its jurisdiction, and institutions, commissions and other agencies organized within the Department:

1.-7. (No change.)

(b) The provisions of this subchapter shall only apply, in whole or in part, to any public institution of higher education in New Jersey which has not adopted or does not have in effect, a policy governing the contents of this subchapter which is equal to or greater than the scope and requirements set forth herein.

9:2-10.2 Guidelines on outside employment for full-time employees

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

(c) All regular or continuing outside employment of a full-time non-bargaining unit employee of a public institution of higher education or the Department during the regular work year must have the prior and continuing written approval of the chief executive officer of the institution or his designee or the Chancellor for Departmental personnel. All full-time bargaining unit employees of the Department or a public institution of higher education shall report all such outside employment on forms provided for such purpose.

(d) No full-time non-bargaining unit employee at a public institution of higher education or the Department may perform part-time work of any kind for another public institution or agency unless such part-time work conforms in all respects with (a), (b) and (c) above and, in addition, has the approval of the chief executive officer of the public institution or agency for which it is to be performed. If such part-time work exceeds in any respect the limitations established in (a), (b) and (c) above then the full-time and part-time employers should agree upon the share of the employee's full-time salary that each will pay. The part-time employer should reimburse the full-time employer by means of a certificate of debit and credit if both are State agencies, or otherwise by check.

(e) These guidelines shall not apply to outside employment undertaken by a full-time employee during his or her annual leave or vacation periods, except that no such employee may engage at any one time in outside employment that constitutes a conflict of interest.

(f) These guidelines shall not apply to outside employment as defined in N.J.S.A. 18A:6-8.1 and 18A:6-8.2. Such outside employment, however, should be reported to the institution's chief executive officer or the Chancellor as a matter of record:

NOTE: The intention of (c) above is to differentiate between outside employment which may be regular or continuing and which therefore requires the written approval of the chief executive officer or his designee or the Chancellor for Departmental personnel and outside employment which may be irregular or infrequent and which

therefore does not require such approval. Regardless of whether a specific instance of outside employment need be approved under these guidelines, it must in each instance meet the three requirements of (b) above.

It is difficult to clearly define "regular or continuing," as opposed to "irregular or infrequent," outside employment. Each employee is therefore responsible for making this judgment in a reasonable manner which is consistent with the spirit of these guidelines. The following examples of outside employment activities which may be classified as "regular or continuing" are given in order to illustrate the intent of the guidelines and are not meant to be an exhaustive listing of such activities.

1.-4. (No change.)

9:2-10.3 Procedures for reporting outside employment status

(a) Any employee who intends to undertake regular or continuing outside employment shall report in advance and in writing his or her intention to the Chancellor in the case of Departmental personnel or to the chief executive officer or his designee. Where prior approval is not feasible, all regular and continuing outside employment should be reported promptly provided, however, that any outside employment by the Vice Chancellor or an Assistant Chancellor of the Department of Higher Education must be approved by the Chancellor prior to commencement of the employment. For all outside employment for which approval is necessary, the employee shall file a status report with the approval officer at the beginning of each succeeding fiscal year during which he or she intends to continue the outside employment.

(b) Each institution of higher education and the Department shall devise its own form for the reporting of outside employment. The form should contain enough specific information to allow the approval officer to determine whether or not the employee intends to engage in regular or continuing outside employment, and to insure that the outside employment, if permitted, will not:

1.-3. (No change.)

(c) (No change.)

(a)

BOARD OF HIGHER EDUCATION
County Community Colleges
Code of Ethics

Adopted Amendment: N.J.A.C. 9:4-2.4

Proposed: March 5, 1990 at 22 N.J.R. 755(a).
Adopted: May 2, 1990 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: May 4, 1990 as R.1990 d.281, without change.
Authority: N.J.S.A. 18A:64A-7, 18A:64A-12 and 18A:3-14(h).
Effective Date: June 4, 1990.
Expiration Date: October 30, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:4-2.4 Code of ethics

(a) A trustee should devote time, thought and study to the duties and responsibilities of a community college trustee so as to render effective and creditable service.

(b) As an individual, a trustee has no legal authority outside of the meetings of the board and should conduct himself or herself accordingly with the college staff, local citizens, and all facets of the local community.

(c) An important function of the board of trustees is to establish the policies and the goals of the institution and to audit the performance of the administration in the fulfillment of these policies and the progress towards the goals but the educational program and the conduct of the college's business should be left to the president and the president's staff.

Recodify existing (a)-(i) as (d)-(l) (No change in text.)

HUMAN SERVICES

(b)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Commodities and Services Council
State Use Law for Rehabilitation Facilities

Adopted New Rules: N.J.A.C. 10:99

Proposed: March 5, 1990 at 22 N.J.R. 766(a).
Adopted: May 11, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: May 11, 1990 as R.1990 d.295, without change.
Authority: N.J.S.A. 30:6-23 et seq., specifically 30:6-32.
Effective Date: June 4, 1990.
Expiration Date: June 4, 1995.

Summary of Public Comments and Agency Responses:

There were two comments submitted on the proposed new rules. The commenter was a member of the Commodities and Services Council.

COMMENTS: The commenter recommended that the word "Council" be inserted at N.J.A.C. 10:99-2.1 following the phrase "the Commodities and Services" and also recommended the insertion of the phrase "provided by" at N.J.A.C. 10:99-2.3(c) in place of the word "of". This phrase would then state "The Council encourages the purchase of commodities and services provided by blind and . . ."

RESPONSE: The Commission agrees that these changes should be made, however, not at this time. The reason is that changes to the Commodities and Services Council statute, N.J.S.A. 30:6-23 et seq., are anticipated to take place shortly. Following the statute changes, the current rules will be reviewed for all needed amendments.

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10:99.

(c)

DIVISION OF YOUTH AND FAMILY SERVICES
Capital Funding Program for Community Based
Substitute Care, General Social Service and
Partial Care Facilities

Adopted New Rules: N.J.A.C. 10:125

Proposed: June 5, 1989 at 21 N.J.R. 1514(a).
Adopted: May 2, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: May 2, 1990 as R.1990 d.277, without change.
Authority: N.J.S.A. 30:1-12, P.L. 1980, c.119 and P.L. 1984, c.157.
Effective Date: June 4, 1990.
Expiration Date: June 4, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Because N.J.A.C. 10:125 expired on July 16, 1989, the rules proposed for readoption with amendments are adopted as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:125.

Full text of the amendments to the adopted new rules proposed for readoption follows.

10:125-1.1 Legal authority, applicability, scope, purpose

(a) This chapter applies to State contracts for the renovation and construction of community based facilities. This chapter implements one portion of the New Jersey Public Purpose Buildings Construction Bond Act of 1980 and one portion of the New Jersey Human Services Facilities Construction Bond Act of 1984 and complements N.J.A.C. 10:3-2. The purpose of the program is to utilize funds from the New

Jersey Public Purpose Buildings Construction Bond Act of 1980 and the New Jersey Human Services Facilities Construction Act of 1984 to assist in the renovation, purchase and construction of community based substitute care, general social service and partial care facilities which provide services to families and children under the auspices of the Division of Youth and Family Services. The scope of this program is limited to the purposes mentioned above for those who are either parties to or candidates for a service contract with the Division.

(b) In order to achieve the purposes of this chapter, the Department hereby delegates the responsibility for providing services and to regulate the provision of service to the Division.

10:125-3.5 Assurance of non-discrimination

The Division shall obtain assurance from each applicant that all portions and services of the entire facility for the construction of which or in connection with which aid under the New Jersey Public Purpose Buildings Construction Act of 1980 or under the New Jersey Human Services Facilities Construction Bond Act of 1984 is sought shall be made available without discrimination on account of race, creed, color or national origin; and that no professionally qualified person shall be discriminated against on account of race, creed, color or national origin with respect to the privilege or professional practice in the facility.

CORRECTIONS

(a)

THE COMMISSIONER

Records

Procedure for Release of Confidential Inmate or Parolee Records

Adopted Amendment: N.J.A.C. 10A:22-2.6

Proposed: March 19, 1990 at 22 N.J.R. 898(a).
 Adopted: May 8, 1990 by William H. Fauver, Commissioner, Department of Corrections.
 Filed: May 8, 1990 as R.1990 d.284, **without change**.
 Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
 Effective Date: June 4, 1990.
 Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:22-2.6 Procedure for release of confidential inmate or parolee records

- (a) (No change.)
 - (b) Information, files, documents, reports, or records prepared by New Jersey State Parole Board employees, or which pertain to parole determinations or supervision, shall not be released by the New Jersey Department of Corrections personnel pursuant to N.J.A.C. 10A:71-2.1(a) and (c).
 - (c) The only confidential information which shall be released shall be the specific information that is directly related to the stated purpose for which the information is requested (see N.J.A.C. 10A:22-2.3 and 4).
 - (d) Requests for confidential information shall be rejected when:
 - 1. The request is unrelated to the stated purpose of the request; and
 - 2. The request is unauthorized by law.
- Recodify existing (d) through (e) as (e) and (f) (No change in text.)

INSURANCE

(b)

DIVISION OF ACTUARIAL SERVICES

Examination of the Financial Experience of Private Passenger Automobile Insurers

Adopted Amendments: N.J.A.C. 11:3-31.5 and Appendix

Proposed: April 2, 1990 at 22 N.J.R. 1026(a).
 Adopted: May 11, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.
 Filed: May 11, 1990 as R.1990 d.290, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.
 Effective Date: June 4, 1990.
 Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency Initiated Changes:

- 1. Brackets contained in some of the exhibits, which are part of formulae used in calculating the data reported in the Financial Data Reports, are changed to parenthesis to clarify that these brackets are not intended to indicate a deletion of these formulae.
- 2. In DOI EXHIBIT A, Part Two, Page 3 of 3, the word "year" and the blank line following are deleted to correct a printing error.

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

- 11:3-31.5 Changes to financial data report prohibited; exceptions
 - (a)-(b) (No change.)
 - (c) The exhibits appended to this subchapter are 1990 exhibits. Where exhibits for prior years or later years must be reported, an insurer shall submit exhibits which are substantially similar to the appended exhibits to report the prior years' or later years' data and which contain all information, including dates, adjusted accordingly.
 - (d) All references in the exhibits to the statutory annual statement and insurance expense exhibit are for 1989 unless otherwise noted. For any year prior to 1989 an insurer shall use the corresponding source of data contained in that year's statutory annual statement or statutory insurance expense exhibit. If the data is not reported in the statutory annual statement or insurance expense exhibit, the insurer shall use its internal company data.

APPENDIX

Financial Data Report Instructions

- One: General Instructions
 - 1.-5. (No change.)
 - 6. "AS" refers to the 1989 statutory annual statement, and "IEE" refers to the 1989 statutory insurance expense exhibit, except where an alternative year is indicated.
 - 7. (No change.)
 - 8. "UCJF Assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgement Fund pursuant to N.J.S.A. 39:6-63 for their private passenger automobile business and not for their commercial automobile business, and "UCJF Reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgement Fund as a result of excess medical expense benefit payments on private passenger automobile claims by the insurer pursuant to N.J.S.A. 39:6-73.1. In DOI Exhibit A, UCJF Reimbursements are referred to as "Excess Medical Benefits."
 - 9. (No change.)

INSURANCE

ADOPTIONS

Two: DOI Exhibit A

- 1. (No change.)
- 2. The sources of data for Item 1 for 1989 follows:
 Liability AS New Jersey Page 14 Line 19.2
 PIP AS New Jersey Page 14 Line 19.1
 Physical Damage AS New Jersey Page 14 Line 21.1
 For years prior to 1989, see N.J.A.C. 11:3-31.5(d), herein.
- 3.-4. (No change.)
- 5. Premiums, losses, and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in," but only if they are contained in Item 1B, and then only the premiums, losses, and dividends not included in Items 2 through 6.
- 6.-7. (No change.)

Three: DOI Exhibit ONE

- 1.-3. (No change.)

Four: DOI Exhibit Three

- 1. (No change.)

Five: DOI Exhibit Five

- 1. DOI Exhibit Five Part Three contains 20 Items which continue as Items 11 through 20 in DOI Exhibit Five Part Four.

Six: DOI Exhibit Six

- 1. (No change.)

Financial Data Reports for New Jersey
 Private Passenger Auto
THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE BY 01 July 1990

Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

**DOI EXHIBIT A
 Part One
 Page 1 of 4**

Please state: _____ Coverage: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Year:
 Calendar Year 1989 _____
 Calendar Year 1988 _____
 Sum of the two calendar years 1989 and 1988 _____

A separate DOI Exhibit A Part One is to be completed for each coverage and year listed above.

**DOI EXHIBIT A
 Part One
 Page 2 of 4**

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____
 Coverage _____
 Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (1) Direct Premiums Written	Col. (2) Direct Premiums Earned	Col. (3) Direct Losses Paid
Item 1	Source: line ____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments (See DOI Exhibit A Part Three)	_____	_____	x
Item 1B	Item 1 minus 1A	_____	_____	_____
NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM 1.				
Exclusions:				
Item 2	Excess Medical Benefits (on private passenger auto claims)	x	x	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):				
Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges included in Item 1	_____	_____	x
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____	_____	_____

**DOI EXHIBIT A
 Part One
 Page 3 of 4**

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____
 Coverage _____
 Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

ADOPTIONS

INSURANCE

	Col. (4) Direct Losses Incurred	Col. (5) Dividends on Direct Business	Col. (6) Direct Unearned Premium Reserves
Item 1 Source: line _____ of Page 14	_____	_____	_____
Item 1A UCJF Assessments	x	x	x
Item 1B Item 1 minus 1A	_____	_____	_____

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM 1.

Exclusions:

Item 2 Excess Medical Benefits (on private passenger auto claims)	_____	x	x
Item 3 Motorcycles	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____
Item 5 JUA Business	_____	_____	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):			
Item 7 _____	_____	_____	_____
Item 8 _____	_____	_____	_____
Item 9 _____	_____	_____	_____
Item 10 _____	_____	_____	_____
Item 10A Finance and Service Charges included in Item 1	x	x	x
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12 Financial Data (Item 1B minus Item 11)	_____	_____	_____
Item 12A Refund of Excess Profits Included in Item 12, Col. (5)	x	_____	x
Item 12B All other Dividends Included in Item 12, Col. (5)	x	_____	x

DOI EXHIBIT A
Part One
Page 4 of 4

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
Year _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

	Col. (7) Direct Losses Unpaid
Item 1 Source: line _____ of Page 14	_____
Item 1A UCJF Assessments	x
Item 1B Item 1 minus 1A	_____

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM 1.

Exclusions:		
Item 2	Excess Medical Benefits (on private passenger auto claims)	_____
Item 3	Motorcycles	_____
Item 4	"Off Road" Vehicles	_____
Item 5	JUA Business	_____
Item 6	Excess/Umbrella Policies	_____
Other Exclusions (list):		
Item 7	_____	_____
Item 8	_____	_____
Item 9	_____	_____
Item 10	_____	_____
Item 10A	Finance and Service Charges included in Item 1	x
Item 11	Subtotal (Sum Items 2 through 10A)	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____

DOI EXHIBIT A
Part Two
Page 1 of 3

Please state: Coverage:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____ Physical Damage _____
Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

A separate DOI Exhibit A Part Two is to be completed for each coverage listed above.

DOI EXHIBIT A
Part Two
Page 2 of 3

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

INSURANCE

ADOPTIONS

		Calendar Year 1987		
		Col. (1)	Col. (2)	Col. (3)
		Direct	Direct	Direct
		Premiums	Unearned	Losses
		Written	Premium	Unpaid
Item 1	Source: line _____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments (See DOI Exhibit A Part Three)	_____	x	x
Item 1B	Item 1 minus 1A	_____	_____	_____

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM 1.

Exclusions:

Item 2	Excess Medical Benefits (on private passenger auto claims)	x	x	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):				
Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges included in Item 1	_____	x	x
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____	_____	_____

DOI EXHIBIT A
Part Two
Page 3 of 3

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
[Year _____]

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Calendar Year 1986		
		Col. (1)	Col. (2)	Col. (3)
		Direct	Direct	Direct
		Premiums	Unearned	Losses
		Written	Premium	Unpaid
Item 1	Source: line _____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments (See DOI Exhibit A Part Three)	_____	x	x
Item 1B	Item 1 minus 1A	_____	_____	_____

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM 1.

Exclusions:

Item 2	Excess Medical Benefits (on private passenger auto claims)	x	x	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):				
Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges included in Item 1	_____	x	x
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____	_____	_____

DOI EXHIBIT A
Part Three
Page 1
UCJF Assessments

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

		Calendar Year 1989	Calendar Year 1988	Calendar Year 1987
Item 1	Assessed during the calendar year	_____	_____	_____
Item 2	Assessed during the prior calendar year	_____	_____	_____
Item 3	UCJF Assessments Incurred *[[[* *[(3 x Item 1) minus (2 x Item 2)]*]]*]	_____	_____	_____

Notes:

Item 1 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.
Item 2 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.
Item 3 is to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A
Part Three
Page 2
UCJF Assessments

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

INSURANCE

ADOPTIONS

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

DOI EXHIBIT ONE
Part Two
Section Two Page 2

		Direct General Expenses	
		Calendar	Year
		1987	
Item 1	Direct Premiums Earned (DOI Exhibit A, Part Two, Page 2 of 3, Col. (1), Item 12 MINUS DOI Exhibit A, Part Two, Page 2 of 3, Col. (2), Item 12 PLUS DOI Exhibit A Part Two, Page 3 of 3, Col. (2), Item 12)	_____	_____
Item 2	Direct General Expenses paid during calendar year	_____	_____
Item 3	Direct General Expenses unpaid as of 31 December of the calendar year	_____	_____
Item 4	Direct General Expenses unpaid as of 31 December of the prior calendar year	_____	_____
Item 5	Direct General Expenses Incurred (Item 2 + Item 3 - Item 4)	_____	_____
Item 6	Ratio Item 5 divided by Item 1	_____	_____

DOI EXHIBIT ONE
Part Two
Section Two Page 1

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Direct Other Acquisition Expenses	
		Col. (1)	Col. (2)
		Calendar	Calendar
		Year	Year
		1989 1988	
Item 1	Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12).	_____	_____
Item 2	Direct Other Acquisition paid during calendar year	_____	_____
Item 3	Direct Other Acquisition unpaid as of 31 December of the calendar year	_____	_____
Item 4	Direct Other Acquisition unpaid as of 31 December of the prior calendar year	_____	_____
Item 5	Direct Other Acquisition Incurred (Item 2 + Item 3 - Item 4)	_____	_____
Item 6	Ratio Item 5 divided by Item 1	_____	_____

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Direct Other Acquisition Expenses	
		Calendar	Year
		1987	
Item 1	Direct Premiums Earned (DOI Exhibit One, Part Two, Section One, Page 2, Item 1).	_____	_____
Item 2	Direct Other Acquisition paid during calendar year	_____	_____
Item 3	Direct Other Acquisition unpaid as of 31 December of the calendar year	_____	_____
Item 4	Direct Other Acquisition unpaid as of 31 December of the prior calendar year	_____	_____
Item 5	Direct Other Acquisition Incurred (Item 2 + Item 3 - Item 4)	_____	_____
Item 6	Ratio Item 5 divided by Item 1	_____	_____

DOI EXHIBIT ONE
Part Two
Section Three

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Commission and Brokerage Fees Incurred	
		Calendar	Year
		1989	
Item 1	1989 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	_____	_____
Item 2	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	_____	_____
Item 3	Dollars of 1989 Direct Written Premium (as stated in Item 1) that are earned in 1989	_____	_____
Item 4	Ratio Item 3 divided by Item 1	_____	_____
Item 5	Item 2 x Item 4	_____	_____

ADOPTIONS

- Item 6 1988 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1)) _____
- Item 7 Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6 _____
- Item 8 Dollars of 1988 Direct Written Premium (as stated in Item 6) that are earned in 1989 _____
- Item 9 Ratio Item 8 divided by Item 6 _____
- Item 10 Item 9 x Item 7 _____
- Item 11 1989 Commission and Brokerage Incurred (Item 10 + Item 5) _____

DOI EXHIBIT ONE
Part Two
Section Four-A

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Commission and Brokerage Fees Incurred

- | | Calendar
Year
1988 |
|--|--------------------------|
| Item 1 1988 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1)) | _____ |
| Item 2 Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1 | _____ |
| Item 3 Dollars of 1988 Direct Written Premium (as stated in Item 1) that are earned in 1988 | _____ |
| Item 4 Ratio Item 3 divided by Item 1 | _____ |
| Item 5 Item 2 x Item 4 | _____ |
| Item 6 1987 Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1)) | _____ |
| Item 7 Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6 | _____ |
| Item 8 Dollars of 1987 Direct Written Premium (as stated in Item 6) that are earned in 1988 | _____ |
| Item 9 Ratio Item 8 divided by Item 6 | _____ |
| Item 10 Item 9 x Item 7 | _____ |
| Item 11 1988 Commission and Brokerage Incurred (Item 10 + Item 5) | _____ |

DOI EXHIBIT ONE
Part Two
Section Four-B

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____

INSURANCE

Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Commission and Brokerage Fees Incurred

- | | Calendar
Year
1987 |
|--|--------------------------|
| Item 1 1987 Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1)) | _____ |
| Item 2 Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1 | _____ |
| Item 3 Dollars of 1987 Direct Written Premium (as stated in Item 1) that are earned in 1987 | _____ |
| Item 4 Ratio Item 3 divided by Item 1 | _____ |
| Item 5 Item 2 x Item 4 | _____ |
| Item 6 1986 Direct Written Premium (DOI Exhibit A, Part Two, Page 3, Item 12, Col. (1)) | _____ |
| Item 7 Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6 | _____ |
| Item 8 Dollars of 1986 Direct Written Premium (as stated in Item 6) that are earned in 1987 | _____ |
| Item 9 Ratio Item 8 divided by Item 6 | _____ |
| Item 10 Item 9 x Item 7 | _____ |
| Item 11 1987 Commission and Brokerage Incurred (Item 10 + Item 5) | _____ |

DOI EXHIBIT ONE
Part Two
Section Five

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Taxes, Licenses, Fees Incurred

- | | Calendar
Year
1989 |
|--|--------------------------|
| Item 1 1989 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1)) | _____ |
| Item 2 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1 | _____ |
| Item 3 Dollars of 1989 Direct Written Premium (as stated in Item 1) that are earned in 1989 | _____ |
| Item 4 Ratio Item 3 divided by Item 1 | _____ |

INSURANCE

- Item 5 Item 2 x Item 4 _____
- Item 6 1988 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1)) _____
- Item 7 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6 _____
- Item 8 Dollars of 1988 Direct Written Premium (as stated in Item 6) that are earned in 1989 _____
- Item 9 Ratio Item 8 divided by Item 6 _____
- Item 10 Item 9 x Item 7 _____
- Item 11 1989 Taxes, Licenses, and Fees Incurred (Item 10 + Item 5) _____

**DOI EXHIBIT ONE
Part Two
Section Six**

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

Taxes, Licenses, Fees Incurred

Calendar
Year
1988

- Item 1 1988 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1)) _____
- Item 2 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1 _____
- Item 3 Dollars of 1988 Direct Written Premium (as stated in Item 1) that are earned in 1988 _____
- Item 4 Ratio Item 3 divided by Item 1 _____
- Item 5 Item 2 x Item 4 _____
- Item 6 1987 Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1)) _____
- Item 7 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6 _____
- Item 8 Dollars of 1987 Direct Written Premium (as stated in Item 6) that are earned in 1988 _____
- Item 9 Ratio Item 8 divided by Item 6 _____
- Item 10 Item 9 x Item 7 _____
- Item 11 1988 Taxes, Licenses, and Fees Incurred (Item 10 + Item 5) _____

**DOI EXHIBIT ONE
Part Two
Section Seven**

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

ADOPTIONS

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

Taxes, Licenses, Fees Incurred

Calendar
Year
1987

- Item 1 1987 Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1)) _____
- Item 2 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1 _____
- Item 3 Dollars of 1987 Direct Written Premium (as stated in Item 1) that are earned in 1987 _____
- Item 4 Ratio Item 3 divided by Item 1 _____
- Item 5 Item 2 x Item 4 _____
- Item 6 1986 Direct Written Premium (DOI Exhibit A, Part Two, Page 3, Item 12, Col. (1)) _____
- Item 7 Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6 _____
- Item 8 Dollars of 1986 Direct Written Premium (as stated in Item 6) that are earned in 1987 _____
- Item 9 Ratio Item 8 divided by Item 6 _____
- Item 10 Item 9 x Item 7 _____
- Item 11 1987 Taxes, Licenses, and Fees Incurred (Item 10 + Item 5) _____

**DOI EXHIBIT TWO
New Jersey Expenses**

Please state: _____ Check one: _____
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

Check one:
 Calendar Year 1989 _____
 Calendar Year 1988 _____
 Sum of the two calendar years _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

Col. (1)
(Dollars) Col. (2)
(Ratio to
Direct
Earned
Premium)

- 1) Direct Earned Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (2)) _____ 1.000
- 2) Direct Commission and Brokerage Fees Incurred (DOI Exhibit One, Part Two, Section Three, Item 11 for 1989 and Section Four-A, Item 11 for 1988) _____
- 3) Direct Other Acquisition, Field Supervision, Collection Fees Incurred (DOI Exhibit One, Part Two, Section Two, Page 1, Col. (1), Item 5 for 1989 and Col. (2), Item 5 for 1988) _____

ADOPTIONS

INSURANCE

- 4) Direct General Expenses Incurred (DOI Exhibit One, Part Two, Section One, Page 1, Col. (1), Item 5 for 1989 and Col. (2), Item 5 for 1988) _____
- 5) Direct Taxes, Licenses, Fees Incurred (DOI Exhibit One, Part Two, Section Five, Item 11 for 1989 and Section Six, Item 11 for 1988) _____
- 6) Direct Losses Incurred (DOI Exhibit A, Part One, Page 3, Item 12, Col. (4)) _____
- 7) Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three, Part One, Col. (1), Item 9 for 1989 and Part Two, Col. (1), Item 9 for 1988) _____

**DOI EXHIBIT THREE
Part Two
Premiums, Losses, Expenses
Calendar Year 1988**

Please state: _____ Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

**DOI EXHIBIT THREE
Part One
Premiums, Losses, Expenses
Calendar Year 1989**

Please state: _____ Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

	Col. (1) 1989	Col. (2) 1988	Col. (3) Difference (Col. (1) - Col. (2))
1) Direct Written Premiums (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	_____	x	x
2) Direct Unearned Premium Reserve as 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6))	_____	_____	_____
3) Direct Earned Premiums (DOI Exhibit A, Part One, Page 2, Item 12, Col. (2))	_____	x	x
4) Direct Paid Losses (DOI Exhibit A, Part One, Page 2, Item 12, Col. (3))	_____	x	x
5) Direct Unpaid Losses at 12/31 (DOI Exhibit A, Part One, Page 4, Item 12)	_____	_____	_____
6) Direct Incurred Losses (DOI Exhibit A, Part One, Page 3, Item 12, Col. (4))	_____	x	x
7) Direct Paid Loss Adjustment Expenses	_____	x	x
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense (DOI Exhibit Two, Item 7, Col. (1))	_____	x	x

	Col. (1) 1988	Col. (2) 1987	Col. (3) Difference (Col. (1) - Col. (2))
1) Direct Written Premiums (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	_____	x	x
2) Direct Unearned Premium Reserve as 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for 1988, and Part Two, Page 2, Item 12, Col. (2) for 1987)	_____	_____	_____
3) Direct Earned Premiums (DOI Exhibit A, Part One, Page 2, Item 12, Col. (2))	_____	x	x
4) Direct Paid Losses (DOI Exhibit A, Part One, Page 2, Item 12, Col. (3))	_____	x	x
5) Direct Unpaid Losses at 12/31 (DOI Exhibit A, Part One, Page 4, Item 12 for 1988 and Part Two, Page 2, Item 12, Col. (3) for 1987)	_____	_____	_____
6) Direct Incurred Losses (DOI Exhibit A, Part One, Page 3, Item 12, Col. (4))	_____	x	x
7) Direct Paid Loss Adjustment Expenses	_____	x	x
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense (DOI Exhibit Two, Item 7, Col. (1))	_____	x	x

**DOI EXHIBIT FOUR
Equity in Unearned Premium Reserve**

Please state: _____ Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

INSURANCE

ADOPTIONS

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988	Col. (3) 1987
1) Direct Unearned Premium Reserve at 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for 1989 and 1988, and Part Two, Page 2, Item 12, Col. (2) for 1987)	_____	_____	_____
2) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1) for 1989 and 1988 and Part Two, Page 2, Item 12, Col. (1) for 1987)	_____	_____	_____
3) Direct Commission and Brokerage Fees Incurred (DOI Exhibit One, Part Two, Item 11, Sections Three, Four-A and Four-B for 1989, 1988 and 1987, respectively)	_____	_____	_____
4) Direct Other Acquisition Expenses Incurred (DOI Exhibit One, Part Two, Section Two, Page 1, Item 5, for 1989 and 1988, and Page 2, Item 5, for 1987)	_____	_____	_____
5) Direct General Expenses Incurred (DOI Exhibit One, Part Two, Section One, Page 1, Item 5 for 1989 and 1988, and Page 2, Item 5 for 1987)	_____	_____	_____
6) Direct Taxes, Licenses, Fees Incurred (DOI Exhibit One, Part Two, Section Five, Item 11, for 1989, Section Six, Item 11 for 1988 and Section Seven, Item 11 for 1987)	_____	_____	_____
7) Prepaid Expenses (1/2 x (Item 4 + Item 5)) + (Item 6 + Item 5)	_____	_____	_____
8) Ratio, Item 7 divided by Item 2	_____	_____	_____
Note: Limit Item 8 to a maximum of 1.000			
9) Equity at 12/31 (Item 8 x Item 1)	_____	_____	_____
10) Change 1988 to 1989 (Item 9, Col. (1) minus Item 9, Col. (2))	_____	x	x
11) Change 1987 to 1988 (Item 9, Col. (2) minus Item 9, Col. (3))	_____	x	x

**DOI EXHIBIT FIVE
Part One
Investment Income Data
Countrywide Data**

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

	Col. (1) 1989	Col. (2) 1988	Col. (3)
1) Interest, Dividends, Real Estate Income (AS, page 6, part 1, col. 8, line 15)	_____	x	x
2) Realized Capital Gains (AS, page 6, part 1A, col. 7, line 11)	_____	x	x
3) Total, Item 1 plus Item 2	_____	x	x
4) Invested Assets (AS, page 2, line 8A, col. 1 for 1989, col. 2 for 1988)	_____	_____	x
5) Average *[[]**(*1/2 x (Item 4 Col. (1) + Item 4 Col. (2)))*[[]***)*	x	x	_____
6) Rate of Return (Ratio Item 3, Col. (1) divided by Item 5, Col. (3))	x	x	_____
7) Agents Balances (AS, page 2, col. 1, line 9.1 plus line 9.2 plus line 9.3 plus line 10 plus line 11)	_____	x	x
8) Unearned Premium Reserve (AS, page 3, line 9, col. 1)	_____	x	x
9) Ratio Item 7 divided by Item 8	x	x	_____

**DOI EXHIBIT FIVE
Part Two
New Jersey Data**

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:

Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988	Col. (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col. (1))	_____	x	x
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	_____	x	x
12) Ratio Item 10 divided by Item 11	x	x	_____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6))	_____	_____	x
14) Average Direct Unearned Premium Reserve *[[]**(*1/2 x (Item 13 Col. (1) + Item 13 Col. (2)))*[[]***)*	x	x	_____

ADOPTIONS

INSURANCE

15) Investable Unearned Premiums * $[\]^{**} \times (1.000 - \text{Item 9} - \text{Item 12}) \times \text{Item 14}^{*}[\]^{**}$ * Limit to a minimum of zero	x	x	_____
16) Average Direct Unpaid Losses * $[\]^{**} \times (1/2 \times (\text{DOI Exhibit Three Part One, Item 5, Col. (1) + Col. (2)})^{*}[\]^{**}$ *	x	x	_____
17) Average Direct Unpaid Loss Adjustment Expenses * $[\]^{**} \times (1/2 \times (\text{DOI Exhibit Three Part One, Item 8, Col. (1) + Col. (2)})^{*}[\]^{**}$ *	x	x	_____
18) Subtotal (Item 16 plus Item 17)	x	x	_____
19) Investable Reserves (Item 18 plus Item 15)	x	x	_____
20) Investment Income Estimate (Item 19 x Item 6)	x	x	_____

DOI EXHIBIT FIVE
Part Three
Investment Income Data
Countrywide Data

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

	Col. (1) 1988	Col. (2) 1987	Col. (3)
1) Interest, Dividends, Real Estate Income (AS, page 6, part 1, col. 8, line 15)	_____	x	x
2) Realized Capital Gains (AS, page 6, part 1A, col. 7, line 11)	_____	x	x
3) Total, Item 1 plus Item 2	_____	x	x
4) Invested Assets (AS, page 2, line 8A, col. 1 for 1988, col. 2 for 1987)	_____	_____	x
5) Average * $[\]^{**} \times (1/2 \times (\text{Item 4 Col. (1) + Item 4 Col. (2)})^{*}[\]^{**}$ *	x	x	_____
6) Rate of Return (Ratio Item 3, Col. (1) divided by Item 5, Col. (3))	x	x	_____
7) Agents Balances (AS, page 2, col. 1, line 9.1 plus line 9.2 plus line 9.3 plus line 10 plus line 11)	_____	x	x
8) Unearned Premium Reserve (AS, page 3, line 9, col. 1)	_____	x	x
9) Ratio Item 7 divided by Item 8	x	x	_____

Note: Sources cited for DOI Exhibit Five Part Three are for the 1988 Statutory Annual Statement.

DOI EXHIBIT FIVE
Part Four
New Jersey Data

Please state: _____ Check one:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____ Physical Damage _____
Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

	Col. (1) 1988	Col. (2) 1987	Col. (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col. (2))	_____	x	x
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	_____	x	x
12) Ratio Item 10 divided by Item 11	x	x	_____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for 1988 and Part Two, Page 2, Item 12, Col. (2) for 1987)	_____	_____	x
14) Average * $[\]^{**} \times (1/2 \times (\text{Item 13 Col. (1) + Item 13 Col. (2)})^{*}[\]^{**}$ *	x	x	_____
15) Investable Unearned Premiums * $[\]^{**} \times (1.000 - \text{Item 9} - \text{Item 12}) \times \text{Item 14}^{*}[\]^{**}$ * Limit to a minimum of zero	x	x	_____
16) Average Direct Unpaid Losses * $[\]^{**} \times (1/2 \times (\text{DOI Exhibit Three Part Two, Item 5, Col. (1) + Col. (2)})^{*}[\]^{**}$ *	x	x	_____
17) Average Direct Unpaid Loss Adjustment Expenses * $[\]^{**} \times (1/2 \times (\text{DOI Exhibit Three Part Two, Item 8, Col. (1) + Col. (2)})^{*}[\]^{**}$ *	x	x	_____
18) Subtotal (Item 16 plus Item 17)	x	x	_____
19) Investable Reserves (Item 18 plus Item 15)	x	x	_____
20) Investment Income Estimate (Item 19 x Item 6)	x	x	_____

INSURANCE

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**DOI EXHIBIT SIX
Part One
Other Income**

**DOI EXHIBIT SEVEN
Financial Result**

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

	Col. (1) 1989	Col. (2)
1) Total Other Income (AS, page 4, line 13, col. 1)	_____	x
2) Aggregate Write-In Deductions (AS, page 4, line 5, col. 1)	_____	x
3) Item 1 minus Item 2	_____	x
4) Direct Earned Premiums (DOI Exhibit Three Part One, Item 3, Col. (1))	_____	x
5) Net Earned Premiums (AS, page 4, line 1, col. 1)	_____	x
6) Item 4 x Item 3	x	_____
7) Other Income (Item 6 divided by Item 5)	_____	x

	Col. (1) 1989	Col. (2) 1988	Col. (3) Col. (1) plus Col. (2)
1) Direct Written Premiums (DOI Exhibit Three Part One, Item 1 for 1989 and Part Two, Item 1 for 1988)	_____	_____	_____
2) Direct Earned Premiums (DOI Exhibit Three Part One, Item 3 for 1989 and Part Two, Item 3 for 1988)	_____	_____	_____
3) Direct Losses Incurred (DOI Exhibit Three Part One, Item 6 for 1989 and Part Two, Item 6 for 1988)	_____	_____	_____
4) Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three Part One, Item 9 for 1989 and Part Two, Item 9 for 1988)	_____	_____	_____
4A) Item 3 plus Item 4	_____	_____	_____
4B) Ratio Item 4A divided by Item 2	_____	_____	x
5) Direct Underwriting Expense Incurred (DOI Exhibit Four, Item 3 plus Item 4 plus Item 5 plus Item 6, all Col. (1) for 1989 and Col. (2) for 1988)	_____	_____	_____
6) Change in Equity in the UEPR (DOI Exhibit Four, Item 10 for 1989 and Item 11 for 1988)	_____	_____	_____
6A) Item 5 minus Item 6	_____	_____	_____
6B) Ratio Item 6A divided by Item 2	_____	_____	x
7) Excess Profit Credit or Refund Incurred (DOI Exhibit A Part One, Page 3, Col. (5), Item 12A)	_____	_____	_____
DOI EXHIBIT SEVEN—continued			
7A) Dividends Other Than Excess Profit Credit or Refund (DOI Exhibit A Part One, Page 3, Col. (5), Item 12B)	_____	_____	_____
7B) AIRE Charges	_____	_____	_____
7C) AIRE Compensation	_____	_____	_____

**DOI EXHIBIT SIX
Part Two
Other Income**

Please state: Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____ Total of above three coverages _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.**

	Col. (1) 1988	Col. (2)
1) Total Other Income (AS, page 4, line 13, col. 2)	_____	x
2) Aggregate Write-In Deductions (AS, page 4, line 5, col. 2)	_____	x
3) Item 1 minus Item 2	_____	x
4) Direct Earned Premiums (DOI Exhibit Three Part Two, Item 3, Col. (1))	_____	x
5) Net Earned Premiums (AS, page 4, line 1, col. 2)	_____	x
6) Item 4 x Item 3	x	_____
7) Other Income (Item 6 divided by Item 5)	_____	x

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8) Underwriting Result (Item 2 minus Item 3 minus Item 4 minus Item 5 plus Item 6 minus Item 7 minus Item 7A minus Item 7B plus Item 7C)	_____	_____	_____
9) Ratio Item 8 divided by Item 2	_____	_____	x
10) Other Income (DOI Exhibit Six Part One, Item 7 for 1989, DOI Exhibit Six Part Two, Item 7 for 1988)	_____	_____	_____
11) Total (Item 8 plus Item 10)	_____	_____	_____
12) Ratio Item 11 divided by Item 2	_____	_____	x
13) Item 7 plus Item 7A	_____	_____	_____

DOI EXHIBIT EIGHT
Equity in the Unearned Premium Reserve
ALL Lines Combined

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988
1) Net Written Premiums ALL Lines (IEE, Col. (34), line 1)	_____	_____
2) Commission and Brokerage ALL Lines (IEE, Col. (34), line 5)	_____	_____
3) Other Acquisition ALL Lines (IEE, Col. (34), line 6)	_____	_____
4) General Expenses ALL Lines (IEE, Col. (34), line 7)	_____	_____
5) Taxes, Licenses, Fees ALL Lines (IEE, Col. (34), line 8)	_____	_____
6) Prepaid Expenses *[[[**(*1/2 x [Item 3 + Item 4]) + (Item 2 + Item 5)*]]]**)*	_____	_____
7) Item 6 as a ratio to Item 1 Limit Item 7 to a maximum of 1.000	_____	_____
8) Unearned Premium Reserve ALL Lines (AS, page 3, line 9, Col. (1) for 1989 and Col. (2) for 1988)	_____	_____
9) Equity in the Unearned Premium Reserve (Item 7 x Item 8)	_____	_____
10) Average (1/2 x *[[[**(*Item 9, Col. (1) + Item 9, Col. (2)*]]]**)*	_____	x

INSURANCE

DOI EXHIBIT NINE
Restated Surplus

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988
1) Stated Surplus (AS, page 3, line 26, col. 1 for 1989 and col. 2 for 1988)	_____	_____
2) Excess of Statutory Over Statement Reserves (AS, page 3, line 15, col. 1 for 1989 and col. 2 for 1988)	_____	_____
3) Reinsurance From Unauthorized Companies (AS, page 3, line 14, col. 1 for 1989 and col. 2 for 1988; include only amounts deemed sound)	_____	_____
4) Non-Admitted Assets (AS, page 12, Exhibit 2, Col. 2, sum of lines 22 through 30; include only amounts deemed sound)	_____	_____
5) Equity in the Unearned Premium Reserve (DOI Exhibit Eight, Item 9, Col. (1) for 1989, Col. (2) for 1988)	_____	_____
6) Total of Items 1, 2, 3, 4 and 5	_____	_____
7) (Item 6, Col. (1) + Item 6, Col. (2)) x 1/2	_____	x

DOI EXHIBIT TEN
Allocation of Surplus

Please state: Check one:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____ Physical Damage _____
Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988	Col. (3) Average
1) Average Direct Loss and Loss Adjustment Expenses Reserves (DOI Exhibit Five Part Two, Item 18)	x	x	_____
2) Direct Unpaid Losses All Lines Countrywide (AS, Schedule T, line 98, col. 7)	_____	_____	_____
3) Direct Unpaid Loss Adjustment Expenses (loss expense reserves that correspond to Item 2)	_____	_____	_____
4) Subtotal (Item 2 plus Item 3)	x	x	_____

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5) Ratio Item 1 divided by Item 4	x	x	_____
6) Surplus (DOI Exhibit Nine, Item 6, Col. (1) for 1989 and Col. (2) for 1988)	_____	_____	_____
7) First Surplus (Item 6, Col. (3) x Item 5)	x	x	_____
8) Direct Earned Premium (DOI Exhibit Three Part One, Item 3 for 1989)	_____	x	x
9) Direct Earned Premium All Lines Countrywide (AS, Schedule T, Line 98, Col. 3)	_____	x	x
10) Ratio Item 8 divided by Item 9	x	x	_____
11) Second Surplus (Item 10 x Item 6, Col. (3))	x	x	_____
12) Average (1/2 x (Item 7 + Item 11))	x	x	_____

Note: Col. (3) is the average of Cols. (1) and (2), except for Items 1, 4, 5, 7, 8, 9, 10, 11, 12.

DOI EXHIBIT ELEVEN

Please state: _____ Check one: _____

Group Name _____ Liability _____

Group NAIC Number _____ PIP _____

Company Name _____ Physical Damage _____

Company NAIC Number _____ Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) 1989	Col. (2) 1988	Col. (3) Col. (1) plus Col. (2)
1) Direct Earned Premium (DOI Exhibit Seven, Item 2)	_____	_____	_____
2) Total Underwriting and Other (DOI Exhibit Seven, Item 11)	_____	_____	_____
3) Excess Profit Refund (DOI Exhibit Seven, Item 7)	_____	_____	_____
4) Other Dividends (DOI Exhibit Seven, Item 7A)	_____	_____	_____
5) Direct Unpaid Losses (DOI Exhibit Three Part One, Item 5)	_____	_____	_____
6) Direct Unpaid Loss Adjustment Expenses (DOI Exhibit Three Part One, Item 8)	_____	_____	_____
7) Subtotal (Item 5 plus Item 6)	_____	_____	_____
8) Item 7 x 0.090	_____	_____	_____
9) Subtotal (Item 2 plus Item 8)	_____	_____	_____
10) Ratio Item 9 divided by Item 1	_____	_____	_____
11) Subtotal (Item 2 plus Item 3 plus Item 4)	_____	_____	_____

12) Subtotal (Item 11 plus Item 8)	_____	_____	_____
13) Ratio Item 12 divided by Item 1	_____	_____	_____
14) Item 2 plus Item 4	_____	_____	_____
15) Subtotal (Item 14 plus Item 8)	_____	_____	_____
16) Ratio Item 15 divided by Item 1	_____	_____	_____

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS**

**Countersigning of Orders and Prescriptions of
Unlicensed Physicians
Podiatric Trainee**

Adopted Amendment: N.J.A.C. 13:35-6.3

Proposed: March 19, 1990 at 22 N.J.R. 905(a).

Adopted: May 9, 1990 by the New Jersey Board of Medical Examiners, Michael B. Grossman, D.O., President.

Filed: May 11, 1990 as R. 1990 d. 291, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2.

