



NEW JERSEY REGISTER

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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 18, 1989

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 16, 1990

FEB 1 1990

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

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

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NEW JERSEY REGISTER

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

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order Number 1(1990)

Disclosures by Public Officials

Issued: January 18, 1990.

Effective: January 18, 1990.

Expiration: Indefinite.

EXECUTIVE ORDER NO. 1

WHEREAS, in our representative form of government, it is essential that the conduct of public officials shall hold the respect and confidence of the people; and

WHEREAS, those in government hold positions of public trust that require adherence to the highest standards of honesty, integrity and impartiality; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits a State officer or employee from having any interest or engaging in any activity that is in substantial conflict with the proper discharge of his duties in the public interest or from undertaking any employment or service which might reasonably be expected to impair his objectivity or independence of judgment; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits a State officer or employee from acting in his official capacity in any matter where he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment; and

WHEREAS, it is the duty of government officials to earn the trust and confidence of the people by avoiding even the appearance of impropriety; and

WHEREAS, the disclosure of personal interest of public officials will serve to restore the public's faith and confidence in its government representatives and will guard against conduct violative of the public trust;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Every public employee and public officer as such terms are defined in Section 7 hereof shall file a sworn and duly notarized statement which is current as of five days prior to the date of filing. Each statement shall include the following information:

a. The name and position of the public officer;

b. Any occupation, trade, business or profession engaged in by the public officer, his or her spouse, and dependent children that is subject to licensing or regulation by a State agency;

c. A list of all assets having a value of more than \$1,000, both tangible and intangible, in which a direct or indirect interest is held by the public employee or public officer, his or her spouse, and dependent children, valued as of the statement date; provided, however, that when the value cannot be determined as of that date, a separate valuation date shall be specified for the particular asset. Where stocks and bonds are involved, there shall be included the name of the company or government agency issuing them; except that whenever such interest exists through ownership in a mutual fund or holding company, the stocks held by such mutual fund or holding company need not be listed; whenever such interest exists through a beneficial interest in a trust, the stocks and bonds held in such trust shall be listed only if the public employee or public officer has knowledge of what stocks and bonds are so held. Where more than 10 percent of the stock of a corporation is held, the percentage of ownership shall be stated. The list shall include any direct or indirect interest, whether vested or contingent, in any contract made or executed by a government instrumentality. In the case of real estate interests, there shall be given the location, including municipality and block and lot number, size, general nature and acquisition date of any real property in New Jersey in which any direct, indirect, vested or contingent interest is held, together with the names of all individuals or entities who share a direct or indirect interest therein and the name of any government instrumentality that is a tenant of such property or that has before it an application, complaint or proceeding directly affecting such property. Assets of a public employee and his or her spouse shall be listed according to the following value categories:

- (i) greater than \$1,000, but not more than \$5,000;
- (ii) greater than \$5,000, but not more than \$25,000;
- (iii) greater than \$25,000, but not more than \$50,000;
- (iv) greater than \$50,000, but not more than \$100,000;
- (v) greater than \$100,000, but not more than \$250,000;
- (vi) greater than \$250,000;

The value of assets of (1) the dependent children of a public employee or (2) a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission on Ethical Standards.

d. A list of all liabilities of the public employee or public officer, his or her spouse, and dependent children, valued by category in the same manner as required by paragraph c above, except liabilities which are:

(1) Less than \$10,000 and owed to a relative as defined in section 7 hereof;

(2) Less than \$1,000 and owed to any other person;

(3) Loans secured by a personal motor vehicle, household furniture or appliances where the loan did not exceed the purchase price of the item and the outstanding balance did not exceed \$10,000