Effective Date: June 4, 1990.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:35-6.3, relating to the countersigning of orders and prescriptions of podiatric trainees. The official comment period ended on April 18, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 19, 1990 at 22 N.J.R. 905(a). Announcements were also forwarded to the Trenton Times, the Star-Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, 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 Board of Medical Examiners; Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Reponse:

No comments were received during the official 30-day comment period.

Summary of Agency Initiated Change:

One technical change from the amendment language as proposed has been made. In the last sentence of N.J.A.C. 13:35-6.3(b), the words "a doctor's" have been deleted and the word "an" substituted to clarify that it is a podiatric physician's order, not a plenary licensed physician's order, which is referred to here.

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

13:35-6.3 Countersigning of orders and prescriptions of unlicensed physicians

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

"Intern" or "PGY 1" (a person studying in postgraduate year one) shall mean an unlicensed graduate of a medical school or college of podiatric medicine, who is engaged in a program which has been approved by the Board and which consists of supervised practice in the science and art of medicine or podiatry among patients in a hospital with continued instruction by the staff of the facility. The internship period shall be limited to one year.

“Resident” or “PGY 2 or 3” shall mean a licensed or unlicensed graduate of an approved internship or PGY 1 who is engaged in an approved program for advanced training in podiatric medicine or in a clinical division of medicine, surgery or other special field in preparation for the practice of a specialty, which training shall be continuously supervised by the staff of the facility. Such approved program must be properly accredited for residency training in the specialty program or programs offered.

“Unlicensed physician” shall mean any unlicensed graduate of a medical school or college of podiatric medicine such as, but not limited to, an intern or resident who is engaged in an approved program or a person possessing an exemption pursuant to law.

(b) A doctor’s order written for a patient’s care by an unlicensed person engaged in an intern or residency training program in a hospital or institution approved by the Board, or the doctor’s order written by a person exempted from the prohibitory provisions of the Medical Practice Act pursuant to law shall be countersigned within 24 hours by a physician possessing a current unrestricted license to practice medicine and surgery in this State. However, a podiatric physician may countersign *[a doctor’s]* *an* order written by a podiatric intern or resident.

(c) Prescriptions written by unlicensed physicians which are to be filled by a pharmacy located outside the hospital or institution where such unlicensed physician is engaged must be countersigned by a physician possessing a current, unrestricted license to practice medicine and surgery in this State. However, a podiatric physician may countersign prescriptions written by a podiatric intern or resident.

(a)

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Continuance of Practice

Adopted New Rule: N.J.A.C. 13:44-2.6

Proposed: February 5, 1990 at 22 N.J.R. 326(b).
 Adopted: April 23, 1990 by the State Board of Veterinary Medical Examiners, Jean Buist, D.V.M., President.
 Filed: May 4, 1990 as R.1990 d.279, **without change**.
 Authority: N.J.S.A. 45:16-9.5 and 9.9.
 Effective Date: June 4, 1990.
 Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:44-2.6 Temporary continuance of facility upon licensee’s death

(a) Upon the demise of the licensed proprietor of an individually owned veterinary facility, an unlicensed spouse or the executor or administrator of the licensee’s estate may continue to own, maintain and operate the facility for a period of one year in order to convey or liquidate the practice, provided that the services of a New Jersey licensed veterinarian shall be engaged to conduct, manage and be responsible for the practice of veterinary medicine.

(b) The unlicensed owner shall provide the State Board of Veterinary Examiners with written notice of the substitute licensee’s name within three weeks of the owner’s death. This period of time may be extended upon written petition to the Board.

(c) The substitute licensee shall also write to the Board indicating his or her willingness to assume the position.

(d) If, for any reason, the substitute licensee’s services are terminated, both the owner and the licensee shall immediately inform the Board in writing and a new licensee shall be immediately engaged and registered with the Board.

(e) The one-year period of conveyance or liquidation may be extended following written petition to the Board.

TRANSPORTATION

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Routes N.J. 54 in Atlantic County; N.J. 26 in Middlesex County; and N.J. 83 in Cape May County

Adopted Amendment: N.J.A.C. 16:28-1.55, 1.104, and 1.119

Proposed: April 2, 1990 at 22 N.J.R. 1060(a).
 Adopted: May 7, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Filed: May 10, 1990 as R.1990 d.285, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
 Effective Date: June 4, 1990.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.55 Route 54

(a) The rate of speed designated for the certain parts of State highway Route 54 described in this subsection shall be established and adopted as the maximum legal rate of speed:

*[2.]*1.* In the Borough of Buena, Atlantic County, for southbound direction of traffic, 55 miles per hour between Route U.S. 40 and the Township of Buena Vista southerly line (approximate mileposts 0.00 to 1.10).

*[1.]*2.* In Buena Vista Township, Atlantic County:

*[ii.]*1.* For northbound direction of traffic, 55 miles per hour between Route U.S. 40 and the Borough of Buena North westerly line (approximate mileposts 0.00 to 1.10).

*[i.]*ii.* For both directions of traffic, 55 miles per hour between the Borough of Buena North westerly line and the Borough of Folsom southerly line (approximate mileposts 1.10 to 6.90).

16:28-1.104 Route 26

(a) The rate of speed designated for the certain parts of State highway Route 26 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. In North Brunswick Township, Middlesex County:

i. For both directions of traffic:

(1) Zone 1: 45 miles per hour between Route U.S. 1 and Patton Street (approximate mileposts 0.00 to 0.84); thence

(2) Zone 2: 35 miles per hour between Patton Street and the City of New Brunswick South westerly line (12th Street) except for 25 miles per hour when passing through the Livingston Park School zone while 25 mph when flashing signs are operating during recess or while children are going to or leaving school, during opening and closing hours (approximate mileposts 0.84 to 1.52).

ii. For northbound direction of traffic, 35 miles per hour between the City of New Brunswick South westerly line (12th Street) and the City of New Brunswick South easterly line (Mile Run Brook) (approximate mileposts 1.52 to 2.60).

2. In the City of New Brunswick, Middlesex County, for southbound direction of traffic, 35 miles per hour between the Township of North Brunswick North westerly line (12th Street) and the Township of North Brunswick North easterly line (Mile Run Brook) (approximate mileposts 1.52 to 2.10).

16:28-1.119 Route 83

(a) The rate of speed designated for the certain part of State highway Route 83 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. In Dennis Township, Cape May County, for both directions of traffic: 50 miles per hour between Route U.S. 9 and Route N.J. 47 (approximate mileposts 0.00 to 3.84).

(a)

**DIVISION OF CONSTRUCTION AND MAINTENANCE
ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT
Junkyards Adjacent to the Interstate and Primary
Highway Systems**

Readoption: N.J.A.C. 16:43

Proposed: April 2, 1990 at 22 N.J.R. 1061(a).

Adopted: May 7, 1990 by Robert A. Innocenzi, Deputy
Commissioner (State Transportation Engineer), Department
of Transportation.

Filed: May 10, 1990 as R.1990 d.286, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:5E-1 et seq.

Effective Date: May 10, 1990.

Expiration Date: May 10, 1995.

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. 16:43.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

**Teachers' Pension and Annuity Fund
Mandatory Retirement**

Adopted Repeal: N.J.A.C. 17:3-6.16

Proposed: February 5, 1990 at 22 N.J.R. 329(a).

Adopted: April 20, 1990 by the Teachers' Pension and Annuity
Fund, Anthony Ferrazza, Secretary.

Filed: May 4, 1990 as R.1990 d.283, **without change**.

Authority: N.J.S.A. 18A:66-51 et seq.

Effective Date: June 4, 1990.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:3-6.16 (Reserved)

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

**Organizational Rules
Exemption opinions; Tax Clearance Section; Status
Section; Reinstatement Section**

**Adopted New Rules: N.J.A.C. 18:1-1.4 through 1.7
New Rules Not Adopted: N.J.A.C. 18:1-1.3 and 1.8**

Proposed: January 16, 1990 at 22 N.J.R. 159(a).

Adopted: May 10, 1990 by Benjamin J. Redmond, Acting
Director, Division of Taxation.

Filed: May 10, 1990 as R.1990 d.288, **with a substantive change**
not in violation of N.J.A.C. 1:30-3.5, and **with portions not**
adopted.

Authority: N.J.S.A. 54:50-1, 52:14B-3.

(CITE 22 N.J.R. 1740)

Effective Date: June 4, 1990.

Expiration Date: July 21, 1994.

Summary of Public Comments and Agency Responses:

The Division received one comment concerning PRN 1990-28. The comment focused solely upon two of the proposed rules, N.J.A.C. 18:1-1.3, Advisory opinions, and N.J.A.C. 18:1-1.8, Conference Branch.

N.J.A.C. 18:1-1.3 Advisory branch

COMMENT: The commenter questioned the need for the statement that a taxpayer is not presently undergoing a Division of Taxation audit, as required on that taxpayer's request for an advisory opinion of the Division.

RESPONSE: This limitation is based upon practical experience over a period of time. From an organizational viewpoint, it was concluded that the Division auditor should be the taxpayer's contact or connection with the Division during an audit and that a taxpayer's attempt to contact other branches in the Division, either directly or indirectly, would be organizationally undesirable and would undermine proper procedure, delaying further an already time-consuming process.

COMMENT: If the law subsequent to an opinion is changed sufficiently to render the opinion inoperative, such fact should be applied only prospectively, not retroactively, unless the change itself is retroactive.

RESPONSE: The Division agrees with the comment.

COMMENT: A taxpayer should be permitted to withdraw a request for an opinion without prejudice, if it appears that an opinion adverse to the taxpayer would be rendered.

RESPONSE: The Division does not agree. The process of preparing an advisory opinion is intended to produce more certainty and consistency in the detailed process of tax administration, in part through the use of precedent. To allow taxpayer withdrawals in the case of potentially unfavorable opinions would not serve these purposes.

COMMENT: A taxpayer should be allowed to provide additional information to the Division, including meeting with the taxpayer or his or her representative.

RESPONSE: The Division agrees.

COMMENT: The commenter asked whether an index of published opinions could be provided, to avoid duplication of opinion requests and to give taxpayers and practitioners guidance on technical tax matters.

RESPONSE: The Division will consider several approaches to providing this service, subject to staffing constraints.

COMMENT: The commenter raised the issue of "no name" opinions.

RESPONSE: The Division does not believe that the rule should consider the effect of reliance on "no name" opinions which have been issued or are in the process of being issued. The Division would be unable to verify in every case that an entity purporting to rely on the opinion was the requester of the opinion or to verify the facts that were presented in the opinion request, if such requests were anonymous or hypothetical.

COMMENT: The commenter questioned the continued viability of the "no name" opinion in certain circumstances, for example, acquisitions or transactions which have not been publicly disclosed or are confidential and which should be addressed in anonymous opinion requests.

RESPONSE: The confidentiality statute, N.J.S.A. 54:50-8a, gives very strong protection of confidentiality to an applicant. This guarantee is very adequate protection to taxpayers, under the circumstances described.

COMMENT: The rule should include a time limit within which the Division must respond to requests.

RESPONSE: The Division will attempt to reply to requests in a timely fashion; however, due to the varying complexity of opinion requests and to budgetary and staffing constraints, the Division has declined to place a specific time limit in the rule with regard to requests for opinions.

N.J.A.C. 18:1-1.8 Conference branch

COMMENT: The commenter proposed language for the proposed rule, dealing with the tolling of the statute of limitations for collection of the tax, where the taxpayer requested a hearing in the protest.

RESPONSE: The Division will consider the possible inclusion of language along the lines suggested at some future time.

Summary of Agency-initiated changes:

N.J.A.C. 18:1-1.3 and 1.8 will not be adopted at this time. The Division has elected to withdraw the two proposed rules and may repropose new rules addressing this subject matter at a future time. The Division made one non-substantive change to N.J.A.C. 18:1-1.4(d)1, by adding the words "constitution or other organizing document." The rule, with this change, now recognizes that some non-incorporated entities may qualify for sales tax exemption and that such status is not restricted to corporations only.

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

18:1-1.3 ***[Advisory opinions]* *(Reserved)***

***[(a) In certain instances an individual or organization may desire an advisory opinion by the Division as to its status for State tax purposes and as to the State tax effects of its transactions or acts. In order to obtain such an advisory opinion, the applicant shall submit a written request which sets forth the following:**

1. The name and address of the individual(s) or organization(s) seeking the opinion and to which the opinion would be applicable;

2. The individual's or organization's social security number and/or Federal tax identification number;

3. A complete statement of the facts to be considered and the opinion requested;

4. Any additional supporting information or legal references which the individual or organization may deem helpful; and

5. A statement that the taxpayer is not presently undergoing a Division of Taxation audit.

(b) When issued, such advisory opinion is not to be relied upon by other taxpayers. The advisory opinion may be revoked or modified at any time under appropriate circumstances. Except in rare or unusual circumstances, revocation or modification of an advisory opinion issued to a taxpayer whose tax liability was directly involved will not be retroactive, provided:

1. There has been no misstatement or omission of material facts;

2. The facts subsequently developed are not materially different from the facts on which the advisory opinion was based;

3. There has been no change in the applicable law;

4. The advisory opinion was originally issued with respect to a prospective or proposed transaction; and

5. The taxpayer directly involved in the advisory opinion acted in good faith in reliance upon the advisory opinion and the retroactive revocation would be to its detriment.

(c) Advisory opinions of the Division of Taxation are not declaratory rulings under N.J.S.A. 52:14B-8.

(d) Requests for advisory opinions should be submitted to the Tax Counselors Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.]*

18:1-1.4 Exemption opinions

(a) To be considered for exempt status pursuant to the Corporation Business Tax Act, N.J.S.A. 54:10A-3(e), as a nonprofit corporation, the applicant organization shall submit the following:

1. An affidavit, signed by an officer of the corporation, indicating that the corporation is:

i. A nonprofit corporation that is not operated to make a profit, without regard as to whether there is profit or loss for a particular year;

ii. Organized without capital stock;

iii. Incorporated under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes of New Jersey or under a special charter or under any similar general or special law of this or any other state; and

iv. Not conducted for the pecuniary profit or benefit of any private shareholder or individual;

2. A copy of the organization's Certificate of Incorporation; and

3. A copy of the organization's bylaws.

(b) If the operations or activities of the corporation should change, the Division of Taxation must be notified. Unless the operations or activities make the taxpayer a profit making corporation, no further corporation business tax returns or Federal returns are required to be filed with the Division of Taxation. The Division of Taxation does not require the filing of a copy of Federal Form 990.

(c) A nonprofit organization properly exempted from filing corporation business tax returns may have other filing requirements with other agencies of the State of New Jersey including, for example, the following:

1. Responsibilities under the Charitable Fund Raising Act of 1971, N.J.S.A. 45:17A-1 et seq. and N.J.A.C. 13:48; or

2. The responsibility to file annual reports with the Office of the Secretary of State, N.J.S.A. 15A:4-5.

(d) To be considered for exempt status pursuant to the Sales and Use Tax Act, an application should be submitted containing information requested at N.J.A.C. 18:24-8.4 or, in lieu thereof, the following information:

1. A copy of the Certificate of Incorporation*, **constitution or other organizing document***;

2. A copy of the Bylaws;

3. A copy of the IRC 501(c)(3) determination letter from the Internal Revenue Service;

4. Form ST-5B, Application for Exempt Organization Permit; and

5. Form CIS-1, Application for Registration.

(e) Requests for exemption opinions should be submitted to the Tax Counselors Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.5 Tax Clearance Section

(a) Requests for Tax Clearance Certificates may be initiated by completing and submitting an Application for Tax Clearance, Form A-5088-TC. A \$25.00 payment is required with such application. An Estimated Summary Tax Return for the current tax year, Form A-5052-TC, bearing the signature of a corporate officer, as well as the appropriate deposit payment, may accompany this form. Delinquent tax returns, tax payment, penalty and interest due are also required. Instructions with the original application form detail the tax information necessary for completion of the application.

(b) After a determination is made that all information has been submitted and all taxes have been paid, a Certificate of Tax Clearance is issued. This certificate may be timely filed with the Secretary of State's Office together with payment of the applicable fee. Typically, the certificates are used in connection with dissolutions, withdrawals, reauthorizations, and mergers (when the survivor is a foreign non-authorized corporation). See also N.J.S.A. 54:50-15, N.J.A.C. 18:7-14.17, 18, 19 and 20.

(c) Additional information, applications and inquiries may be made by writing to the Division of Taxation, Tax Clearance Section, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.6 Status Section

(a) Requests for either Tax Lien Search or Release of Lien of Franchise Taxes may be initiated by completing an Application for Tax Lien Search, Form CS-152R (\$25.00 fee) or an Application for Release of Lien (\$5.00 fee) and remitting the appropriate fee. Information required to complete such applications includes the name of the corporation, the corporate serial number, the Federal identification number, the State and date of incorporation, dates title was held (for conveyance of real property) and the reason for making such application. Typically, applications are made in connection with a conveyance of real property out of a corporate entity, to obtain funding, to release escrow funds or release existing liens on void or inactive corporations. When the intended use pertains to conveyance of real property, information as to the location of the property, such as block, lot, township, and metes and bounds description, must be included. See also N.J.S.A. 54:10A-29 and N.J.A.C. 18:7-13.13 for tax lien search, and N.J.S.A. 54:10A-30 and N.J.A.C. 18:7-13.12 for release of lien of franchise tax.

(b) Additional information, applications and inquiries may be made to the Status Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.7 Reinstatement Section

(a) Requests for reinstatement of voided corporate charters may be initiated by completing and submitting an Application for Reinstatement of Corporate Charter, Form C-9021. No fee is required with such application. Information required includes the name of the corporation, trade name (if applicable), business address, corporate serial number, federal identification number, state and date of incorporation, date of voidance, nature of business and whether or not the corporation holds title to real property. All applications submitted should bear the signature of an authorized representative of the corporation.

(b) Such certificates must be approved by the Attorney General's Office and certified by the Secretary of State, and payment must be made of the applicable fee. This is accomplished after the Division of Taxation has determined all back taxes have been paid in full and a notarized petition of reinstatement has been signed by a corporate officer. See also N.J.S.A. 54:11-5, 54:49-13.1, and N.J.A.C. 18:7-14.8 and 18:7-14.9.

(c) Additional information, applications and inquiries may be made to the Reinstatement Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.8 *[Conference Branch]* *(Reserved)*

*[(a) A Conference Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director. A protest by a taxpayer to the Conference Branch generally must be made within 30 days of the giving of the notice or assessment sought to be reviewed. In the case of a petition for redetermination under the Gross Income Tax Act, however, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States), N.J.S.A. 54A:9-9(b). The administrative hearing or review results in a final determination of the matter which is then subject to judicial review in the New Jersey Tax Court, N.J.S.A. 54:51A-14, N.J.S.A. 54A:9-10.

(b) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10.

(c) Protests, petitions for redetermination, or requests for administrative hearings should be submitted to the Conference Branch, Division of Taxation, University Office Plaza, 3635 Quakerbridge Road, CN 269, Trenton, NJ 08646-0269.]*

(a)

DIVISION OF TAXATION

Organizational Rules

Petitions for Rules

Adopted New Rules: N.J.A.C. 18:1-2

Proposed: January 16, 1990 at 22 N.J.R. 160(a).

Adopted: May 10, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: May 10, 1990 as R.1990 d.287, **without change**.

Authority: N.J.S.A. 54:50-1 and 52:14B-4(f).

Effective Date: June 4, 1990.

Expiration Date: July 21, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Division received one comment which dealt with these proposed rules. The commenter conjectured that there may be some instances in which a proposed rule may have some merit even though it may not be in "substantial compliance," since the proponent of the rule proposal may not have sufficient data to submit an economic or social impact statement. The commenter suggested that the Division should reserve the right to waive the requirement on a conditional basis while the parties agree on the manner in which the requirements can be met.

RESPONSE: The Division responded that it had considered carefully the desirability of requiring a requester of a rule to include in such request an economic impact and social impact statement. The Division concluded that as a prerequisite for a serious request for a rule, the requester should give careful attention itself to broad public policy issues rather than possibly only focusing on self interest. In particular instances the Division will evaluate whether and to what extent the requester has grappled with social or economic issues and will evaluate whether or not the requester had the ability to do so in a detailed way. However, the Division was of the view that such requirements should be met prior to the submission of a request.

Full text of the adoption follows.

SUBCHAPTER 2. PETITIONS FOR RULES

18:1-2.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment, or repeal of any rule by the Division of Taxation pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.2 Form of petition

(a) A petition for the promulgation, amendment or repeal of a rule shall be in writing, shall be legible and comprehensible, shall be signed by the petitioner, and shall be captioned "Petition for Rulemaking Action."

(b) Any such petition shall contain and set forth all of the following information:

1. The full name and address of the petitioner and of those on whose behalf the petitioner may be acting in a particular instance;

2. The reasons for the request;

3. A description of the substance or nature of the rulemaking which is requested and a draft text of the proposed rule or rules;

4. A description or analysis of the economic impact of adoption of the request;

5. A description or analysis of the social impact of adoption of the request;

6. The class or group affected by the proposed rulemaking and, if the proposal would impose reporting, recordkeeping, or other compliance requirements on small businesses, a description of the methods to be used to minimize any adverse economic impact on small businesses;

7. A complete disclosure of petitioner's interest in the request, including without limitation, any relevant organizational affiliation or economic interest and the financial effect upon petitioner if the request were brought into effect; and

8. The statutory authority under which the Division may take the requested action.

(c) Petitions shall be sent to the following address: Chief Tax Counselor, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646.

(d) Any document submitted to the Division of Taxation which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.3 Procedures of the Division

(a) Within 15 days of receipt of a petition in compliance with N.J.A.C. 18:1-2.2, the Division will file a Notice of Petition with the Office of Administrative Law for publication in the New Jersey Register (Register) in accordance with N.J.A.C. 1:30-3.6(a). The notice will include the following:

1. The name of the petitioner;

2. The substance or nature of the rulemaking action which is requested;

3. The problem or purpose which is the subject of the request; and

4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Division will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include the following:

1. The name of the petitioner;

2. The Register citation for the Notice of Petition, if that notice appeared in a previous Register;

3. Certification by the Director that the petition was duly considered pursuant to law;

4. The nature or substance of the Division's action upon the petition; and

5. A brief statement of reasons for the Division's action.

(c) The Division's action on a petition may include the following:

1. Denying the petition;

2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the peti-

tioner and submitted to the Office of Administrative Law for publication in the Register.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species List

Adopted Amendment: N.J.A.C. 7:5C-5.1

Proposed: January 16, 1990 at 22 N.J.R. 94(a).

Adopted: May 11, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: May 11, 1990 as R.1990 d.292, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and P.L. 1989, c.56 (to be codified at 13:1B-15.151 through 13:1B-15.158); and 13:1D-9.

DEP Docket Number: 059-89-12.

Effective Date: June 4, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

On January 16, 1990 at 22 N.J.R. 94(a), the Department proposed the designation of 304 species to the Endangered Plant Species List (List). Adoption of the List is required by the Endangered Plant Species List Act (Act), P.L. 1989, c.56, to be codified at N.J.S.A. 13:1B-15.151 through 13:1B-15.158, which directed the Department's Division of Parks and Forestry to develop and adopt the List within one year of the passage of the Act. The list contained in the proposal was developed in accordance with the procedures, standards and criteria in the Endangered Plant Species Program Rules, N.J.A.C. 7:5C, particularly N.J.A.C. 7:5C-2.1 and 2.2 (see 22 N.J.R. 179(a)). A Basis and Background Document containing detailed documentation on the suitability of each of the 304 species proposed for inclusion on the List was filed with the proposal and made available to the public for inspection.

The Department received written comment on the proposed list from 11 commenters during the public comment period which closed on March 17, 1990. The Department is adopting the List with minor changes to correct several typographical errors and to reflect the deletion from the proposed list of 17 species for which information was received by and incorporated into the Natural Heritage Database during the comment period on the proposal which altered the status of these species to the extent that they are no longer eligible for listing. Some of these species were rendered ineligible by information received by the Natural Heritage Database through the most recent notice listing species under review by the Federal government for designation as endangered or threatened, which was published in the Federal Register on February 21, 1990 at 55 Fed. Reg. 6184 (see Comment No. 75, below, for explanation of species affected). Although this Notice of Review also contained information which would qualify some previously ineligible species for listing at N.J.A.C. 7:5C-5.1, the Department is precluded by N.J.A.C. 7:5C-2.1(c) and the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from adding these or any other species to the List without prior public notice and the opportunity for public comment. Therefore, as part of the next revision of the List, the Department will propose listing these and any other species determined by the Department after January 16, 1990 to be eligible for listing.

In the event that their status remains unchanged, the following 16 species will be proposed for addition to the List upon its future revision because further review by the Natural Heritage Program has determined that they occur natively in New Jersey and all have five or fewer total occurrences in New Jersey, qualifying them for listing under N.J.A.C. 7:5C-2.2(a)4: *Hydrastis canadensis*, *Isanthus brachiatus*, *Penstemon laevigatus*, *Phlox divaricata*, *Potamogeton robbinsii*, *Rudbeckia fulgida*, *Sphagnum angustifolium*, *Sphagnum austini*, *Sphagnum centrale*, *Sphagnum contortum*, *Sphagnum macrophyllum* var. *floridanum*, *Sphagnum platyphyllum*, *Sphagnum riparium*, *Sphagnum strictum*, *Sphagnum subsecundum*, and *Viola septentrionalis*.

In the event that their status remains unchanged, the following three species will be proposed for addition to the List upon its future revision

because additional review by the Natural Heritage Program has determined that these species qualify for listing under N.J.A.C. 7:5C-2.2(a)1: *Castanea pumila*, *Platanthera hookeri*, and *Zigadenus leimanthoides*.

1. COMMENT: The proposed Endangered Plant Species List (List) includes only 25 of the 54 Pinelands species that are currently protected by the Pinelands Comprehensive Management Plan (Plan), N.J.A.C. 7:50-6:24. The List should include the remaining 29 species because their status in the Pinelands reflects their Statewide prospects for survival.

RESPONSE: The list of 54 species in the Plan contains species found and declared to be threatened or endangered plants of the Pinelands. Although the Plan lacks any further definition of the terms "endangered" or "threatened," clearly N.J.A.C. 7:50-24 goes beyond endangered species to protect threatened species as well, and it specifically refers to plants of such status in the Pinelands. The Act mandating the formation of the Endangered Plant Species List does not recognize the boundaries of the Pinelands National Reserve and refers only to species endangered in the State or nation. The remaining 29 species referred to in the comment were not proposed for listing because they do not meet the definition of "endangered species" contained in the Act or the criteria for designating plant species as endangered located at N.J.A.C. 7:5C-2.2.

2. COMMENT: The List includes only 23 (excluding *Quercus nigra*) of the 64 species recommended by the New Jersey Natural Heritage Program in 1987 for addition to the official Pinelands list because protection of these 64 species was "urgently needed to insure their survival in the Pinelands." The List should include all 64 of these species because their status in the Pinelands reflects their Statewide prospects for survival.

RESPONSE: The list of 64 species recommended by the New Jersey Natural Heritage Program in 1987 for addition to the Pinelands list was based on the status categories of both endangered and threatened plants, and was limited to plants of such status within the Pinelands. Only 23 of these 64 species were proposed for listing because only they meet the definition of "endangered species" contained in the Endangered Plant Species List Act and the criteria for designating plant species as endangered located at N.J.A.C. 7:5C-2.2. The remainder do not.

3. COMMENT: Adoption of the proposed list would lead to adoption by the Pinelands Commission of a list which lacks many important species currently listed by the Pinelands Commission as well as those previously recommended by the Department for addition to the official Pinelands list. These plants would no longer be protected under the Pinelands Comprehensive Plan. This is because it may be difficult for any State regulatory agency to protect those species not officially recognized by the Department as "in jeopardy."

RESPONSE: The Act requires the Department to adopt a list of plant species endangered in the State or nation, thereby eliminating the current confusion which has resulted from the various existing unofficial New Jersey lists. The resultant List is in no way based on or related to the official list currently contained in the New Jersey Pinelands Comprehensive Management Plan, which prohibits development that will impact the survival of populations of 54 officially listed plant species. The definition of "endangered species" contained in the Act prevents the Department from listing many of the species currently on the official Pinelands list as well as many of the species recommended by the Department for addition to, but which were never added to, the Pinelands list. The various State regulatory agencies which use the existing unofficial lists may amend their rules to incorporate the List if doing so is consistent with their enabling legislation. Further, the Department plans to encourage other regulatory agencies to incorporate the official Endangered Plant Species List in their regulatory programs to the extent possible (see 22 N.J.R. 179(a)). The Pinelands Commission may choose to amend its existing official list to reflect the official State List if doing so is consistent with its enabling legislation. This is a decision that must be made by the Pinelands Commission.

4. COMMENT: The existence of the List may cast doubt on the validity of any other list used by State agencies, including any which the Office of Natural Lands Management may formally recommend.

RESPONSE: The creation of one official endangered plant species list for the State is part of the legislative purpose of the Act. The Department intends to discontinue the use of the various unofficial lists in its regulatory programs upon adoption of the official List (see 22 N.J.R. 179(a)). Adoption of an official List will not affect the validity of other unofficial lists since they currently possess no official status and are of value only to the various individual agencies, organizations, or groups which use them. These entities may choose to utilize the official List if doing so is determined to be consistent with their goals or enabling legislation.

5. COMMENT: Eighty-three of the species on the List are of historical occurrence or extinct in New Jersey. No meaningful protection can be provided to species whose existence in the State is not confirmed.

RESPONSE: The species which are identified by the Natural Heritage Database as historic occurrences have been retained and included on the List because they are believed, based on the best available scientific information (such as botanists' records), to exist in the State and are among the most endangered plant species in the State. The eventual protection of these species might very well avert their extinction from the State. To exclude these species from the List would only further jeopardize their existence in the State and would be contrary to the intention of the Act. The Department now believes that four species on the proposed list, *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata*, do not exist in the State and therefore has not adopted them as part of the List.

6. COMMENT: Excluding historic species, of the remaining 221 species on the List, 90 or so are known from only a single existing population and all but a handful of the rest currently exist in no more than five populations in the State. This List is not acceptable because it only consists of plants that have been reduced to one or a few populations which are likely to be genetically depauperate.

RESPONSE: Plant species which have more than a few populations or which have genetically diverse populations are not necessarily precluded from inclusion on the List. If it is determined that additional plant species which are genetically diverse or which possess more than a few populations are in jeopardy according to the criteria stated at N.J.A.C. 7:5C-2.2, they will be recommended for inclusion on the List.

7. COMMENT: The List has omitted 23 species which were classified as "critically imperiled" in New Jersey (S1 rank) in the Department's Special Plants of New Jersey issued on November 29, 1989.

RESPONSE: Only 16 species ranked as S1 on the November 29, 1989 edition of the Department's list of Special Plants of New Jersey are not included on the proposed list, not 23. Since the commenter did not individually list the 23 species in question or provide detailed justification for their inclusion, it is not possible to respond to this comment in detail. Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered; the majority of plants classified as S1 on the November 29, 1989 edition of the list of Special Plants of New Jersey were proposed for listing under one or more of these criteria.

8. COMMENT: The Department should list as endangered the seven bryophytes classified as "critically imperiled" (S1 rank) in the Special Plants of New Jersey issued on November 29, 1989, because the Department indicated at 22 N.J.R. 180(b) that bryophytes are to be evaluated for listing according to the same criteria as vascular plants.

RESPONSE: Because the term "plant" is defined at N.J.A.C. 7:5C-1.4 as "any member of the Plant Kingdom," the Endangered Plant Species Program rules do not preclude the listing of bryophytes as endangered. However, the Department's information on bryophytes is substantially more limited than the information available on vascular plants. Therefore, given the time constraints under which it was operating in developing the proposed list, the Department focused its efforts on vascular plants and was unable to adequately evaluate the status of the bryophytes in time to include these species as part of the proposed list. The Department now feels that these seven bryophytes of the genus *Sphagnum* classified by the Natural Heritage Program as "critically imperiled" (*S. angustifolium*, *S. centrale*, *S. contortum*, *S. macrophyllum* var *floridanum*, *S. riparium*, *S. strictum* and *S. subsecundum*) as well as *S. austinii* and *S. platyphyllum* currently qualify for listing under criteria at N.J.A.C. 7:5C-2.2. However, the Department is precluded by N.J.A.C. 7:5C-2.1(c) and the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from adding these or any other species to the list as part of this adoption without prior public notice and the opportunity for public comment. As part of its ongoing review and revision of the List, and in the event that the status of these species remains unchanged, the Department intends to propose these nine bryophyte species for listing in its next revision of the List.

9. COMMENT: In the Department's Basis and Background Document, the term "extant populations," as found in the Act, is interpreted to mean "the sum of all records, current and historic, for a species in the State." The Department's interpretation impermissibly narrows the statutory language and directly contravenes the Act's purpose. The Department's interpretation results in a list containing fewer species than would otherwise be the case. Therefore, in accordance with the language in the Act, species with five or fewer extant (currently known) populations should be listed as endangered.

RESPONSE: A lack of staff due to the absence of an appropriation in the Act, coupled with the statutory deadline for adopting the List forced the Department to rely on existing information in the Natural Heritage Database in formulating the proposed list. The Department, therefore, took a conservative approach in listing species under the category of "five or fewer extant occurrences" by including species having five or fewer total occurrences ever reported in the State. While it is quite possible that some of these occurrences have been eliminated, these species would still qualify as endangered under N.J.A.C. 7:5C-2.2(a)4. Conversely, it is unlikely that additional occurrences will be reported, since the Natural Heritage Program has extensively searched the botanical records that have been collected over the last century. Should additional occurrences be found, these species would still be eligible for listing because they would qualify under N.J.A.C. 7:5C-2.2(a)1 as species whose survival is in jeopardy.

Other species may have five or fewer extant populations, but more than five total occurrences, and thus have not been listed under this criterion. Many of these species have been listed based on the Department's determination that the survival of the species in the State or nation is in jeopardy. Detailed justification for this determination has been provided in the Basis and Background Document for each of these species. The justification includes, but is not limited to, the number of extant populations known and presumed to exist based on the best available scientific information available from the Natural Heritage Database.

10. COMMENT: It would be helpful for the Department to define what it means by the terms "current" and "historic."

RESPONSE: In the Basis and Background Document, the Department uses the terms "current" and "historic" combined to refer to all locational records, both recent and past, that exist in the Natural Heritage Database for a species in the State. In this context, a current record is one for a population which has been verified to exist on the basis of recent field work by a knowledgeable individual. A historic record is one for a population which has not been verified by recent field work. The total number of documented locational records for a species includes both current and historic records.

11. COMMENT: In the Basis and Background Document, the Department has provided a counterintuitive definition for the term "extant populations." The Department should place all crucial definitions in published regulations rather than hiding these definitions in the Basis and Background Document.

RESPONSE: In the Basis and Background Document, "extant populations" are defined to be those populations documented to exist at a particular location. The Department disagrees with the commenter's statement that this definition is counterintuitive. The Department agrees that all crucial definitions should be placed in the rules. The next time the rules are amended, the Department will consider proposing a definition for the term "extant populations" for inclusion in the rules at N.J.A.C. 7:5C.

12. COMMENT: In formulating the List, the Department has wrongfully abandoned strict adherence to the definitional structure of the Natural Heritage methodology, which is based on an assessment of location and distribution of species and communities on the current landscape.

RESPONSE: The Department followed the adopted rules at N.J.A.C. 7:5C in formulating the List. Regardless of where species lie within the definitional structure of the Natural Heritage methodology, only those species which satisfy the criteria at N.J.A.C. 7:5C-2.2 may be included in the proposed list. The criteria at N.J.A.C. 7:5C-2.2 are based on the Act and in some cases will preclude strict adherence to the definitional structure of the Natural Heritage methodology. However, the procedures for formulating the List in no way affect the assessment by the Natural Heritage Program of the location and distribution of species and communities on the current landscape.

13. COMMENT: *Dioscorea hirticaulis* (rank G2G3Q) and *Rhynchospora pallida* (rank G2G3) should be listed as endangered because they have higher global rankings than *Desmodium strictum* (rank G2G4), which has been proposed for listing as endangered.

RESPONSE: Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. The commenter has not demonstrated that these two species meet these criteria. That these three species have a "slide rank" (that is, combining two numerical ranks) indicates that there is uncertainty in determining their global ranks. Recent data have resulted in a rank change for two of these species (*Desmodium strictum* to G3 and *Rhynchospora pallida* to G3?) and, therefore, they do not qualify as endangered under the criteria at N.J.A.C. 7:5C-2.2. *Desmodium strictum* has thus not been adopted as part of the List. The

"Q" in the global rank of *Dioscorea hirticaulis* indicates taxonomic uncertainty. Since substantial doubt exists as to whether this species meets the definition of "species" contained in the Act, the Department has deferred proposing this plant for listing.

14. COMMENT: In considering globally rare species for inclusion on the List, by failing to include a modifier before the word "vulnerable" in the definition of "rare" at N.J.A.C. 7:5C-1.4, the Department links logically its definition of "rare" with its definition of the G3 rank. Therefore, all G3 ranked species should be listed as endangered.

RESPONSE: It is not the Department's intent to link the definition of "rare" to the definition of a G3 global rank. Rather, as stated in the Basis and Background Document, it is the Department's intent to define "rare worldwide" as including those species ranked in the Natural Heritage Database as either G1 or G2. N.J.A.C. 7:5C-1.4 defines "rare" to mean "extremely uncommon making it vulnerable to extinction throughout its range." Species ranked G3 can be found abundantly at some locations and, therefore, would not be considered to be extremely uncommon or necessarily vulnerable to extinction throughout their range.

15. COMMENT: Dr. Larry Morse, director of The Nature Conservancy's scientific databases and one of the chief authors of the Natural Heritage methodology, describes G3 species as "quite rare globally." Therefore, all G3 ranked species should be listed as endangered.

RESPONSE: Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. Species in the Natural Heritage category of G3 will not always qualify for listing because they may be locally common within the State with no current definable threats to their continued existence and therefore not in jeopardy within the State or world.

16. COMMENT: Species ranked G3/S2 on the Department's Special Plants of New Jersey (*Bidens bidentoides*, *Coreopsis rosea*, *Psilocarya nitens* and *Puccinellia fasciculata*) should be listed as endangered since these species fall within the definition of "globally rare" in the rules and by no stretch of the imagination can a species ranked S2 be considered as "locally common."

RESPONSE: Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. The commenter has not demonstrated that these species meet these criteria. Species ranked as S2 by the Natural Heritage Program are sometimes "locally common." *Narthecium americanum*, ranked G2S2, is an example of this situation. Where it occurs in the State it often grows in the thousands. But since it is of restricted distribution and habitat, and threats to its survival are demonstrable, its listing as endangered is appropriate. The species *Bidens bidentoides*, *Coreopsis rosea*, *Psilocarya nitens*, and *Puccinellia fasciculata* were not proposed for listing because in the Department's judgment they do not meet the definition of "rare" at N.J.A.C. 7:5C-1.4 or satisfy the criteria at N.J.A.C. 7:5C-2.2.

17. COMMENT: The Department seems to be assuming that because a plant is "locally common" it cannot also be "in jeopardy" and eligible for inclusion on the List. This is not true since, apart from the threat of habitat alteration or destruction, locally common plant populations (including endemic species) can have low heterozygosities and may therefore be genetically depauperate. A genetically depauperate plant population is unable to evolve quickly to adapt to new environmental challenges.

RESPONSE: A species whose populations contain a low genetic heterozygosity may not be able to evolve quickly, but this does not necessarily mean that its populations will be unable to survive new environmental challenges. The existing genetic makeup of a plant population may allow it to withstand some new environmental challenges. If it is determined that a plant species which has locally common populations is faced with a new environmental challenge which places its existence in the State in jeopardy, it will be proposed for inclusion on the List in accordance with N.J.A.C. 7:5C-2.2(a)1.

18. COMMENT: All species ranked S1 and S2 which are found disjunctly or at the edge of their range in New Jersey should be considered "in jeopardy" and listed as endangered because they will have a lower fecundity or viability. This is supported in many cases by the scientific literature. Since the threat of extirpation is very real for these species (that is, they are "in jeopardy"), these species should be listed as endangered.

RESPONSE: While some outbreeding plant species with small populations that are disjunct or at the edge of their geographic range may experience relatively lower fecundity or viability when compared to populations in the center of their range, it is not proven that this reduced fecundity or viability will always be so great as to place the existence of these populations in jeopardy. Furthermore, this argument cannot be

necessarily extended to all species with Natural Heritage ranks of S1 or S2 which occur disjunctly or at the edge of their geographic range in New Jersey, as these populations would be expected to vary in their sizes and reproductive strategies. However, if the Department learns that these species are experiencing such low fecundity and viability in their populations as to place their existence in the State in jeopardy, they will be proposed for inclusion on the List in accordance with N.J.A.C. 7:5C-2.2(a)1.

19. COMMENT: *Carex mitchelliana* (ranked G3G4/S2) should be listed as endangered because an Ocean County population of this species was found to have an expected heterozygosity of 0 percent (Bruederle). This strongly suggests that this species is vulnerable to agents of stress and is thus "in jeopardy."

RESPONSE: Although the Ocean County population may have a lower ability to adapt to environmental change when compared to other populations of *Carex mitchelliana* which have higher levels of heterozygosity, it has not been demonstrated that this species is threatened by a particular stress which places its existence in the State in jeopardy. Therefore, the Department does not consider this species eligible for listing as endangered.

20. COMMENT: All S2 plants should be listed as endangered because the term "imperiled" in the Natural Heritage Program methodology as it applies to S1 and S2 ranked species is synonymous with "endangered."

RESPONSE: Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. The commenter has not demonstrated that all species ranked S2 meet these criteria. That a species is ranked as S2 by the Natural Heritage Program is not in and of itself justification for the Department to list the species as endangered. Further, the Natural Heritage methodology does not equate the terms "imperiled" and "endangered"; the term "endangered" is defined in the Endangered Plant Species Program rules at N.J.A.C. 7:5C-1.4 but is not used by the Natural Heritage methodology. The commenter also attempts to equate the Natural Heritage Program's S2 rank with the S1 rank. These two ranks are not synonymous and each is clearly defined as two distinct levels of rarity.

21. COMMENT: Extirpated and historical species should be either segregated on the List or not listed as endangered because it is anticipated that the List will be used extensively in permit review, planning and land acquisition decisionmaking, that it will affect the way land is used, and, consequently, that it will have important financial implications for those with interests in land.

RESPONSE: The Department now believes that four species on the proposed list, *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata*, do not exist in the State and therefore has not adopted them as part of the List. Additional species which are identified by the Natural Heritage Database as historic occurrences have been included and will be retained on the List because they are believed, based on the best available scientific information (such as botanists' records), to exist in the State and are among the most endangered plant species in the State. As all species on the List are jeopardized with extinction in the State, the Department does not feel that these species should necessarily be segregated or addressed differently because of the way the List may be used. Further, the Act does not require the Department to draw such distinctions.

22. COMMENT: The Department should consider not listing historical and extirpated species and instead drafting regulations which authorize an immediate endangered classification for any species classified as extirpated or historical on the list of Special Plants of New Jersey upon rediscovery of the species in the State.

RESPONSE: As discussed above, the Department assembled the proposed list on the basis of the best available information contained in the Natural Heritage Database regarding the qualification of species as endangered under the rules at N.J.A.C. 7:5C. The Department now believes that four species on the proposed list, *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata*, do not exist in the State and therefore has not adopted them as part of the List. It is the Department's judgment that all the species proposed at 22 N.J.R. 94(a) for listing do exist in the State and are not extirpated. If field studies or other information establish conclusively that listed species have become extirpated, the Department will propose the removal of these species from the List.

Because the Act does not contain provisions for protection of listed plants or their habitats, the Department does not believe that procedures for immediate or emergency listing of plant species are warranted. If extirpated species are rediscovered, the department will propose designat-

ing these species to the List under the regular rulemaking procedure contemplated by N.J.A.C. 7:5C-2.1.

23. COMMENT: The change made by the Department in the wording of N.J.A.C. 7:5C-2.2(a)4 from "five or fewer extant populations," as stated in the rule, to "five or fewer total occurrences," as stated in the Basis and Background Document Summary, was made because of the Department's difficulty in determining what constitutes an extant population and is therefore unacceptable.

RESPONSE: A lack of staff due to the absence of an appropriation in the Act, coupled with the statutory deadline for adopting the List, forced the Department to rely on existing information in the Natural Heritage Database in formulating the proposed list. The Department, therefore, took a conservative approach in listing species under the category of "five or fewer extant occurrences" by including species having five or fewer total occurrences ever reported in the State. While it is quite possible that some of these occurrences have been eliminated, these species would still qualify as endangered under this criterion. Conversely, it is unlikely that additional occurrences will be reported, since the Natural Heritage Program extensively searched the botanical records that have been collected over the last century. Should additional occurrences be found, these species would still be eligible for listing because they would qualify under N.J.A.C. 7:5C-2.2(a)1 as species whose survival is in jeopardy.

Other species may have five or fewer extant populations, but more than five total occurrences, and thus have not been listed under N.J.A.C. 7:5C-2.2(a)4. Many of these species have been listed based on the Department's determination that the survival of the species in the State or nation is in jeopardy. Detailed justification for this determination has been provided in the Basis and Background Document for each of these species. The justification includes the number of extant populations known and presumed to exist based on the best available scientific information available from the Natural Heritage Database.

24. COMMENT: It is incorrect for the Department to assume that historical occurrences that have not been field checked and for which potential habitat still may exist are extant, since this assumption results in a number of species having far greater "extant" populations than is actually the case. This also fails to consider that potential habitat can still be present long after the demise of a population.

RESPONSE: Although additional field work may document that some populations have become extirpated, until such information becomes available the Department cannot ignore the potential existence of an endangered plant species at a documented location. To do so would only further jeopardize the species' existence in the State and would be contrary to the intention of the Act.

25. COMMENT: The Department should develop a definition of "extant population" that does not include historical sites that have not been field checked. One possible definition is "any population whose existence has been verified within the last five years."

RESPONSE: The Department disagrees with the proposed definition. Most populations which have not been field checked in the last five years are likely to be extant if habitat still exists. Furthermore, it is not feasible for the Department to field check populations every five years. The Department prefers the following definition for "extant": "Extant populations are those documented to exist at a particular location." A population will no longer be considered to exist at a particular location when information available to the Department indicates that the habitat conditions required by the species for survival no longer exist at the site, or when field surveys document that the species no longer exists at the location. The Department intends to clarify the definition of this term in its next revision of the List.

26. COMMENT: Assuming that the Department makes the correction in wording to criterion 4 in the Basis and Background Document Summary (corresponding to N.J.A.C. 7:5C-2.2(a)4 recommended in Comments No. 23 and No. 25, 107 species are then justified in detail for inclusion on the List on the basis that they qualify under N.J.A.C. 7:5C-2.2(a)1. Of these 107 species, 105 do not require detailed justification since they are known from five or fewer extant locations in the State and, therefore, they should be listed because they would qualify under criterion 4 (N.J.A.C. 7:5C-2.2(a)4). The two remaining species, *Sagittaria teres* and *Trollius laxus* ssp. *laxus*, therefore, are the only species of this group that require detailed justification (although *S. teres* also qualifies under N.J.A.C. 7:5C-2.2(a)3).

RESPONSE: Based on the Department's response to Comments No. 9, No. 23 and No. 25, no change in the wording of criterion 4 in the Basis and Background Document Summary will be made to reflect the

opinion of the commenter. However, the explanation in the Basis and Background Document Summary will be revised in the future to more clearly state the methodology of the Department and the rationale for its use. Because the commenter has not specifically listed the species in question or provided information on their qualification for listing, the Department is unable to respond to this comment in detail.

Sagittaria teres and *Trollius laxus* ssp. *laxus* are judged by the Department to each meet N.J.A.C. 7:5C-2.2(a)1, as adequately summarized in the Basis and Background Document. Additional information further justifying the listing of these species is contained in the Natural Heritage Program's database.

27. COMMENT: All species that the New Jersey Natural Heritage Program believes to be extirpated in the State, without regard to Federal status, should be removed from the List. This includes *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata*.

RESPONSE: The Department agrees. *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata* are not believed to exist in the State and therefore they have not been adopted as part of the List.

28. COMMENT: All species whose occurrence in the State is regarded as only historical by the New Jersey Natural Heritage Program should be removed from the List because (1) these species currently have no extant occurrences (2) the inclusion of these species will unnecessarily inflate the length of the List making it intimidating to the regulators who may use it, and (3) it is probable that these species were included based on an aberrant definition for the word "extant" (see Comments Nos. 23-25, above). Therefore, the following 79 species should be deleted from the List: *Arenaria stricta*, *Armoracia aquatica*, *Aster lucidulus*, *Cacalia atriplicifolia*, *Cardamine longii*, *Carex alopecoidea*, *Carex backii*, *Carex cumulata*, *Carex louisianica*, *Carex tuckermanii*, *Carex woodii*, *Centrosema virginianum*, *Cleistes divaricata*, *Commelina erecta*, *Cratogeomys succulenta*, *Cryptogramma stelleri*, *Cuscuta cephalanthii*, *Cuscuta polygonorum*, *Cynoglossum boreale*, *Cyperus refractus*, *Cypripedium candidum*, *Cypripedium reginae*, *Dalibarda repens*, *Desmodium humifusum*, *Desmodium pauciflorum*, *Dicentra eximia*, *Draba reptans*, *Eleocharis equisetoides*, *Eleocharis tortilis*, *Elephantopus carolinianus*, *Eriophorum gracile*, *Eriophorum spissum*, *Euphorbia marilandica*, *Gentiana linearis*, *Glaux maritima*, *Glyceria borealis*, *Gnaphalium macounii*, *Hieracium canadense* var. *fasciculatum*, *Juncus brachycarpus*, *Juncus elliottii*, *Krigia dandelion*, *Lathyrus orchroleucus*, *Lechea tenuifolia*, *Linnaea borealis*, *Linum intercursum*, *Lobelia dortmanna*, *Malaxis monophyllos*, *Micranthemum micranthemoides*, *Myriophyllum pinnatum*, *Myriophyllum verticillatum*, *Nuphar microphyllum*, *Ophioglossum vulgatum* var. *pyncostichum*, *Oryzopsis pungens*, *Panicum aciculare*, *Panicum xanthophyllum*, *Phlox pilosa*, *Phyla lanceolata*, *Plantago pusilla*, *Platanthera peramoena*, *Poa autumnalis*, *Poa saltuensis*, *Polygala incarnata*, *Potamogeton obtusifolius*, *Potamogeton richardsonii*, *Prenanthes racemosa*, *Pycnanthemum torrei*, *Ranunculus cymbalaria*, *Ranunculus reptans*, *Ruellia caroliniensis*, *Scheuchzeria palustris* ssp. *americana*, *Scirpus maritimus*, *Scirpus pedicellatus*, *Sparganium angustifolium*, *Stachys palustris* var. *homotricha*, *Stellaria pubera*, *Stylosanthes riparia*, *Tridens chapmanii*, *Verbena simplex*, *Vulpia sciurea*.

RESPONSE: The Department believes, based on the best available scientific information, that these 79 species do exist in the State and that they are among the most endangered of all of our native flora. To preclude listing these species would be contrary to the intent of the Act. It would also be inappropriate for the Department to restrict the length of the List because of a perceived reluctance of regulators to use the List.

29. COMMENT: Should the Department determine that any of the above historical species should be listed, a species-by-species explanation should be provided on how these species have been determined to be extant in the State.

RESPONSE: As discussed above, the Department's decision to include on the List plant species currently known only from historical occurrences is based on an analysis of existing information in the Natural Heritage Database.

Based on this existing information, the Department documented the suitability of the species proposed for listing on a species-by-species basis in the Basis and Background Document which accompanied the listing proposal. It is the Department's judgment that these species do exist in the State and are not extirpated. The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Basis and Background Document was based. Therefore, there is no need for the Department to provide additional documentation on these species.

30. COMMENT: The taxon *Claytonia virginica* forma *hammondiae* should be removed from the List because, being a forma, it technically does not meet the definition of "species" at N.J.A.C. 7:5C-1.4, and therefore would be vulnerable to legal challenge.

RESPONSE: The Department agrees that *Claytonia virginica* forma *hammondiae* does not meet the definition of "species" at N.J.A.C. 7:5C-1.4 and therefore has not adopted this taxon as part of the List.

31. COMMENT: The following 16 species should be added to the List because they are currently known from fewer than five confirmed extant occurrences and, therefore, satisfy N.J.A.C. 7:5C-2.2(a)4: *Castanea pumila*, *Cerastium beerianum*, *Chenopodium standleyanum*, *Chrysopsis camporum*, *Crataegus holmesiana*, *Dioscorea hirticaulis*, *Heteranthera multiflora*, *Isanthus brachiatum*, *Juncus longii*, *Penstemon laevigatus*, *Platanthera hookeri*, *Potamogeton robbinsii*, *Rudbeckia fulgida*, *Viola septentrionalis*, *viola stoneana*, *Zigadenus leimanthoides*.

RESPONSE: At the time of proposal of the List at 22 N.J.R. 94(a), the Department reserved listing these 16 species as endangered pending evaluation of additional information. The following eight species have since been determined to qualify as endangered under the criteria at N.J.A.C. 7:5C-2.2: *Castanea pumila*, *Isanthus brachiatum*, *Penstemon laevigatus*, *Platanthera hookeri*, *Potamogeton robbinsii*, *Rudbeckia fulgida*, *Viola septentrionalis*, and *Zigadenus leimanthoides*. However, the Department is precluded by N.J.A.C. 7:5C-2.1(c) and the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from adding these or any other species to the List without prior public notice and the opportunity for public comment. In the event that the status of these species remains unchanged, the Department will propose the listing of these species as endangered as part of future revisions of the List.

32. COMMENT: Should the Department determine that any of these 16 species do not qualify for the List, a species-by-species explanation should be provided as to why they were not placed on the List.

RESPONSE: In developing the proposed list, the Department evaluated the species in question and determined on the basis of information in the Natural Heritage Database that, other than the eight species addressed in Response No. 31, these species do not qualify as endangered under the rules at N.J.A.C. 7:5C. The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Department's evaluation of these species was based. Therefore, there is no need for the Department to provide additional documentation on these species. If the Department receives additional information which is incorporated into the Natural Heritage Database and which alters the status of any of these species, it will consider listing these species as endangered as part of future revisions of the List.

33. COMMENT: The following 169 species should be added to the List because (1) they qualify under N.J.A.C. 7:5C-2.2(a)1, (2) they all have fewer than 20 extant occurrences and in 1987 the Natural Heritage Program recommended to the Pinelands Commission that species with fewer than 20 known occurrences in the State that occur in the Pinelands should be protected from development, and (3) they are regarded as "imperiled" and "very vulnerable to extirpation in the State" by the New Jersey Natural Heritage Program: *Acer nigrum*, *Adlumia fungosa*, *Agastache nepetoides*, *Agastache scrophulariifolia*, *Alopecurus aequalis*, *Amianthium muscaetoxicum*, *Andropogon eliottii*, *Andropogon ternarius*, *Angelica venenosa*, *Arabis hirsuta*, *Arethusa bulbosa*, *Aristida curtissii*, *Aristida virgata*, *Artemisia campestris* ssp. *caudata*, *Asclepias lanceolata*, *Asclepias rubra*, *Asclepias variegata*, *Asclepias verticillata*, *Asplenium montanum*, *Aster concolor*, *Aster infirmus*, *Aster prenanthoides*, *Aster sagittifolius*, *Aster tradescantii*, *Betula papyrifera*, *Bidens bidentoides*, *Boltonia asteroides* var. *asteroides*, *Botrychium onoidense*, *Bromus kalmii*, *Cardamine douglassii*, *Carex bebbii*, *Carex bicknellii*, *Carex buxbaumii*, *Carex conoidea*, *Carex crawfordii*, *Carex cryptolepis*, *Carex diandra*, *Carex disperma*, *Carex eburnea*, *Carex frankii*, *Carex hitchcockiana*, *Carex lupuliformis*, *Carex mitchelliana*, *Carex pallescens*, *Carex retrorsa*, *Carex rostrata*, *Carex sterilis*, *Carex typhina*, *Carex viridula*, *Carex willdenowii*, *Castilleja coccinea*, *Cheilanthes lanosa*, *Chenopodium hybridum*, *Chenopodium leptophyllum*, *Clematis occidentalis*, *Coeloglossum viride*, *Corallorhiza trifida*, *Coreopsis rosea*, *Cornus canadensis*, *Crataegus dodgei*, *Crataegus punctata*, *Crotonopsis elliptica*, *Cuscuta coryli*, *Cynoglossum virginianum*, *Cystopteris protrusa*, *Desmodium laevigatum*, *Desmodium viridiflorum*, *Diplachne maritima*, *Dirca palustris*, *Elatine americana*, *Elatine minima*, *Eleocharis halophila*, *Eleocharis quadrangulata*, *Epilobium strictum*, *Eragrostis frankii*, *Euonymus atropurpureus*, *Eupatorium altissimum*, *Eupatorium aromaticum*, *Fimbristylis caroliniana*, *Fimbristylis puberula*, *Fuirena*

squarrosa, *Galium palustre*, *Gentiana quinquefolia*, *Glyceria laxa*, *Gratiola pilosa*, *Gratiola virginiana*, *Honkenya peploides*, *Hydrocotyle verticillata*, *Hypericum adpressum*, *Hypericum gymnanthum*, *Juncus articulatus*, *Juncus brevicaudatus*, *Juncus greenii*, *Lemna trisulca*, *Lеспедеза stuevei*, *Listera australis*, *Ludwigia hirtella*; *Ludwigia linearis*, *Lycopodium inundatum*, *Lycopus rubellus*, *Lygodium palmatum*, *Malaxis unifolia*, *Mimulus moschatus*, *Monarda didyma*, *Obolaria virginica*, *Oenothera oakesiana*, *Panicum hemitomon*, *Panicum leucothrix*, *Panicum oligosanthes*, *Panicum wrightianum*, *Paspalum dissectum*, *Phaseolus polystachyus*, *Phlox maculata*, *Phoradendron flavescens*, *Picea rubens*, *Pinus serotina*, *Pinus taeda*, *Plantago maritima*, *Platanthera ciliaris*, *Platanthera flava* var. *herbiola*, *Poa languida*, *Polygala mariana*, *Polygala polygama*, *Polygonum opelousanum*, *Polygonum setaceum*, *Populus heterophylla*, *Porteranthus trifoliatus*, *Potamogeton oakesianus*, *Prenanthes autumnalis*, *Prunus depressa*, *Psilocarya nitens*, *Psilocarya scirpoides*, *Puccinellia fasciculata*, *Pyrola chlorantha*, *Pyrola secunda*, *Pyrus angustifolia*, *Ranunculus ambigens*, *Ranunculus aquatilis*, *Ranunculus longirostris*, *Ranunculus pusillus*, *Rhynchospora inundata*, *Rhynchospora oligantha*, *Rotala ramosior*, *Rubus ostryifolius*, *Sabatia dodecandra*, *Sagina procumbens*, *Sagittaria subulata*, *Salix lucida*, *Scirpus smithii*, *Scleria pauciflora*, *Sclerolepis uniflora*, *Scutellaria nervosa*, *Selaginella reptans*, *Senecio tomentosus*, *Sesuvium maritimum*, *Setaria magna*, *Sisyrinchium arenicola*, *Smilacina trifolia*, *Sparganium chlorocarpum*, *Spiranthes odorata*, *Sporobolus asper*, *Stachys hyssopifolia*, *Taxus canadensis*, *Trichostema setaceum*, *Trisetum pensylvanicum*, *Vaccinium oxycoccos*, *Viburnum trilobum*, *Vicia americana*, *Waldsteinia fragarioides*.

RESPONSE: Species meeting the criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. The commenter has not demonstrated that any of these species meet these criteria. That a species has less than 20 occurrences in New Jersey is not justification for the Department to list these 169 species as endangered since it is not a part of the stated criteria at N.J.A.C. 7:5C-2.2. To list these species because the Natural Heritage Program recommended in 1987 that species with 20 or fewer occurrences be considered for inclusion on the Pinelands list is not justified under the rules or the Act. The Natural Heritage Program proposed those recommended changes to the Pinelands list based on its interpretation of N.J.A.C. 7:50, which mandates the listing of both endangered and threatened plant species.

34. COMMENT: Should the Department determine that any of these 169 species do not qualify for the List, a species-by-species explanation should be provided on why these species do not qualify under N.J.A.C. 7:5C-2.2(a)1.

RESPONSE: In developing the proposed list, the Department evaluated the 169 species in question and determined on the basis of information in the Natural Heritage Database that they did not qualify as endangered under the rules at N.J.A.C. 7:5C. The determination that a plant species is "in jeopardy" and therefore qualifies for listing under N.J.A.C. 7:5C-2.2(a)1 is a complex decision involving a balancing of the three criteria listed at N.J.A.C. 7:5C-2.2(a)1 on the basis of species-specific factors. A Basis and Background Document has been made available to the public summarizing the Department's justification for listing all species, including species justified for listing on the basis of N.J.A.C. 7:5C-2.2(a)1.

The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Department's evaluation of these species was based. Therefore, there is no need for the Department to provide additional documentation on these species. If the Department receives additional information which is incorporated into the Natural Heritage Database and which alters the status of any of these species, it will consider listing these species as endangered as part of future revisions of the List.

35. COMMENT: All species regarded as globally rare by the New Jersey Natural Heritage Program, including all species ranked as G3, should be placed on the List since they obviously qualify under N.J.A.C. 7:5C-2.2(a)3. This includes the following: *Bidens bidentoides*, *Carex schweinitzii*, *Coreopsis rosea*, *Gentiana autumnalis*, *Psilocarya nitens*, *Puccinellia fasciculata* (the preceding six species are also recommended on the basis that they qualify under N.J.A.C. 7:5C-2.2(a)1), *Dioscorea hirticaulis*, *Rhynchospora pallida*, and *Viola stoneana* (the preceding three species are also recommended on the basis that they qualify under N.J.A.C. 7:5C-2.2(a)4).

RESPONSE: Species meeting criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. In the Basis and Background Document, "rare worldwide" is defined so as to primarily include species

ranked in the Natural Heritage Database as G1 or G2. Species ranked G3 will not always meet criteria established at N.J.A.C. 7:5C-2.2, since some of them are locally abundant and reasonably stable and secure, even though of rather narrow worldwide ranges.

36. COMMENT: Should the Department determine that the species suggested in Comment No. 35 are not eligible for inclusion on the List, an explanation should be provided as to why these species do not meet the "rare worldwide" criterion at N.J.A.C. 7:5C-2.2(a)3 when they are currently ranked as globally rare by the New Jersey Natural Heritage Program.

RESPONSE: In developing the proposed list, the Department evaluated the suggested species and determined on the basis of information in the Natural Heritage Database that they did not qualify as endangered under the rules at N.J.A.C. 7:5C. Specifically, the Department determined that these species did not qualify as rare throughout their worldwide ranges, which would qualify them for listing under N.J.A.C. 7:5C-2.2(a)3. The definition of "rare" which is contained in N.J.A.C. 7:5C-1.4 was provided in order to further refine the language of N.J.A.C. 7:5C-2.2, which was obtained directly from the Act. Species in the Natural Heritage category of G3 (including its associated ranks) will not always qualify for listing because they may be locally common and reasonably stable and secure, even though of rather narrow worldwide ranges. Moreover, the Department determined that these species did not qualify for listing under any other criteria at N.J.A.C. 7:5C-2.2.

The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Department's evaluation of these species was based. Therefore, it is not necessary for the Department to provide the requested additional species-by-species justification. If the Department receives additional information which is incorporated into the Natural Heritage Database and which alters the status of any of these species, it will consider listing these species as endangered as part of future revisions of the List.

37. COMMENT: The Basis and Background Document Summary should be modified such that the following 10 species are listed as globally rare and qualifying under N.J.A.C. 7:5C-2.2(a)3: *Asplenium bradleyi*, *Calamogrostis pickeringii*, *Calamovilfa brevipilis*, *Carex barrattii*, *Eriocaulon parkeri*, *Eupatorium resinotum*, *Muhlenbergia torreyana*, *Prunus alleghaniensis*, *Sagittaria teres*, *Schizaea pusilla*.

RESPONSE: The Basis and Background Document defines "rare worldwide" as primarily including species ranked in the Natural Heritage Database as G1 or G2. Nine of the 10 species listed by the commenter are ranked in the Natural Heritage Database as G3, and therefore do not qualify under N.J.A.C. 7:5C-2.2(a)3. One species, *Eupatorium resinotum*, was proposed and adopted to the List on the basis of its Federal status (N.J.A.C. 7:5C-2.2(a)2); this species recently was reranked as G2 and now also qualifies for listing as endangered under N.J.A.C. 7:5C-2.2(a)3.

38. COMMENT: Should the Department determine that the changes to the Basis and Background Document Summary suggested in Comment No. 37 should not be made, an explanation should be provided as to why these species do not meet the "rare worldwide" criterion at N.J.A.C. 7:5C-2.2(a)3 when they are currently ranked as globally rare by the New Jersey Natural Heritage Program.

RESPONSE: In developing the proposed list, the Department evaluated the suggested species and determined on the basis of information in the Natural Heritage Database that they did not qualify as endangered under the rules at N.J.A.C. 7:5C. Specifically, the Department determined that nine of these species did not qualify as rare throughout their worldwide ranges, which would make them eligible for listing under N.J.A.C. 7:5C-2.2(a)3. The definition of "rare" which is contained in N.J.A.C. 7:5C-1.4 was provided in order to further refine the language of N.J.A.C. 7:5C-2.2, which was obtained directly from the Act. Species in the Natural Heritage category of G3 (including its associated ranks) will not always qualify for listing because they may be locally common and reasonably stable and secure, even though of rather narrow worldwide ranges. Moreover, the Department determined that these species did not qualify for listing under any other criteria at N.J.A.C. 7:5C-2.2.

The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Department's evaluation of these species was based. Therefore, it is not necessary for the Department to provide the requested additional species-by-species justification. If the Department receives additional information which is incorporated into the Natural Heritage Database and which alters the status of any of these species, it will consider listing these species as endangered as part of future revisions of the List.

39. COMMENT: The following bryophytes of the genus *Sphagnum* should be added to the List because they have been sufficiently studied by Andrus and Karlin (1989) and on the basis that they qualify under N.J.A.C. 7:5C-2.2(a)1: *S. angustifolium*, *S. centrale*, *S. contortum*, *S. macrophyllum* v. *floridanum*, *S. riparium*, *S. strictum* and *S. subsecundum*.

RESPONSE: Because the term "plant" is defined at N.J.A.C. 7:5C-1.4 as "any member of the Plant Kingdom," the Endangered Plant Species Program rules do not preclude the listing of bryophytes as endangered. However, the Department's information on bryophytes is substantially more limited than the information available on vascular plants. Therefore, given the time constraints under which it was operating in developing the proposed list, the Department focused its efforts on vascular plants and was unable to adequately evaluate the status of the bryophytes in time to include these species as part of the proposed list. The Department now feels that these seven bryophytes of the genus *Sphagnum* classified by the Natural Heritage Program as "critically imperiled" (*S. angustifolium*, *S. centrale*, *S. contortum*, *S. macrophyllum* var. *floridanum*, *S. riparium*, *S. strictum* and *S. subsecundum*), as well as *S. austinii* and *S. platyphyllum*, currently qualify for listing under the criteria at N.J.A.C. 7:5C-2.2. However, the Department is precluded by N.J.A.C. 7:5C-2.1(c) and the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from adding these or any other species to the List as part of this adoption without prior public notice and the opportunity for public comment. As part of its ongoing review and revision of the List, and in the event that the status of these species remains unchanged, the Department intends to propose these nine bryophyte species for listing in its next revision of the List.

40. COMMENT: The following species of *Sphagnum* should be listed because they qualify under N.J.A.C. 7:5C-2.2(a)1: *S. capillifolium*, *S. carolinianum*, *S. cyclophyllum*, *S. flexuosum*, *S. fuscum*, *S. macrophyllum*, *S. perichaetiale*, *S. portericense*, *S. squarrosum*, *S. subtile*, *S. tenellum*, *S. teres* and *S. warnstorfil*.

RESPONSE: Based on documentation on file in the Natural Heritage Database, the Department does not presently consider these 13 species of *Sphagnum* moss to be endangered in New Jersey under any of the criteria at N.J.A.C. 7:5C-2.2. The commenter has not demonstrated how these species qualify as endangered under N.J.A.C. 7:5C-2.2(a)1.

41. COMMENT: If the Department determines that any of the species of *Sphagnum* listed in Comment No. 40 should be listed, an explanation should be provided as to why.

RESPONSE: The commenter has not provided any information which alters the information in the Natural Heritage Database, upon which the Department's evaluation of these species was based. Therefore, it is not necessary for the Department to provide the requested additional species-by-species justification. If the Department receives additional information which is incorporated into the Natural Heritage Database and which alters the status of any of these species, it will consider listing these species as endangered as part of future revisions of the List.

42. COMMENT: The Department should define "Plant Kingdom" so that it is clear whether or not fungi, lichens, and algae are eligible for the List.

RESPONSE: The Department considers the Plant Kingdom to be comprised of those organisms contained in the phylum Bryophyta and phylum Tracheophyta. This includes bryophytes and vascular plants but does not include algae, fungi or lichens. The Department will clarify this definition as part of its future revision of the List.

43. COMMENT: The listing of *Isoetes X eatonii*, denoting a hybrid species, should be changed to *Isoetes eatonii* until there is a clear consensus in the botanical community as to whether or not this species is of hybrid origin.

RESPONSE: *Isoetes X eatonii* is believed to be a sterile primary hybrid between *Isoetes echinospora* and *I. engelmannii* (Taylor, W. C., N. Luecke, and M. R. Smith. 1985. Proceedings of the Royal Society of Edinburgh, 86B:259-263.) and its inclusion on the List was based on its listing as a candidate species (C2) in the Federal Register (50 Fed. Reg. 39526, September 27, 1985). In the 1990 Notice of Review, its status was changed to C3 (55 Fed. Reg. 6184, February 21, 1990) and, as a result, *Isoetes X eatonii* has not been adopted as part of the List.

44. COMMENT: The placement of *Isoetes X eatonii* on the List is alphabetically out of order; this species should be located after *Ilex montana* and before *Isoetes macrospora*.

RESPONSE: As explained in the response to Comment No. 43, *Isoetes X eatonii* has not been adopted as part of the List.

45. COMMENT: The following typographical corrections should be made to the List: *Cares woodii* should be *Carex woodii*, *Convolvulus*

spithamaeus should be *Convolvulus spithamaeus*, *Hydrocotyle ranunculoides* should be *Hydrocotyle ranunculoides*, and *Potamogeton pusillus v. gemmiparis* should be *Potamogeton pusillus v. gemmiparis*.

RESPONSE: The Department agrees with the comment. The recommended typographical changes have been made in the adopted amendment.

46. COMMENT: Additional information should be provided for the species *Potamogeton pusillus v. gemmiparis* since this species is not included on the most recent Special Plants of New Jersey and, thus, the rank the New Jersey Natural Heritage Program has assigned to this species is not known.

RESPONSE: The inclusion of this species on the proposed list was based on a specimen which has since been determined to be misidentified. Therefore, this species has not been adopted as part of the List.

47. COMMENT: The Basis and Background Document Summary should have been included in the New Jersey Register as it was very short.

RESPONSE: While inclusion of the Basis and Background Document Summary in the New Jersey Register may have provided some additional information, almost 90 percent of the Summary consisted of the proposed list and the criteria for listing which was already printed in the Register as part of the proposal (see 22 N.J.R. 94(a)). In order to provide as much information as possible to the public concerning future revisions of the list, justifications for change will be provided as part of future proposals.

48. COMMENT: On what grounds does the Department believe that data from the Natural Heritage Database and other sources provides "incontrovertible documentation for proposing the listing of these species," as indicated in the Basis and Background Document Summary?

RESPONSE: N.J.A.C. 7:5C-2.2(a)2, 3, and 4 provide relatively clear-cut guidelines for listing of species as endangered. Information available through the Natural Heritage Database and Federally published lists can readily be used in determining the eligibility of plant species based on these three criteria. This is the reason for use of the term "incontrovertible" and for the lack of further justification for proposing the listing of these species in the Basis and Background Document Summary. By contrast, the Department must make a judgment in determining the eligibility of species for listing based on N.J.A.C. 7:5C-2.2(a)1, using the best available scientific information in the Natural Heritage Database. This detailed justification has been made available in the Basis and Background Document so that the public may be aware of the Department's rationale for decision-making.

49. COMMENT: As indicated in the Basis and Background Document Summary, what are some "other valid reasons" that the Department can use for proposing a plant species on the List in addition to the three categories indicated at N.J.A.C. 7:5C-2.2(a)1?

RESPONSE: It was necessary for the Department to include the term "another valid reason" in its explanation of the "Detailed Justification Required" column in the Basis and Background Document Summary because N.J.A.C. 7:5C-2.2(a)1 indicates that the Department's determination that a species' survival in the State or nation is in jeopardy should include, "but not [be] limited to," subcriteria listed at N.J.A.C. 7:5C-2.2(a)1i, ii, or iii. Although few factors do not fall within one of these three subcriteria, examples of other valid reasons for listing of species under this criterion could include effects of disease and predation, severely restricted species distribution and habitat, a documented declining trend that cannot be attributed to any known factor, extreme historical susceptibility to over-collection, and inability to properly survey for species due to prohibition of access by the landowner.

50. COMMENT: What type of format or forum will the Department use to inform the public on the status and significance of endangered flora?

RESPONSE: Because the Act contained no appropriation of funds to support its goals, the Department may not be able to aggressively pursue public education about the State's endangered flora. At the very least, however, the official list will be printed and made available to the public upon request. Press releases and periodical articles will be prepared, when possible, by Department staff. Should funding become available, an annual or biannual symposium may be organized to inform the public as well as to gain information on the status of the State's flora. Proposals containing the Department's revisions to the official list will be made available to the public through publication in the New Jersey Register.

51. COMMENT: Does the Department plan to prepare maps of plant habitats to inform the public about endangered flora, and, if so, how will "habitat" be defined?

RESPONSE: The Department does not plan to prepare maps of endangered plant habitat for distribution to the public as part of the Endangered Plant Species Program. The Department, through the Natural

Heritage Program and in coordination with The Nature Conservancy, is in the process of preparing Element Stewardship Abstracts for selected endangered species. These documents will bring together species-specific information about habitat needs, ongoing research, management requirements, and information deficiencies.

52. COMMENT: The Department should not attempt, through the Natural Heritage Database, to include within an endangered plant habitat those areas "capable of supporting certain species," as this is a very difficult and subjective finding to prove or disprove.

RESPONSE: Neither the List nor the Endangered Plant Species Program rules identifies plant habitats since habitat identification is not within the scope of the Act. Therefore, the Department does not intend to identify habitats, or areas capable of supporting endangered plant species, as part of the Endangered Plant Species Program.

53. COMMENT: As noted under the economic impact section, what is meant when it is indicated that the presence of listed plants may affect permitting decisions?

RESPONSE: As indicated in the Act, the purpose of the List is to provide "... a definitive, officially recognized State list of endangered plants ... to eliminate the confusion resulting from various existing unofficial lists which are inconsistent ...". There are a number of these unofficial lists currently being used by permitting agencies through their enabling legislation. The Department anticipates that these agencies will use the official Endangered Plant Species List in making permit decisions, to the extent allowed by their enabling legislation (see 22 N.J.R. 179(a)).

54. COMMENT: The Department must specifically identify those programs for which it has statutory authority to consider endangered plant species in the permit decision and, for those programs identified, the Department must specify those plants which can and cannot be used in the permit decision process.

RESPONSE: The Department noted in the list proposal that the presence of endangered plants may affect permitting decisions (see 22 N.J.R. 94(a)). This is because the Department has statutory and regulatory authority in other programs to consider the presence of endangered species as one of a number of factors which are considered in permitting and planning decisions. For example, under the Coastal Policy rules at N.J.A.C. 7:7E, consideration is given to whether an area is known to be inhabited on a seasonal or permanent basis by any vegetation (flora) listed as an endangered or threatened species, or under active consideration for State or national listing (see N.J.A.C. 7:7E-3.36(a)). As another example, identification and mapping of endangered plant species is required when an environmental assessment is performed as part of the procedure for obtaining a discharge allocation certificate (DAC) through the NJPDES permit program (see N.J.A.C. 7:14A-10.4). Permit applicants and individuals seeking planning approvals from the Department should contact the particular Department program involved for further information on endangered species requirements. The Department does not expect that distinctions will be drawn under its permit programs as to which endangered plants can and cannot be used in the permit decision process since such distinctions would be contrary to the intent and purpose of the Endangered Plant Species List Act.

55. COMMENT: Is it true, as implied in the Regulatory Flexibility Statement, that the Department and not the permit applicant/land owner has the burden of proof of identifying whether a specific species is found on a piece of property?

RESPONSE: The purpose of the Regulatory Flexibility Statement is to describe the methods utilized by State agencies to minimize the adverse economic impact of rules which impose reporting, record keeping, or other compliance requirements on small businesses, as required by N.J.S.A. 52:14B-16 et seq. and N.J.A.C. 1:30-3.1. As such, the Regulatory Flexibility Statement does not address the issue of who has the burden of proof of identifying as part of a permit process whether a specific species is found on a piece of property. Such questions will be governed by the applicable statutory and regulatory authority for the permit program. The only inference which should be drawn from the Regulatory Flexibility Statement is that the Department, not the public, bears the burden of the reporting and record keeping associated with the process of listing plant species as endangered.

56. COMMENT: The procedures and methodology employed by the Natural Heritage staff in their determinations of whether a plant species is "in jeopardy" and thus endangered have not been subject to public review either in this proposal or in the recently adopted rules for creating the List. These procedures and methodology should be revealed since the presence of endangered species will be a factor in the issuance of certain permits.

RESPONSE: The criteria used to evaluate if a plant should be considered for listing are found at N.J.A.C. 7:5C-2.2. The information used to determine if a species meets these criteria is derived from the Natural Heritage Database. A summary of this information of each of the species listed under these criteria is available from the Department through the Office of Natural Lands Management. The methodology used by the Natural Heritage Program is based on the Procedures Manual developed by The Nature Conservancy, used by all 50 State Natural Heritage Programs, and is available for public review in the Office of Natural Lands Management, 501 E. State Street, Trenton, New Jersey.

57. COMMENT: The proposed list is an extensive one that may become even larger. There may not be sufficient qualified consultants and botanists in the private sector, as well as experts within the Department, responsible for reviewing projects to make the determination that an area is an endangered species habitat.

RESPONSE: The Act mandates the Department's adoption of an official list of endangered plant species. Because neither the Act nor the rules at N.J.A.C. 7:5C address the habitat of listed species or the specific manner in which the List will be used, with the exception of research, education and planning, the concern raised by the commenter is beyond the scope of this rulemaking.

58. COMMENT: Are Department staff qualified to identify certain species or determine whether a species is a rare species or simply a variety of a more common species, when leading botanists are not in agreement on these crucial taxonomic issues?

RESPONSE: The Department's Natural Heritage Program staff is qualified to make such determinations. For species having controversial or uncertain taxonomic status, Natural Heritage Program staff routinely seek the advice of leading taxonomic experts at Cornell University, Harvard University, Philadelphia Academy of Natural Sciences, The New York Botanical Garden, Ramapo State College, Rutgers University, Washington University, and other institutions, as well as the numerous taxonomists whose services are available to the Natural Heritage Program through The Nature Conservancy. If a subspecies or variety of any species is determined to be endangered it will be listed, regardless of how common the nominate species or any other of its subspecific taxa may be. For example, *Cardamine pratensis* var *palustris* is listed as endangered since this native variety is known from a few, very small occurrences. The nominate species, *Cardamine pratensis*, is both non-native and locally common, and is therefore excluded from listing as endangered.

59. COMMENT: Plants that are merely "proposed" or "under review" by the Federal government should not be listed by the State as endangered since this Federal category is very broad and does not necessarily include plants that are threatened or endangered in the State.

RESPONSE: The terms "proposed" and "under review" were obtained directly from the Act. As such, these terms were incorporated directly into adopted rules at N.J.A.C. 7:5C, making mandatory the inclusion on the List of all such Federal species within these categories.

60. COMMENT: There should be a mechanism for the Department to modify its list in an expeditious manner as necessary, since the Federal list has not been updated annually and species that are "under review" on the Federal list may appear on that list years beyond when they should have been removed.

RESPONSE: In accordance with N.J.A.C. 7:5C-2.1(c), the Department will review the List at least annually to determine if species additions or deletions are necessary based on new or updated information in the Natural Heritage Database. If needed, revisions to the List will then be proposed and adopted, pursuant to the Administrative Procedure Act. The Department cannot, however, propose the removal from the List of any native plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened (see N.J.A.C. 7:5C-2.1(c)). It is, therefore, mandatory that species "under review" remain on the List until such time as they are removed from this category by the Federal government.

61. COMMENT: The Department should ensure that there will be public involvement in the process of modifying the endangered plant list annually.

RESPONSE: Within one year of adoption of the Endangered Plant Species List, the Department expects to publish in the New Jersey Register, in accordance with the Administrative Procedure Act, a proposal of any revisions to the List that it believes are necessary. The public has the opportunity to be involved in this process by submitting written comment on the proposal. N.J.A.C. 7:5C-4.1 also provides a mechanism for public participation in the Department's ongoing evaluation of endangered plant species.

62. COMMENT: What is the Department's rationale for stopping the natural decimation of plant species at the expense of future varieties of species?

RESPONSE: The Department assumes that the commenter is referring to N.J.A.C. 7:5C-2.2(a)1i, which indicates that one determinant that a species' survival in the State or nation is in jeopardy is the number of apparently secure populations in the State or nation as compared to the number of populations vulnerable to decimation by natural or man-made factors. The term "natural" was included because of its inclusion in Section 4 of the Act. This section states that any factor or combination of factors, natural or man-made, shall be considered in listing species as endangered. However, because the Act does not provide habitat protection or other specific protection for listed species, designation of species to the List is not expected to interfere with the natural evolution of plant species at the expense of future varieties.

63. COMMENT: An unauthorized change has been made in the wording of N.J.A.C. 7:5C-2.2(a)4 in the adopted rules from "five or fewer extant populations in the State" in the rules to "five or fewer total occurrences" in the Basis and Background Document Summary. The change permits the Department to list historical species and those species that are currently known from five or fewer extant locations but have more than five total occurrences.

RESPONSE: The Department disagrees. A lack of staff due to the absence of an appropriation in the Act, coupled with the statutory deadline to adopt the List, forced the Department to rely on existing information in the Natural Heritage Database in formulating the proposed list. The Department, therefore, took a conservative approach in listing species under the category of "five or fewer extant occurrences" by including species having five or fewer total occurrences ever reported in the State. While it is quite possible that some of these occurrences have been eliminated, these species would still qualify as endangered under this criterion. Conversely, it is unlikely that additional occurrences will be reported, since the Natural Heritage Program has extensively searched the botanical records that have been collected over the last century. Should additional occurrences be found, these species would still be eligible for listing because they would qualify under N.J.A.C. 7:5C-2.2(a)1 as species whose survival is in jeopardy.

Other species may have five or fewer extant populations, but more than five total occurrences, and thus have not been listed under this criterion. Many of these species have been listed based on the Department's determination that the survival of the species in the State or Nation is in jeopardy. Detailed justification for this determination has been provided in the Basis and Background Document for each of these species. The justification includes the number of extant populations known and presumed to exist based on the best available scientific information available from the Natural Heritage Database.

64. COMMENT: Assuming that the Basis and Background Document Summary is changed as suggested in Comment No. 63, 105 of the 107 species listed as qualifying under N.J.A.C. 7:5C-2.2(a)1 (excluding *Sagittaria teres* and *Trollius laxus* ssp. *laxus*) should be moved to the column in the Basis and Background Document which corresponds with N.J.A.C. 7:5C-2.2(a)4.

RESPONSE: Based on the Department's response to Comments No. 9, No. 23 and No. 63, no change in the wording of criterion 4 in the Basis and Background Document Summary will be made to reflect the opinion of the commenter. However, the explanation in the Basis and Background Document Summary will be revised in the future to more clearly state the methodology of the Department and the rationale for its use.

Sagittaria teres and *Trollius laxus* ssp. *laxus* are judged by the Department to each meet N.J.A.C. 7:5C-2.2(a)1, as adequately summarized in the Basis and Background Document. Additional information further justifying the listing of these species is contained in the Natural Heritage Program's database.

65. COMMENT: The following 85 species currently ranked as SX or SH by the New Jersey Natural Heritage Program are not currently known to exist in the State and should be removed from the List because they do not meet any of the four criteria for listing at N.J.A.C. 7:5C-2.2: *Amaranthus pumilus*, *Arenaria stricta*, *Armoracia aquatica*, *Aster lucidulus*, *Cacalia atriplicifolia*, *Cardamine longii*, *Carex alopecoidea*, *Carex backii*, *Carex cumulata*, *Carex louisianica*, *Carex tuckermanii*, *Carex woodii*, *Centrosema virginianum*, *Cleistes divaricata*, *Commelina erecta*, *Crataegus succulenta*, *Cryptogramma stelleri*, *Cuscuta cephalanthii*, *Cuscuta polygonorum*, *Cynoglossum boreale*, *Cyperus refractus*, *Cyperus retrofractus*, *Cyripedium candidum*, *Cyripedium re-*

ginae, *Dalibarda repens*, *Desmodium humifusum*, *Desmodium pauciflorum*, *Dicentra eximia*, *Draba reptans*, *Eleocharis equisetoides*, *Eleocharis tortilis*, *Elephantopus carolinianus*, *Eriophorum gracile*, *Eriophorum spissum*, *Euphorbia marilandica*, *Galactia volubilis*, *Gentiana linearis*, *Glaux maritima*, *Glyceria borealis*, *Gnaphalium macounii*, *Hieracium canadense* var. *fasciculatum*, *Juncus brachycarpus*, *Juncus eliottii*, *Krigia dandelion*, *Lathyrus ochroleucus*, *Lechea tenuifolia*, *Linnaea borealis*, *Linum intercursum*, *Lobelia dortmanna*, *Malaxis monophyllos*, *Micranthemum micranthemoides*, *Myriophyllum pinnatum*, *Myriophyllum verticillatum*, *Nuphar microphyllum*, *Ophioglossum vulgatum* var. *pyncostichum*, *Oryzopsis pungens*, *Panicum aciculare*, *Panicum xanthophyllum*, *Phlox pilosa*, *Phyla lanceolata*, *Plantago pusilla*, *Platanthera leucophaea*, *Platanthera peramoena*, *Poa autumnalis*, *Poa saltuensis*, *Polemonium vanbruntiae*, *Polygala incarnata*, *Potamogeton obtusifolius*, *Potamogeton richardsonii*, *Prenanthes racemosa*, *Pycnanthemum torrei*, *Ranunculus cymbalaria*, *Ranunculus reptans*, *Ruellia carolinensis*, *Scheuchzeria palustris* ssp. *americana*, *Scirpus maritimus*, *Scirpus pedicellatus*, *Sparganium angustifolium*, *Stachys palustris* var. *homotricha*, *Stellaria pubera*, *Stylosanthes riparia*, *Tomanthera auriculata*, *Tridens chapmanii*, *Verbena simplex*, *Vulpia sciurea*.

RESPONSE: The Department now believes that four species on the proposed list, *Amaranthus pumilus*, *Platanthera leucophaea*, *Polemonium vanbruntiae* and *Tomanthera auriculata*, do not exist in the State and therefore has not adopted them as part of the List. Additional species which are identified by the Natural Heritage Database as historic occurrences are included on the List because they are believed, based on the best available scientific information, to exist in the State and are among the most endangered plant species in the State.

66. COMMENT: The Department should explain its rationale for including *Sagittaria teres* and *Trollius laxus* on the List, since the detailed justification reports for these species fail to indicate how they qualify under N.J.A.C. 7:5C-2.2(a), ii, or iii.

RESPONSE: *Sagittaria teres* and *Trollius laxus* ssp. *laxus* are judged by the Department to each meet N.J.A.C. 7:5C-2.2(a)1, as adequately summarized in the Basis and Background Document. Additional information further justifying the listing of these species is contained in the Natural Heritage Program's database.

67. COMMENT: Four plants should be deleted from the List because they are not recognized as distinct species, subspecies or varieties in many works, including the most recent taxonomic treatment of the U.S. flora by Kartesz and Kartesz (1980) and, therefore, do not qualify under the definition of "species" at N.J.A.C. 7:5C-1.4. 1. *Boltonia asteroides* v. *glastifolia* should be deleted because it is placed with the more frequent *Boltonia asteroides* v. *asteroides*, which is known from over 20 current populations. 2. *Uvularia pudica* v. *nitida* is included because it is deemed globally rare by the State but it should be deleted because it is "lumped" with *Uvularia puberula* which is common in the South. 3. *Nuphar microphyllum* should be deleted because it is included with *Nuphar luteum* ssp. *pumilum* which is rather frequent in New Jersey and also because it is a State historical species. 4. *Xyris flexuosa* should be deleted because (a) it is not recognized as a species but is placed in *X. caroliniana*, a frequent species in the State and (b) also because it is a State historical species.

RESPONSE: The 1980 Kartesz and Kartesz publication is a nomenclature system, not a taxonomic treatment as stated by the commenter. This publication provides no descriptions or keys to identify any plant taxa. While many of the nomenclature changes incorporated in this publication are valid, for the Department to adopt these new names in the absence of technical descriptions or keys would cause needless confusion and possible delays or added financial costs to the endangered species assessments of projects.

The confusion resulting from strictly adhering to Kartesz and Kartesz nomenclature is evidenced by the commenter's statement that *Xyris flexuosa* should be deleted because it is not recognized as a species in their publication but placed by them in *X. caroliniana*. *Xyris flexuosa* is recognized as a full species in Kartesz and Kartesz, but under the name of *Xyris caroliniana*. What is described in current northeastern manuals as *X. caroliniana* is listed under *X. difformis* in Kartesz & Kartesz.

The commenter also is apparently confused with the Kartesz and Kartesz treatment of *Nuphar luteum* ssp. *pumilum* versus *Nuphar microphyllum* as used by the Department. The taxon *N. microphyllum* is recognized by Kartesz and Kartesz but as a subspecies of *Nuphar luteum*.

Concerning *Uvularia pudica* var. *nitida*, the Department believes that this is a valid taxon and follows the treatment used in the regional technical manuals.

The Department is aware that the taxonomy of *Boltonia* is difficult and unsettled, but most of the confusion involves taxa not known to occur in New Jersey. The Department follows Fernald's nomenclature (Gray's Manual of Botany, 8th edition, 1950) for the genus *Boltonia*. In New Jersey the two varieties of *Boltonia asteroides* recognized by Fernald are geographically allopatric, occupy different habitats, and are morphologically distinct. The variety *asteroides* is restricted to a narrow limestone belt running through Sussex and Warren counties and is confirmed extant at less than 20 locations. The variety *glastifolia* is confirmed extant at only two sites on the southern tip of Cape May County and therefore qualifies as endangered under N.J.A.C. 7:5C-2.2(a)4.

68. COMMENT: The Department should not determine what plants are distinct species, subspecies or varieties but should follow one nomenclature system, preferably the most recent one by Kartesz and Kartesz.

RESPONSE: The Kartesz and Kartesz 1980 checklist is outdated and has been superseded by Kartesz' 1990 checklist (in press). The Natural Heritage Program, which is the source of the Department's nomenclatural treatment, follows the 1985 draft of the checklist and will incorporate changes reflected in the 1990 checklist except in instances where doing so would result in needless confusion, or where valid taxonomic disagreement exists. See previous comment for further explanation.

69. COMMENT: Non-native populations of species that occur on the List (for example, *Cercis canadensis*, *Dicentra exima*) should be exempted since they are often found in yards or growing semi-wild near old homesteads.

RESPONSE: The Department agrees and has considered only native populations when evaluating a species' eligibility for inclusion on the List.

70. COMMENT: The listing of *Cryptogramma stelleri* is questionable, as this species is considered extirpated from the single known locality in the State (Montgomery 1989, Snyder 1987) and other extirpated taxa (for example, *Dryopteris celsa*) are not listed.

RESPONSE: The Department believes this species is still extant in New Jersey based on the best available information. The known site is on a fairly high cliff face and is therefore difficult to inventory. It is also believed that this species may be present in this location in its gametophyte stage and would therefore not be easily distinguished from the numerous bryophytes present. It is not the Department's intention to include extirpated plant species on the List.

71. COMMENT: The listing of *Botrychium simplex* var. *simplex* is questionable, as its distinction from var. *augustisegmentum* or var. *tenebrosum* is doubtful, and may represent mere environmental forms that should not be accorded taxonomic recognition.

RESPONSE: The Department has not adopted *Botrychium simplex* var. *simplex* as part of the List since recent data indicates that it is probably only a form of *B. simplex*. The Department disagrees, however, that it cannot be distinguished from var. *angustisegmentum* since this is a variety of a separate species of *Botrychium*, *B. lanceolatum*.

72. COMMENT: *Lygodium palmatum* and *Selaginella rupestris* should be considered for listing because they both occupy endangered habitats and are declining in numbers in the State.

RESPONSE: While both species have declined somewhat in the State, the Department believes that neither species is in immediate jeopardy of extirpation, and both are known from more than six confirmed extant occurrences, with several on State or Federally-protected lands. The Department will continue to monitor both these species, and if their numbers drastically decline, or definable threats to individual occurrences increase, the Department may propose them for listing at that time.

73. COMMENT: The Department should adjust the List based on the imminent publication in the Federal Register of an updated Notice of Review, which includes species "under review" by the Federal government as endangered or threatened. This should result in removal of such reasonably stable and secure species as *Muhlenbergia torreyana* and *Calamovilfa brevifolia*, that are not "endangered" in New Jersey but locally abundant, even though of narrow worldwide range.

RESPONSE: The notice to which the commenter refers was published in the Federal Register on February 21, 1990, approximately one month after the proposed list appeared in the New Jersey Register. The Department is precluded by the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from making the substantial revisions which would be needed to incorporate all the information in the updated Notice of Review as part of the initial adoption of the List. However, the Department has revised the proposed list to reflect the withdrawal of species which were proposed for listing solely on the basis of Federal status and which no longer carry Federal designation. As part of its

ongoing review and revision of the List, the Department will propose recently designated Federal review species for listing in its next revision of the List.

74. COMMENT: The adopted rule at N.J.A.C. 7:5C is inaccurate in indicating that species "under review by the Federal government as endangered or threatened" includes species in status categories of LE, LT, PE, and PT, since only species listed in Categories 1 and 2 of the Notice of Review are considered "under review."

RESPONSE: The Department agrees with the comment. However, it should be noted that this inaccuracy in the adopted rules will not affect the inclusion of a plant species on the List, since both the definition of "endangered species" in the Act and the definition of "endangered" at N.J.A.C. 7:5C-1.4 clearly include Federally listed and proposed endangered and threatened species. This comment will be addressed upon revision of the rules at N.J.A.C. 7:5C.

75. COMMENT: The following eight species should be removed from the List if their inclusion is based solely on Federal status, since the U.S. Fish and Wildlife Service has recently published a revised Notice of Review for Plant Taxa in the Federal Register (55 Fed. Reg. 6184, February 21, 1990) and these species are now designated as Category 3 species (taxa no longer under consideration for listing as endangered or threatened): *Calamovilfa brevipilis*, *Cardamine longii*, *Carex Barrattii*, *Eriocaulon parkeri*, *Isoetes eatonii*, *Muhlenbergia torreyana*, *Polemonium vanbruntiae* and *Schizaea pusilla*.

RESPONSE: Based on N.J.A.C. 7:5C-2.2(a)2, these eight species no longer qualify for listing as endangered. *Cardamine longii* has been retained on the List because it satisfies at least one of the other three criteria for listing species as endangered at N.J.A.C. 7:5C-2.2. For reasons stated earlier, *Isoetes eatonii* and *Polemonium vanbruntiae* have not been designated to the List (see Comments #5 and #43). The remaining five species (*Calamovilfa brevipilis*, *Carex barrattii*, *Eriocaulon parkeri*, *Muhlenbergia torreyana* and *Schizaea pusilla*) have not been adopted as part of the List because of their change in Federal status and because they do not qualify as endangered under any other criteria at N.J.A.C. 7:5C-2.2.

76. COMMENT: The following new species were added to the revised Notice of Review for Plant Taxa in the Federal Register (55 Fed. Reg. 6184, February 21, 1990), and should be considered species now "under review" in status category 2 and eligible for addition to the List pursuant to N.J.A.C. 7:5C-2.2(a)2: *Claytonia* sp., *Desmodium humifusum*, *Liatris borealis*, *Potamogeton confervoides* and *Verbena riparia*. However, occurrence of the latter species in New Jersey is questionable.

RESPONSE: The notice to which the commenter refers was published in the Federal Register on February 21, 1990, approximately one month after the proposed list appeared in the New Jersey Register. The Department is precluded by the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from making the substantial revisions which would be needed to incorporate all the information in the updated notice of Review as part of the initial adoption of the List. As part of its ongoing review and revision of the List, the Department will propose recently listed Federal review species native to the State for listing in its next revision of the List.

The Department has already proposed and adopted *Desmodium humifusum* to the List because it qualifies as endangered under both N.J.A.C. 7:5C-2.2(a)3 and (a)4.

77. COMMENT: The following nine species of the genus *Sphagnum* meet the criteria for S1 or SH status in the Natural Heritage Database and are recommended for addition to the List: *S. austinii*(SH), *S. angustifolium*, *S. centrale*, *S. contortum*, *S. macrophyllum* var *floridanum*, *S. platyphyllum*, *S. riparium*, *S. strictum* and *S. subsecundum*.

RESPONSE: Because the term "plant" is defined at N.J.A.C. 7:5C-1.4 as "any member of the Plant Kingdom," the Endangered Plant Species Program rules do not preclude the listing of bryophytes as endangered. However, the Department's information on bryophytes is substantially more limited than the information available on vascular plants. Therefore, given the time constraints under which it was operating in developing the proposed list, the Department focused its efforts on vascular plants and was unable to adequately evaluate the status of the bryophytes in time to include these species as part of the proposed list. The Department now feels that these nine bryophytes of the genus *Sphagnum* currently qualify for listing under criteria at N.J.A.C. 7:5C-2.2. However, the Department is precluded by N.J.A.C. 7:5C-2.1(c) and the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., from adding these or any other species to the List as part of this adoption, without prior public notice and the opportunity for public comment. As part of

its ongoing review and revision of the List, and in the event that the status of these species remains unchanged, the Department intends to propose these nine bryophyte species for listing in its next revision of the List.

78. COMMENT: The Moccasin-Flower or Pink Lady's Slipper (Orchid Family) deserves protection and preservation and should be added to the List.

RESPONSE: Species meeting criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. The commenter has not demonstrated how this species meets these criteria. The pink lady's slipper (*Cypripedium acaule*) is currently known from more than 100 confirmed extant occurrences statewide, many of which occur on protected lands. Therefore the Department does not currently classify these species as endangered in the State.

Summary of Agency-Initiated Changes:

The Department has made the following changes upon adoption of the Endangered Plant Species List:

1. *Potamogeton pusillus* var *gemmiparus* has not been adopted as part of the List because the New Jersey record for this species has been determined to be based on a misidentification and the taxa is therefore not known to occur in the State.
2. The Department has not adopted *Pycnanthemum clinopodioides* as part of the List due to the uncertain taxonomic status of this taxon. Pending further review by the Natural Heritage Program, this species may or may not be repropoed for listing as endangered.
3. Recent examination of New Jersey specimens of *Spiraea alba* by the Natural Heritage Program has shown that substantial uncertainty exists in accurately identifying this taxon in the State. Therefore, the Department has not adopted this taxon as part of the List. Pending further review by the natural Heritage Program, this taxon may or may not be repropoed for listing as endangered.
4. Further investigation by the Natural Heritage Program has shown that insufficient evidence exists to designate *Strophostyles leiosperma* as a native species in New Jersey. Therefore, it has not been adopted as part of the List because it does not meet the definition of "endangered species" at N.J.A.C. 7:5C-1.4.

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

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

1. Scientific Name	Common Name
<i>Aeschynomene virginica</i>	sensitive joint-vetch
<i>Agrimonia microcarpa</i>	small-fruited groovebar
<i>Agropyron trachycaulum</i>	slender wheatgrass
<i>Alisma triviale</i>	large water-plantain
[<i>Amaranthus pumilus</i>]	sea-beach pigweed]
<i>Amelanchier humilis</i>	running serviceberry
<i>Andromeda glaucophylla</i>	bog rosemary
<i>Anemone cylindrica</i>	long-headed anemone
<i>Aplectrum hyemale</i>	puttyroot
<i>Arabis drummondii</i>	Drummond's rock cress
<i>Arceuthobium pusillum</i>	dwarf mistletoe
<i>Arenaria stricta</i>	rock sandwort
<i>Aristida lanosa</i>	wooly three-awned grass
<i>Armoracia aquatica</i>	lake cress
<i>Asimina triloba</i>	pawpaw
<i>Asplenium bradleyi</i>	Bradley's spleenwort
<i>Asplenium pinnatifidum</i>	lobed spleenwort
<i>Aster borealis</i>	rush aster
<i>Aster lucidulus</i>	shining aster
<i>Aster praectus</i> var <i>angustior</i>	willow-leaved aster
<i>Aster pringlei</i>	Pringle's aster
<i>Aster radula</i>	low rough aster
<i>Athyrium pycnocarpon</i>	glade fern
<i>Boltonia asteroides</i> var <i>glastifolia</i>	boltonia
<i>Botrychium multifidum</i>	leathery grape-fern
[<i>Botrychium simplex</i> var <i>simplex</i>]	little grape-fern]
<i>Bouteloua curtipendula</i>	side-oats gramma grass
<i>Breweria pickeringii</i> var <i>caesariense</i>	Pickering's morning-glory
<i>Cacalia atriplicifolia</i>	pale indian plantain

ADOPTIONS

Calamagrostis pickeringii
 *[Calamovilfa brevipilis
 Cardamine longii
 Cardamine pratensis var palustris
 Cardamine rotundifolia
 Carex alopecoidea
 Carex aquatilis
 Carex backii
 *[Carex barrattii
 Carex brunnescens
 Carex bushii
 Carex crawei
 Carex cumulata
 Carex deweyana
 Carex foenea
 Carex haydenii
 Carex jamesii
 Carex leptoneuria
 Carex limosa
 Carex louisianica
 Carex oligocarpa
 Carex plantaginea
 Carex polymorpha
 Carex pseudocyperus
 Carex tuckermanii
 [Cares] *Carex* woodii
 Centrosema virginianum
 Ceratophyllum echinatum
 Cercis canadensis
 Chenopodium rubrum
 Cinna latifolia
 Cirsium virginianum
 *[Claytonia virginica forma
 hammondiae
 Cleistes divaricata
 Clitoria mariana
 Commelina erecta
 Conioselinum chinense
 [Convolvulus] *Convolvulus*
 spithameus
 Corema conradii
 Crataegus calpodendron
 Crataegus succulenta
 Cryptogramma stelleri
 Cuscuta cephalanthii
 Cuscuta polygonorum
 Cynoglossum boreale
 Cyperus engelmannii
 Cyperus lancastriensis
 Cyperus polystachyos var texensis
 Cyperus pseudovegetus
 Cyperus refractus
 Cyperus retrofractus
 Cypridium candidum
 Cypridium reginae
 Dalibarda repens
 Desmodium humifusum
 Desmodium pauciflorum
 Desmodium sessilifolium
 *[Desmodium strictum
 Dicentra canadensis
 Dicentra eximia
 Diodia virginiana
 Draba reptans
 Eleocharis brittonii
 Eleocharis compressa
 Eleocharis equisetoides
 Eleocharis melanoscarpa
 Eleocharis pauciflora var fernaldii
 Eleocharis tortilis
 Eleocharis verrucosa
 Elephantopus carolinianus
 Pickering's reedgrass
 pine barren reedgrass]*
 Long's bitter cress
 cuckoo flower
 round-leaved water-cress
 foxtail sedge
 water sedge
 Back's sedge
 Barratt's sedge]*
 brownish sedge
 Bush's sedge
 Crowe's sedge
 clustered sedge
 Dewey's sedge
 dry-spiked sedge
 cloud sedge
 Nebraska sedge
 finely-nerved sedge
 mud sedge
 Louisiana sedge
 few-fruited sedge
 plantain-leaved sedge
 variable sedge
 cyperus-like sedge
 Tuckerman's sedge
 Wood's sedge
 spurred butterfly pea
 spiny coontail
 redbud
 red goosefoot
 slender wood reedgrass
 Virginia thistle
 Hammond's yellow spring beauty]*
 spreading pogonia
 butterfly pea
 slender dayflower
 hemlock-parsley
 erect bindweed
 broom crowberry
 pear hawthorn
 fleshy hawthorn
 slender rock-brake
 button-bush dodder
 smartweed dodder
 northern wild comfrey
 Engelmann's flatsedge
 Lancaster flatsedge
 coast flatsedge
 marsh flatsedge
 reflexed flatsedge
 rough flatsedge
 small white lady's-slipper
 showy lady's-slipper
 robin-run-away
 trailing tick-trefoil
 few-flowered tick-trefoil
 sessile-leaved tick-trefoil
 pineland tick-trefoil]*
 squirrel-corn
 wild bleeding-hearts
 larger buttonweed
 Carolina whitlow-grass
 Britton's spikerush
 flat-stemmed spikerush
 knotted spikerush
 black-fruited spikerush
 few-flowered spikerush
 twisted spikerush
 spikerush
 elephant's foot

ENVIRONMENTAL PROTECTION

Ellisia nyctelea
 Equisetum pratense
 Equisetum variegatum
 *[Eriocaulon parkeri
 Eriophorum gracile
 Eriophorum spissum
 Eriophorum tenellum
 Eupatorium capillifolium
 Eupatorium resinum
 Euphorbia marilandica
 Euphorbia purpurea
 Fraxinus profunda
 Galactia volubilis
 Galium hispidulum
 Galium labradoricum
 Galium trifidum
 Gaultheria hispidula
 Gentiana linearis
 Geum vernum
 Glaux maritima
 Glyceria borealis
 Glyceria grandis
 Gnaphalium macounii
 Goodyera tessellata
 Gymnopogon brevifolius
 Helonias bullata
 Hemicarpha micrantha
 Hieracium canadense var fasciculatum
 Hottonia inflata
 Hybanthus concolor
 Hydrocotyle *[ranunculoides]*
 ranunculoides
 Hydrophyllum canadense
 Hypericum majus
 Hypericum prolificum
 Ilex montana
 Isoetes macrospora
 Isoetes melanopoda
 *[Isoetes x eatonii
 Isotria medeoloides
 Jeffersonia diphylla
 Juncus brachycarpus
 Juncus caesariensis
 Juncus coriaceous
 Juncus eliottii
 Kalmia polifolia
 Krigia dandelion
 Kuhnia eupatorioides
 Lathyrus ochroleucus
 Lathyrus venosus
 Lechea tenuifolia
 Limosella subulata
 Linnaea borealis
 Linum intercursum
 Linum sulcatum
 Listera cordata
 Listera smallii
 Lobelia boykinii
 Lobelia dortmanna
 Lonicera canadensis
 Luzula acuminata
 Lycopodium annotinum
 Malaxis monophyllos
 Manisuris rugosa
 Megalodonta beckii
 Melanthium virginicum
 Micranthemum micranthemoides
 Miliium effusum
 Monarda clinopodia
 Muhlenbergia capillaris
 *[Muhlenbergia torreyana
 Myriophyllum pinnatum
 Aunt Lucy
 meadow horsetail
 variegated horsetail
 Parker's pipewort]*
 slender cottongrass
 sheathed cottongrass
 rough cottongrass
 dog-fennel thoroughwort
 pine barren boneset
 Maryland spurge
 glade spurge
 pumpkin ash
 downy milk-pea
 coast bedstraw
 Labrador marsh bedstraw
 small bedstraw
 creeping snowberry
 narrow-leaved gentian
 spring avens
 sea-beach milkwort
 small floating mannagrass
 American mannagrass
 clammy everlasting
 checkered rattlesnake plantain
 short-leaved skeleton grass
 swamp-pink
 Hemicarpha
 Canada hawkweed
 featherfoil
 green violet
 floating pennywort
 broad-leaved waterleaf
 larger Canadian St. John's-wort
 shrubby St. John's-wort
 mountain holly
 lake quillwort
 black-based quillwort
 Eaton's quillwort]*
 small whorled pogonia
 twinleaf
 short-fruited rush
 New Jersey rush
 awl-leaved rush
 Elliott's rush
 pale laurel
 dwarf dandelion
 false boneset
 pale vetchling peavine
 smooth veiny peavine
 slender pinweed
 mudweed
 twin-flower
 Florida yellow flax
 grooved yellow flax
 heart-leaved twayblade
 kidney-leaved twayblade
 Boykin's lobelia
 water lobelia
 fly honeysuckle
 hairy woodrush
 stiff clubmoss
 white adder's-mouth
 wrinkled jointgrass
 water-marigold
 Virginia bunchflower
 Nuttall's mudwort
 tall millet grass
 basil bee-balm
 long-awned smoke grass
 pine barren smoke grass]*
 cut-leaved water-milfoil

ENVIRONMENTAL PROTECTION

ADOPTIONS

Myriophyllum tenellum	slender water-milfoil	Ruellia caroliniensis	Carolina petunia
Myriophyllum verticillatum	whorled water-milfoil	Sacciolepis striata	American cupscale
Narthecium americanum	bog asphodel	Sagittaria australis	southern arrow head
Nelumbo lutea	American lotus	Sagittaria cuneata	arum-leaved arrow head
Nuphar microphyllum	small yellow pond lily	Sagittaria teres	slender arrow head
Oenothera humifusa	sea-side evening primrose	Salix pedicellaris	bog willow
Onosmodium virginianum	Virginia false-gromwell	Sanicula trifoliata	large-fruited sanicle
Ophioglossum vulgatum var pycnostichum	sheathed adder's tongue	Scheuchzeria palustris ssp americana	arrow-grass
Oryzopsis asperifolia	white-grained mountain ricegrass	Schizachne purpurascens	purple oats
Oryzopsis pungens	slender mountain ricegrass	*[Schizaea pusilla	curly grass fern]*
Panicum aciculare	bristling panic grass	Schwalbea americana	chaffseed
Panicum boreale	northern panic grass	Scirpus longii	Long's bulrush
Panicum flexile	wiry panic grass	Scirpus maritimus	salt marsh bulrush
Panicum hirtii	Hirsts' panic grass	Scirpus microcarpus	barber pole bulrush
Panicum xanthophysum	slender panic grass	Scirpus pedicellatus	stalked bulrush
Phlox pilosa	downy phlox	Scirpus torreyi	Torrey's bulrush
Phyla lanceolata	fog fruit	Scleria verticillata	whorled nut rush
Pinus pungens	table mountain pine	Scutellaria leonardii	small skullcap
Pinus resinosa	red pine	Silene nivea	snowy campion
Plantago pusilla	slender plantain	Sisyrinchium montanum var crebrum	strict blue-eyed grass
Platanthera flava var flava	southern rein orchid	Solidago rigida	stiff goldenrod
Platanthera integra	yellow fringeless orchid	Sparganium angustifolium	narrow-leaved bur-reed
[Platanthera leucophaea	prairie white-fringed orchid]	Sparganium minimum	small bur-reed
Platanthera nivea	snowy orchid	*[Spiraea alba	narrow-leaved meadow sweet]*
Platanthera orbiculata	large round-leaved orchid	Spiranthes laciniata	lace-lip ladies'-tresses
Platanthera peramoena	purple fringeless orchid	Sporobolus neglectus	puff-sheathed dropseed
Pluchea foetida	stinking fleabane	Stachys palustris var homotricha	marsh hedge-nettle
Poa autumnalis	autumn bluegrass	Stellaria calycantha	northern stichwort
Poa saltuensis	bluegrass	Stellaria pubera	star chickweed
Polemonium reptans	Greek valerian	Streptopus amplexifolius	white twisted-stalk
[Polemonium vanbruntiae	Jacob's ladder]	Streptopus roseus	rosy twisted-stalk
Polygala incarnata	pink milkwort	*[Strophostyles leiosperma	smooth fuzzy bean]*
Polygala senega	Seneca snakeroot	Stylosanthes riparia	riparian pencil flower
Polygonum densiflorum	stout smartweed	Thuja occidentalis	northern white cedar
Polygonum glaucum	sea-beach knotweed	Tiarella cordifolia	foamflower
Polymnia uvedalia	bearsfoot	Tofieldia racemosa	false asphodel
Potamogeton alpinus	northern pondweed	*[Tomanthera auriculata	eared false foxglove]*
Potamogeton illinoensis	Illinois pondweed	Triadenum fraseri	Fraser's St. John's-wort
Potamogeton obtusifolius	obtuse-leaved pondweed	Triadenum walteri	Walter's St. John's-wort
[Potamogeton pusillus var gemmiparis	budding pondweed]	Trichomanes sp 1	filmy fern
Potamogeton praelongus	white-stemmed pondweed	Tridens chapmanii	Chapman's redtop
Potamogeton richardsonii	Richardson's pondweed	Triglochin maritimum	sea-side arrow-grass
Potamogeton zosteriformis	flat-stemmed pondweed	Triosteum augustifolium	narrow-leaved tinker's-weed
Potentilla palustris	marsh cinquefoil	Triphora trianthophora	three birds orchid
Potentilla tridentata	three-toothed cinquefoil	Trollius laxus ssp laxus	spreading globe flower
Prenanthes racemosa	smooth rattlesnake root	Utricularia biflora	two-flowered bladderwort
Prunus alleghaniensis	Alleghany plum	Utricularia minor	lesser bladderwort
Prunus angustifolia	Chickasaw plum	Utricularia olivacea	dwarf white bladderwort
Ptelea trifoliata	wafer ash	Utricularia resupinata	reversed bladderwort
[Pycnanthemum clinopodioides	basil mountain mint]	Uvularia pudica var nitida	pine barren bellwort
Pycnanthemum torrei	Torrey's mountain mint	Valerianella radiata	beaked corn-salad
Quercus imbricaria	shingle oak	Verbena simplex	narrow-leaved vervain
Quercus lyrata	overcup oak	Vernonia glauca	broad-leaved ironweed
Quercus nigra	water oak	Veronica catenata	speedwell
Ranunculus allegheniensis	Allegheny mountain crowfoot	Viburnum alnifolium	witch hobble
Ranunculus cymbalaria	sea-side crowfoot	Vicia caroliniana	Carolina wood vetch
Ranunculus fascicularis	early buttercup	Viola canadensis	Canada violet
Ranunculus reptans	creeping buttercup	Vitis novae-angliae	New England grape
Rhexia aristosa	awned meadowbeauty	Vulpia sciurea	squirrel fescue
Rhododendron atlanticum	dwarf azalea	Wolffiella floridana	Florida bogmat
Rhododendron canadense	rhodora	Xyris fimbriata	fringed yellow-eyed grass
Rhynchospora capillacea	capillary beaked rush	Xyris flexuosa	sand yellow-eyed grass
Rhynchospora filifolia	thread-leaved beaked rush	Xyris montana	northern yellow-eyed grass
Rhynchospora globularis	grass-like beaked rush		
Rhynchospora glomerata	clustered beaked rush		
Rhynchospora knieskernii	Knieskern's beaked rush		
Rhynchospora microcephala	small-headed beaked rush		
Rhynchospora rariflora	rare-flowering beaked rush		
Ribes glandulosum	skunk currant		
Ribes missouriense	Missouri gooseberry		
Rubus canadensis	smooth blackberry		

(a)

**NEW JERSEY WATER SUPPLY AUTHORITY
Schedule of Rates, Charges and Debt Service
Assessments for the Sale of Water from the
Delaware and Raritan Canal—Spruce Run/Round
Valley Reservoirs System**

Adopted Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9

Proposed: December 18, 1989 at 21 N.J.R. 3836(a).

Adopted: May 11, 1990 by the New Jersey Water Supply Authority, Judith A. Yaskin, Chairman and Commissioner, Department of Environmental Protection.

Filed: May 11, 1990 as R.1990 d.294, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 052-89-11.

Effective Date: June 4, 1990.

Operative Date: July 1, 1990.

Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-2. In accordance with N.J.A.C. 7:11-2.11(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustment to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water customers and Public Advocate's office as required by N.J.A.C. 7:11-2.11(a)4. This meeting was held on January 19, 1990 at the Authority's Administration Building conference room and was attended by representatives from the Elizabethtown Water Company and Middlesex Water Company. A representative from the Public Advocate, Division of Rate Counsel did not attend.

A public hearing concerning this rule was held on February 15, 1990 to provide interested persons the opportunity to present testimony. Notice of the public hearing was published in the New Brunswick Home News, Trenton Times, Newark Star Ledger, Asbury Park Press and Hunterdon County Democrat. One individual attended the hearing and no one presented comments. No written comments were received during the public comment period which closed on March 23, 1990. The oral comments received at the pre-public hearing meeting are summarized below:

COMMENT: It is likely that the Authority will receive unanticipated revenues during Fiscal Year 1991 through the sale of additional water. Can these revenues be used to reduce the proposed water rate?

RESPONSE: For rate setting purposes, the Authority cannot count on unanticipated revenues. Any unanticipated revenues can, however, be used to help stabilize the rates for the following fiscal year.

COMMENT: Is it likely that the Manasquan Reservoir System will be supplying water on July 1, 1990 and contributing revenue to help offset the Authority's headquarters general and administrative expenses?

RESPONSE: It is anticipated that the Manasquan Reservoir System will commence operations on July 1, 1990 as scheduled. However, as with any new system, problems could develop which might delay the start of operations. Under the circumstances it would be prudent to adopt both Operations and Maintenance Expenses components (that is, with and without the Manasquan Reservoir System in operation) as proposed.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-2.2(b), 7:11-2.3(d) and 7:11-2.9(a)1 and 2

Due to lower than projected operational costs for Fiscal Year 1990, as well as greater than projected revenues and interest earnings, the projected operations and maintenance component of the rate schedule is changed in this adoption from \$111.88 as the charge per million gallons set forth in the proposed rule to \$104.26 per million gallons if the Manasquan Reservoir System is not operational and from \$104.06 to \$96.45 per million gallons if the Manasquan Reservoir System is operational, a savings of \$7.62 per million gallons. This reduced rate is reflected both at N.J.A.C. 7:11-2.2(b)1 and 2 which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-2.9(a)1 and 2 which references N.J.A.C. 7:11-2.2 and sets forth the operations and maintenance charge for standby service users.

As the purpose behind proposed N.J.A.C. 7:11-2.1(d) was to advise the public of the dates for rate determination and notification, its adoption as a permanent part of the rule would serve no purpose. Therefore, the proposed subsection is deleted upon adoption.

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

7:11-2.1 General provisions

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

[(d) The rate charged under N.J.A.C. 7:11-2.2(b) and 2.9(a) will be determined by the Authority at the April 2, 1990 monthly business meeting. All purchasers will be notified of the rate determination by regular mail by May 2, 1990.]

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of 152.362 million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

1. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Allocation Million Gallons per Day (MGD)	Rate/Million Gallons
	[\$111.88] *\$104.26*

2. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Allocation Million Gallons per Day (MGD)	Rate/Million Gallons
	[\$104.06] *\$96.45*

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.801 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation Million Gallons per Day (MGD)	Rate/Million Gallon
7/1/90 to 6/30/2002		\$13.90

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of 152.292 million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation Million Gallons per Day (MGD)	Rate/Million Gallon
7/1/90 to 10/30/2006		\$33.28

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of *[\$152.926]* ***\$152.292*** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation Million Gallons per Day (MGD)	Rate/Million Gallon
7/1/90 to 6/30/92		\$44.97
7/1/92 to 6/30/93		\$55.04
7/1/93 to 6/30/94		\$56.88

7:11-2.9 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$111.88]* *\$104.26* plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$104.06]* *\$96.45* plus annual debt service assessments rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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2. For Standby Contracts within the Raritan River Basin:

i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$111.88]* *\$104.26* plus annual debt service assessment rate for the 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$104.06]* *\$96.45* plus annual debt service assessments rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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(a)

**NEW JERSEY WATER SUPPLY AUTHORITY
Schedule of Rates, Charges and Debt Service
Assessments for the Sale of Water from the
Manasquan Reservoir Water Supply System**

Adopted New Rules: N.J.A.C. 7:11-4

Proposed: December 18, 1989 at 21 N.J.R. 3838(a).

Adopted: May 11, 1990 by the New Jersey Water Supply Authority, Judith A. Yaskin, Chairman and Commissioner, Department of Environmental Protection.

Filed: May 11, 1990 as R.1990 d.293, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-1 et seq., specifically 58:1B-7.

DEP Docket Number: 056-89-11.

Effective Date: June 4, 1990.

Operative Date: July 1, 1990.

Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting rules at N.J.A.C. 7:11-4. The Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers and interested parties including the Public Advocate's Office and the Board of Public Utilities. This meeting was held on January 5, 1990 at the Allaire State Park Headquarters Building conference room, Farmingdale, New Jersey, and was attended by 16 parties including a representative from the Board of Public Utilities. A representative from the Public Advocate, Division of Rate Counsel did not attend.

A public hearing concerning these rules was held on February 1, 1990 at the Howell Township Recreational Building, Howell, New Jersey, to provide interested persons the opportunity to present testimony. Notice of the public hearing was published in the Trenton Times, Newark Star Ledger, and Asbury Park Press. The notice was also mailed to the contractual water purchasers and approximately 350 interested parties on the Authority's mailing list including the Public Advocate's Office and the Board of Public Utilities. Seventeen individuals attended the hearing including two representatives from the Board of Public Utilities and five attendees presented comments. Five letters were also received during the public comment period which closed on March 9, 1990. The written and oral comments received are summarized below:

COMMENT: The New Jersey-American Water Company submitted two letters containing a total of 25 specific requests for additional data.

RESPONSE: The Authority provided detailed written data to the New Jersey-American Water Company. The two letters and the Authority's responses were incorporated in the hearing record.

COMMENT: The Adelpia Water Company submitted three letters containing a total of 14 specific requests for additional data.

RESPONSE: The Authority provided detailed written data to the Adelpia Water Company. The three letters and the Authority's responses were incorporated in the hearing record.

COMMENT: The New Jersey American Water Company questioned the necessity of a staff totaling 25 positions. They maintained that two Operator positions are unnecessary for coverage of full time shift positions and that the Assistant Heavy Equipment Operator and Equipment Operator positions should be eliminated and the work accomplished by hiring private contractors.

RESPONSE: The Authority has judged it to be more cost effective to provide five people for each rotating shift position as proposed.

The Building and Grounds maintenance staff is comprised of five people (working foreman, one assistant heavy equipment operator, one equipment operator and two maintenance workers). The Authority maintains that the expected significant workload would be most effectively covered by keeping this limited full time staff busy at a variety of tasks throughout the year. The Authority has determined that it is not cost effective to obtain several different outside contractors for specific building and grounds maintenance activities.

COMMENT: The New Jersey American Water Company questioned the Authority's allocation of staff salaries between the Reservoir System and the Treatment Plant/Transmission System and proposed a different allocation of staff salaries.

RESPONSE: The Company has expressed the view that a greater percent of staff time should be allocated to the Treatment Plant. The Authority believes that the analysis prepared by the Authority staff supports the judgment made in allocating the staff time between the two systems. These judgments were arrived at through a thorough understanding of the needs of each system and the levels of effort required for proper management, operation and maintenance.

COMMENT: Detailed work papers and schedules should be maintained to support salary costs and allocation of costs between the Reservoir System and the Treatment Plant/Transmission System.

RESPONSE: The Authority has directed its consultant, Coopers & Lybrand, to develop a system to enable the Authority to collect employee time and other productivity data. This actual operating information, which will be audited by the Auditors each year, will support future cost allocations between the Reservoir System and the Treatment Plant/Transmission System.

COMMENT: The New Jersey American Water Company and Adelpia Water Company stated that the Headquarters General and Administrative Expenses should be allocated on the basis of salaries or otherwise and not on the basis of the value of water contracts.

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RESPONSE: As indicated in a November 27, 1989 letter from the Authority's consultants, Coopers & Lybrand, only a small portion of the allocated Headquarters General Administrative Expenses (\$29,556 out of \$361,990) is directly related to personnel. Therefore, the Authority concurs with the judgment of Coopers & Lybrand that the use of the value of water contracts is a reasonable and equitable basis for allocating these costs.

COMMENT: The New Jersey American Water Company indicated that the Monmouth County Improvement Authority should pay for the use of the land upon which the MCIA treatment facility is being constructed and that they should pay a proportionate share of the cost of the Reservoir Administration facilities.

RESPONSE: All of the land used for the intake facilities, the pipeline and the reservoir construction was acquired by the State of New Jersey in previous years using State bond money and there is no obligation on the Authority or its customers to repay any of the money used to acquire the property.

With this in mind, the Authority previously leased the water treatment plant property to the Monmouth County Improvement Authority (MCIA) for \$1 per year. The water treatment plant will not be occupying a significant amount of space in the Administration building and therefore the Authority does not agree that the MCIA should pay for the space.

It should also be noted that the New Jersey American Water Company has been permitted to construct, without charge, their own 36-inch force main and meter vault on Authority property and the Company has also been provided with land for the installation of the Company's two 15 million gallon per day (mgd) pumping units within a below ground concrete structure. This expensive structure was likewise enlarged by the Authority to accommodate New Jersey Americans' pumping unit, controls and piping.

All of the actions taken by the Authority regarding the use of the property by the MCIA and the New Jersey American Water Company are considered to be fair and reasonable and consistent with the objective of providing a reliable water supply to the region.

COMMENT: The New Jersey American Water Company indicated that the Howell Township MUA should pay for the avoided costs due to their being permitted to connect to the Reservoir force main.

RESPONSE: The Authority does not agree that the Howell Township MUA should pay for the avoided costs due to their being permitted to connect to the Reservoir force main. The Authority's 66-inch force main was under contract before the MUA decided to construct their own plant. The Authority has allowed the New Jersey American Water Company the use of intake property and structure without charge and considers it reasonable to allow the MUA to use a connection off of the pipeline without any payment for this right.

COMMENT: The New Jersey American Water Company stated that the Monmouth County Parks Commission should pay for the recreational use of the Reservoir site to offset the Authority's costs of owning, maintaining and insuring the property.

RESPONSE: The Authority's lease agreement with the Monmouth County Parks Commission makes available the Reservoir site for public recreational use. This agreement was one of the considerations in connection with the Authority obtaining an easement for the construction of the 66-inch pipeline across the Park Commission's Howell Golf Course and the availability of this route saved the water users a considerable amount of money. The Authority considers it to be in the public interest to make these valuable recreational opportunities available. The Authority does not agree that the County should pay for the recreational use of the Reservoir site. Furthermore, aside from the embankment areas, the wetland areas, and the perimeter drain, the County will at its own expense keep and maintain the recreational areas and supervise and police the use of the facilities.

COMMENT: The New Jersey American Water Company recommended that a Manasquan Advisory Committee be formed.

RESPONSE: Section 3 of the water purchase contracts contains a provision for the creation of an Advisory Committee.

COMMENT: How will the Authority evaluate for future rate adjustments the allocation factors for Headquarters General and Administrative Expenses and how will the appropriate credits and debits be implemented?

RESPONSE: The Authority has recently requested that Coopers & Lybrand prepare a report to define the type of records which should be maintained by the affected units covered under the Headquarters G/A expense categories. After the close of each fiscal year the auditors will provide the Authority with their findings as to the adjustment of the

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allocation factors, if any, and the actual audited expenditures for the fiscal year.

The audit report is available during September (for the previous fiscal year ending on the preceding June 30). Each September the Authority also will be completing the preparation of the proposed budgets for the next fiscal year starting on the following July 1. The adjusted allocation factors, if any, and the audited expenditures for the previous fiscal year will be used to establish a debit or credit for each system. This debit or credit will be applied to the budgets being prepared each September for the following fiscal year starting on July 1.

COMMENT: Has the Authority ever changed a proposed rate as a result of outsiders' input?

RESPONSE: This has occurred often in the Authority's Raritan Basin System.

COMMENT: Who makes the decision to change the proposed rates?

RESPONSE: The appointed hearing officers would make a recommendation for consideration by all of the Commissioners.

COMMENT: Presently, there is 14.505 mgd under contract. What would happen if one or more of the water purchasers should break their contracts?

RESPONSE: Basically others must temporarily pick up the burden. However, the Authority is committed to enforcing all of its contracts.

COMMENT: Suppose the Authority cannot supply water for a month and there are no revenues. How would the Authority continue its operations?

RESPONSE: The budget contains an Operations and Maintenance Reserve Fund which would cover three months of operation.

Summary of Agency-Initiated Changes

N.J.A.C. 7:11-4.3(c) and 7:11-4.9

Due to a greater than projected Operations and Maintenance Expense Component sales base for Fiscal Year 1991, the projected Operations and Maintenance Expense Component of the rate schedule is changed in this adoption from \$351.35 as the charge per million gallons set forth in the proposed rules to \$345.09 per million gallons, a savings of \$6.26 per million gallons. This reduced rate is reflected both at N.J.A.C. 7:11-4.3(c) which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-4.9 which references N.J.A.C. 7:11-4.3 and 4.4 and sets forth the operations and maintenance charge for standby service users.

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

SUBCHAPTER 4. SCHEDULE OF RATES, CHARGES AND DEBT SERVICE ASSESSMENTS FOR THE SALE OF WATER FROM THE MANASQUAN RESERVOIR WATER SUPPLY SYSTEM

7:11-4.1 General provisions

(a) The schedule of rates, charges and debt service assessments for the sale of water from the Manasquan Reservoir System established in this subchapter shall constitute the rate schedule for the Manasquan Reservoir System (rate schedule).

(b) The rates, charges and debt service costs contained in this subchapter shall be paid for raw water, withdrawn or allocated from the Manasquan Reservoir System. The rates, charges and debt service costs set forth herein shall be incorporated in all water purchase contracts.

(c) The rates, charges and debt service costs established in this subchapter provide revenue to cover the annual requirements of the Manasquan Reservoir System. These annual requirements consist of the aggregate amount required during each annual payment period to pay all operation and maintenance expenses, debt service costs and special or reserve fund requirements of the Manasquan Reservoir System.

(d) The total rate charged under this rate schedule shall include the operations and maintenance expenses component under N.J.A.C. 7:11-4.3, and the debt service costs under N.J.A.C. 7:11-4.4.

(e) This rate schedule complements N.J.A.C. 7:11-5 which establishes rules for the use of water from the Manasquan Reservoir System.

7:11-4.2 Definitions

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

“Authority” means the New Jersey Water Supply Authority established pursuant to N.J.S.A. 58:1B-1 et seq.

“Delayed water purchase contract” means a water purchase contract entered into for uninterruptible service, commencing subsequent to the initial operation date of the Manasquan Reservoir System.

“Delayed water purchase surcharge” means any amount by which the debt service cost component of payments to be made under any delayed water purchase contract for uninterruptible service exceeds the debt service cost component payable by initial water purchasers.

“Force Majeure” means acts of God, strikes, lockouts or other industrial disturbances, orders of the Government of the United States or the State or any agency or instrumentality thereof or of any civil or military authority, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, explosions, breakage or accidents to machinery, pipelines, dams or canals, partial or entire failure of water supply, arrests, civil disturbances, acts of any public enemy, and any other causes not reasonably within the control of the party claiming inability to timely comply with its obligations.

“Initial water purchase contract” means a water purchase contract providing for uninterruptible service commencing on the initial operation date of the Manasquan Reservoir System.

“Manasquan Reservoir Intake Facility” means the location on the Manasquan River at Hospital Road in the Township of Wall, County of Monmouth, where water is diverted by the Authority from the Manasquan River to supply purchasers or for pumping to the Manasquan Reservoir System for storage.

“Manasquan Reservoir System” means the water supply system constructed by the Authority in Monmouth County, the major components of which are a 740 acre, four-billion gallon reservoir facility in Howell Township, a raw water intake facility and pump station located adjacent to the Manasquan River in Wall Township, and a five mile transmission pipeline connecting the reservoir and the intake facility, together with all component plants, structures and other real or personal property, and additions and improvements thereto.

“Point of delivery” means the location where the Manasquan Reservoir System’s delivery equipment interconnects with the purchaser’s interconnection system.

“Purchaser” means the party who contracts with the Authority to purchase water from the Manasquan Reservoir System.

“Purchaser interconnection system” means the buildings, structures, piping, valves, meters and other control apparatus and equipment, located on properties or facilities owned by the Authority, installed by or on behalf of, and owned by, the purchaser to connect purchasers’ water supply system with the Manasquan Reservoir System.

“Short-term service” means the supply of Manasquan Reservoir System water for interim or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable water, provided on a non-guaranteed or interruptible basis.

“Standby service” means the supply of Manasquan Reservoir System water for certain occasional uses, such as fire protection or other emergencies, natural or otherwise.

“Uninterruptible service” means the supply of Manasquan Reservoir System water which the purchaser is authorized to continuously withdraw without interruption, for public water supply purposes.

7:11-4.3 Operations and maintenance expense component

(a) The operations and maintenance expense component per million gallons set forth in (c) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the Manasquan Reservoir System, and minor additions or improvements thereof or thereto.

(b) The operation and maintenance expense component of all rates is based upon the point of delivery being located at the Authority’s Manasquan River intake facility, and any purchaser taking delivery

of Manasquan Reservoir System water at a different point of delivery will be assessed an additional charge to cover additional operation and maintenance expense associated with establishment of and making delivery at such point of delivery. Such charges may include, but are not limited to, in the case of any purchaser establishing a point of delivery on the transmission line between the Manasquan River intake facility and the reservoir, an additional charge to cover the cost of pumping water to the reservoir to replace water delivered from the reservoir to such purchaser.

(c) Operations and maintenance expense component:

	Rate/Million Gallons (based upon a *[14.505]* *14.905* mg per day sales base)
Effective Date	
July 1, 1990	*[\$351.35]**\$345.09*

7:11-4.4 Debt service cost component

(a) The debt service costs component is based upon the amount to be included for debt service costs with respect to each annual payment period or portion thereof, and will be that amount accruing in the bond year (starting on August 1 of each calendar year and ending on the next following July 31) or corresponding portion thereof, commencing during the fiscal year (starting on July 1 of each calendar year and ending on the next following June 30) within which such annual payment period or portion thereof falls. The debt service costs include the aggregate amounts payable during the specified period for:

1. Interest accruing during such period on the bonds, but not including any interest accruing on the State loan bonds which is to be deferred and added to principal, until payment in respect of such deferred interest is to commence;

2. That portion of each required principal payment or mandatory redemption or sinking fund payment on the Authority bonds (together, “principal installment”) which would accrue during such period;

3. Such additional amounts as are required to provide a debt service coverage in accordance with the following schedule:

Twelve Month Period Beginning on	Coverage Percent of Gross Debt Service
2/1/91	105 percent
2/1/92	110 percent
2/1/93	115 percent
2/1/94	120 percent; and

4. Any amounts payable into any debt service reserve fund established for any authority bonds.

(b) The following debt service rates based on a sales base of 14.505 million gallons per day, will be applied to all persons who enter into a water purchase contract before the date upon which the Authority commences operation of the Manasquan Reservoir System (initial water purchase contract) and begins to make uninterruptible service available to the purchasers (system operation date).

Period	Rate/Million Gallons
7/1/90 to 1/31/91	\$654.91
2/1/91 to 1/31/92 (Coverage 105 percent)	\$687.66
2/1/92 to 1/31/93 (Coverage 110 percent)	\$720.52
2/1/93 to 1/31/94 (Coverage 115 percent)	\$753.39
2/1/94 (Coverage 120 percent)	\$786.29

(c) A delayed water purchase surcharge will be assessed to all persons who enter into a water purchase contract for an uninterruptible service commencing subsequent to the system operation date (delayed water purchase contract). This includes a purchaser under an initial water purchase contract which provides for an increase in the amount of uninterruptible service effective subsequent to the system operation date.

(d) In place of the imposition upon any delayed water purchaser of delayed water purchaser surcharges with respect to any one or more items, a delayed water purchaser may, at the time of entry into a delayed water purchase contract, make a single lump sum payment in respect of such items in a manner to be agreed upon between the Authority and the delayed water purchaser.

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7:11-4.5 Payments

(a) The annual payment consists of the aggregate amount projected by the Authority to be payable to the Authority by the purchaser during each annual payment period for uninterrupted service. This is derived by multiplying the applicable rates and charges in the rate schedule in effect for the relevant annual payment period by the number of gallons available to purchaser on an annual uninterrupted service basis (subject to the provisions of the water purchase contract) and subject to adjustment to reflect:

1. Any delayed water purchaser surcharges applicable to the purchaser;
2. Any credits to allocate benefits of any delayed water purchaser surcharges to the purchaser; and
3. Other charges, credits or adjustments provided for in the water purchase contracts.

(b) The annual payment period shall commence on July 1 and end on the next ensuing June 30.

(c) The purchaser shall make quarterly water payments for uninterrupted service not later than the 10th day of January, April, July and October in each year for uninterrupted service with respect to the calendar quarter ending on the last day of the immediately preceding month. The amount of the quarterly water payments shall be derived by dividing the amount of the purchaser's annual payment or adjusted annual payment for any fiscal year by four or in such other or different required quarterly payments of which the Authority gives notice to the purchaser pursuant to the water purchase contract.

(d) The Authority will notify the purchaser not later than 30 days prior to the beginning of each annual payment period of the amount of the purchaser's annual payment for uninterrupted service and, if the Authority determines that the quarterly water payments under the water purchase contracts should be made on a basis other than in equal installments, in order to permit the Authority to meet its obligations as they become due, it will, concurrently with such notice, provide the purchaser with a schedule of the amounts of each of the quarterly water payments to be made by the purchaser.

7:11-4.6 Uninterruptible service

(a) The rates, charges and debt service assessments per mg of water set forth for the rate schedule for uninterrupted service under initial water purchase contracts for the fiscal year are based upon:

1. The projected annual requirements for the fiscal year, after deducting therefrom projected net revenues in connection with the ownership or operation of the Manasquan Reservoir system from sources other than payment for uninterrupted service except to the extent that such other revenues are to be applied to obligations not included in such projected annual requirements. Such other obligations include payments, credits or rebates to purchasers for:

- i. Delayed water purchase surcharges collected;
- ii. Compensation for any amounts charged to system water purchasers in prior fiscal years by reason of default in payment of any obligation under any water purchase contract which obligation is subsequently collected by the Authority; and
- iii. Distribution of the proceeds of surplus water sold.

(b) The rate is obtained by dividing the adjusted projected annual requirements set forth in (a)1 above by the number of mg per day of Manasquan Reservoir System water which are required by the terms of all water supply contracts for uninterrupted service during the fiscal year, multiplied by 365.

(c) The Authority may exclude for any period, for purposes of the computation in (a) and (b) above, the uninterrupted service provided in any water purchase contract if an event of default has occurred. This will not affect the Authority's right to enforce the provisions of the water purchase contract against the defaulting party; however, any payment received from a defaulting water purveyor for such uninterrupted service with respect to such period shall be rebated or credited to the non-defaulting purchasers.

(d) The purchaser will not be required to make payment to the extent that the Authority does not make water available under the terms of the contract for uninterrupted service.

7:11-4.7 Short term service

(a) The rates for short-term service shall be an amount per mg of water equal to the sum of the debt service component established

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in N.J.A.C. 7:11-4.4, and the operations and maintenance component established in N.J.A.C. 7:11-4.3.

(b) The monthly payment for water provided to the purchaser pursuant to short-term service shall be based upon the Manasquan Reservoir System water actually consumed at the rate per mg stated in (a) above.

(c) Payment for water provided to the purchaser pursuant to short-term service shall be made within 30 days following receipt of the Authority's invoice.

(d) Payments received in any fiscal year with respect to short-term service during such year shall not be included in actual or projected revenues for such year for purposes of determining the rates applicable to that year but shall be included in revenues for the fiscal year succeeding the year in which payment is received for purposes of determining the rates for uninterrupted service in such succeeding fiscal year.

7:11-4.8 Standby service

(a) The rates for standby service shall consist of:

1. A standby charge established in N.J.A.C. 7:11-4.9 for each month during which standby service is available equal to the capacity, in mgd per day, of the purchaser's withdrawal facilities to be served by such standby service multiplied by the rate per mg for uninterrupted service set forth in N.J.A.C. 7:11-4.3 and 4.4; and

2. A charge for water actually consumed in any month at the rate per mg of water established by the rates for short-term service as set forth in N.J.A.C. 7:11-4.7 at the time of such consumption, minus the standby charge for such month.

(b) Payment for water provided to the purchaser pursuant to standby service shall be made within 30 days following receipt of the Authority's invoice.

(c) Payments received in any fiscal year pursuant to (a)1 and 2 above shall not be included in actual or projected revenues for that year for purposes of determining the rates applicable to such year but shall be included in revenues for the fiscal year succeeding that in which payment is received for the purpose of determining the rates for uninterrupted service in the succeeding fiscal year.

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	*[\$351.35]* *\$345.09* plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4

7:11-4.10 Payments for other services

Payment for any other charges payable by reason of excessive withdrawals or otherwise, shall be made within 30 days following receipt of the Authority's invoice and shall be based upon Manasquan Reservoir System water actually consumed. The rate for excessive withdrawal shall be the rate set forth in N.J.A.C. 7:11-4.7.

7:11-4.11 Late payment interest charge

All amounts not paid when due shall be subject to a late payment charge at two percent above the prime rate of the First Fidelity Bank, N.A., prevailing on the due date, but not to exceed 18 percent per annum, from the date when due until paid.

7:11-4.12 Rate adjustments

(a) The Authority reserves the right from time to time to adopt adjustments to the rate schedule in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and this subchapter.

(b) A purchaser shall be notified of such proposed changes not less than six months in advance of the effective date of such new rates.

7:11-4.13 Procedures for rate adjustments

(a) Prior to amending the schedule of rates, charges and debt service assessments established by this subchapter, the Authority shall:

1. Provide notice and an explanation outlining the need for the proposed rate adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Public Utilities and other interested persons at least six months prior to the proposed effective date. This notice and explanation shall be deemed to be part of the record of the proceedings;

2. Provide supporting documents and financial records of the Authority, at the Authority's cost, in support of the proposed adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Public Utilities and other interested persons upon request, and make such documents and records available for review at the Authority's offices in Clinton, New Jersey at the time notice of the proposed amendment to the rates is given. These supporting documents and financial records shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)7 below;

3. Afford purchasers, the Department of the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting;

4. Schedule a meeting with the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, within 45 days after sending them notice of the proposed amendments to the rate schedule regarding the proposed amendments:

i. At the meeting the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, will be invited to submit written questions which will be put into the hearing record and which will be answered by the Authority at the public hearing;

ii. In order to be answered at the public hearing, questions must be received by the Authority no later than 15 days prior to the public hearing. The Authority will make every reasonable effort to answer those questions received less than 15 days prior to the public hearing at the time of the hearing. All questions will be answered as part of the record and the comments and responses will be included in the hearing report prepared pursuant to (a)9 below;

5. Hold a public hearing on the proposed rate adjustment. One or more members of the Authority will serve as the hearing officer. The public hearing agenda shall include, but not be limited to:

i. An opening statement by the hearing officer;

ii. The Authority's answers to the questions raised prior to the hearing by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons;

iii. Oral statements, written statements and any supporting evidence presented by interested persons; and

iv. Questions of the Authority by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities, and any interested persons on any aspect of the need for, the basis of, or any provision of the proposed rate adjustment. Follow up questions relative to the answers of the Authority may also be directed to the Authority during the public hearing;

6. Attempt to answer all questions raised at the public hearing. In the event that a response cannot be immediately given at the public hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response will be provided to all contractual water purchasers, the Public Advocate, Division of Rate Counsel, Board of Public Utilities and attendees at the hearing and made a part of the hearing record;

7. Permit, within 10 working days after receipt of the answer, contractual water purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and attendees to respond in writing to the answers of the staff for the record;

8. Hold the public comment period open for at least 25 working days after the public hearing in order to allow additional written comments to be submitted; and

9. After the public comment period is closed, require a hearing officer's report, which shall include findings of fact and specific responses to all issues and questions raised during the public hearing proceedings, to be prepared and submitted to the Authority prior to the Authority taking final action on the proposal.

(b) In addition to the above requirements, the Authority will follow all the requirements for rulemaking established pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

DIVISION OF COASTAL RESOURCES**Dam Safety Standards****Readoption with Amendments: N.J.A.C. 7:20**

Proposed: February 5, 1990 at 22 N.J.R. 279(a).

Adopted: May 1, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: May 2, 1990 as R.1990 d.276, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 58:4-1 et seq., and N.J.S.A. 13:1D-1 et seq.

DEP Docket Number: 064-89-12.

Effective Date: May 2, 1990, Readoption; June 4, 1990, Amendments.

Expiration Date: May 2, 1995.

Summary of Public Comments and Agency Responses:

This rule was proposed on February 5, 1990. Approximately 100 commenters submitted written comments during the comment period which closed on April 6, 1990.

1. COMMENT: A comment was received suggesting that the standards for the design of dams should reflect the difference between on- and off-line dams.

RESPONSE: The threat of failure from an off-line dam is no different from the threat of failure from an on-line dam. Therefore, the Department's standards for the design of on- and off-line dams are uniform.

2. COMMENT: Numerous comments were received suggesting that the Department provide a funding source for the repair and inspection of private dams throughout the State.

RESPONSE: Although these comments may have some merit, they are beyond the scope of the proposal and existing Departmental authority. Implementation would require legislative action.

3. COMMENT: One comment requested that the Department clarify why it established a definition for "emergency spillway."

RESPONSE: The Department defined "emergency spillway" to clarify the reference point for measuring the vertical height of a dam. In the definition of "dam," the measured height of a dam is from the toe-of-dam to the emergency spillway.

4. COMMENT: Two commenters asked why the words "original" and "natural" were deleted from the definition of "height of dam". The commenters asked whether the Department's intent in modifying this definition was to classify an excavated off-line basin as a Class III dam even if the bermed elevation is not greater than the existing ground surface elevation.

RESPONSE: The Department deleted the words "original" and "natural" to clarify the definition of "height of dam" because these words created confusion in measuring the vertical height of existing or proposed dam structures. In certain cases it was difficult to document original and natural conditions. It is not the intent of the Department to regulate excavated basins where berms are not constructed; however, where there is the potential for the failure of a structure that is 15 feet in height, the Department will take jurisdiction. The Department cannot, without reviewing design plans, fully respond to the commenter's specific example.

5. COMMENT: Two commenters requested that the Department clarify the definition of "Independent Review Board" regarding who will determine if someone is qualified to perform a review of the project's design and construction, and how will the board be assembled, managed and regulated.

RESPONSE: The dam owner will be required to assemble and manage the Independent Review Board. The Department will approve the Independent Review Board based upon Board members' experience with the design, construction and rehabilitation of dams of similar size and design to the dam under review.

6. COMMENT: Two commenters suggested that the Department clarify the definition of "toe-of-dam" since terms used within that definition such as "downstream face of dam," "ground surface" and "invert of the outlet pipe" are not defined. The commenters specifically asked whether the invert of the outlet pipe when a drop manhole is provided is the invert of the pipe entering the manhole, leaving the manhole or the actual invert of the discharge to the stream. The commenters also requested clarification of the definition when an off-line basin is placed on a gently sloping area.

RESPONSE: The definition of "toe-of-dam" is used to measure the maximum vertical height of the dam structure. Phrases within the definition such as "ground surface" and "invert of the outlet pipe" are engineering terms that are commonly used in the field of dam safety and the Department does not believe it is necessary to redefine these phrases. In order to clarify the definition of toe-of-dam, however, the Department has modified it by adding the clause "whichever is the lowest point". Since a drop manhole can be located at different points within the dam structure, and since the commenter does not provide any specificity regarding a gently sloping area, the Department cannot, without reviewing design plans, fully respond to the commenters specific questions.

7. COMMENT: One comment suggested that non-defined spillway terms such as spillway system, principal spillway, secondary spillway, primary spillway, auxiliary spillway and overflow spillway be clarified with a possible reduction in the number of different names used.

RESPONSE: The terms principal, secondary, primary, auxiliary and overflow are words used to describe different types of spillways. While some of these terms can be used interchangeably, such as principal and primary or secondary and auxiliary, all of these words are commonly used in the field of dam safety and, therefore, the Department does not believe it is necessary to provide further definitions of these terms at this time. The Department will, when time allows, review the use of these terms in these rules to see if their number can be reduced.

8. COMMENT: Two comments questioned whether the Department at N.J.A.C. 7:20-1.4(1) should regulate dredging within 200 feet of a dam since regulations already exist for dredging in State open waters. The commenters also questioned the Department's basis for using 200 feet.

RESPONSE: N.J.A.C. 7:20-1.4(1) regulates dredging within 200 feet of a dam in order to ensure that dredging will not damage a dam's foundation. In contrast, regulations governing dredging in State open waters contained in the Freshwater Wetlands rules at N.J.A.C. 7:7A-4 do not focus on the effects of dredging on a dam structure. Therefore, N.J.A.C. 7:20-1.4(1) is a necessary provision. The Department arrived at the 200-foot safety zone by calculating the average height of a dam in New Jersey to be 20 feet and using a conservative slope of 10 horizontal to one vertical. Based on the above calculation, 200 feet was considered an appropriate distance in order to ensure that dredging without the Department's oversight will not damage a dam.

9. COMMENT: Two comments questioned whether the Department will, in fact, waive documentation for Class III dam permits as allowed pursuant to N.J.A.C. 7:20-1.5(e).

RESPONSE: The requirements set forth in N.J.A.C. 7:20-1.5(e) were previously stated in N.J.A.C. 7:20-1.3(a)3. Pursuant to that section, the Department waived certain requirements for documentation in the pre-application stage for Class III dams. The Department intends to continue to exercise its discretion in waiving certain documentation requirements in the future.

10. COMMENT: Two comments requested that the Department clarify N.J.A.C. 7:20-1.4(m) with respect to how an applicant can demonstrate to the satisfaction of the Department that a utility crossing within dam embankments will not jeopardize the safety of the dam.

RESPONSE: A permit applicant for a permit to repair or modify a dam can demonstrate that a utility crossing will not jeopardize the safety of a dam through professionally accepted engineering analyses.

11. COMMENT: A comment was received stating that the Department should delete the phrase "unless the Department determines it to be necessary" at N.J.A.C. 7:20-1.6(c) because it will never be necessary for an applicant to submit a preliminary report for the repair of a dam.

RESPONSE: It may be necessary for an applicant to submit a preliminary report depending upon the scope of the project. Therefore, the Department will retain its discretion in N.J.A.C. 7:20-1.6(c) to determine when such a report may be necessary.

12. COMMENT: One comment stated that although the permitting procedures set forth in the rules are reasonable for a dam construction permit, they may not be pertinent for a permit to modify or repair an existing dam. The commenter stated that the Department should set up a procedure whereby it can waive certain application requirements set forth in N.J.A.C. 7:20-1.7 for a permit application to repair or modify a dam.

RESPONSE: The Department agrees and has modified N.J.A.C. 7:20-1.7(a) accordingly.

13. COMMENT: A comment was received that supported the increase in maximum height-of-dam for Class IV dams from 10 to 15 feet in N.J.A.C. 7:20-1.8(a)4. However, the commenter questioned how the Department will measure the height of a dam and whether this will involve an increase in the number of Class IV dams reclassified as Class III dams.

RESPONSE: The Department has clarified the point on which the vertical height is measured by providing a definition for toe-of-dam. The Department, by increasing the maximum height of Class IV dams, has allowed more dams to be classified as Class IV that would otherwise be classified as Class III dams.

14. COMMENT: One comment was received which endorsed the establishment of Class IV dams in N.J.A.C. 7:20-1.8.

RESPONSE: The Department acknowledges this endorsement.

15. COMMENT: Several comments were received which recommended that the Department enforce cooperation between local, county and State governments when the owner is obligated to prepare the Emergency Action Plan required by N.J.A.C. 7:20-1.7(f).

RESPONSE: The Emergency Action Plan prepared by the dam owner outlines the owner's responsibilities for identifying an emergency condition and providing notification to all appropriate emergency management coordinators. Presently, emergency planning is coordinated by a municipality's Emergency Management Coordinator and the State Office of Emergency Management pursuant to the Emergency Management Act, P.L. 1989, c.222, amending N.J.S.A. App. A:9-40.1.

16. COMMENT: One comment endorsed N.J.A.C. 7:20-1.9(b) as it permits flexibility in the establishment of spillway capacities and design floods where it can be shown that the dam does not significantly increase the hazard over natural conditions.

RESPONSE: The Department acknowledges this comment.

17. COMMENT: Several comments were received suggesting that the Department provide clarification of spillway sizing requirements for existing dams at N.J.A.C. 7:20-1.9(b), noting that, as written, the Department could require use of a more stringent design storm than the probable maximum storm. For example, one commenter suggested that the Department modify this provision to provide that the required spillway design flood used not exceed the flood resulting from the spillway design storm at N.J.A.C. 7:20-1.9(a). Another commenter suggested that the clause "when appropriate with respect to the design of the dam" be added to the third sentence of N.J.A.C. 7:20-1.9(b).

RESPONSE: In order to clarify spillway design storm requirements, the Department has modified N.J.A.C. 7:20-1.9(b) to allow for using a reduced spillway design storm based on hydraulic and hydrologic factors. This reduced design storm may be used when the applicant has demonstrated to the Department that use of the design storm outlined in N.J.A.C. 7:20-1.9(a) to calculate required spillway capacity will not provide more protection to downstream properties than the proposed reduced spillway design.

18. COMMENT: One commenter asked why there is a more restrictive spillway design storm for Class IV dams than for Class III dams when a Class IV dam presents less of a hazard.

RESPONSE: The Department has built a degree of conservatism into the standards for Class IV dams since these dams will not be under the direct regulation of the Department, but will be regulated by the municipalities and/or counties in which they are built.

19. COMMENT: Two comments asked how the Department arrived at the minimum pipe-conduit sizes in N.J.A.C. 7:20-1.9(g).

RESPONSE: The standard pipe-conduit sizes were developed by the United States Department of Agriculture, Soil Conservation Service, for use in the design of dam structures. The Department concurs with their findings and has chosen to adopt them in these rules.

20. COMMENT: One comment questioned whether the Department at N.J.A.C. 7:20-1.9(g) will now require all dams to have an emergency spillway.

RESPONSE: The Department requires only those dams which use a conduit as a primary spillway to have an emergency spillway.

21. COMMENT: One comment suggested that N.J.A.C. 7:20-1.9(g) include a provision that would require the design of the dam to account

for the loss of conduit wall thickness due to corrosion during the expected service life of the dam structure.

RESPONSE: N.J.A.C. 7:20-1.9(g)1 already provides that the type of construction material used shall be consistent with the anticipated life of the structure.

22. COMMENT: One commenter stated that N.J.A.C. 7:20-1.9(i)2 should be modified since valves do not always have to be located upstream of the dam and that this requirement could impose an unreasonable constraint on design and an unnecessary cost upon an owner without any appreciable increase in safety.

RESPONSE: The Department agrees that in certain circumstances valves may be located downstream of the dam. The Department has modified N.J.A.C. 7:20-1.9(i) accordingly.

23. COMMENT: One comment suggested that the Department use the term "review, in an advisory capacity" instead of the word "oversee" at N.J.A.C. 7:20-1.10(b) since the word "oversee" implies that the Independent Review Board will supervise the design and construction of a proposed or existing dam.

RESPONSE: The Department does not believe that any change in terminology is warranted since the suggested phrase and the word "oversee" can be used interchangeably. The scope of the Independent Review Board remains limited to that of advising the Department.

24. COMMENT: One comment suggested that N.J.A.C. 7:20-1.10(b) be modified so that the Department has the discretion only to require the use of an Independent Review Board for Class I and II dams.

RESPONSE: The Department believes that safety and environmental concerns may justify the use of an Independent Review Board for Class I, II and III dams. Therefore, the Department will retain its discretion to require an Independent Review Board for any proposed or existing dams coming under its jurisdiction.

25. COMMENT: One comment suggested that N.J.A.C. 7:20-1.10(b)4 be modified to make issuance of a final approval by the Department automatic after a specific time period has elapsed and no inspection has been conducted by the Department. The commenter added that if the Department requires additional time or scheduling flexibility, the rules should allow for that flexibility.

RESPONSE: The purpose of a final approval is to confirm that the terms of the permit have been met to the Department's satisfaction. If no inspection is conducted, it is inappropriate for the Department to issue a final approval.

26. COMMENT: One comment asked why off-line Class III and IV dams will require Operation and Maintenance Manuals pursuant to N.J.A.C. 7:20-1.11(a).

RESPONSE: Development and use of Operation and Maintenance Manuals are required for Class III and IV dams because all dams need to be inspected, operated and maintained appropriately. Failure to have and follow such a manual may result in a dam failure.

27. COMMENT: One comment expressed concern that the requirement for owners to develop and use an Operation and Maintenance Manual could lead to a liability problem for the author of the manual who may not be the owner or operator of the dam.

RESPONSE: It is inappropriate for the Department to assign liability between the owner or operator of a dam and the author of an Operation and Maintenance Manual. Any concerns about liability can be worked out in an agreement between the owner/operator and the author.

28. COMMENT: Several comments stated that the Department should change the frequency at N.J.A.C. 7:20-1.11 of regular inspections for Class I dams to every three years, Class II dams to every three years and Class III dams to every three years. In addition, the comment suggested that formal inspections should be changed to every 12 years for Class I dams and every 16 years for Class II dams.

RESPONSE: The Department has established the schedule outlined in the rules to maintain the integrity of the dam structure and protect the life and property of downstream residents. The Department does not believe it would be appropriate to inspect these dams any less frequently.

29. COMMENT: Several comments were received which recommended that the Department provide a dam owner with a two-year advance notice of a formal inspection for Class III dams.

RESPONSE: The Department will only require a formal inspection of a Class III dam when the structure has been determined to be in need of repair or a change in the downstream hazard classification has been brought to the Department's attention. Under the circumstances, a two-year advance notice would be inappropriate.

30. COMMENT: Several comments were received which recommended that the informal inspections for Class IV dams be performed by the owner.

RESPONSE: The rules, at N.J.A.C. 7:20-1.11(g)3, allow the dam owner or operator to perform the informal inspection.

31. COMMENT: One comment endorsed the modified dam inspection schedule at N.J.A.C. 7:20-1.11 which provides for less frequent inspection of low hazard dams.

RESPONSE: The Department acknowledges this comment.

32. COMMENT: One comment asked if Class IV dams are subject to any formal or informal inspection requirements.

RESPONSE: Under the prior rules, all dams, including Class IV dams, were required to be inspected every two years. In modifying the inspection schedules in the proposal, the Department inadvertently left out the schedule for the inspection of Class IV dams. The Department has corrected that error and modified N.J.A.C. 7:20-1.11(e) to provide for the inspection of Class IV dams at the same frequency as Class III dams, every four years.

33. COMMENT: Several commenters stated that the Department should notify dam owners of proposed downstream development which may increase the hazard classification of their dams. The commenters stated that the Department should prohibit all downstream construction that will cause a dam to be reclassified as a Class I dam.

RESPONSE: The Department cannot monitor and lacks the authority to regulate all proposed construction downstream from dams which may impact on a hazard classification. Verification of the downstream hazard conditions is the function of the regular and formal inspection, and is the responsibility of the owner or operator of the dam.

34. COMMENT: One comment suggested that the Department establish time limits for action by the Department for each stage of the permit review process.

RESPONSE: Permit review time depends upon the complexity of each project being reviewed, if the Department were to establish a mandatory deadline for completion of its review, the Department's review could become less comprehensive for major projects and public safety may be compromised.

35. COMMENT: Several commenters suggested that the Department reclassify a Class II dam to a Class III dam upon the written request by the owner when there are no downstream hazards.

RESPONSE: Presently, a dam owner or operator may request a dam reclassification at any time. In order to reclassify a dam, the Department requires documentation and information supporting the requested change.

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

7:20-1.1 Scope and applicability

(a) The rules in this subchapter were adopted pursuant to the authority of N.J.S.A. 58:4-1 et seq., as amended by the Safe Dam Act of 1981, and N.J.S.A. 13:1D-1 et seq.

1.-3. (No change.)

7:20-1.2 Definitions

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

"Division" means the Division of Coastal Resources in the Department of Environmental Protection.

"Emergency spillway" means the spillway capable of passing the spillway design storm with the principal and/or auxiliary spillway blocked.

"Height-of-dam" means the vertical dimension from the lowest point in the stream bed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

"Independent Review Board" means one or more independent professional engineers who are qualified in the design, construction and rehabilitation of dams to perform a review of the project design and construction.

"Toe-of-dam" means the junction of the downstream face of a dam with the ground surface *[()*or *the* invert of the outlet pipe*[()]* * , whichever is the lowest point*.

7:20-1.3 Permit-by-rule

(a) All dams must be designed, constructed, operated, maintained or removed in compliance with the rules in this subchapter except as set forth below:

1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:

i. Design must be based upon a spillway design storm that results in rainfall of 50 percent greater than a 24-hour, 100-year, Type III storm (Later technology adopted by the United States Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type III storm.); and

ii. (No change.)

2. (No change.)

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

7:20-1.4 General requirements and prohibitions

(a) No person may construct or operate a new dam or modify or repair an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with (j) below.

(b)-(h) (No change.)

(i) The Department shall be notified immediately by the owner or operator upon the detection of any condition which may jeopardize the safety of the structure.

(j) Situations which threaten the public health, safety, and welfare and require emergency dam repair will be considered by the Department under the following procedure:

1. The owner or operator shall inform the Department by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.

2. The owner or operator shall perform the emergency work upon verbal approval of the Department, which approval shall be verified by the Department in writing within three working days. The Department shall offer guidance and instructions in performing the work.

3. After the work has been completed in accordance with the Department's instructions, the owner or operator shall submit a dam permit application and "as built" drawings to the Department for review. A letter shall be issued by Department in lieu of a dam permit.

(k) The Department shall be notified in writing on or before the transfer of dam ownership.

(l) Unless otherwise approved by the Department in writing, no person shall dredge within 200 feet of a dam.

(m) Utilities crossings within dam embankments are prohibited unless demonstrated to the satisfaction of the Department that such utilities will not jeopardize the safety of the dam.

(n) No person shall remove or breach an existing dam without first having obtained a permit from the Department unless subject to the permit-by-rule provisions in N.J.A.C. 7:20-1.3.

7:20-1.5 General application procedures

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

(e) Applicants for a dam permit for a Class III dam, as defined pursuant to N.J.A.C. 7:20-1.8, may submit a preliminary application, which should include that information needed to establish a Class III hazard classification. Thereafter, in its discretion, the Department may waive certain documentation and inspection requirements set forth in these rules.

7:20-1.6 Preapplication stage

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

(c) Applicants for a permit to repair an existing dam are not required to submit a preliminary report unless the Department determines it to be necessary.

7:20-1.7 Application stage

(a) The application shall be on forms specified and supplied by the Department and must be accompanied by two copies of the final design report and construction specifications and five sets of all plans,

drawings, designs and specifications. ***Upon the written request of the applicant, the Department may waive certain requirements for documentation in the application stage set forth at (b) to (g) below for a permit to modify or repair an existing dam.***

(b)-(g) (No change.)

(h) The application to remove or breach a dam shall include the following:

1. Design report, and plans and computations to effect the breach including size of breach, shape of breach, disposal of spoil material;

2. Plans and computations for restoration of the lake bed including the channel upstream of the breach, and for the control of sediment within the lake and downstream of the breach during and after the breach has been effected;

3. Computations for design of the method and timing for de-watering the lake;

4. Computations detailing the effects of the breach on the downstream channel and demonstrating that the project will not adversely affect flooding conditions downstream;

5. Specifications containing the technical provisions which describe in detail the proposed work methods and equipment and, in addition, a work schedule for the entire project;

6. A plan of the existing dam and lake along with surrounding property lines;

7. Evidence that all adjoining property owners of the impoundment have received notification that an application has been submitted to the Department to remove or breach a dam;

8. A description of the potential effects of the dam removal or breach upon the environment; and

9. A description of the potential effects of the dam removal or breach upon life and property downstream of the dam.

7:20-1.8 Dam classification

(a) The Department will use the following guidelines to classify dams according to hazard. Probable future development of the area downstream from the dam which might be affected by its failure will be considered in determining the hazard classification. The Department may, in its discretion, change the hazard class of any proposed or existing dam.

1.-3. (No change.)

4. Class IV—Small Dams: This classification includes any project which impounds less than 15 acre/feet of water to the top of dam, has less than 15 feet height-of-dam and which has a drainage area above the dam of 150 acres or less in extent. No dam may be included in Class IV if it meets the criteria for Class I or II. Any applicant may request consideration as a Class III dam upon submission of a positive report and demonstration proving low hazard.

7:20-1.9 Design criteria

(a) The minimum design storm used to calculate required spillway capacity must be determined according to the following table:

Hazard	Spillway Design Storm (SDS)
Class I	PMP
Class II	One-half PMP
Class III	24 hour 100 year frequency, Type III storm ¹
Class IV	24 hour 100 year frequency, Type III storm plus 50% ¹

¹Any later technology adopted by the U.S. Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type III storm.

(b) For existing dams, it is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, and other hydrologic factors have a critical bearing on determining the safe spillway design flood. ***[Rational]* *When appropriate, based on the design of a dam, rational* selection of a safe *reduced* spillway design for specific site conditions based on quantitative and relative impact analysis is acceptable. The spillway should be sized so that the increased downstream damage resulting from overtopping failure of the dam would not be significant as compared with the damage caused by the flood in the absence of a dam overtopping failure.**

(c)-(f) (No change in text.)

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(g) Pipe conduits may be used for the primary (principal) spillway. When so used, the following requirements shall be met:

1. Pipe conduits shall be of such design as to safely support the total external loads in addition to the total internal hydraulic pressure without leakage. The type of construction material used shall be consistent with the anticipated life of the structure. Corrugated metal pipe shall not be used in the construction of new dams.

i. For Class I and II dams, the minimum allowable inside dimension of the pipe conduit is 30 inches.

ii. For Class III dams, the minimum allowable inside diameter of the pipe conduit is 18 inches.

iii. For Class IV dams, the minimum allowable inside diameter of the pipe conduit is 12 inches.

2. All pipe conduits shall convey water at the maximum design velocity without damage to the interior surface;

3. The pipe conduits shall be designed so that negative pressure will not occur at any point along the primary (principal) spillway system;

4. Anti-seep collars or other methods approved in writing by the Department shall be installed to control seepage along the conduit;

5. Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit;

6. An anti-vortex device shall be included in the design unless the applicant has demonstrated to satisfaction of the Department that one is not necessary;

7. A trash rack, approved by the Department, shall be installed at the intake to prevent clogging of the pipe conduit;

8. An emergency spillway shall be provided; and

9. Cathodic protection is required for all metal pipes.

(h) Should a vegetated or unlined secondary (emergency) spillway, approved by the Department, be installed, it must be able to pass the design storm without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

1. Once in 100 years for Class I dams;

2. Once in 50 years for Class II dams; or

3. Once in 25 years for Class III and IV dams.

(i) Drawdown requirements are as follows:

1. Except for excavated impoundments, all dams shall include a device to permit draining the reservoir, as approved in writing by the Department. Computations for the minimum time required to drain the reservoir shall be required for new and existing dams.

2. ***Unless the applicant demonstrates to the satisfaction of the Department that there is a need to locate a valve downstream from the dam and that the areas downstream of the dam will remain protected, all valves* [Valve]*** or sluice gates in pipe conduit drains must be installed upstream of the dam.

3. All pipe conduits used as drawdown drains for all dam classifications shall meet the requirements of (g) above, except that the minimum allowable inside dimension may be less than 30 inches.

(j)-(m) (No change in text.)

(n) Freeboard requirements are as follows:

1. (No change.)

2. For all dams the minimum elevation of the top of the dam must be that necessary to pass the design storm with at least one foot of freeboard to the top of dam.

3. Where special conditions of severe frost damage, ice damage or wave action may occur, higher elevations than required in (n)2 above may be required and should be considered by the applicant.

(o) (No change in text.)

7:20-1.10 Construction

(a) (No change.)

(b) The Department may, in its discretion, require the owner to obtain the services of an Independent Review Board to oversee the design and construction of any proposed or existing dam.

(c) Construction inspection program requirements are as follows:

1.-2. (No change.)

3. Upon receipt of the as-built plans required in (a)6 above and the engineer's certification required in (a)7 above, the Department will inspect the completed construction within 45 days. If the Department finds that construction was completed in accordance with the

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approved designs, plans, specifications and approved changes, the construction will be approved in writing within 30 days. The approval date shall be the date such approval is sent by the Department.

4. In the 12th month following approval of construction by the Department pursuant to (c)3 above, the Department may make a final inspection of the construction. If the Department makes a final inspection of the construction, a final approval will be given by the Department, if the final inspection shows that the terms of the permit, designs, plans, specifications and approved changes thereof have been met.

7:20-1.11 Dam operating requirements and inspections: new and existing dams

(a) The owners and operators of all dams shall develop and use an Operation and Maintenance Manual which provides guidance and instruction to project personnel for the proper operation and maintenance of the reservoir and dam, and meets the following requirements:

1. The manual shall be composed of two parts:

i. Part One shall include an introduction, project description, project authorizations, project history and list of project contracts.

ii. Part Two shall contain the operation and maintenance instructions for major project facilities and equipment and a schedule for maintenance.

(b) (No change in text.)

(c) Owners or operators of Class I dams not meeting the size characteristics described in (b) above shall have a regular inspection performed once every two years and a formal inspection performed every six years.

(d) Owners or operators of Class II dams shall have a regular inspection performed once every two years and a formal inspection performed every 10 years.

(e) Owners or operators of Class III ***and IV*** dams shall have a regular inspection performed every four years. The Department may at its discretion require the owner or operators to perform a formal inspection of a Class III ***or IV*** dam.

(f) All dam inspections shall be performed from March through December.

(g) All inspections shall be performed in compliance with the following requirements:

1.-2. (No change.)

3. Informal inspections may be performed by the dam owner or operator and the Report on Condition shall be part of the owner's or operator's permanent file and, unless requested by the Department, Reports shall not be submitted to the Department.

4.-5. (No change.)

(h)-(i) (No change in text.)

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Newborn Screening Program

Readoption with Amendments: N.J.A.C. 8:19

Proposed: March 5, 1990 at 22 N.J.R. 733(a).

Adopted: May 9, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: May 11, 1990 as R.1990 d.289, 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. 26:2-101 et seq., 26:2-110, 26:2-111 and 26:2H-5.

Effective Date: May 11, 1990, Readoption: June 4, 1990, Amendments.

Expiration Date: May 11, 1995.

Summary of Public Comment and Agency Response:

The Department received written comments from two individuals, a physician and an audiologist, prior to the close of the comment period on April 4, 1990.

COMMENT: Both commenters expressed concern over the proposed change to N.J.A.C. 8:19-1.3 which would allow appropriately trained professionals, who may not be directly under the supervision of a physician or audiologist, to complete the follow-up hearing screening. Both commenters stated they understood the intent of the change was to increase the availability of follow-up services but that the term "appropriately trained professional" was not defined. One commenter suggested that due to the complexity of evaluating an infant's response to sound, the supervision requirement be maintained or include in the rule a clearly defined training protocol to clarify the term "appropriately trained professional".

RESPONSE: The Department agrees that the change was intended to expand the availability of follow-up screening services. The Department is developing a hearing screening protocol and is planning to conduct hearing screening training programs for nurses and related professionals. However, until the training program has been fully implemented, the Department agrees that N.J.A.C. 8:19-1.3 should reflect the professional standards for follow-up hearing screening as previously set forth in N.J.A.C. 8:19-1.3.

Full text of the proposed amendments follows (changes to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 19 NEWBORN SCREENING PROGRAM

SUBCHAPTER 1. NEWBORN HEARING SCREENING

8:19-1.1 Hearing development literature supplied to parents

Prior to the discharge of a live newborn from any hospital or birthing center in the State of New Jersey, the hospital nursery, neonatal intensive care unit or birthing center shall provide all parents or legal guardians of the newborn with literature provided by the Department of Health describing the normal development of auditory function and the Newborn Hearing Screening Program. Such literature will be designed to provide parents with an understanding of the implications of hearing loss on the development of speech-language and provide information regarding normal auditory behavior. All literature shall be furnished free of charge to hospitals and birthing centers by the Department of Health.

8:19-1.2 Newborn hearing screening report form required

(a) All hospital nurseries, including neonatal intensive care units and birthing centers, shall complete a Newborn Hearing Screening Report Form (SCH-1) on all live newborns regardless of the presence or absence of a risk factor. This Newborn Hearing Screening Report Form contains high risk categories that are associated with possible hearing impairment. These high risk categories are defined in N.J.A.C. 8:19-1.5. The Newborn Hearing Screening Report Form is composed of three identical copies. Registered nurses in the hospital nursery and neonatal intensive care unit or the birth attendant shall complete the Newborn Hearing Screening Report Form.

(b) The hospital nursery, neonatal intensive care unit or birthing center shall forward one copy of the Newborn Hearing Screening Report Form to Special Child Health Services, New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625-0364 upon discharge of each live newborn identified as having a risk factor(s) and for each live newborn transferred to a neonatal intensive care unit regardless of the presence or absence of a risk factor. The hospital or birthing center shall submit the Newborn Hearing Screening Report Form to the Department within one week of discharge or transfer. The second copy of the Newborn Hearing Screening Report Form shall be placed in the newborn's permanent medical record. The third copy shall be given to the infant's parent(s) or legal guardian.

(c) The hospital nursery, including neonatal intensive care units, and birthing centers shall assure that the newborn's parent or legal guardian is informed of the purpose and need for newborn hearing screening, shall obtain consent from the parent or legal guardian and shall document consent by obtaining the parent's or legal guardian's signature on the Newborn Hearing Screening Report Form. When a parent or legal guardian objects to the screening on the grounds screening would conflict with his or her religious tenets or practices,

such refusal shall be documented on the Newborn Hearing Screening Report Form and placed in the newborn's permanent medical record.

(d) For those children who have no risk factors, a completed Newborn Hearing Screening Report Form shall be placed in the newborn's permanent medical record and one copy shall be given to the infant's parent(s) or legal guardian.

(e) The screening shall be documented in the Nursery Log Book for each live newborn being discharged from the hospital nursery, neonatal intensive care unit or birthing center.

(f) Special Child Health Services personnel shall have the authority to review, on site, the Nursery Log Book and medical records.

8:19-1.3 High risk infant registry

Special Child Health Services shall maintain a registry of high risk infants for hearing impairment so as to remind parents or legal guardians of high risk infants for the need for a six month auditory screening of the high risk infant by a licensed physician, licensed audiologist or ***[other appropriate trained professional]* *person(s) under their direction***.

8:19-1.4 Six month auditory screening report

The person completing the six month auditory screening of the infants at high risk for hearing impairment shall report their results to Special Child Health Services, New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625-0364. A Hearing Screening Follow-Up Form (SCH-2) shall be provided at no cost by Special Child Health Services to the parents of infants at high risk and to any other persons who may request such forms.

8:19-1.5 High risk conditions

(a) The following conditions will be screened for as risk factors associated with possible hearing impairment. These conditions shall be described in the literature as required by N.J.A.C. 8:19-1.1.

1. Five minutes Apgar Score of six or less;
2. Bacterial Meningitis, especially haemophilus influenza;
3. Confirmed or suspected congenital or perinatal infections including, but not limited to, rubella, herpes, toxoplasmosis, syphilis, cytomegalovirus;
4. Defects of head or neck (such as cranio-facial syndromal or non-syndromal abnormalities, overt or submucous cleft palate, morphologic abnormalities of the pinna) exclusive of isolated skin tags;
5. Elevated bilirubin exceeding indication for exchange transfusion;
6. Family history of childhood hearing impairment;
7. Birthweight of 1500 grams or less;
8. Ototoxic drugs (such as gentamycin or kanamycin) administered to the infant for 14 days or more or through multiple courses of therapy; and
9. Evidence of intracranial hemorrhage.

8:19-1.6 Confidentiality of reports

Any forms and reports furnished to the Department of Health as required by these rules shall not be made public so as to disclose the identity of the person to whom they relate. Information obtained from forms and reports furnished to the Department shall be used by the Department for purposes of follow up of high risk infants. No information shall be released for any other purpose without the written consent of the parent or legal guardian.

SUBCHAPTER 2. NEWBORN BIOCHEMICAL SCREENING

8:19-2.1 to 2.10 (No change.)

(a)

Reportable Communicable Diseases; Immunization Requirements**Readoption with Amendments: N.J.A.C. 8:57
Adopted Repeals: N.J.A.C. 8:57-1.13, 1.14, 2, 3
and 5**

Proposed: December 18, 1989 at 21 N.J.R. 3897(a).

Adopted: April 9, 1990 by the Public Health Council,
Milton Prystowsky, M.D., Chairman.

Filed: April 20, 1990 as R.1990 d.243, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

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

Effective Date: April 20, 1990, Readoption: June 4, 1990,
Amendments and Repeals.

Operative Date: January 1, 1991 for N.J.A.C. 8:57-1.5(e);
September 1, 1990 for N.J.A.C. 8:57-1.7(a), (c), (d), (f) and (g);
September 1, 1991 for N.J.A.C. 8:57-4.1 through 4.15.

Expiration Date: April 20, 1995.

A public hearing on the proposed readoption was held on January 22, 1990 at the Health-Agriculture Building, Trenton, New Jersey.

Summary of Public Comments and Agency Responses:

The Department received written comments from over 300 commenters during the public comment period ending January 22, 1990. The great majority of comments were received from chiropractic associations, doctors of chiropractic, patients of chiropractic medicine, and the general public. Other comments were received from a day care center and the New Jersey State Department of Human Services, Division of Youth and Family Services (DYFS), regarding day care issues. Comments were also received from the New Jersey Hospital Association, the Northern New Jersey Association for Infection Control Practitioners and the Southern New Jersey Association for Infection Control Practitioners, and infectious disease specialists regarding the proposed Epidemiology Surveillance Form.

A list of all commenters and a copy of their comments is being retained by the Division of Epidemiology and Disease Control, Communicable Disease and Injury Control Services, and is available upon request.

N.J.A.C. 8:57-1.5(e)

COMMENT: These provisions are appropriate and will improve the reporting process.

RESPONSE: The Department appreciates this comment.

COMMENT: Telephone reporting should not be required for nosocomial infections.

RESPONSE: Routine nosocomial infections do not require telephone reporting, only completion of the requested information on the monthly Epidemiology Surveillance Form. The nosocomial infections requiring telephone reporting are disease outbreaks (as are all non-nosocomial disease outbreaks) and those involving the communicable diseases which require reporting within 24 hours whether community-acquired or nosocomially-acquired. This is unchanged from the previous N.J.A.C. 8:57.

COMMENT: The Joint Commission on Accreditation of Healthcare Organizations (J.C.A.H.O.) encourages each institution to perform focused studies of those infections determined to be problematic in that institution.

RESPONSE: The Department appreciates this comment.

COMMENT: The priorities and functions of existing infection control programs would be diverted to "state-mandated" issues.

RESPONSE: This is not the intent of the Epidemiology Surveillance System. If the diseases/organisms listed are not a problem in a given facility, completion time for the Epidemiology Surveillance Form would be minimal. If the diseases/organisms are a problem in a given facility, the Epidemiology Surveillance Form can help identify the problem.

COMMENT: No other state mandates a nosocomial surveillance system.

RESPONSE: Although not mandated by other states, several states, including Iowa, Missouri, and Virginia, have nosocomial surveillance systems. The Centers for Disease Control conducts national nosocomial surveillance.

COMMENT: A committee should be established to evaluate nosocomial issues.

RESPONSE: The New Jersey State Department of Health established a committee to evaluate nosocomial issues. Representatives of the Department of Health, the New Jersey Hospital Association, Association for Practitioners in Infection Control-Northern New Jersey, Association for Practitioners in Infection Control—Southern New Jersey, infectious disease specialists, hospital administrators, and hospital laboratorians are members of this committee.

COMMENT: The nosocomial surveillance reporting form was not included in the New Jersey Register.

RESPONSE: No reportable disease surveillance form, nosocomial or non-nosocomial, was published in the New Jersey Register. The nosocomial surveillance reporting form is currently under development by the ad hoc committee.

COMMENT: Definitions to be used to complete the nosocomial surveillance form were not published in the New Jersey Register.

RESPONSE: Definitions and instructions for completing the Epidemiology Surveillance Form will be available. An ad hoc committee including representatives of the New Jersey State Department of Health, Southern New Jersey Association for Practitioners of Infection Control, Inc., Northern New Jersey Association for Practitioners of Infection Control, Inc., New Jersey Hospital Association, infectious disease physicians, and hospital laboratorians has been organized. This ad hoc committee will address the specific surveillance form and definitions required for completion of the surveillance form.

COMMENT: Completion of the nosocomial surveillance form would increase the workload of the infection control practitioner.

RESPONSE: It is the responsibility of the hospital administrator to designate a representative to complete the form. No mention is made in the New Jersey Register specifying that the form must be completed by an infection control practitioner. A major consideration of the ad hoc committee is to ensure that any contribution of infection control practitioners would be guided by the principle of efficiency. As evidenced in responses to other comments, every effort has been made to place no undue burden on the facility or the representative designated by the administrator in the completion of the Epidemiology Surveillance Form.

COMMENT: No distinction is made between colonized and infected patients.

RESPONSE: The Epidemiology Surveillance System is designed to track organisms. The organisms are present in colonized and infected patients. The distinction between colonized and infected patients is a clinical distinction between asymptomatic and symptomatic patients. Eliminating this distinction greatly diminishes the need to perform chart review and thereby diminishes the time and effort required to complete the Epidemiology Surveillance Form.

COMMENT: Epidemiology methodology is lacking.

RESPONSE: The surveillance form will be designed by the ad hoc committee with emphasis on epidemiology methodology and statistical analysis.

COMMENT: It would be preferable to use a denominator in order to establish rates of nosocomial infections.

RESPONSE: The information requested on the Epidemiology Surveillance Form will be formulated by the ad hoc committee. The ad hoc committee will consider the use of a denominator when constructing the Epidemiology Surveillance Form.

COMMENT: There is no standard methodology currently used by hospitals in conducting their nosocomial surveillance. Comparing data from different hospitals may include an overestimate or underestimate of nosocomial problems depending on the surveillance methodology used.

RESPONSE: The Epidemiology Surveillance System will be designed to minimize differences in surveillance techniques. The responses required are based on laboratory information. The data for each hospital will only be compared statistically to data from that hospital to establish a statistically significant difference, thereby eliminating differences between hospitals.

COMMENT: Nosocomial data from individual hospitals are part of the public record and may be misinterpreted if released to the public.

RESPONSE: This was the most frequently received comment. The following revision has been made to prevent release of individual hospital data as part of the public domain. "Reports made, maintained or kept on file pursuant to this section shall not be deemed to be public records." A general principle of mandated surveillance systems is to ensure that people are not unduly penalized for providing the required information. The addition of this sentence explicitly states the mechanism of protection

provided to people or organizations submitting a disease report required in N.J.A.C. 8:57-1.5(e).

The information requested in the Epidemiology Surveillance Form and the entire Epidemiology Surveillance System is a novel approach to tracking and studying microorganisms. The Department agrees that the information gathered on the Epidemiology Surveillance Form will not provide information that can readily be used to implicate the hospital as the source of the microorganism. In an effort to minimize the work load on the hospital, the information requested includes "data regarding specific microorganisms occurring in that month within that facility". This can include a combination of community-acquired microorganisms, health-care facility acquired microorganisms at a facility other than the reporting facility, and hospital-acquired microorganisms.

Hospitals have been selected as the source of information for the Epidemiology Surveillance Form because they have the microbiology laboratory capability to detect the microorganisms. These facilities should not potentially be penalized by placing the raw data from the Epidemiology Surveillance Form in the public domain just because hospitals have the ability to detect these microorganisms and are therefore able to provide the information requested on the Epidemiology Surveillance Form. As previously stated, the information on the Epidemiology Surveillance Form reflects the detection of microorganisms obtained from many possible sources outside the hospital.

Mandated passive surveillance systems require cooperation to be effective. The majority of disease reports for all reportable diseases, not just those included in the Epidemiology Surveillance Form, come from hospitals. The entire passive surveillance system in New Jersey hinges on cooperation by the hospitals. There should be no disincentive for this cooperation. By respecting patient and hospital anonymity, the Department of Health anticipates more cooperation in Epidemiology Surveillance Form submission than if this anonymity were not provided.

COMMENT: Completion of a nosocomial surveillance form on a quarterly basis instead of monthly would be an alternative to ongoing assessment.

RESPONSE: Monthly reporting was selected as a way to be as up to date as possible in tracking organisms and detecting potential outbreaks.

COMMENT: One individual was opposed to selecting Methicillin-resistant *Staphylococcus aureus*, *Clostridium difficile*, and multiply-resistant bacteremia for inclusion in the nosocomial surveillance form.

RESPONSE: Methicillin-resistant *Staphylococcus aureus* (MRSA) and multiply-resistant bacteremia have been selected for the Epidemiology Surveillance System because MRSA can be used as a model for multiply-resistant bacteria and can be used to develop an effective infection control strategy for dealing with multiply-resistant bacteria. Additionally, information on multiply-resistant bacteremias helps track these organisms to allow planning of preventive strategies. In order to focus on MRSA and multiply-resistant bacteremias, the Department of Health, in conjunction with the ad hoc committee, decided to delete *Clostridium difficile* from the initial Epidemiology Surveillance Form.

COMMENT: Nosocomial surveillance data have the potential for punitive regulatory action.

RESPONSE: No punitive regulatory action will be taken, based on the data submitted on the Epidemiology Surveillance Form. However, not completing and submitting the form is in violation of N.J.S.A. 26:1A-7 and N.J.A.C. 8:43G-14, the Hospital Infection Control Standards, which are to go into effect July 1, 1990 and which can be cited during regulatory investigations.

COMMENT: Will Division of Health Facilities Evaluations personnel have access to the nosocomial surveillance form?

RESPONSE: The Epidemiology Surveillance Form will be sent directly to the Division of Epidemiology and Diseases Control. The forms will not be sent to the Division of Health Facilities Evaluations and the staff from that Division will not have access to the nosocomial surveillance form.

N.J.A.C. 8:57-1.6 (a)

COMMENT: The Division of Youth and Family Services, Department of Human Services, felt that requiring schools and child care centers to report within 24 hours in writing any suspected communicable disease on the reportable disease list imposed an undue administrative burden and that verbal reports should be permitted.

RESPONSE: The words "in writing" will be deleted from N.J.A.C. 8:57-1.6 to allow such reports to be made either verbally or in writing within 24 hours, as is currently the case.

COMMENT: The Division of Youth and Family Services, Department of Human Services suggested that the various references to child care programs be simplified by using the term "child care center."

RESPONSE: The Department concurs in this suggestion and will amend N.J.A.C. 8:57 accordingly, as appropriate.

N.J.A.C. 8:57-4.1 through 4.15

COMMENT: The State of New Jersey does not have the authority to establish mandatory immunization laws which infringe upon a parent's right to choose.

RESPONSE: The State of New Jersey has had a mandatory immunization law affecting children enrolled in child care and school settings since 1975. The State has full authority to legislate and enforce rules as they pertain to the public health of all its citizens.

COMMENT: The State of New Jersey Department of Health is in violation of the Federal Constitution because the proposed rule on religious exemption denies people their constitutional right to religious freedom.

RESPONSE: In the proposed rules, religious exemptions to mandatory immunization continue to be allowed under the law, provided the parent presents a statement explaining how immunization conflicts with the pupil's exercise of bona fide religious tenets or practices. The Department of Health has conferred with the Office of the Attorney General and has been advised that the proposed rule on religious exemption does not violate State law, the U.S. Constitution, or the 14th Amendment.

COMMENT: The State of New Jersey Department of Health should allow moral or philosophical exemptions from mandatory immunization laws for those parents who personally object to immunization on philosophical or moral grounds.

RESPONSE: The State of New Jersey does not have a statute which provides a philosophical exemption from immunization for children in child care or school settings. As stated above, a religious exemption is allowed under the law. Also, medical exemptions are permitted.

COMMENT: The 30-day grace period for out-of-State children to provide the required documentation of immunization should also be extended to in-State children.

RESPONSE: Under the existing law, there is no exemption specifically granted to new enterers allowing them a 30-day grace period. However, it has been the policy of the New Jersey Department of Health to allow those schools who so wish to grant a 30-day grace period for out-of-State child care and school enrollees in order to give the parents time to retrieve the required immunization documentation from out-of-State sources. There is no practical need to extend a 30-day grace period to New Jersey residents. At this time, the Department of Health is not considering such a change in the rule. The Department is, however, amending the rule on adoption to permit individual school administrators to make the determination to allow a grace period.

COMMENT: Child care centers are under financial and space limitations which make the provision of a separate medical record file an unnecessary expense.

RESPONSE: The Department of Health agrees that this provision might create a burden for child care operators. Therefore, changes will be made in the rule so that the child's immunization record card may be filed with the child's other medical records, provided that the immunization records are easily accessed for identification and audit.

COMMENT: Child care centers do not have the medical expertise to determine compliance with the proposed rules concerning provisional enrollment status of children under five years of age; there is no uniform immunization schedule.

RESPONSE: Under existing rules, child care center directors are responsible for ensuring that a child in provisional enrollment status will be adequately immunized after the provisional period has elapsed. Under the proposed rules, child care center directors will now be responsible for records of children who are under age one as they have previously been responsible for records of children over age one. The Department of Health will simplify the existing immunization schedule already found in the "Technical Assistance Handbook" sections of the Department of Human Services Child Care Center manual and will distribute the simplified schedule to all child care centers to assist the operators. The Department does not propose a change in the language of this rule.

COMMENT: Child care center operators do not possess the knowledge to annually evaluate medically contraindicated immunizations; this periodic evaluation should be the responsibility of the parent.

RESPONSE: All medical exemptions granted under the present rule are for a specific period of time. It is the responsibility of the child care operator or school to review the status of these exemptions as often as

necessary and refer parents to their physician if the exemption has expired or is no longer valid. Any question concerning the validity of a medical exemption may be referred to the local health department or State Department of Health, if necessary. In practice, these exemptions should have already been under annual review, since the number of exemptions is required from all child care centers and schools upon submission of the State-required annual immunization status report.

COMMENT: The parent often does not inform the child care operator where the child is being transferred; therefore, the operator should not be held responsible for transferring the child's immunization record.

RESPONSE: The New Jersey immunization record is intended to follow the student throughout his or her child care or school years. It is unreasonable, expensive, and wasteful to have parents present immunization records each time a child changes institutions when the required information is already on the prescribed form. The Department will clarify the language of the rule to allow a center to give the record to the parent or send it to another requesting school or child care facility within 24 hours of such a request.

COMMENT: Current licensing standards within the Department of Human Services require all records to be maintained for one year after a child leaves a child care facility. There is a very high turnover among children enrolled in child care facilities and maintaining records for four years will create unnecessary space and filing problems for small operators.

RESPONSE: The Department concurs with the assessment of the problem as described and will propose a change in the rule to specify that child care operators and elementary schools retain immunization records for a minimum of one year after a child departs.

Summary of Agency-Initiated Changes:

The Department has determined that a delay in the operative dates of N.J.A.C. 8:57-1.5(e) to January 1, 1991; of N.J.A.C. 8:57-1.7(a), (c), (d), (f) and (g) to September 1, 1990; and N.J.A.C. 8:57-4.1 through 4.15 to September 1, 1991 will give health care providers more time to implement the rules. Forms and procedures are being developed, in consultation with the ad hoc committee described above.

Additional changes have been made on adoption which serve to clarify the requirements, as follows:

In N.J.A.C. 8:57-1.5(e), the Department has deleted references to "nosocomial" and added the more appropriate terminology "specific microorganisms" and "epidemiology." Additionally, the Department has deleted the requirement to submit data annually, since the monthly information submitted will fulfill the requirements.

In N.J.A.C. 8:57-4.4, (c) has been deleted, as the provisions in (d) are sufficient. The Department has added (e) to facilitate implementation of the law and to allow those who have been granted a religious exemption to continue that exemption without having to reapply.

In response to several telephone comments, at N.J.A.C. 8:57-4.5(e), the new requirement for a 30-day grace period has been modified to permit the individual school administrator to make the decision regarding the granting of a grace period.

In N.J.A.C. 8:57-4.7(c), the Department has changed the requirement to send a student's record, to permit the individual school administrator to make the decision. In order to implement the law in a more practical way, the Department has amended subsection (d) to require elementary schools and child care facilities to retain records for one year, and has clarified that secondary schools are required to retain records for four years.

In N.J.A.C. 8:57-4.8, the Department has changed the requirement to refer delinquent reports to the Departments of Education or Human Services so that such referrals would now be at the discretion of the Department of Health.

In N.J.A.C. 8:57-4.10, changes have been made to coordinate the requirements with currently recommended pediatric immunization schedules, which suggest that boosters be administered between age four and age six and that three adult doses be administered to children over the age of seven. The Department has added (e) to clarify that children do not need the preschool booster until age five or six, when it is usually given. The Department has added (f) and has similarly amended N.J.A.C. 8:57-4.11, 4.12 and 4.14, to avoid the likelihood of overvaccination.

In N.J.A.C. 8:57-4.11 and 4.12, the Department has clarified the requirements to conform to current medical practice. In N.J.A.C. 8:57-4.16, the Department has added "child care facility," in order to conform the text to the intent of this subchapter and the law, that is, to impose immunization requirements on facilities serving children from infancy through high school.

The Department has added recommendations at N.J.A.C. 8:57-4.17 to serve as a guide to physicians in the implementation of N.J.A.C. 8:57-4, which covers children in schools or child care centers from infancy through high school, and must, of necessity, provide flexibility in serving the needs of children in several age groups.

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

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

SUBCHAPTER 1. REPORTABLE COMMUNICABLE DISEASES

8:57-1.1 Purpose and scope

The purpose of this subchapter is to expedite the reporting of certain diseases or outbreaks of disease so that appropriate action can be undertaken to protect the public health. The latest edition of the American Public Health Association's publication, "Control of Communicable Diseases in Man", should be used as a reference providing guidelines for the characteristics and control of communicable disease unless other guidelines are issued by the State Department of Health.

8:57-1.2 Definitions

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

"Health officer" means a licensed health officer or his or her designee.

"State Department of Health" means a duly authorized representative of the State Department of Health.

8:57-1.3 Reportable diseases

(a) Any single case of the following diseases is declared to be reportable in writing for purposes of this subchapter. All diseases listed herein are to be reported, by physicians, institutional superintendents, principals, laboratory supervisors and health officers, in the manner prescribed by N.J.A.C. 8:57-1.4, 1.5, 1.6, 1.7 and 1.8, except for the manner of reporting specifically noted for AIDS and HIV infection, cancers, environmental diseases, occupational diseases and poisonings. For the reporting of AIDS and HIV infection, see N.J.A.C. 8:57-2.1.

Amebiasis (*Entamoeba histolytica*)
 Anthrax (*Bacillus anthracis*)
 Botulism (*Clostridium botulinum*)
 Brucellosis (*Brucella* spp.)
 Campylobacter jejuni Disease
 Cancer, see N.J.A.C. 8:57A
 Cholera (*Vibrio cholerae*)
 Creutzfeldt-Jakob Disease
 Diphtheria (*Corynebacterium diphtheriae*)
 Encephalitis, Arboviral
 Environmental Diseases, see N.J.A.C. 8:57-3.1 and 3.2
 Foodborne Intoxications,
 including (but not limited to) Ciguatera, Paralytic Shellfish
 Poisoning, Scombroid, Mushroom Poisoning
 Giardiasis (*Giardia lamblia*)
 Hansen's Disease (Leprosy, *Mycobacterium leprae*)
 Haemophilus influenzae, Invasive Disease (e.g. Meningitis, Sepsis)
 Hemorrhagic Colitis (*Escherichia coli* 0157:H7, other or unknown
 etiology)
 Hemolytic Uremic Syndrome
 Hepatitis, Viral:
 Type A
 Type B
 Non-A, Non-B
 Kawasaki Disease (Mucocutaneous Lymph Node Syndrome)
 Legionella pneumophila Pneumonia (Legionnaire's Disease)
 Leptospirosis (*Leptospira interrogans*)
 Listeriosis (*Listeria monocytogenes*, Invasive Disease, for example
 Meningitis, Sepsis)

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Lyme Disease (*Borrelia burgdorferi*)
Malaria (*Plasmodium* spp)
Measles (Rubeola)
Meningococcal Invasive Disease (*Neisseria meningitidis*, for example Meningitis, Sepsis)
Mumps
Occupational Diseases, see N.J.A.C. 8:57-3.1 and 3.2
Pertussis (Whooping Cough, *Bordetella pertussis*)
Plague (*Yersinia pestis*)
Poisonings, see N.J.A.C. 8:57-3.1 and 8:57-3.2
Poliomyelitis
Psittacosis (*Chlamydia psittaci*)
Rabies, Human Illness
Rabies, Animal Bites Treated for Rabies
Rheumatic Fever, Acute
Rickettsial Diseases, including
 Q Fever (*Coxiella burnetii*)
 Rocky Mountain Spotted Fever (*Rickettsia rickettsii*)
Rubella (German Measles), including Congenital Rubella Syndrome
Salmonellosis
Sexually Transmitted (Venereal) Diseases
 Chancroid (*Haemophilus ducreyi*)
 Chlamydia trachomatis, including (but not limited to)
 Lymphogranuloma Venereum, and Infant Disease, for example
 Pneumonia, Conjunctivitis
 Gonorrhea (*Neisseria gonorrhoeae* including Ophthalmia Neonatorum)
 Granuloma Inguinale
 Syphilis (*Treponema pallidum*), including Congenital
Shigellosis
Smallpox (*Variola*)
Streptococcus agalactiae, Group B, Perinatal Invasive Disease (for example Meningitis, Sepsis)
Tetanus (*Clostridium tetani*)
Trichinosis (*Trichinella spiralis*)
Tuberculosis (*Mycobacterium tuberculosis*, *M. africanum*, and *M. bovis*)
Tularemia (*Francisella tularensis*)
Typhoid Fever (*Salmonella typhi*)
Viral Hemorrhagic Fevers,
 including (but not limited to) Ebola, Lassa, Marburg
Yellow Fever
Yersinia enterocolitica Disease

(b) In addition to the aforementioned reporting responsibilities, the following diseases are declared to be reportable immediately by telephone by physicians, institutional superintendents, principals, laboratory supervisors, and health officers in the manner described in N.J.A.C. 8:57-1.4, 1.5, 1.6, 1.7 and 1.8.

1. Disease outbreaks, including:
 - Foodborne/Waterborne
 - Nosocomial
 - Other/Unknown
2. Single cases or suspected cases of:
 - Botulism (*Clostridium botulinum*)
 - Creutzfeldt-Jakob Disease
 - Diphtheria (*Corynebacterium diphtheriae*)
 - Encephalitis, Arboviral
 - Haemophilus influenzae*, Invasive Disease
 - Hepatitis A, Institutional Settings
 - Measles (Rubeola)
 - Meningococcal Invasive Disease (*Neisseria Meningitidis*)
 - Pertussis (Whooping Cough, *Bordetella pertussis*)
 - Plague (*Yersinia pestis*)
 - Poliomyelitis
 - Rabies (Human Illness)
 - Rubella
 - Smallpox (*Variola*)
 - Viral Hemorrhagic Fevers,
 including (but not limited to) Ebola, Lassa, Marburg

(c) In addition to the aforementioned reporting responsibilities, any single case of the following disease is required to be reported

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by laboratory supervisors in the manner described in N.J.A.C. 8:57-1.7(b): Atypical Mycobacterioses.

(d) For purposes of research, surveillance and in response to technological developments in disease control, the State Commissioner of Health, or a person designated to act for the Commissioner, is empowered to amend the list of diseases as set forth in this chapter for such periods of time as may be necessary to control disease.

(e) In addition, any single case of the diseases identified in N.J.A.C. 8:57-2.1, AIDS infection with HIV, 8:57-3, Occupational and Environmental Diseases and Poisonings, and 8:57A, Cancer, shall be reported in the manner described in N.J.A.C. 8:57-2.1, 8:57-3 and 8:57A.

8:57-1.4 Reporting of diseases by physicians

(a) Every physician attending any person ill with or infected with any of the diseases listed in N.J.A.C. 8:57-1.3(a) shall, within 24 hours after such disease has been diagnosed, report in writing such disease to the health officer of the jurisdiction wherein the diagnosis is made, excepting cases of sexually transmitted (venereal) diseases and tuberculosis, which are to be reported directly to the State Department of Health.

(b) The report shall include the name, municipality and telephone number of the reporting physician; the name of the disease; the name, age, date of birth, gender, race, occupation, current location, home address and telephone number of the person ill or infected with such disease; the date of onset of illness, pertinent medical history and diagnostic confirmation; and such other information as may be requested by the State Department of Health.

(c) Physicians having knowledge of any outbreak of any disease shall immediately report the facts by telephone to the health officer specified in (a) above.

(d) Diagnosed or suspected cases of the diseases listed in N.J.A.C. 8:57-1.2(b) shall be reported by telephone immediately by the attending physician to the health officer specified in (a) above. Such telephone report shall be followed by a written report as required in (a) above.

(e) The physician may delegate this reporting activity to a member of the staff, but this delegation does not relieve the physician of the ultimate reporting responsibility, even if the patient has been hospitalized or has had laboratory reports submitted.

(f) Physicians failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Physicians failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by statute. 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 of the Board of Medical Examiners of the State Department of Law and Public Safety, and appropriate hospital medical directors or administrators.

8:57-1.5 Reporting of diseases occurring in institutions

(a) The superintendent or other person having control or supervision over any non-State institution such as a hospital, sanitarium, nursing home, emergency shelter for the homeless, or penal institution in which any person is ill or infected with any of the diseases listed in N.J.A.C. 8:57-1.3(a) shall, within 24 hours after such disease has been diagnosed, report in writing such disease to the health officer having jurisdiction over the territory in which such institution is located, excepting cases of sexually transmitted (venereal) disease and tuberculosis, which are to be reported directly to the State Department of Health.

(b) The superintendent or other person having control or supervision over any State institution such as a hospital, sanitarium, nursing home, emergency shelter for the homeless, or penal institution in which any person is ill or infected with any of the communicable diseases listed in N.J.A.C. 8:57-1.3 shall, within 24 hours after such disease has been diagnosed, submit a report in writing of this fact to the State Department of Health.

(c) The reports required by (a) and (b) above shall state the name of the disease; the name, age, date of birth, gender, race, occupation, current location, home address and telephone number of the person ill or infected with such disease; the date upon which he or she was received for care or treatment; the name, location and telephone

number of the reporting institution; the name, municipality and telephone number of the attending physician; the date of onset of illness, pertinent medical history and diagnostic confirmation; and such other information as may be required by the State Department of Health.

(d) Any outbreak of disease, or any single case of a disease listed in N.J.A.C. 8:57-1.3(b), shall be immediately reported by telephone as well as by written report to the health officer, except in the case of disease occurring in State institutions, which shall be immediately reported by telephone as well as by written report to the State Department of Health.

(e) ***[The] *Beginning on January 1, 1991, the*** superintendent of any acute care hospital shall, within 31 days of the end of each month, submit data regarding ***[nosocomial infections]* *specific micro-organisms occurring*** in that month within that institution to the State Department of Health, as outlined in the ***[Nosocomial]* *Epidemiology*** Surveillance Form (available from the State Department of Health). ***[Annual data shall also be submitted not more than 60 days after the end of the year.]* *Reports made, maintained or kept on file pursuant to this section shall not be deemed to be public records.***

(f) The superintendent may delegate these reporting activities to a member of the staff, but this delegation does not relieve the superintendent of the ultimate reporting responsibility.

(g) Superintendents failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Superintendents failing to meet these reporting requirements, despite warning, shall be subject to fine, 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 of the State Department of Health, Division of Health Facilities Evaluation, other appropriate licensing review organizations, and other appropriate agencies.

8:57-1.6 Reporting of diseases occurring in schools

(a) The principal, or other person in charge of any public, private, parochial, or other school, college, ***[nursery school, or day]* *child*** care center shall report in writing the suspected presence of any diseases listed in N.J.A.C. 8:57-1.3(a) within 24 hours to the local health officer, except in the case of sexually transmitted diseases and tuberculosis, which are to be reported directly to the State Department of Health. Such report should contain the name of the suspected disease as well as the name, age, date of birth, gender, race, home address and telephone number of the person ill or infected with such disease; the name, municipality and telephone number of the attending physician; and such other information as may be required by the State Department of Health. Any unusual absenteeism thought to be due to disease shall also be reported.

(b) Any outbreak of any disease, or any single case of a disease listed in N.J.A.C. 8:57-1.3(b), shall be immediately reported by telephone as well as by written report to the health officer.

(c) The principal may delegate this reporting activity to a member of the staff, but this delegation does not relieve the principal of the ultimate reporting responsibility.

(d) Principals failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Principals failing to meet these reporting requirements, despite warning, shall be subject to fine, 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 of the State Departments of Education, Higher Education, or Human Services (Division of Youth and Family Services), or other appropriate accreditation review organizations.

8:57-1.7 Reporting results of laboratory examinations and submission of specimens to the State Department of Health, Division of Public Health and Environmental Laboratories

(a) All laboratory supervisors shall report in writing results of laboratory examinations of specimens indicating or suggesting the existence of a reportable disease to the physician or veterinarian

submitting the specimen, and to the health officer having jurisdiction over the territory in which this physician or veterinarian is located, except in the case of sexually transmitted (venereal) diseases and tuberculosis, which are to be reported directly to the State Department of Health. Reports to health officers shall be made not later than five working days after the close of business on the day on which the results were obtained. Reports of sexually transmitted (venereal) diseases and tuberculosis to the State Department of Health shall be made not later than 72 hours after the close of business on the day on which the results were obtained.

(b) Laboratory results indicating or suggesting any single case of the disease listed in N.J.A.C. 8:57-1.3(c) shall be reported directly to the State Department not later than 72 hours after the close of business on the day on which the results were obtained.

(c) The reports required by N.J.A.C. 8:57-1.7(a) and (b) shall contain at least the result of the laboratory examination, the type of specimen tested, the specific test used, the name and age of the patient, the name and address of the submitting physician, veterinarian, or institutional representative, and the date the examination was performed.

(d) Laboratory results indicating or suggesting the existence of an outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(b) shall be immediately reported to the aforementioned health officer by telephone. Such telephone report shall be followed by a written report as required in N.J.A.C. 8:57-1.7(a).

(e) All laboratories shall submit to the State Department of Health, Division of Public Health and Environmental Laboratories, for further testing, all microbiologic cultures of the following organisms, obtained from human or food specimens:

1. Legionella spp.;
2. Neisseria meningitidis; and
3. Salmonella spp.

(f) The laboratory supervisor may delegate reporting and specimen submission activities to a member of the staff, but this delegation does not relieve the laboratory supervisor of the ultimate reporting responsibility.

(g) 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 fine 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.

8:57-1.8 Reporting of diseases by health officers

(a) Health officers who receive complete reports of diseases required under N.J.A.C. 8:57-1.4, 1.5, 1.6 and 1.7 (submitted by physicians, institutions, schools or laboratories) shall send a copy thereof to the State Department of Health within 24 hours of receipt of the report. If the initial report received is incomplete, the health officer shall seek complete information, and shall provide all available information to the State Department of Health within five working days of receiving the initial report, specifying that a complete report is pending.

(b) Health officers who receive reports of any outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(b) shall transmit the report immediately by telephone to the State Department of Health.

(c) The health officer who receives a report of any outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3 shall immediately forward the facts contained therein together with such related information as he or she may have available to the health officer of the local health agency where the disease was believed to have been contracted and the health officer of the local health agency wherein the home address of the ill or infected person is situated. If either of the said health agencies is not located in New Jersey, the health officer shall forward this information to the State Department of Health.

(d) The health officer may delegate reporting activities to a member of the staff, but this delegation does not relieve the health officer of the ultimate reporting responsibility.

(e) Health officers failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Health officers failing to meet these reporting requirements, despite warning, shall be subject to fine, 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 Public Health Licensing and Examination Board of the State Department of Health.

8:57-1.9 Health officer investigations

A health officer shall, upon receiving a report of an outbreak of disease, or of a case or suspected case of a reportable disease, cause an investigation to be made following such direction as may be given by the State Department of Health, for the purposes of determining whether an outbreak or a case of reportable disease exists; ascertaining the source and spread of the infection; and determining and implementing appropriate control measures. The health officer shall immediately relay all available information pertaining to the investigation to the State Department of Health. The specific health officer or health officers participating in such investigations may include those having jurisdiction over locations of suspected transmission of disease, areas of residence or occupation of persons believed infected, sites of institutions where such persons may be located or receive care, and other jurisdictions determined appropriate by the State Department of Health.

8:57-1.10 Isolation and restriction for communicable disease

(a) A health officer or the State Department of Health, upon receiving a report of a communicable disease, shall by written order establish such isolation, or other restrictive measures required by law or regulation or as may be necessary to prevent or control disease. It is necessary in the judgment of the health officer or the State Department of Health in order to provide adequate isolation, a health officer or the State Department of Health shall promptly remove, or cause to be removed, a person ill with a communicable disease to a hospital. Such order shall remain in force until terminated by the health officer or the State Department of Health.

(b) (No change.)

(c) A health officer, if authorized by the State Department of Health or local board of health regulations, or the State Department of Health, may by written order restrict any person who has been exposed to a communicable disease, under conditions he or she may specify; providing such period of restriction shall not exceed the period of incubation of the disease.

(d) (No change.)

8:57-1.11

(a) (No change in text.)

Recodify existing 1.11 and 1.12 as 1.12 and 1.13 (No change in text.)

8:57-4.1 Applicability

These uniform regulations shall apply to all pupils attending any public or private school, child care center, nursery school, preschool and kindergarten in New Jersey.

8:57-4.2 Proof of immunization

No principal, director or other person in charge of a school or *[preschool]* ***child care*** facility shall knowingly admit or retain any pupil who has not submitted acceptable evidence of immunization according to the schedules specified in this subchapter, except when there are exemptions as noted in this subchapter.

8:57-4.3 Medical exemptions

(a) A pupil shall not be required to have any specific immunization(s) which are medically contraindicated.

(b) A written statement submitted to the school or preschool facility from a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States indicating that an immunization is medically contraindicated for a specified period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons, as enumerated by the Immunization Practices Advisory Committee (ACIP)¹ of the United States Public Health Service

or the American Academy of Pediatrics (AAP)² guidelines, will exempt a pupil from the specific immunization requirement for the stated period of time.

(c) The physician's statement shall be maintained as part of the immunization record of the pupil and shall be reviewed annually by the school or *[preschool]* ***child care*** facility. When the pupil's medical condition permits immunization, this exemption shall terminate and the pupil shall be required to obtain the immunization(s) from which he or she has been exempted.

(d) Those pupils with medical exemptions from receiving specific immunizations may be excluded from the school or *[preschool]* ***child care*** facility during a vaccine-preventable disease outbreak or threatened outbreak, as determined by the State Commissioner of Health or his or her designee.

(e) As provided by N.J.S.A. 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school of the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

¹Immunization Practices Advisory Committee, U.S. Public Health Service, Centers for Disease Control, Atlanta, GA 30333.

²American Academy of Pediatrics, Committee on Infectious Diseases, P.O. Box 927, Elk Grove Village, Illinois 60009-0927.

8:57-4.4 Religious exemptions

(a) A pupil shall be exempted from mandatory immunization if the parent or guardian objects thereto in a written statement submitted to the school or preschool facility signed by the parent or guardian explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices. General philosophical or moral objection to immunization shall not be sufficient for an exemption on religious grounds.

(b) This statement will be kept by the school or preschool facility as part of the pupil's immunization record.

[(c) This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health.]

*[(d)**(c)* Those pupils with religious exemptions *[to]* ***from*** receiving immunizing agents may be excluded from the school or *[preschool]* ***child care*** facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

*[(e)**(d)* As provided by N.J.S.A. 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school on the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

***[(e) Those pupils enrolled in school or child care facilities before September 1, 1991, and who have previously been granted a religious exemption, shall not be required to reapply for a new religious exemption under N.J.A.C. 8:57-4.4(a).*]**

8:57-4.5 Provisional admission

(a) A pupil may be admitted to a school or *[preschool]* ***child care*** facility on a provisional basis if a physician or health department can document that at least one dose of each of the required vaccine(s) or antigen(s) which are age appropriate has been administered and that the pupil is in the process of receiving the remaining immunization(s).

(b) Provisional admission for pupils under age five shall be granted in compliance with the requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current Im-

munization Practices Advisory Committee (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed 17 months for completion of all immunization requirements.

(c) Provisional admission for pupils five years of age or older shall be granted in compliance with the requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed one year for completion of all immunization requirements.

(d) Provisional status shall only be granted one time to pupils entering or transferring into schools or ***[preschool]* *child care*** facilities in New Jersey. Information on this status shall be sent by the original school or preschool ***[preschool]* *child care*** facility to a new school or facility if a pupil transfers.

(e) Those pupils transferring into a New Jersey school or ***[preschool]* *child care*** facility from out-of-State ***[shall]* *may*** be allowed a 30-day grace period in order to obtain past immunization documentation before provisional status shall begin.

(f) The school or ***[preschool]* *child care*** facility shall ensure that the required vaccines/antigens are being received on schedule. If at the end of the provisional admission period, the pupil has not completed the required immunizations, the administrative head of the school or ***[preschool]* *child care*** facility shall exclude the pupil from continued ***[school]*** attendance ***[until]* *until*** appropriate documentation has been presented.

(g) Those students in provisional status may be temporarily excluded from the school or ***[preschool]* *child care*** facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

8:57-4.6 Documents accepted as evidence of immunization

(a) The following documents will be accepted as evidence of a pupil's immunization history provided that the type of immunization and the date when each immunization was administered is listed:

1. An official school record from any school or ***[preschool]* *preschool*** facility indicating compliance with the immunization requirements of this subchapter; or
2. A record from any public health department indicating compliance with the immunization requirements of this subchapter; or
3. A certificate signed by a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States indicating compliance with the immunization requirements of this subchapter.

(b) All immunization records submitted by a parent or guardian in a language other than English shall be accompanied by a translation sufficient to determine compliance with the immunization requirements of this subchapter.

8:57-4.7 Records required

(a) Every school or ***[preschool]* *child care*** facility shall maintain an official State of New Jersey School Immunization Record for every pupil that shall include the date of each immunization and that shall be ***[kept separate and apart]* *separated*** from the pupil's other medical records ***for purpose of immunization record audit***.

(b) If a pupil withdraws, is promoted, or transfers to another school or ***[preschool]* *child care*** facility, this immunization record, ***or a certified copy thereof,*** along with statements pertaining to religious or medical exemptions, ***[or a certified copy thereof,]*** shall be sent ***[within 24 hours]*** to the new school by the original school or ***shall*** be given to the parent or guardian upon request ***, within 24 hours of such a request***.

(c) When a pupil graduates ***from secondary school***, this record or a certified copy thereof shall be sent to an institution of higher education or ***may*** be given to the parent or guardian upon request.

(d) Each pupil's official New Jersey School Immunization Record or a copy thereof shall be retained by every ***secondary*** school ***[or preschool]*** for a minimum of four years after the pupil has left the school. ***Every elementary school or child care facility shall retain an immunization record or a copy thereof for a minimum of one year after the pupil has left the school.***

(e) Any computer-generated document or list developed by a school or preschool shall be considered to be a supplement to, and not a replacement of, the official New Jersey School Immunization Record.

8:57-4.8 Reports to be sent to State Department of Health

(a) A report of the immunization status of the pupils in every school or preschool facility shall be sent each year to the State Department of Health by the principal, director, or other person in charge of the school or preschool facility.

(b) The form for the annual immunization status report shall be provided by the State Department of Health.

(c) This report shall be submitted by December 1 of the respective academic year after a review of all appropriate immunization records.

(d) A copy of this report shall be sent to the local board of health in whose jurisdiction the school or preschool facility is located.

(e) Those schools and ***[preschool]* *child care*** facilities not submitting the annual report by December 1 will be considered delinquent and ***may be*** referred to the New Jersey State Department of Education or the New Jersey State Department of Human Services, as appropriate. The local health department will also be notified of the delinquency.

8:57-4.9 Records available for inspection

The principal or other person in charge of a school or preschool facility shall make all immunization records available for inspection by authorized representatives of the State Department of Health or the local board of health in whose jurisdiction the school is located within 24 hours of notification.

8:57-4.10 Diphtheria and tetanus toxoids and pertussis vaccine

(a) Every pupil ***born on or after January 1, 1986*** shall have received ***a minimum of*** four doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP), one dose of which shall have been given on or after the fourth birthday.

(b) Those pupils enrolled in preschool facilities who are too young to meet this requirement shall be considered to be in compliance with this rule if they are appropriately immunized for their age, as recommended by the Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service.

(c) Pediatric diphtheria-tetanus toxoid (DT) shall be accepted in lieu of DTP for pupils under age seven if a physician's written medical contraindication to further pertussis vaccine has been presented as specified in N.J.A.C. 8:57-4.3.

(d) Pupils seven years of age and older who have not completed this requirement shall receive tetanus and diphtheria toxoids (adult Td) instead of DTP. Any appropriately spaced combination of three doses of DTP or Td in a pupil over age seven shall be acceptable as adequate immunization for this vaccine series^{*}, provided that one dose was administered on or after the fourth birthday^{*}.

[e] The requirement to receive a booster dose of DTP after the fourth birthday shall not apply to children enrolled in child care centers.

[f] Those pupils born on or after January 1, 1986 who have received five or more doses of DTP shall have satisfied the DTP requirement.

8:57-4.11 Poliovirus vaccine

(a) Every pupil ***born on or after January 1, 1986*** shall have received at least three doses of live, trivalent, oral poliovirus vaccine (OPV), one dose of which shall have been given on or after the fourth birthday.

(b) Those pupils enrolled in preschool facilities who are too young to meet this requirement shall be considered to be in compliance with this rule if they are appropriately immunized for their age as recommended by the Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service.

[c] If a pupil has received four doses of conventional trivalent inactivated poliovirus vaccine (IPV) or three doses of enhanced inactivated poliovirus vaccine (E-IPV), one dose of which shall have been given on or after the fourth birthday, this will be accepted in lieu of trivalent oral poliovirus vaccine.]

[d]**[c]* Any appropriately spaced combination of four doses of conventional ***or enhanced IPV and OPV will satisfy the poliovirus vaccine requirement.**

*[(e)**(d)* **For pupils seven years of age and older, any*** *[Any]* appropriately spaced combination of three doses of enhanced IPV and OPV will satisfy the poliovirus vaccine requirement.

[(f) Any appropriately spaced combination of four doses of conventional IPV and enhanced IPV will satisfy the poliovirus vaccine requirement.]

(e) The requirement to receive a booster dose of OPV or IPV after the fourth birthday shall not apply to children enrolled in child care centers.

8:57-4.12 Measles virus vaccine

(a) Every pupil shall have received one dose of measles virus vaccine, live, attenuated, or any vaccine combination containing ***live*** measles ***[virus]* vaccine***[, live, attenuated.]* administered on or after the first birthday.

(b) Those pupils younger than 15 months of age who are enrolled in a preschool facility shall be considered to be in compliance with this rule until reaching the age of 15 months, which is the medically recommended age for routine measles immunization.

(c) Pupils who present documented laboratory evidence of measles immunity shall not be required to receive measles vaccine.

(d) Those pupils enrolled in school or child care facilities before September 1, 1991 who have a current immunization record with physician diagnosed and documented measles disease shall not be required to receive measles vaccine.

8:57-4.13 Rubella vaccine

(a) Every pupil shall have received one dose of live rubella virus vaccine, or any vaccine combination containing live rubella virus vaccine administered on or after the first birthday.

(b) Those pupils younger than 15 months of age who are enrolled in a preschool facility shall be considered to be in compliance with this rule until reaching the age of 15 months, which is the medically recommended age for routine rubella immunization.

(c) Rubella virus vaccine shall not be required of pupils who present documented laboratory evidence of rubella immunity.

8:57-4.14 Mumps vaccine

(a) Every pupil*[, born on or after January 1, 1973,]* shall have received one dose of live mumps virus vaccine, or any vaccine combination containing live mumps vaccine, administered on or after the first birthday.

(b) Those pupils younger than 15 months of age who are enrolled in a ***[preschool]* *child care*** facility, shall be considered to be in compliance with this rule ***until*** reaching the age of 15 months, which is the medically recommended age for routine mumps immunization.

(c) Pupils who present written certification from the diagnosing physician that the pupil had mumps disease shall not be required to receive mumps vaccine.

(d) Pupils who present documented laboratory evidence of mumps immunity shall not be required to receive mumps vaccine.

8:57-4.15 Providing immunization

(a) A board of education and/or a local board of health may provide, at public expense, the necessary equipment, materials and services for immunizing pupils with the following immunizing agents, either singly or in combination:

1-5. (No change.)

6. Poliovirus vaccine;

7-8. (No change.)

8:57-4.16 Emergency powers of the State Commissioner of Health

(a) In the event that the State Commissioner of Health or his or her designee determines either that an outbreak or threatened outbreak of disease or other public health immunization emergency exists, the Commissioner or his or her designee may issue either additional immunization requirements to control the outbreak or threat of an outbreak or modify immunization requirements to meet the emergency.

(b) All pupils failing to meet these additional requirements shall be excluded from ***a*** school ***or child care facility*** until the outbreak or threatened outbreak is over.

(c) These requirements or amendments to the requirements shall remain in effect until such time as the State Commissioner of Health or his or her designee determines that an outbreak or a threatened outbreak no longer exists or the emergency is declared over, or for three months after the declaration of the emergency, whichever one comes first. The State Commissioner of Health or his or her designee may redeclare a state of emergency if the emergency has not ended.

***8:57-4.17 Optimal immunization recommendations**

The specific vaccines and the number of doses required under N.J.A.C. 8:57-4 are intended to establish the minimum vaccine requirements for child care, preschool or school entry and attendance in New Jersey. Additional vaccines or vaccine doses are recommended by the State Department of Health, in accordance with the guidelines of the American Academy of Pediatrics (AAP) and the Immunization Practices Advisory Committee (ACIP) for optimal immunization protection and may be administered, although they are not required for school attendance.*

HEALTH/LABOR

(a)

ASBESTOS CONTROL SERVICE DIVISION OF WORKPLACE STANDARDS

Asbestos Licenses and Permits

Readoption with Amendments: N.J.A.C. 8:60 and 12:120

Proposed: March 5, 1990 at 22 N.J.R. 736(a).

Adopted: April 30, 1990, by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health, and Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: May 3, 1990 as R.1990 d.278, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:5A-39 (P.L. 1984 c.173).

Effective Date: May 3, 1990, Readoption; June 4, 1990, Amendments.

Expiration Date: May 3, 1995.

The Departments of Health and Labor afforded all interested parties an opportunity to comment on the proposed readoption with amendments, N.J.A.C. 8:60 and 12:120, relating to asbestos licenses and permits. The official comment period ended on April 4, 1990. Announcement of the opportunity to respond appeared in the New Jersey Register on March 5, 1990 at 22 N.J.R. 736(a). Announcements were also forwarded to the New Jersey Chapter of the National Asbestos Council, the Safe Buildings Alliance, all New Jersey-certified asbestos training agencies, and all New Jersey-licensed asbestos abatement contractors.

Summary of Public Comments and Agency Responses:

Written comments were received from John C. Biechman, Vice President of the Safe Buildings Alliance (SBA) and Myles O'Malley, Acting Executive Director of the White Lung Association of New Jersey (WLA/NJ).

COMMENT: One commenter suggested that N.J.A.C. 8:60-7 and 12:120-7 be amended to more clearly state that those licensees engaged in abatement projects which are exempt from the scope of the rules would not be required to notify the Departments when performing exempt activities.

RESPONSE: The Department agrees that those activities as set forth at N.J.A.C. 8:60-1.4(b) and 12:120-1.4(b) are exempt from the scope of the rules and do not require notification as set forth at N.J.A.C. 8:60-7 and 12:120-7. The language as originally drafted implies that any abatement activities exempted pursuant to N.J.A.C. 8:60-1.4(b) and 12:120-1.4(b) do not require notification of the Departments. Therefore, N.J.A.C. 8:60-7.2(a) and 12:120-7.2(a) have been changed to clarify the scope and intent of the rules.

COMMENT: One commenter objected to the inclusion of an exemption from the requirements of the chapter for private employers who are subject to the provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., (OSHA) and who use their own employees

to perform asbestos work in their own facilities. The commenter also stated that this amendment would severely damage the progress made by the Statewide asbestos program and subject building occupants to unregulated abatement activities due to the inadequacy of the Occupational Safety and Health Administration's (OSHA) standards and that agency's lack of enforcement.

RESPONSE: The addition of this language is solely to clarify the scope and intent of the rules and is based upon a judgment in a suit brought against the State of New Jersey, *New Jersey State Chamber of Commerce v. State*, 653 F.Supp. 1453 (D.N.J. 1987). The suit involved a limited constitutional challenge to the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq., and the rules promulgated thereunder. The challenge was limited to the enforcement of these rules against employers who use their own employees to perform asbestos abatement work in their own facilities. The plaintiffs in this suit were the New Jersey State Chamber of Commerce, Public Service Electric and Gas Company, and Jersey Central Power and Light Company. On March 4, 1987, United States District Court Judge Dickinson R. Debevoise granted summary judgment in favor of the plaintiffs and declared that the testing, certification, license, and permit requirements of the Asbestos Control and Licensing Act and the rules promulgated thereunder were unenforceable. Further, it was concluded that the federal program was sufficiently comprehensive to meet the need of the Asbestos Control and Licensing Act. Summary judgment was also granted in favor of the plaintiffs which permanently enjoined the State of New Jersey from enforcing the Act and its attendant rules in their entirety against employers who are subject to OSHA jurisdiction and who use their own employees at their own facilities to perform asbestos work.

This judgment represented a compromise between the State of New Jersey and the plaintiffs in this case. To date, the parties to the above-referenced suit have maintained a non-mandatory relationship with the Department of Health and have voluntarily deferred to the Department of Health's recommendations and curricula as a model for their training efforts.

It is not within the purview of this readoption, nor is it appropriate, for the Departments of Health and Labor to address the commenter's allegations of OSHA inadequacy.

COMMENT: One commenter objected to the exclusion allowed of roofing and exterior siding material at N.J.A.C. 8:60-1.4(b)5 and 12:120-1.4(b)5.

RESPONSE: Currently, little scientific data exists which demonstrates an increased risk associated with the removal and replacement of asbestos-containing roofing and siding materials to building occupants. However, there is no question that occupational exposure to asbestos has resulted in an increased risk of disease and disability in the workforce. It is the Department of Health's position that this deregulation will not place the affected tradespersons at risk insofar as those individuals are afforded training and protection under provision of the revised General Industry Standard and Construction Standard, 29 CFR 1910, Subpart 7 and 29 CFR 1926, Subpart D, respectively.

The Department of Health reserves the right to reevaluate its position and require licensing and training should future studies show a significant risk to this type of environmental exposure.

COMMENT: One commenter called for the extension of the Asbestos Hazard Abatement Subcode, N.J.A.C. 5:23-8, to all buildings, and cited as precedent New York's State Industrial Code 56 and New York City's Local Law 76.

RESPONSE: The concerns raised by the commenter are not within the scope of the amendments to N.J.A.C. 8:60 and 12:120. Insofar as N.J.A.C. 5:23-8 is within the jurisdiction of the Department of Community Affairs, the Departments of Health and Labor do not have the authority to extend the provisions of N.J.A.C. 5:23-8 beyond its stated scope.

COMMENT: One commenter questioned the procedure by which the rules and amendments were proposed. Further, it was alleged that those groups most affected by the amendments were not notified of the rulemaking.

RESPONSE: As with all proposed changes to rules of agencies of the State of New Jersey, the Departments must follow the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA) when proposing and adopting changes to its rules. The APA contains requirements regarding public notice and opportunity for public comment on all rule proposals. Specifically, the APA requires that the Departments give at least 30 days notice to the public of its intended action, and that the Departments afford all interested parties a reasonable opportunity

to submit data, views, or arguments orally or in writing (see N.J.S.A. 52:14B-4(a)(1) and 52:14B-4(a)(3)).

The Departments complied with the APA requirements by publishing notice of the proposed readoption with amendments to N.J.A.C. 8:60 and 12:120 in the March 5, 1990 New Jersey Register at 22 N.J.R. 736(a). Additionally, the announcements were forwarded to the New Jersey Chapter of the National Asbestos Council, the Safe Buildings Alliance, all New Jersey-certified asbestos training agencies, and all New Jersey-licensed asbestos abatement contractors. The public comment period closed on April 4, 1990.

In terms of communicating to the public the effect of the proposed changes to the rules, the Departments are required to prepare various background statements which must accompany the rule proposal (see N.J.A.C. 1:30-3.1). The Summary statement explains the purpose of the rules, who and what will be affected by it, and how, when, and where the effect will occur. The Social Impact statement describes the expected social impact of the rule on the public and on any special segment of the public impacted differently than others. The Economic Impact statement describes the expected costs, revenues, and other economic impact on the State, the public, and on the group directly regulated by the rule. Finally, the Regulatory Flexibility Statement describes the methods utilized to minimize any adverse economic impact of the rule on small businesses.

The Departments of Health and Labor have included each of the above statements in its notice of proposed readoption with amendments to N.J.A.C. 8:60 and 12:120 published in the March 5, 1990 New Jersey Register at 22 N.J.R. 736(a). Additionally, the public was afforded a 30-day comment period in which individuals had the opportunity to question the Departments concerning any conclusions contained in these statements or to seek clarification of the impact of the rule.

COMMENT: One commenter requested a public hearing regarding the proposed readoption with amendments. A specific request for discussion regarding the incorporation of the provisions of N.J.A.C. 5:23-8 into N.J.A.C. 8:60 and 12:120 was also made.

RESPONSE: Pursuant to the Administrative Procedure Act, public hearings are mandated only at the timely request of the Legislature or a governmental body or subdivision (see N.J.S.A. 52:14B-4(a)(3)). Insofar as this request was not from such a body, the Departments choose not to entertain the request for a public hearing.

Summary of Changes Made Between Proposal and Adoption:

The Department of Health and the Department of Labor have further evaluated the rules and have made several technical changes to correct cross-references, citations, inconsistencies, and typographical errors, and have made the following substantive changes not requiring additional public notice and comment:

The term "asbestos abatement" has been added throughout the rules, to clarify the scope and application of the rules.

N.J.A.C. 8:60-1.4(b)2 and 3 and 12:120-1.4(b)2 and 3 have been amended to include the repair of asbestos-containing material. The Departments maintain that this addition is necessary to clarify the scope of the chapter.

At N.J.A.C. 8:60-2.1 and 12:120-2.1, the definition of "Applicant" has been expanded to include training agencies seeking certification to conduct asbestos abatement training; the definition of "Contractor" has been expanded to include employers who hire supervisors; and the definition of "Subcontractor" has been expanded to include employers who hire workers and supervisors.

N.J.A.C. 8:60-3.5(b) and 12:120-3.5(b) have been revised to include other administrative violations which have been noted during the continuing administration of the licensing and permitting program, as set forth at N.J.A.C. 8:60-5.3(f) and (g) and 12:120-5.3(f) and (g).

At N.J.A.C. 8:60-4.9 (12:120-4.9)(c), language has been deleted because the 5-day informal hearing requirement conflicts with the 10 days allowed under (a).

N.J.A.C. 8:60-5.2(b)2 and 12:120-5.2(b)2 have been revised to require a minimum of 24 hours of instruction for obtaining an experienced asbestos worker permit. Twenty-six hours of training were proposed at 22 N.J.R. 736(a) and this represented a typographical error.

N.J.A.C. 8:60-5.3 and 12:120-5.3 have been deleted and all subsequent references have been recodified and amended to reflect this change. The Departments maintain that use of the procedure to verify the identity of the applicant has contributed to undue hardship upon the applicants. Further, this change is necessitated by current staffing and budgetary constraints.

N.J.A.C. 8:60-5.9(b)3 and 12:120-5.9(b)3 have been revised to require proof of refresher training for permit holders whose permits expire after October 1, 1990, to coincide with the issuance of permits, to give permit holders lead time to comply, and to conform to the Federal requirements at 40 CFR 763. Additionally, text has been relocated to N.J.A.C. 8:60-5.7 (12:120-5.7)(c), (d) and (e).

In N.J.A.C. 8:60-6.2 (12:120-6.2)(b), the phrase "and contractor" was deleted, since a contractor is not a person, but an entity, and cannot participate in a training program.

In N.J.A.C. 8:60-6.2 and 6.3 (12:120-6.2 and 6.3)(a)4, a requirement has been added for annual refresher training, in accordance with Federal requirements found at 40 CFR 763.

A new paragraph 6 has been added at N.J.A.C. 8:60-6.5(a) and 12:120-6.5(a) to require smoking cessation instructors to have successfully completed a smoking cessation course approved by the Department of Health, to provide a background in the subject.

N.J.A.C. 8:60-6.6(i)6 and 7 and 12:120-6.6(i)6 and 7 have been amended to include another reference to the U.S. Occupational Safety and Health Administration regulations for respiratory protection, to clarify the proper use of a respirator, and to replace "Smoke" with the correct term "Fume".

N.J.A.C. 8:60-6.6(k)1 and 12:120-6.6(k)1 have been revised to require instruction regarding glovebag procedures and techniques, which have always been Federally required, but were inadvertently omitted from the rules.

At N.J.A.C. 8:60-6.9 (12:120-6.9), "corporate officers" has been changed to "individuals," in order to assure accountability for day to day activities.

At N.J.A.C. 8:60-6.10 (12:120-6.10)(d) has been amended to conform to N.J.A.C. 8:60-6.2 (12:120-6.2); (e) has been amended to require specification of the instructors who will teach the course, for audit purposes; and (i) has been amended to require that student evaluation forms be maintained, for audit purposes.

N.J.A.C. 8:60-6.12(a)5 and 12:120-6.12(a)5 have been amended to include the submission of false information on the Application for Certification as an Asbestos Training agency (ASB-23) as grounds for suspension or revocation of a training agency's certification.

A new paragraph 8 has been added at N.J.A.C. 8:60-8.1(a) and 12:120-8.1(a) to include an additional U.S. Occupational Safety and Health Administration respiratory protection regulation as a document referred to in the chapter.

Appearing in the Summary of the proposed readoption with amendments at 22 N.J.R. 736(a) was a statement that the fee for an asbestos worker and an asbestos supervisor permit would be increased from \$20.00 to \$50.00. While the permit fee is being increased, the Departments failed to mention that the fee is now for a two year permit rather than a one year permit. The Department has clarified this by adding the word "biennial" at N.J.A.C. 8:60-4.2 (12:120-4.2) (h).

Full text of the adoption follows (additions to proposals indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 120 ASBESTOS *[TRAINING COURSES]* *LICENSES AND PERMITS*

8:60-1.3 (12:120-1.3) Purpose

(a) The purpose of this chapter is to provide reasonable standards for:

1. Licensing of employers;
2. Permitting of workers;
3. Permitting of supervisors; and
4. Certifying of training agencies and courses for the above job classifications.

8:60-1.4 (12:120-1.4) Scope

(a) This chapter shall apply to:

1. Licensing of employers;
2. Examination and issuance of permits to workers;
3. *[Permitting of supervisors;]* ***Examination and issuance of permits to supervisors;***
4. Certifying of training agencies and courses for the above job classifications;

5. Employers having a contractual relationship for asbestos work with the owner of a building or structure or equipment for the application, enclosure, encapsulation, repair, or removal of asbestos-containing material; and

6. (No change.)

(b) This chapter shall not apply to:

1. The limited repair of asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released;

2. The stripping*, **repair,*** or removal of 10 feet or less of *[asbestos]* ***asbestos-containing material*** from piping;

3. The stripping*, **repair,*** or removal of 25 square feet of *[asbestos]* ***asbestos-containing material*** from any duct, boiler, tank, structural member*,* or similar equipment;

4. The sale or storage of asbestos;

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects; or

6. Private employers subject to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair, or remove asbestos-containing material in their own facility.

8:60-1.5 (12:120-1.5) Documents referred to by reference

The availability of standards and publications referred to in this chapter is set forth at N.J.A.C. 12:120-8 and 8:60-8.

8:60-1.6 (12:120-1.6) Validity

If any section, paragraph, sentence or word of this chapter is determined to be invalid by any court of competent jurisdiction, such determination shall not affect or impair the validity of the remainder of this chapter.

8:60-2.1 (12:120-2.1) Definitions

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

"Accepted engineering practice" means those practices which conform to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

...
"Applicant" means any person seeking to obtain either an asbestos ***abatement*** worker permit, an asbestos ***abatement*** supervisor permit, *[or]* an employer license*, **or an agency seeking certification to conduct asbestos abatement training*.**

...
"Approved" means acceptable to the Commissioner of Labor ***or the Commissioner of Health, as the case may be*.**

...
"Asbestos" means the asbestiform varieties of chrysotile; crocidolite; amosite; anthophyllite; tremolite; or actinolite and includes any asbestos-containing material.

"Asbestos-containing material" means any material which contains more than one percent asbestos by weight.

"Asbestos work" means the application, enclosure, encapsulation, repair, or removal of asbestos-containing material.

"Certificant" means any training agency certified by the Department of Health pursuant to N.J.A.C. 8:60-6 and 12:120-6.

"C.F.R." means the Code of Federal Regulations.

...
"Contractor" means an employer who hires workers ***and supervisors*** to perform asbestos work or ***who*** performs the asbestos work directly.

...
"Department of Health" means the Asbestos Control Service of the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0360.

“Employee” means:
 1. Any person, including supervisory personnel, suffered or permitted to work by an employer; or
 2. (No change.)

[“Employment Services Office” means any local office or outstation of the New Jersey Department of Labor, Division of Employment Services.]

“Experienced asbestos worker” means any person who has worked with either the application, enclosure, encapsulation, repair, or removal of asbestos-containing material and who has completed an approved New Jersey Department of Health Experienced Asbestos Worker training course prior to June 18, 1985.

“Facility” means any building or structure.

“License” means a certificate documenting acceptance by the Commissioner of an employer as competent to perform the application, enclosure, encapsulation, repair, or removal of asbestos-containing material and to bid for or to contract to perform such work.

“May” means a discretionary term.

“Permit” means a certificate documenting acceptance by the Commissioner of a worker or a supervisor as competent to perform the application, enclosure, encapsulation, repair, or removal of asbestos-containing material. Workers shall work under the direction of a supervisor who holds a valid New Jersey asbestos supervisor permit.

“Subcontractor” means an employer who hires *[employees]* *workers and supervisors* to perform asbestos work or *who* performs asbestos work directly.

“Supervisor” means any person who has completed an asbestos supervisor training course approved by the Department of Health and who has successfully passed a written asbestos supervisor examination devised and administered under the approval of the Department of Health for the position of supervisor and who possesses a valid asbestos supervisor permit issued by the Department of Labor. Individuals who qualify under the experienced worker provision of this chapter shall also be recognized as supervisors.

“Trainee” means any person who is enrolled in an asbestos worker or asbestos supervisor training course approved by the Department of Health.

“U.S.C.” means the United States Code.

“Worker” means a person who has completed an asbestos worker training course approved by the Department of Health and who has successfully passed a written asbestos worker examination devised and administered under the approval of the Department of Health for the position of worker and who possesses a valid asbestos worker permit issued by the Department of Labor.

8:60-3.1 (12:120-3.1) Scope of subchapter

This subchapter shall apply to the administration of the licensing, permitting, and certification standards mandated by this chapter.

8:60-3.2 (12:120-3.2) Compliance

(a) Every employer falling within the scope of this chapter, whose employees apply, enclose, encapsulate, repair, or remove asbestos-containing materials shall comply with the provisions of this chapter and shall be duly licensed by the Commissioner of Labor.

(b) Every employee falling within the scope of this chapter who applies, encloses, encapsulates, repairs, or removes asbestos-containing materials shall be required to hold a permit for such purpose issued by the Commissioner of Labor pursuant to this chapter.

(c) (No change.)

8:60-3.3 (12:120-3.3) Interface of State agencies

(a) The Department of Labor, under the provisions of this chapter, shall:

1. (No change.)
2. Issue permits to qualified workers;
3. Issue permits to qualified supervisors;
4. Collect the fees for licenses and permits;
5. Determine that employers have a valid license; and
6. Determine that workers and supervisors have valid permits.

(b) The Department of Health, under the provisions of this chapter, shall:

1. Certify training agencies which use Department of Health-approved courses to train workers and supervisors and to determine compliance by such training agencies with this chapter;

2. Certify the course of training and the examination thereon given to workers and supervisors;

3. Have the authority to determine that an employer has a valid license; and

*[3.]*4.* Have the authority to determine that workers and supervisors have valid permits.

8:60-3.4 (12:120-3.4) Disorderly persons offense

(a) In accordance with N.J.S.A. 34:5A-41, any person who violates a provision of this chapter is guilty of a disorderly persons offense and is liable for a fine of \$1,000 or imprisonment not in excess of six months, or both.

(b) The Commissioner of Labor or the Commissioner of Health, as the case may be, as an alternative to or in addition to the fines and imprisonment authorized in (a) above, may impose administrative penalties in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5.

8:60-3.5 (12:120-3.5) Administrative penalties

(a) Employers and training agencies shall be required to pay the administrative penalties *[of]* *as set forth in* Table 3.5(a) for each violation of the Act or this chapter.

Table 3.5(a)
 Employer/Training Agency Penalties

Violation	Penalty Up To
1. Performing as an employer without a license	\$1000.00
2. Allowing an employee to work without a permit	\$1000.00
3. Submitting false information on the application for a license	\$1000.00
4. Submitting false information on the application for a course certification	\$1000.00
5. Performing as a training agency without certification	\$1000.00
6. Failure to follow required work practices	\$1000.00
7. Failure to perform quality asbestos training	\$1000.00
8. Other violations of the Act or this chapter	\$ 500.00

(b) Workers, supervisors, and trainees shall be required to pay the administrative penalties of Table 3.5(b) for each violation of the Act or this chapter.

Table 3.5(b)
 Worker/Supervisor/Trainee Penalties

Violation	Penalty Up To
1. Working as an employee without a permit	\$500.00
2. Submitting false information on the application for a permit	\$500.00
3. Submitting false information on the application for an examination	\$500.00
4. Submitting false information to gain entrance into an examination	\$500.00
5. Using fraudulent means during the taking of an examination	\$500.00
*[4.]*6.* Using fraudulent means to pass an examination	\$500.00
*[5.]*7.* Tampering with, altering, or defacing a permit	\$500.00
*[6.]*8.* Other violations of the Act or this chapter	\$500.00

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. Degree of hazard posed to human health and the environment;
2. Degree of harm posed to the proper administration of the licensing/permitting program;

3. Category of culpability evidenced by the violator's action, including knowing action, reckless action, or negligent action;

i. In determining culpability, ignorance of any legal requirement of the Act or this chapter shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless;

ii. Actual notice of the legal requirement of the Act or this chapter shall constitute a finding of knowing action;

4. Past history of compliance on the part of the violator;

5. Economic benefit which the violator accrues as a result of their violation; and

6. Cooperation of the violator in correcting the violation.

(d) In addition to other sanctions in the Act or this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

1. (No change.)

2. The removal of the employer from the job site within the meaning and purposes of the Act;

3. The removal of any worker from the job site within the meaning and purposes of the Act; and

4. The removal of any supervisor from the job site within the meaning and purposes of the Act.

8:60-3.6 (12:120-3.6) Hearings

(a) When the Commissioner of Labor or the Commissioner of Health, as the case may be, assesses an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5, the employer, the supervisor, the training agency, the trainee, or the worker shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) Any employer, supervisor, training agency, trainee, or worker shall have the right to an informal hearing before the Commissioner of Labor or the Commissioner of Health, as the case may be. Such hearing ***[may]* *shall*** be held provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty ***[under]* *issued pursuant to*** N.J.A.C. 8:60-3.5 and 12:120-3.5. When the hearing is held before the Commissioner of Labor or the Commissioner of Health, as the case may be, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer*,* supervisor, training agency, trainee, or worker.

(c) Any employer, supervisor, training agency, trainee, or worker shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5.

(d) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

8:60-4.1 (12:120-4.1) Scope of subchapter

This subchapter shall apply to the procedures required to obtain or to renew a license as an employer.

8:60-4.2 (12:120-4.2) Application for license

(a) The application for an employer license shall be made on forms provided by the Division of Workplace Standards.

(b) The application for an employer license shall be typewritten or neatly and legibly printed in ink.

(c) All applications shall be carefully completed.

(d) Applicants shall furnish evidence of applicable full time asbestos work experience as an employer. This experience shall have been completed within five years of the filing of the application. This experience shall be listed by job name, location, time involved, and cost of the contract.

(e) No license shall be granted to an employer:

1. If he is less than 21 years of age; or

2. If he has been found to be in non-compliance with N.J.A.C. 12:120-4.3 and 8:60-4.3.

(f) All correspondence relative to applications for licenses shall be addressed to the Division of Workplace Standards.

(g) The Division of Workplace Standards shall be notified by the employer of any change of residence. When writing, the license number shall be specified.

(h) The application fee for a ***biennial*** license shall be \$200.00.

(i) The application fee for a biennial license shall accompany the application and is nonrefundable.

(j) The application fee for a license shall be paid by certified check or money order made payable to the Commissioner of Labor.

(k) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the application fee.

(l) Applicants denied licenses shall not be permitted to resubmit an application for one year from the date of the denial of the application.

8:60-4.3 (12:120-4.3) Eligibility for employer license

(a) The applicant, to be eligible for a license as an employer, shall:

1. Provide evidence of having successfully completed the training course and ***pass the written*** examination for ***asbestos abatement*** supervisors ***[approved by the Commissioner of Health]* *devised and administered under the approval of the Department of Health*** as set forth at N.J.A.C. 12:120-6.2 and 8:60-6.2.

2. Have employed with the firm a job supervisor who holds a valid New Jersey asbestos supervisor permit; or

3. Have employed with the firm an experienced asbestos worker who has received a permit pursuant to N.J.A.C. 12:120-5.2(b) and 8:60-5.2(b) and who serves in a supervisor's capacity; and

4. Disclose in and attach to the application form all information including, but not limited to, (a)4i through ix below and such other information as shall demonstrate the applicant's reliability and responsibility:

i. A copy of the employer's certificate of insurance specifying the name of the insurance carrier, policy number, and policy period under which the entire New Jersey Workers' Compensation obligation is insured;

ii.-ix. (No change.)

5. Establish that the applicant is of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those corporate officers who are responsible for the day-to-day operation of the corporation. Where a corporate applicant is owned by a close corporation, this requirement shall also apply to owners of more than 10 percent of the shares in the corporation.

8:60-4.4 (12:120-4.4) Granting of employer license

(a) (No change.)

(b) The license for an employer shall:

1.-2. (No change.)

3. Contain the date of expiration;

4. (No change.)

5. Be valid for two years from the date of issuance;

6. Be signed by the Commissioner of Labor or his or her designee; and

7. Be nontransferable.

i. Where an employer license is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the license shall constitute a license transfer.

(c) The license shall be either an A license or a B license.

1.-2. (No change.)

8:60-4.5 (12:120-4.5) Identification of licensee

(a) The license shall be available at the worksite for examination by the Commissioner of Labor, Commissioner of Health, the contracting agency, and the owner or the owner's representative.

(b) A sign meeting the requirements of this subsection shall be posted and displayed outdoors at the worksite.

1. The sign shall be readily visible; and

2. The sign shall contain the following information in letters not less than four inches in height: "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK—LICENSE NUMBER _____".

(c) All commercial vehicles used in connection with the application, enclosure, encapsulation, repair, or removal of asbestos-containing material shall be visibly marked with the employer's New Jersey Department of Labor-issued license number.

(d) The employer shall have a New Jersey Department of Labor-issued duplicate of the original license available at each job site. This Department of Labor-issued duplicate of the original license shall be available at a cost of \$20.00.

(e) (No change.)

8:60-4.6 (12:120-4.6) Work Practices

(a) Every licensee shall ensure that all asbestos work performed conforms to the following:

1. Accepted engineering practice;
2. 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A and M;
3. (No change.)
4. N.J.A.C. 5:28-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities and public buildings as defined at N.J.A.C. 5:23-8.2.

(b) Every licensee who performs asbestos work shall ensure that a permitted supervisor is on-site throughout the course of the project.

1. The permitted supervisor and licensee shall be responsible for ensuring that the asbestos work is performed in accordance with the provisions of this section through periodic visual inspections and immediate correction of problems.

(c) Every licensee shall provide for a final inspection upon completion of the project.

1. This final inspection shall include a thorough visual inspection of the work site and the conduct of air monitoring.

(d) Every licensee shall be responsible for immediately correcting at no additional charge to the customer, any violation of the standards of (a) above discovered in the work performed by the licensee.

8:60-4.7 (12:120-4.7) Suspension or revocation of employer license

(a) Any employer may have his license suspended or revoked for:

1. Incompetence;
2. Negligence;
3. Failure to comply with contract specifications; or
4. Any violation of the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq. or this chapter.

(b) Any employer shall have his ***or her*** license suspended or revoked for:

1. Loaning, abandoning, or allowing the license to pass from his personal control;
2. Debarment under the Act or any other State law;
3. Any valid reason establishing that the licensee is unfit to hold a license;
4. Any good cause within the meaning and purposes of the Act;
5. Any violation of N.J.A.C. 8:60 and 12:120 found to be of an extreme nature, taking into account the considerations, where appropriate, specified at N.J.A.C. 8:60-3.5(c) and 12:120-3.5(c); or
6. Any violation of an administrative order lawfully issued by the Commissioner of Labor or the Commissioner of Health as the case may be.

(c) Any employer who has his license suspended or revoked pursuant to this section shall not perform asbestos work, including any work which is in progress, any work for which bids are in, or any work which has been contracted for until such license is restored by the Department.

(d) The Commissioner shall suspend a license for violations of this section of this subchapter provided that:

1. Written or oral notice of the violations is provided to the employer; and
2. The employer has the opportunity to respond to the charges.

(e) All employer licenses shall expire two years from the date of issuance.

(f) A license shall be automatically cancelled on the date of its expiration. Any person performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions of the Act.

(g) Any person using fraudulent means to obtain a license shall be subject to prosecution under the Act. Any license acquired through such means shall be invalid.

8:60-4.8 (12:120-4.8) Renewal of employer license

(a) The application for renewal of a license shall be submitted at least 30 days prior to the date of expiration. When the application for renewal of a license is submitted within the required time period, the license may continue in effect until the Commissioner renders a determination regarding the application.

(b) The license shall be renewed biennially.

(c) The application fee for renewal of a license shall be \$200.00.

(d) The application fee for renewal of a license shall accompany the application and is non-refundable.

(e) The application fee for renewal of a license shall be paid by certified check or money order made payable to the Commissioner of Labor.

(f) No liability shall be assumed by the Division of Workplace Standards for loss in transmission of the application fee for renewal of a license.

(g) An application for renewal of a license shall not be approved until all outstanding penalties lawfully imposed on the applicant under the Act or this chapter have been paid.

(h) An application for renewal of a license that has expired shall be treated as an original application.

(i) The cost of a duplicate license shall be \$20.00.

(j) The replacement cost of a license which has been altered, defaced, mutilated, or lost shall be \$20.00. Replacement shall be made only after review by the Commissioner.

(k) Photostats, photographs, or reproductions of a license shall have no status and shall not be recognized.

8:60-4.9 (12:120-4.9) Hearings for employers

(a) In all cases where the Commissioner proposes to revoke or suspend a license, refuses to renew a license, or denies an application for a license, the employer shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both upon receipt ***by the Commissioner*** of a request for the hearing within 10 days of receipt of notice of the proposed agency action.

(b) In the interest of protecting employee health or public health, the Commissioner of Labor or the Commissioner of Health, as the case may be, may suspend a license prior to a hearing. When the license has been suspended, the employer shall have the right to a hearing within 10 days of the notice of suspension.

(c) ***[An informal hearing before the Commissioner may be held provided a written request is submitted within five days after due notice has been given that the Commissioner proposes to revoke or suspend a license, refuses to renew a license or denies an application for a license.]*** When ***[the]* *an informal*** hearing is held before the Commissioner, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer.

(d) The employer shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 56:1F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 5. REQUIREMENTS AND PROCEDURES FOR OBTAINING AN ASBESTOS WORKER OR AN ASBESTOS SUPERVISOR PERMIT

8:60-5.1 (12:120-5.1) Scope of subchapter

(No change in text.)

8:60-5.2 (12:120-5.2) Requirements for obtaining an asbestos worker or an asbestos supervisor permit

(a) The Commissioner shall issue a permit to each applicant who satisfies the requirements listed below. The applicant shall:

1. (No change.)

[2. Verify their identity at a New Jersey Employment Services Office;]

[3.]*2.* Successfully complete either the ***asbestos abatement worker or ***asbestos abatement*** supervisor training course approved by the Department of Health and pass a written examination devised**

and administered under the approval of the Department of Health for each respective position;

i. Proof of ***[successful completion of]* *passing*** the written examination shall be submitted with the permit application; and ***[4.]**3.*** Complete the permit application, a copy of which may be obtained from the Department of Labor.

(b) The Commissioner shall issue a permit to an experienced asbestos ***abatement*** worker who satisfies the requirements listed below. The experienced asbestos ***abatement*** worker shall:

1. (No change.)

[2. Verify their identity at a New Jersey Employment Services Office;]

[3.]**2. Submit to the Division of Workplace Standards evidence that the applicant has completed a minimum of ***[26]* *24*** hours of instruction in a training course which has been approved by the Commissioner of Health as substantially complying with the asbestos training programs ***as*** set forth at N.J.A.C. 12:120-6 and 8:60-6;

[4.]**3. Submit to the Division of Workplace Standards evidence of having had and ***[successfully]*** passed a qualitative and quantitative respirator fit test administered by a qualified industrial hygienist or health professional;

[5.]**4. Submit to the Division of Workplace Standards an application as set forth at N.J.A.C. 12:120-***[5.5]**5.4*** and 8:60-***[5.5]**5.4***; and

6. (No change.)

***[8:60-5.3 (12:120-5.3) Procedures for verifying identity of the applicant**

(a) Each applicant shall verify their identity at a New Jersey Employment Services Office.

(b) Each applicant shall bring to the Employment Services Office a social security card and one of the following:

1.-3. (No change.)

4. An unexpired foreign passport with attached employment authorization;

5. An alien registration card with photograph;

6.-8. (No change.)

9. Other documentation that, in the discretion of the Employment Services Office, establishes the applicant's identity. Specifically excluded is any asbestos permit issued by any local, state, or Federal regulatory agency.

(c) Each applicant also shall bring to the Employment Services Office one passport-size color photograph taken against a white background or backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses, or any other item which may alter or disguise the overall features of the face in the photograph.

(d) Upon verification of the identity of the applicant, the Employment Services Office shall mail to the Division of Workplace Standards the following:

1. An asbestos permit referral which shall contain certification by the Employment Services Office that the applicant has been identified; and

2. The applicant's passport-size color photograph.]*

8:60-5.*[4]3* (12:120-5.*[4]**3*)** Procedures for completing training course and examination

(a) Each applicant required by this subchapter to complete asbestos training shall register at a training agency which has been certified by the New Jersey Department of Health to offer such training. A list of certified training agencies is available from the Department of Health.

1. The topics for worker and supervisor training are set forth at N.J.A.C. 12:120-6.2, 6.6, and 6.7 and N.J.A.C. 8:60-6.2, 6.6 and 6.7.

(b) Upon successful completion of the training course, each applicant shall register through the training agency to take a written examination administered under the approval of the Department of Health.

1. Each applicant shall bring the following to the examination:

i. The trainee's copy of the Asbestos Trainee Evaluation Form (ASB-24).

ii. A recent passport-size color photograph of the applicant taken against a white background or backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses, or any other item which may alter or disguise the overall features of the face in the photograph. This photograph shall be surrendered at the examination site; and

iii. Any document with the trainee's signature which establishes the applicant's ***[identification as specified at N.J.A.C. 12:120-5.3(b) and N.J.A.C. 8:60-5.3(b)]* *identity***.

(c) Each applicant who receives a score of at least 70 on the worker examination shall pass the examination for the worker permit.

1. If an applicant fails to pass the worker examination after three opportunities and still desires to obtain a worker permit, such applicant shall retake the entire four-day worker training course.

(d) (No change.)

(e) Each applicant for a supervisor permit who achieves a score of 60 to 69, inclusive, shall qualify for a worker permit.

1. If an applicant who scores from 60 to 69 decides not to take the supervisor examination within the remaining opportunities, such applicant shall notify the Department of Labor for purposes of obtaining a worker permit and submit to the Department of Labor the applicant's copy of the Asbestos Trainee Evaluation Form (ASB-24). If an applicant selects this option, the applicant will lose his or her opportunity to retake the supervisor examination without retraining.

(f) Any applicant who copies or retains any questions or answers used in the asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

(g) Any applicant using fraudulent means during the taking of an asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

(h) Applicants who do not take the examination within one year of completion of their training shall retake the complete training prior to being examined.

(i) Applicants who fail to pass the examination within two years of completion of their training shall retake the complete training prior to being examined.

8:60-5.*[5]4* (12:120-5.*[5]**4*)** Procedures for completing permit application

(a) (No change.)

(b) Each applicant shall provide the following to the Division of Workplace Standards:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, telephone number, social security number;

2. The name and location of the course where the applicant has successfully completed asbestos training, the date of completion, and number of hours of training.

i. (No change.)

ii. The applicant shall submit proof of ***[successful completion of]* *passing*** the written examination;

3. Two recent, identical passport-size color photographs taken against a white background or backdrop with the applicant's face being not less than three quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face in the photographs.

i.-iii. (No change.)

4. (No change.)

(c) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of their knowledge.

(d) The applicant shall submit a \$50.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

8:60-5.*[6]5* (12:120-5.*[6]**5*)** Length of permit

(a) Each permit issued by the Commissioner shall be conditionally valid for a two year period.

1. Each permit holder shall have his permit validated annually upon the submission of evidence of satisfactory completion of a refresher training course approved by the Department of Health. The

Department of Health shall establish the contents of the refresher training course.

8:60-5.*[7]**6* (12:120-5.*[7]**6*) Contents of permit

(a) Each permit for an asbestos worker or asbestos supervisor shall be issued in writing, be signed by the Commissioner of Labor, and shall contain:

1.-2. (No change.)

3. The name and address of the worker or supervisor to whom it is issued; and

4. The worker's or supervisor's social security number.

(b) Each permit for an asbestos supervisor shall contain, in addition to the requirements set forth at (a) above, "SUPVR" which shall indicate successful completion of the supervisor training course examination and the New Jersey Department of Health supervisor examination ***or that the applicant meets the requirements for an experienced asbestos worker as set forth at N.J.A.C. 8:60-2 (12:120-2)*.**

8:60-5.*[8]**7* (12:120-5.*[8]**7*) Identification of permit holder

(a) Each worker or supervisor performing asbestos work shall have their permits available at the job site and readily available for inspection by representatives of the Commissioners of the Departments of Labor and Health and of the contracting agency.

(b) Tampered with, altered, or defaced permits shall be void.

***(c) Any photostats, photographs, or reproductions of a permit shall be invalid.**

(d) Any worker or supervisor who loses his or her permit or has it stolen shall immediately notify the Division of Workplace Standards in writing.

(e) An altered, defaced, mutilated, lost, or stolen permit may be replaced after a review of the circumstances by the Commissioner. Replacement cost for the permit shall be \$50.00.*

8:60-5.*[9]**8* (12:120-5.*[9]**8*) Suspension and revocation of permit

(a) (No change.)

(b) The Commissioner may order the immediate suspension or revocation of ***[a]* *an asbestos abatement* worker or *an asbestos abatement* supervisor permit** if there is an imminent danger to the health and safety of the public or ***the* employees.**

1. Any ***asbestos abatement* worker or *asbestos abatement* supervisor** who has his or her permit suspended or revoked pursuant to this section shall not perform asbestos work until such permit is restored by the Department ***of Labor*.**

(c) Prior to suspending or revoking a permit, the Commissioner shall provide the worker or supervisor with an oral or written notice of the violations. This subsection shall not apply to situations set forth at (b) above.

1. (No change.)

(d) Any individual performing the duties of ***[a]* *an asbestos abatement* worker or *an asbestos abatement* supervisor** and possessing an expired permit shall be subject to the penalties under the Act ***and this chapter*.**

(e) Any applicant using fraudulent means to obtain an asbestos worker or an asbestos supervisor permit shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

1. The use of fraudulent means to obtain an asbestos supervisor permit shall invalidate any other New Jersey permit which the applicant may possess.

8:60-5.*[10]**9* (12:120-5.*[10]**9*) Renewal of permit

(a) An application for renewal of a permit shall be submitted at least 30 days prior to its expiration date. When the application for renewal is submitted within the required time period, the permit may continue in effect until the Commissioner renders a determination regarding the application. The applicant shall be notified in writing by the Department whether a valid extension has been granted. This validation together with the expired permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of the Departments of Labor and Health and the contracting agency.

(b) The Commissioner shall renew a worker or supervisor permit if the renewal applicant has:

1. (No change.)

2. Completed an application as set forth at N.J.A.C. 12:120-5.*[5]**5.4* and 8:60-5.*[5]**5.4* within three years of the expiration date of the expired permit;

3. Provided evidence of ***[continuing education or]* refresher training** pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8; and

i. Permit holders whose permits expire on or after October 1, 1990 shall submit proof of refresher training.

4. Paid all penalties lawfully imposed on the renewal applicant under the Act ***and this chapter*.**

(c) (No change.)

***(d) Any worker or supervisor who alters, defaces, mutilates or loses a permit or has it stolen shall comply with the requirements set forth at (b) above.**

1. Any worker or supervisor who loses a permit or has it stolen shall notify the Division of Workplace Standards in writing immediately.

2. Any photostats, photographs or reproductions of a permit shall be invalid.]*

8:60-5.*[11]**10* (12:120-5.*[11]**10*) Appeal procedures

(a) (No change.)

(b) Any aggrieved individual who disagrees with the Department of Labor's review decision may submit to the Division of Workplace Standards a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the date of the written decision.

1. If possible, the formal hearing shall be held within 30 days of the date the Division of Workplace Standards receives the written request for a formal hearing.

8:60-6.1 (12:120-6.1) Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain and maintain certification from the Commissioner of Health for training agencies and training courses on asbestos abatement as provided for in the Act.

8:60-6.2 (12:120-6.2) Types of courses

(a) The asbestos abatement worker training course shall be presented over four days and shall include a minimum of 26 hours of training exclusive of lunch and break times. The topics which shall be presented in the asbestos abatement worker training curriculum are set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6.

1. All applicants for both worker and supervisor permits shall attend a certified training course which covers this curriculum.

2. The worker training curriculum shall be presented with a minimum of eight hours of hands-on practice in all phases of asbestos abatement operations including worker area preparation and removal of asbestos-like insulation from ceilings and pipes.

3. Hands-on removal training shall include wetting, scraping, cleaning, disposal, and decontamination.

4. Demonstrations not involving individual participation shall not count as hands-on training.

(b) The asbestos abatement supervisor ***[and contractor]* training course** shall be presented over five days and shall include a minimum of 32 hours of training exclusive of lunch and break times. The ***asbestos abatement* supervisor *[and contractor]* training course** shall consist of attendance of the four-day asbestos abatement worker training course specified in (a) above as well as an additional fifth day of training to include a minimum of six hours of training exclusive of lunch and break times. The topics which shall be presented over the fifth day of ***asbestos abatement* supervisor *[and contractor]* training** are set forth at N.J.A.C. 12:120-6.7 and 8:60-6.7.

1. All applicants for ***[a]* *an asbestos abatement* supervisor permit *[or contractor/employer license]*** shall attend a certified training course following this curriculum ***unless they are qualified as experienced asbestos abatement workers*.**

(c) Annual refresher training for asbestos ***[worker]* *workers shall be at least six hours.*** ***[and asbestos supervisors shall be at least**

six hours. An additional two hours shall be required for asbestos supervisors.]* **Annual refresher training for asbestos supervisors shall consist of the six-hour asbestos worker refresher training course plus an additional two hours.*** The items required to be presented during refresher training are set forth at N.J.A.C. 12:120-6.8 and 8:60-6.8.

8:60-6.3 (12:120-6.3) Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit a completed "Application for Certification as an Asbestos Training Agency" (ASB-23) and a proposal to the Department of Health, specifying:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, and the name of the responsible individual and his or her telephone number;

2. (No change.)

3. A description of the public outreach and publicity efforts which will be made to inform the appropriate potential trainees of the course availability;

4. A detailed course outline of the course curriculum including the topics set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6 for asbestos abatement worker training courses, N.J.A.C. 12:120-6.7 and 8:60-6.7 for asbestos abatement supervisor training courses*, N.J.A.C. 12:120-6.8 and 8:60-6.8 for annual refresher training courses*, the amount of time allotted to each topic, and the name of the instructor for each topic;

5. A description of the teaching methods to be used to present each topic, including, where appropriate, lectures, discussions, demonstrations, hands-on training, and audio-visual materials. When applicable, the name, producer, and date of production of audio-visual materials to be used shall be included;

6. Copies of written materials to be distributed as part of the training course;

7. Evidence demonstrating that the applicant has employed or contracted to employ a minimum of two instructors, either on a full time or temporary basis, to satisfy the education, experience and qualifications criteria as set forth at N.J.A.C. 12:120-6.4 and 8:60-6.4. Resumes describing special training and education and/or prior experience shall be submitted as documentation of compliance with the instructor criteria;

8.-9. (No change.)

10. A description of the materials to be used for hands-on practice exercises and demonstrations including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, and other barrier construction supplies, air filtration units, water spray devices, decontamination facilities, and simulated asbestos material;

11. A detailed description of the site of the training course including the address where demonstrations and hands-on practice exercises will be conducted;

12. Any restrictions on attendance such as English language only or other language to be used;

13. Instructor-to-student ratio for the hands-on practice experiences and demonstrations;

14. Evidence that a no-smoking policy will be established, maintained, and enforced during all aspects of asbestos abatement training; and

15. A copy of the applicant's valid training agency certification previously issued by the Department of Health pursuant to this subchapter where applicable.

(b) (No change.)

(c) The applicant shall be required to successfully pass a pre-commencement inspection of the training facility conducted by the Department of Health.

(d) The applicant shall immediately notify the Department of Health in writing of any change(s) in the application information occurring either prior to or after certification.

8:60-6.4 (12:120-6.4) Eligibility for certification of training courses

(a) Only training course certification applications meeting the requirements of this subchapter shall be approved by the Department of Health.

(b) The training agency applicant shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(c) The applicant shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials, and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.

1. Class size shall be limited to no more than 25 students.

8:60-6.5 (12:120-6.5) Criteria for training course instructors

(a) To be eligible for certification of any training course, two or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. All instructors shall have experience in both the design, field performance, and evaluation of air monitoring programs and the design and implementation of respiratory protections programs.

2. In order to qualify to teach the sections of the course concerning the health effects of asbestos, a qualified health professional shall be employed.

3. To qualify to teach the hands-on practice sessions, an instructor shall have experience as a New Jersey asbestos abatement contractor or as a supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work including work area preparation, construction of barriers, the use of personal protective equipment, engineering controls, work practices, clean-up, disposal, and decontamination.

4. An instructor shall have experience in designing, implementing, and evaluating either employee educational programs in occupational health and safety or vocational education programs.

5. All translators shall have previously taken and successfully ***[passed]* *completed*** the asbestos worker course and shall have taken and successfully passed the ***asbestos worker*** examination ***[with a test score of at least 80 in the interpreted language]***.

6. Instructors teaching smoking cessation topics shall have successfully completed a course in smoking cessation approved by the Department of Health.

8:60-6.6 (12:120-6.6) Criteria for topics in asbestos worker training courses

(a) Training courses for asbestos abatement workers shall be designed and conducted to include, at a minimum, the topics specified in (b) through (r) below.

(b) Introduction:

1. (No change.)

2. New Jersey State Asbestos Policy—Trainees should be informed of the penalties which may be imposed for violating regulations issued to implement the Act;

3. History of asbestos use; and

4. (No change.)

(c) Recognition of asbestos:

1. Types, physical characteristics, and aerodynamics of asbestos ***fibers***;

2. (No change.)

3. Products where asbestos may be encountered; and

4. (No change.)

(d) Health effects of asbestos:

1.-5. (No change.)

6. Effects of smoking ; and

7. Effects of smoking cessation, various smoking cessation methodologies, and the resources available to aid in smoking cessation.

(e) Relevant Federal, State, and local regulatory requirements, procedures, and standards. Emphasis shall be directed at relevant EPA, OSHA, and State regulations concerning asbestos abatement employers, workers, and supervisors. Further emphasis shall be placed upon:

1. The scope of all relevant New Jersey regulatory requirements; and

2. The penalties imposed for violation of the Act or the rules promulgated thereunder.

- (f) Purposes and methods of asbestos monitoring and testing:
 1.-5. (No change.)
 6. Current standards and proposed changes; and
 7. (No change.)
- (g) Case Studies: Typical problems and corrective measures:
 1. Presentation by course instructor(s) of problems which have actually occurred during asbestos abatement operations and how these problems have been resolved;
- (h) Introduction of remediation methods, removal, encapsulation and enclosures and to the principles of control which shall be applied to all asbestos application and remediation projects:
 1.-3. (No change.)
 4. Clean-up and disposal; and
 5. (No change.)
- (i) Protection of the worker:
 1.-5. (No change.)
 6. Occupational Safety and Health Administration regulations—29 CFR Part 1910.134 ***and 29 CFR Part 1926.58(h)***—Respiratory Protection; and
 7. Demonstration exercises of the above respirators, including fit testing or flow testing, ***donning,*** wearing, adjusting, filter replacing and cleaning procedures. Each ***[participant]* *trainee*** shall have individual, supervised personal practice using these procedures with at least one of the types of respirators listed in (i)3, 4*, *or 5 above. Fit testing shall be performed on each trainee using the OSHA "Irritant ***[Smoke]* *Fume*** Protocol".
- (j) Preparation of the work area (hands-on practice required):
 1.-5. (No change.)
 6. Change area; and
 7. (No change.)
- (k) Minimizing fibers in the air while disturbing and removing asbestos insulation (hands-on practice required):
 1. Containment ***and glovebag techniques*;**
 2.-3. (No change.)
 4. Specialized tools; and
 5. (No change.)
- (l) Special work practices to minimize exposure and health hazards.
 (m) Personal hygiene.
 (n) Proper clean-up and disposal (hands-on practice required):
 1. Clean-up including techniques and sequence of activities; and
 2. (No change.)
- (o) Decontamination (hands-on practice required):
 1. (No change.)
 2. Direction of air flow; and
 3. Sequential steps.
- (p) General safety considerations:
 1.-6. (No change.)
 7. Electrical hazards; and
 8. (No change.)
- (q) ***[Work practice demonstration]* *Work procedures (hands-on practice required)*:**
 1. Trainees shall participate in simulated on-the-job activities in the following subjects: suiting up in disposable full body clothing; preparation of the work site; sealing off the work area; construction of a decontamination unit; various abatement techniques to include removal of asbestos; clean-up methods; material handling and disposal. Each trainee shall wear a respirator and other appropriate personal protective equipment during these activities. The respirator shall be one of those specified at N.J.A.C. 12:120-6.6(i) 3, 4, or 5 and 8:60-6.6(i) 3, 4, or 5; and
 2. (No change.)
- (r) Review and course evaluation:
 1. (No change.)
 2. Practice tests; and
 3. (No change.)
- 8.60-6.7 (12:120-6.7) Additional criteria for supervisor's training course
 (a) The specialized course for asbestos abatement supervisors and contractors shall address the following topics:
 1. (No change.)
 2. Insurance and bonding to include contractor issues:

- i. Worker's compensation coverage and exclusions;
 ii. Insurance coverage and exclusions; and
 iii. Third-party liability and defenses.
 3. (No change.)
 4. Federal, State, and local recordkeeping requirements and records recommended for legal and insurance purposes;
 5. The requirements as related to Asbestos Abatement Contractors as set forth at N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code;
 6. How to supervise effectively;
 7. Additional emphasis on work practices, including proper construction and maintenance of barriers and decontamination systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment, use and maintenance of HEPA vacuums, proper clean-up and disposal procedures;
 8. Air monitoring for asbestos fibers including, but not limited to, aggressive air sampling procedures, air monitoring equipment and instrumentation, purposes of sampling, types of samples, and interpretation of results, specifically from analyses performed by polarized light microscopy, phase contrast microscopy, and transmission electron microscopy;
 9. Pressure differential monitoring including, but not limited to, sampling procedures, monitoring equipment and instrumentation, purposes of sampling, and interpretation of results;
 10. Discussion of key elements that are included in contract specifications; and
 11. Procedures for conducting a visual inspection of the worksite.

8:60-6.8 (12:120-6.8) Criteria for topics in refresher training courses

(a) Certification for refresher training courses is expressly conditioned upon holding a certification in good standing for the asbestos abatement worker course and the asbestos abatement supervisor/contractor course.

(b) The asbestos abatement worker refresher training course shall consist of a minimum of six hours of training exclusive of lunch and break times covering:

- Any changes in the Federal regulatory requirements applicable to workers;
- Highlights of the New Jersey regulatory requirements applicable to workers;
- Any new developments in applicable state-of-the-art asbestos abatement procedures; and
- A review of the items specified at N.J.A.C. 8:60-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r) and 12:120-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r).

(c) The asbestos abatement supervisor refresher training course shall consist of a minimum of eight hours of training exclusive of lunch and break times ***[covering the training]**. This refresher training shall consist of six hours of instruction covering the topics as*** required in (b) above, as well as an asbestos abatement supervisor-specific refresher training course consisting of two hours of training covering:

- Any changes in the Federal regulatory requirements applicable to supervisors, contractors, or employers;
 - Highlights of the New Jersey regulatory requirements applicable to supervisors, contractors, or employers;
 - Respiratory protection programs and medical surveillance;
 - New developments in the state-of-the-art and state-of-the-science regarding monitoring for airborne asbestos fibers; and
 - A short review of the items specified at N.J.A.C. 12:120-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11 and 8:60-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11.
- (d) The Department of Health reserves the right to require additional refresher training course topics within one month of a certified training agency's receipt of written notice.

(e) Certified training agencies shall issue a certificate of completion to trainees upon their completion of a refresher training course. The certificate of completion shall specify the name of the course, the certificate number, the expiration date of the certificate, the trainee's name, the trainee's social security number, the date of completion

of refresher training, the location of the training, and shall be signed by the course instructor.

8:60-6.9 (12:120-6.9) Granting of certification

(a) No training agency shall be eligible for course certification unless the applicant has first received certification as an approved training agency pursuant to either this section or N.J.A.C. 8:60-6.4 and 12:120-6.4.

(b) A yearly certification shall be granted to a training agency*[, institution, or firm]* which has demonstrated the ability to meet the requirements of this subchapter including course content, teaching methods, and instructor qualification based upon the application submission required by N.J.A.C. 8:60-6.3 and 12:120-6.3, and such investigation as the Commissioner of the Department of Health should deem necessary.

(c) All applicants shall be of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those *[corporate officers]* ***individuals*** who are responsible for the day-to-day operation of the corporation.

(d) An annual letter of *[certification]* ***certificate*** shall:

1. Specify the date of issuance;
2. Specify an expiration date;
3. Specify the name and address of the training agency*[, institution, or firm]* which is certified;
4. Specify what training courses the certificant is authorized to teach;
5. Be signed by the Commissioner of the Department of Health or his or her designee; and
6. Be nontransferable.
 - i. Where a training agency certification is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the agency shall constitute a certification transfer.

8:60-6.10 (12:120-6.10) Training agency operating requirements

(a) Certified training agencies shall use, in addition to their own, any training materials, evaluation forms, informational or audiovisual aids which may be supplied by the Department of Health.

(b) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(c) Certified training agencies shall limit class size to 25 students for the basic core curriculum.

(d) Certified training agencies shall limit class size to 30 students for the ***additional day of the* asbestos supervisor course *and for the annual refresher training course***.

(e) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. The notification shall specify the address of the training, the times of the training, the type of training, the language in which the course is to be instructed, *[and]* the expected number of trainees enrolled*, **and the instructors who will teach the course***. If ***any*** course information changes, the certified training agency shall inform the Department of Health as soon as the agency becomes aware of such changes.

(f) All certified training agencies shall permit entry to all training courses by representatives of the Department of Health for purposes of course evaluation and determination of compliance with this subchapter.

(g) The certified training agency shall limit individual classes to not more than two languages. The language shall be the common language of the instructors and one translated language.

(h) The certified training agency shall provide ***to*** students taking the asbestos worker examination in a foreign language written materials including, but not limited to, study handouts and related literature in the same language as the New Jersey examination.

(i) All certified training agencies shall maintain ***student evaluation forms***, daily attendance records*[,]* and ***[shall maintain]*** copies of examinations administered by the agency for any asbestos abatement course. The agency shall permit representatives of the Department of Health to inspect and to evaluate these records.

(j) All certified training agencies shall notify the Department of Health in advance of any significant changes in any information

submitted by the certificant on its agency and its course applications. Any course modifications made subsequently to receipt of certification shall require ten days prior notification and shall be subject to Department of Health approval. A conditional approval may be granted pending detailed evaluation of the changes. Notwithstanding this subsection, any such changes must continue to be in compliance with the substantive requirements of this subchapter.

(k) Notwithstanding (j) above, the certified training agency shall notify the Department of Health in writing at least four weeks in advance of any changes in the hands-on practice session site.

(l) All certified training agencies shall cooperate fully with the Department of Health in all matters related to the conduct of certified training courses, administration of examinations, and licensing of individuals pursuant to this chapter.

8:60-6.11 (12:120-6.11) Renewal of training agency certification

(a) In order to approve a training agency certification renewal application, the Commissioner of Health shall determine, based upon the application, that:

1. The certificant has certified that all information contained on the original application is still correct, or where applicable, has updated such information;
2. All outstanding penalties lawfully imposed on the certificant have been paid;
3. The certificant has exhibited competence, integrity, and responsibility during the previous certification year; and
4. The training agency can operate in compliance with this subchapter.

[(c)](b)*** A complete application for renewal of a certification shall be submitted at least 30 days prior to the date of its expiration. When a complete application is submitted within the required time period, the certification shall continue in effect until the Commissioner of Health renders a final decision on the application.

[(d)](c)*** Any application not complying with ***[(c)]***(b)*** above shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

[(3)](d)*** Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

8:60-6.12 (12:120-6.12) Suspension or revocation of certification

(a) Any certified training agency may have its certification suspended or revoked for:

1. Incompetence;
2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department of Health;
3. Any violation of N.J.A.C. 8:60-6.10 and 12:120-6.10;
4. Submitting false information on an initial or renewal application;
5. Submitting false information on an "Asbestos Abatement Course Evaluation" form (ASB-25)*, ***[or]*** on an "Asbestos Trainee Evaluation" form (ASB-24)*, **or on an Application for Certification as an Asbestos Training Agency (ASB-23)***;
6. Any violation of this subchapter; or
7. Any good cause within the meaning and purpose of the law.

8:60-6.13 (12:120-6.13) Hearings for applicants and certificants when certification has been denied, revoked or suspended

(a) When in the judgment of the Commissioner of Health, immediate suspension of a training agency certification is necessary to protect ***[license]*** trainees or the public health and safety, the Commissioner of Health may suspend a certification pending the conduct of a hearing. When the certification has been suspended pursuant to this paragraph, the certificant shall have the right to a hearing within 10 days of such request.

1. A certificant shall have 10 calendar days after receipt of written notice of certification suspension pursuant to this section to request a hearing.

(b) In all cases where the Commissioner of Health proposes to revoke or suspend a certification, or denies an application for

certification, the applicant shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both.

(c) An informal hearing before the Commissioner of Health may be held provided a written request is submitted within 10 days after the notice has been given that the Commissioner of Health proposes to revoke or suspend certification or proposes to deny an application for certification. When the hearing is held before the Commissioner of Health, he or she shall state his or her findings and conclusions in writing and transmit a copy to the applicant for certification.

(d) The certificant or certification applicant, as the case may be, shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon submission of a written request for the hearing. The request for the hearing shall be received by the Commissioner of Health within 10 calendar days of receipt of due notice of the Commissioner of Health's proposed action.

(e) For purposes of this section, due notice shall mean written notice mailed to the certificant or certification applicant's last filed address which specifies:

1. The intended agency action;
2. The legal basis for such action;
3. The facts supporting such legal basis; and
4. Notice of the right to a hearing:
 - i. The 10 day period to request such hearing; and
 - ii. The address to which such requests shall be sent.

(f) Where a certificant or certification applicant fails to request a hearing within the 10 day period, his right to a hearing pursuant to this section shall be deemed waived and the Commissioner of Health's proposed action shall become final.

8:60-6.14 (12:120-6.14) Examination of applicants

(a) Each applicant for a permit ***[under]* *pursuant to* N.J.A.C. 12:120-5 and 8:60-5 shall ***[successfully]* pass an examination in asbestos work and control. This examination shall be administered under the approval of the Department of Health ***[under]* *pursuant to the* procedures as set forth at N.J.A.C. 12:120-***[5.4]**5.3*** and 8:60-***[5.4]**5.3***.******

1. Each applicant for an asbestos supervisor permit shall be required to successfully pass an English-language asbestos supervisor examination.

SUBCHAPTER 7. ASBESTOS WORK NOTIFICATION REQUIREMENTS

8:60-7.1 (12:120-7.1) Purpose and scope of subchapter

(a) The purpose of this subchapter is to establish the requirements for notifying the Departments of Labor and Health as to when and where asbestos work will be undertaken.

(b) This subchapter shall be applicable to all licensed contractors who perform asbestos work in New Jersey.

8:60-7.2 (12:120-7.2) Notification requirements

(a) Every licensee who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 days prior to beginning such work on forms specified by the Department of Health ***except where such work is exempted at N.J.A.C. 8:60-1.4(b) (12:120-1.4(b))***.

(b) The written notification required by (a) above shall include:

1. The name, address, and telephone number of the licensee;
2. The license number and type of license held by the licensee;
3. The name and address of the owner of the facility;
4. The location and description of the facility;
5. A description of the asbestos work to be performed;
6. The scheduled starting and completion dates of the asbestos work;
7. The name and address of the waste disposal site where the asbestos-containing material will be disposed; and
8. Any other relevant information which the Commissioner of Labor or the Commissioner of Health, as the case may be, determines to be necessary.

(c) The written notification required by (a) above shall be submitted to:

New Jersey Department of Labor
Office of Asbestos Control and Licensing
28 Yard Avenue, Station Plaza 4
CN 0054
Trenton, NJ 08625-0054
and
New Jersey Department of Health
Asbestos Control Service
CN 360
Trenton, NJ 08625-0360

(d) The Commissioner of Labor or the Commissioner of Health, as the case may be, may allow less than 10 days prior notification where emergency circumstances require.

8:60-7.3 (12:120-7.3) Penalties

Any licensee who fails to comply with the requirements set forth in this subchapter shall be liable for a penalty of up to \$500.00 as provided for at N.J.A.C. 8:60-3.5(a) and 12:120-3.5(a).

SUBCHAPTER 8. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

8:60-8.1 (12:120-8.1) Documents referred to by reference

(a) The full title and edition of each of the following standards and publications referred to in this chapter are as follows:

1. (No change.)
2. N.J.A.C. 1:1, Uniform Administrative Procedure Rules;
- 3.-4. (No change.)
5. N.J.S.A. 34:5A-32 et seq., Asbestos Control and Licensing Act;
6. N.J.S.A. 52:14B-1 et seq., Administrative Procedures Act; ***[and]***
7. ***[40]**29* CFR 1910.134—Respiratory Protection*[.]**; and***
- *8. 29 CFR 1926.58(h)—Respiratory Protection.***

8:60-8.2 (12:120-8.2) Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
28 Yard Avenue, Station Plaza 4
3rd Floor
CN 0054
Trenton, New Jersey 08625-0054

8:60-8.3 (12:120-8.3) Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:120-8.1 and 8:60-8.1.

CFR—Code of Federal Regulations

Copies available from:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

N.J.A.C.—New Jersey Administrative Code

Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386

Trenton, N.J. 08625-0386

N.J.S.A.—New Jersey Statutes Annotated

Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386

Trenton, N.J. 08625-0386

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan, Northeast, and Lower Raritan/Middlesex County Water Quality Management Plans Public Notice

Take notice that an amendment to the Upper Raritan, Northeast and Lower Raritan/Middlesex County Water Quality Management (WQM) Plans has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for Warren Township. That document identifies the entire Raritan River Basin portion of Warren Township as being within the existing or proposed sewer service areas to the Somerset Raritan Valley Sewerage Authority (SRVSA) Sewage Treatment Plant (STP). Portions of the Townships of Bernards, Bridgewater and Green Brook, including the "Green Brook II" and "Top O the World" proposed developments in Green Brook Township, are included in the existing or proposed sewer service areas to the SRVSA STP. Within the Passaic River Basin portion of the Township, the WMP delineates the existing and proposed sewer service areas for the Warren Sewerage Authority Stage I/II, Stage IV and Stage V STPs and allows for future expansion of these STPs to treat projected wastewater flows.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan, Northeast, and Lower Raritan/Middlesex County WQM Plans. All information dealing with the aforesaid WQM Plans 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. All information dealing with the Lower Raritan/Middlesex County WQM Plan and the proposed amendment is also located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901. It is available for inspection as specified above.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments regarding the amendment to the Northeast and Upper Raritan WQM Plans 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 to the Northeast and Upper Raritan WQM Plans 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 Mr. Chalofsky at the NJDEP address cited above. If a public hearing for the amendment to the Northeast and Upper Raritan WQM Plans is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

Middlesex County will hold a **public hearing** on the proposed Lower Raritan/Middlesex County WQM Plan amendment. The public hearing will be on Wednesday, July 11, 1990, at 10:00 A.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. Interested persons may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above; and Mr. Chalofsky at the NJDEP address cited above. All comments must be submitted by the date of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public

hearing will also be considered by the NJDEP during its review. Middlesex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(b)

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 would expand the sewer service area of the Evesham Municipal Utilities Authority to include Block 3201, Lot 1 in Medford Township, Burlington County. This lot is currently located in an area identified as suitable for individual subsurface sewage disposal systems, according to the Medford Township Wastewater Management Plan, but site conditions (that is, the presence of freshwater wetlands) preclude the use of such systems.

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, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, 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 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 Mr. Chalofsky 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.

LAW AND PUBLIC SAFETY

(c)

BOARD OF MEDICAL EXAMINERS

Notice of Action on Petition for Rulemaking Practice of Medicine and Surgery N.J.A.C. 13:35

Petitioner: New Jersey Optometric Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-2.

Take notice that on October 10, 1989 (see 21 N.J.R. 3676(b)), petitioner filed a petition with the Board of Medical Examiners requesting that it determine and declare the following:

Invasive surgical care is tertiary care and is the responsibility of the operating surgeon. The management of post-operative care is primary care and can be managed effectively by the patient's primary health care provider. The judgment on delivery of post-operative care shall be made in consultation with the patient, the operating surgeon, and the patient's primary health care provider. The post-operative care and patient co-management shall be rendered by the operating surgeon and the patient's primary health care provider.

The Board's preliminary response, published at 21 N.J.R. 3975(e), provided for the formulation of a Board Committee to study the petition and to make recommendations to the full Board.

Based upon Committee recommendations, the Board subsequently determined to deny the petition on the basis that the public health, safety and welfare are best served by maintaining its current policy in regard to post-surgical ophthalmological care; that is, that such care is the practice of medicine or surgery and that it should not be permitted to be managed by optometrists (see 22 N.J.R. 1162(a)). Although this matter was thoroughly considered by the Board at its December 13, 1989 meeting and at prior Committee meetings, the Board determined to reconsider the petition at its April 11, 1990 meeting in order to ensure that all parties received adequate notice of the Board's consideration of the petition (see 22 N.J.R. 1276(b)).

Accordingly, at its April 11 meeting, upon notification to petitioner, the Board reconsidered the petition and the recommendations of the Committee. The Board discussed, specifically, its long-standing opposition to itinerant surgery—the practice of performing surgery and leaving the post-surgical care to other health care professionals—and unanimously agreed to deny the petition for the following reasons:

The Board reiterated that itinerant surgery is inappropriate and unethical in all areas of medicine. Surgery is composed of a three-pronged sequence: first, pre-operative diagnosis and selection of appropriate surgical treatment; second, performance of the appropriate surgery; and third, post-operative patient care. It is therefore the operating surgeon's responsibility to care for the patient until he or she is fully recovered from surgery. The petitioner has not presented compelling reasons to sacrifice this high standard of patient care in the ophthalmological area.

Furthermore, serious post-operative complications can arise that, unless treated appropriately and quickly, may result in severe consequences to the patient, including loss of vision in the affected eye and loss of vision in the other through sympathetic ophthalmia. The Board believes that the training of optometrists in post-surgical care is restricted to didactic programs with very little, if any, clinical experience. It is therefore in the best interests of the patient that post-surgical care be performed only by fully trained and licensed physicians.

Only by maintaining its current policy regarding the delivery of ophthalmological surgical care can the Board fulfill its statutory duty to protect the public health, safety and welfare. The Board is currently preparing a proposal to promulgate a regulation to formalize this policy, which proposal will more specifically address the issues raised by petitioner.

(a)

STATE BOARD OF MEDICAL EXAMINERS Notice of Receipt of Two Petitions for Rulemaking and Action Thereon Practice of Medicine N.J.A.C. 13:35

Petitioner: New Jersey Academy of Ophthalmology and
Otolaryngology.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-1 et seq.

Take notice that petitioner, a not-for-profit corporation composed of New Jersey licensed physicians, through its counsel, John D. Fanburg, Esq., filed with the State Board of Medical Examiners two petitions

which, by agreement of counsel for petitioner, were considered to have been received on March 13, 1990.

The first petition concerns prescription of pharmaceutical agents. Petitioner states that it commences this action to require the Board to address and determine that the use and prescription of pharmaceutical and therapeutic measures or agents by optometrists for the purposes of diagnosing and treating deficiencies, deformities, diseases, or anomalies of the human eye is beyond the scope of an optometrist's licensure. Petitioner specifically requests that the State Board of Medical Examiners construe the provisions of N.J.S.A. 45:9-1 et seq. and determine and declare that "only a physician licensed pursuant to N.J.S.A. 45:9-1 may use and prescribe 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 second petition concerns post-surgical care. Citing the Board's July 12, 1989 policy statement that "management of post-surgical care is the practice of medicine and the responsibility of the operating ophthalmologist . . . and should not be delegated to a non-ophthalmologist," petitioner asks the Board to adopt regulations to provide that the management of post-operative and post-surgical care is the practice of medicine and surgery and is within the confines of N.J.S.A. 45:9-1 et seq. Specifically, petitioner requests the State Board of Medical Examiners to determine and declare that:

"(a) Ophthalmic surgeons are uniquely qualified to perform ophthalmic surgery, including cataract surgery.

(b) Ophthalmic surgeons are responsible for providing independent pre-surgical histories and physical examinations as well as post-operative management.

(c) Management of post-surgical care is the practice of medicine and the responsibility of the operating ophthalmologist.

(d) 'Management of post-ophthalmic surgical care' is defined as personal, firsthand observation by the operating ophthalmologist, or by his/her designee with equal training and licensure, of the patient on a regular basis following the surgical procedure.

(e) With respect to cataract surgery, the operating ophthalmologist, or by his/her designee with equal training and licensure, shall remain responsible for post-operative management until the patient is fully recovered.

(f) The purpose of the post-surgical care of a cataract surgery patient is to monitor healing and take whatever steps are necessary to ensure the best possible surgical outcome and to monitor the peak periods of risk for complications.

(g) Post-surgical responsibilities shall not be delegated to a non-ophthalmologist."

Upon notice to petitioner, the Board of Medical Examiners considered these petitions at its April 11, 1990 meeting and determined that further study by a Board committee will be necessary. The committee will consider the necessity of a rule regarding prescription of pharmaceutical agents in light of the fact that the scope of appropriate practice is defined in the Board's statute. The committee will also discuss petitioner's proposal for a regulation concerning management of post-surgical care in light of the Board's prior policy statements and its recent consideration of other petitions for rulemaking on this subject.

The Board committee will report its findings to the Board within 60 days, after which the board shall address this issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1		N.J.A.C.	Expiration Date
N.J.A.C.	Expiration Date		
1:1	5/4/92	3:18	1/19/93
1:5	10/20/91	3:19	3/17/91
1:6	5/4/92	3:21	2/2/92
1:6A	3/19/95	3:22	5/12/94
1:7	5/4/92	3:23	7/6/92
1:10	5/4/92	3:24	8/18/94
1:10A	5/4/92	3:25	8/17/92
1:10B	10/6/91	3:26	12/31/90
1:11	5/4/92	3:27	9/16/90
1:13	5/4/92	3:28	12/12/94
1:13A	4/3/94	3:32	10/3/93
1:20	5/4/92	3:33	9/18/94
1:21	5/4/92	3:38	10/5/92
1:30	2/14/91	3:41	10/16/90
1:31	6/17/92	3:42	4/4/93
PERSONNEL (CIVIL SERVICE)—TITLE 4/4A			
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
2:1	9/3/90	4:1	1/28/90
2:2	1/17/94	4:2	1/28/90
2:3	8/21/94	4:3	6/20/94
2:5	8/21/94	4:6	5/5/91
2:6	9/3/90	4A:1	10/5/92
2:9	7/7/91	4A:2	10/5/92
2:16	5/7/90	4A:3	9/6/93
2:22	7/6/92	4A:4	6/6/93
2:23	7/18/93	4A:5	10/5/92
2:24	4/2/95	4A:6	1/4/93
2:32	6/1/92	4A:7	10/5/92
2:33	3/6/94	4A:8	1/16/95
2:34	1/2/95	4A:9	10/5/92
2:48	11/27/90	4A:10	11/2/92
2:50	5/1/92		
2:52	5/1/95		
2:53	3/3/91		
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)		
2:68	11/7/93		
2:69	11/7/93		
2:70	5/7/90		
2:71	7/8/93		
2:72	7/8/93		
2:73	7/8/93		
2:74	7/8/93		
2:76	7/31/94		
2:90	6/24/90		
COMMUNITY AFFAIRS—TITLE 5			
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
3:1	1/6/91	5:1	2/5/95
3:2	4/12/95	5:2	4/10/94
3:3	1/11/95	5:3	9/1/93
3:6	3/3/91	5:4	10/5/92
3:7	9/16/90	5:10	11/17/93
3:11	5/1/94	5:11	3/10/94
3:13	11/17/91	5:12	12/27/94
3:17	6/18/91	5:13	12/24/92
		5:14	12/1/90
		5:15	5/1/94
		5:18	1/4/95
		5:18A	1/4/95
		5:18B	1/4/95
		5:18C	2/5/95
		5:19	2/1/93
		5:22	2/5/95
		5:23	3/1/93
		5:24	9/1/90
		5:25	3/1/91
		5:26	3/1/91
		5:27	5/2/95
		5:28	12/20/90
		5:29	6/18/91
		5:30	6/29/93
BANKING—TITLE 3			
N.J.A.C.	Expiration Date		
3:1	1/6/91		
3:2	4/12/95		
3:3	1/11/95		
3:6	3/3/91		
3:7	9/16/90		
3:11	5/1/94		
3:13	11/17/91		
3:17	6/18/91		

N.J.A.C.	Expiration Date
5:31	12/1/94
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	6/4/95
5:80	4/20/95
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

N.J.A.C.	Expiration Date
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	4/23/95
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	10/7/90
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/90
7:45	2/6/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	5/12/95
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:7	1/2/95
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	11/22/94
6:22	9/30/90
6:22A	12/19/93
6:24	4/2/91
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	2/20/95
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	2/20/92
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:34	11/15/93
8:39	6/20/93
8:40	5/7/91
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93

N.J.A.C.	Expiration Date
8:43A	9/3/90
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/6/91
8:65	12/2/90
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94

N.J.A.C.	Expiration Date
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/28/94
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:95	8/23/89
10:97	5/15/94
10:99	6/4/95
10:109	3/17/91
10:120	8/21/91
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:129	7/5/90
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	4/30/95
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	2/20/95
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/8/95
10:53	4/27/95
10:54	3/3/91
10:55	3/8/95
10:56	8/26/91
10:57	3/3/91

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90

N.J.A.C.	Expiration Date
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	3/30/95
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	6/3/90
13:30	3/12/95
13:31	12/12/91
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:61	3/5/95
13:62	3/19/95
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	3/23/95
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90
14:25	3/5/95

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	1/16/95
14A:7	9/16/90
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:20A	2/20/95
16:20B	2/20/95
16:21	9/3/90
16:21A	11/20/94
16:22	2/3/91
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:41	7/28/92
16:41A	1/23/95
16:41B	3/4/90
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	2/8/95
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93

N.J.A.C.

N.J.A.C.	Expiration Date
16:76	2/6/94
16:77	3/5/95
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	3/19/95
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
19:8	7/5/93	19:44	9/29/93
19:9	10/17/93	19:45	3/24/93
19:10	9/5/94	19:46	4/28/93
19:12	8/7/91	19:47	4/28/93
19:16	8/7/91	19:48	10/13/93
19:17	6/8/93	19:49	3/24/93
19:18	5/21/95	19:50	5/12/93
19:20	2/5/95	19:51	8/14/91
19:25	1/9/91	19:52	9/25/91
19:30	10/7/90	19:53	4/28/93
19:40	8/24/94	19:54	3/24/93
19:41	5/12/93	19:61	7/7/91
19:42	5/12/93	19:65	7/7/91
19:43	4/27/94	19:75	1/13/94

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the April 2, 1990 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.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MARCH 19, 1990

NEXT UPDATE: SUPPLEMENT APRIL 16, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-12.5	22 N.J.R. 3(a)		
1:1-14.10	22 N.J.R. 590(a)	R.1990 d.219	22 N.J.R. 1353(a)
1:6A	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	22 N.J.R. 1295(a)		
1:11-10.1	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	22 N.J.R. 91(a)	R.1990 d.220	22 N.J.R. 1353(b)

Most recent update to Title 1: TRANSMITTAL 1990-2 (supplement March 19, 1990)

AGRICULTURE—TITLE 2			
2:2-3.3	21 N.J.R. 3333(a)	R.1990 d.201	22 N.J.R. 1116(a)
2:24	21 N.J.R. 3045(b)	R.1990 d.202	22 N.J.R. 1116(b)
2:32-2.22	22 N.J.R. 3(b)	R.1990 d.203	22 N.J.R. 1116(c)
2:52	22 N.J.R. 888(a)	R.1990 d.271	22 N.J.R. 1553(a)
2:52-6, 7	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:53-3, 4, 6, 7	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:69-1.11	22 N.J.R. 1295(b)		
2:70-1	22 N.J.R. 1411(a)		
2:71-2.2-2.6	22 N.J.R. 1296(a)		
2:71-2.28, 2.29, 2.31	22 N.J.R. 1242(c)		
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	22 N.J.R. 1244(a)		
2:90	22 N.J.R. 1299(a)		

Most recent update to Title 2: TRANSMITTAL 1990-2 (supplement February 20, 1990)

BANKING—TITLE 3			
3:0	22 N.J.R. 275(a)		
3:1-14	21 N.J.R. 3333(b)		
3:1-17	21 N.J.R. 3207(b)		
3:2	22 N.J.R. 690(b)	R.1990 d.236	22 N.J.R. 1353(c)
3:16-2.3	22 N.J.R. 1015(a)		
3:18-3.5	21 N.J.R. 3333(b)		
3:41-7.4	22 N.J.R. 1185(a)		

Most recent update to Title 3: TRANSMITTAL 1990-2 (supplement February 20, 1990)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)		
4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)		
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)		
4A:8-2.4	Family leave	22 N.J.R. 1300(b)		

Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)

COMMUNITY AFFAIRS—TITLE 5				
5:2-1.1	Department organization	Exempt	R.1990 d.199	22 N.J.R. 1117(a)
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)	R.1990 d.230	22 N.J.R. 1354(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:19-4.3	Continuing care retirement communities: administrative correction	_____	_____	22 N.J.R. 1117(b)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)	R.1990 d.227	22 N.J.R. 1355(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12-4.15, 4.21, 4.22, 4.24-4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Hazard Subcode	21 N.J.R. 3696(a)	R.1990 d.226	22 N.J.R. 1356(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14-3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(b)	R.1990 d.253	22 N.J.R. 1554(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-7.3, 7.50, 7.116	Barrier Free Subcode: administrative corrections	_____	_____	22 N.J.R. 1355(b)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:23-9.5	Uniform Construction Code: records retention by code office	22 N.J.R. 1455(a)		
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)	R.1990 d.275	22 N.J.R. 1720(a)
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)	R.1990 d.274	22 N.J.R. 1720(b)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)	R.1990 d.282	22 N.J.R. 1720(c)
5:80	Housing and Mortgage Finance Agency	22 N.J.R. 277(b)	R.1990 d.248	22 N.J.R. 1556(a)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)	R.1990 d.247	22 N.J.R. 1556(b)
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)	R.1990 d.246	22 N.J.R. 1557(a)
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)	R.1990 d.254	22 N.J.R. 1557(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)	Expired	
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)		
Most recent update to Title 5: TRANSMITTAL 1990-3 (supplement March 19, 1990)				
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:1	Department organization	Exempt	R.1990 d.200	22 N.J.R. 1117(c)
5A:2	Military leave for public employee members of National Guard	22 N.J.R. 1185(b)		
Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)				
EDUCATION—TITLE 6				
6:3-2.1, 2.2, 2.5-2.8	Pupil records	22 N.J.R. 1302(a)		
6:20	School business services	22 N.J.R. 1246(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)		
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)	R.1990 d.237	22 N.J.R. 1359(a)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5-2.9, 3.3-3.7, 3.9, 4.1, 4.2, 4.4-4.8, 5.1, 5.2, 6.1-6.5, 7.1, 7.4, 8.1, 8.4-8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)		
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)	R.1990 d.235	22 N.J.R. 1359(b)
Most recent update to Title 6: TRANSMITTAL 1990-3 (supplement March 19, 1990)				
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)		
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)	R.1990 d.188	22 N.J.R. 1122(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)	R.1990 d.292	22 N.J.R. 1743(a)
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	Emergency (expires 6-29-90)	R.1990 d.269	22 N.J.R. 1631(a)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)	R.1990 d.294	22 N.J.R. 1755(a)
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)	R.1990 d.293	22 N.J.R. 1756(a)
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)	R.1990 d.197	22 N.J.R. 1124(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	R.1990 d.260	22 N.J.R. 1565(a)
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)	R.1990 d.259	22 N.J.R. 1558(a)
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19-2.2, 6.10	Water supply allocation permits: administrative corrections	_____	_____	22 N.J.R. 1265(a)
7:19-3.8	Fees for water allocation permits: administrative correction	_____	_____	22 N.J.R. 1134(a)
7:20-1	Dam safety standards	22 N.J.R. 279(a)	R.1990 d.276	22 N.J.R. 1760(a)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)		
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25A	Oyster resource management	22 N.J.R. 283(a)	R.1990 d.250	22 N.J.R. 1573(a)
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	R.1990 d.260	22 N.J.R. 1565(a)
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)	R.1990 d.228	22 N.J.R. 1362(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-3A.8	Medical waste generator fees	22 N.J.R. 1478(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
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8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b))	21 N.J.R. 3292(a)	R.1990 d.264	22 N.J.R. 1597(a)
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12:56-16	Payroll deductions for mass transit commutation tickets	22 N.J.R. 148(a)	R.1990 d.215	22 N.J.R. 1270(a)
12:100-5.2	Public employee safety and health: excavations	22 N.J.R. 607(a)	R.1990 d.216	22 N.J.R. 1270(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)	R.1990 d.258	22 N.J.R. 1610(a)
12:120	Asbestos training courses	22 N.J.R. 736(a)	R.1990 d.278	22 N.J.R. 1773(a)
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		

Most recent update to Title 12: TRANSMITTAL 1990-2 (supplement February 20, 1990)

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12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)		
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)		
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)	Expired	
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)		
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		

Most recent update to Title 12A: TRANSMITTAL 1989-7 (supplement November 20, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)		
13:13	Discrimination on the basis of handicap	22 N.J.R. 1436(a)		
13:18-1, 3-9, 11	Motor Vehicles: oversize and overwidth vehicles; Motor Fuels Use Tax; connecting devices; insurance termination; Bus Excise Tax; overhangs; uninsured motorists; Division organization	22 N.J.R. 614(a)	R.1990 d.225	22 N.J.R. 1378(b)
13:20-40.1	Motor vehicle registration: reflectorized plates fee	22 N.J.R. 1230(b)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)		
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:25	Motorized bicycles	22 N.J.R. 323(a)	R.1990 d.210	22 N.J.R. 1270(c)
13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)		
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)		
13:29	Board of Accountancy rules	22 N.J.R. 1042(a)		
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)		
13:30	Board of Dentistry rules	22 N.J.R. 149(b)	R.1990 d.205	22 N.J.R. 1145(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:33	Practice of ophthalmic dispensers and technicians	22 N.J.R. 154(a)	R.1990 d.204	22 N.J.R. 1148(a)
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)	R.1990 d.291	22 N.J.R. 1738(a)
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)	R.1990 d.273	22 N.J.R. 1614(a)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)	R.1990 d.240	22 N.J.R. 1616(a)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)	R.1990 d.279	22 N.J.R. 1739(a)
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)	R.1990 d.272	22 N.J.R. 1615(a)
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)		
13:45B-6.1	Private employment agencies and personnel services firms: license, registration, and other fees	22 N.J.R. 906(a)		
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13:47A-10	Registration of securities	21 N.J.R. 2903(a)	R.1990 d.241	22 N.J.R. 1617(a)
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)		
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)		
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13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
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13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)	R.1990 d.184	22 N.J.R. 1149(a)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)	R.1990 d.185	22 N.J.R. 1149(b)
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
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14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
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14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
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14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)		

Most recent update to Title 14: TRANSMITTAL 1990-2 (supplement March 19, 1990)

ENERGY—TITLE 14A

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)	Expired	
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

Most recent update to Title 14A: TRANSMITTAL 1990-1 (supplement January 16, 1990)

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Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

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15A:2-1.1	Department organization	Exempt	R.1990 d.198	22 N.J.R. 1149(c)
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Most recent update to Title 15A: TRANSMITTAL 1990-1 (supplement February 20, 1990)

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16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)		
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)	R.1990 d.232	22 N.J.R. 1379(a)
16:28-1.55, 1.104, 1.119	Speed limit zones along Routes 54 in Atlantic County, 26 in Middlesex County, and 83 in Cape May County	22 N.J.R. 1060(a)	R.1990 d.285	22 N.J.R. 1739(b)
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16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)		
16:28-1.80, 1.86	Speed limit zones along Routes 172 and 171 in Middlesex County	22 N.J.R. 1239(a)		
16:28-1.99, 1.108	Speed limit zones along Route 157 in Absecon and Route 82 in Union County	22 N.J.R. 328(a)	R.1990 d.207	22 N.J.R. 1270(d)
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16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, 1.62	Restricted parking and stopping along Routes 35 in Red Bank, U.S. 40 in Franklin Township, 49 in Salem, 77 in Harrison Township, U.S. 130 in Pennsauken and Delran, 168 in Gloucester Township, and 12 in Flemington and Kingwood	22 N.J.R. 913(a)	R.1990 d.251	22 N.J.R. 1625(a)
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16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	22 N.J.R. 1536(b)		
16:28A-1.61	Bus stop zones along U.S. 9W in Alpine	22 N.J.R. 1241(a)		
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16:30-10.11	Midblock crosswalk along Route 49 in Fairfield Township	22 N.J.R. 1242(a)		
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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17:1-12.7	Police and Firemen's Retirement System: entry age limit and transfers	22 N.J.R. 1454(a)		
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17:3-6.16	Teachers' Pension and Annuity Fund: mandatory retirement	22 N.J.R. 329(a)	R.1990 d.283	22 N.J.R. 1740(b)
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17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:14-1.2	Minority and female construction subcontractors: administrative correction	_____	_____	22 N.J.R. 1150(a)
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17:16-43	State pension fund investments: mortgage-backed passthrough securities	22 N.J.R. 1043(a)		
17:16-50	State pension fund investments: U.S. Treasury futures	22 N.J.R. 1043(b)		
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18:1-2	Division of Taxation: petitions for rules	22 N.J.R. 160(a)	R.1990 d.287	22 N.J.R. 1742(a)
18:7-3.13	Corporation Business Tax: application of overpayment to estimated tax	22 N.J.R. 1045(a)		
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
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19:16-5.7	Public Employment Relations Commission: interest arbitration	22 N.J.R. 330(a)	R.1990 d.221	22 N.J.R. 1380(a)
19:18	Contested transfer determinations	22 N.J.R. 790(a)	R.1990 d.255	22 N.J.R. 1626(a)
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19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:30	Economic Development Authority: organization and procedure	22 N.J.R. 1537(a)		
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19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:45-1.11	Casino organization	21 N.J.R. 3446(a)	R.1990 d.222	22 N.J.R. 1380(b)
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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19:46-1.24	State seal on slot machines	22 N.J.R. 24(a)	R.1990 d.196	22 N.J.R. 1156(a)
19:47-1.3	"Don't come bet" in craps	21 N.J.R. 3869(b)		
19:53-1.5	Affirmative action requirements	22 N.J.R. 332(a)	R.1990 d.213	22 N.J.R. 1272(a)

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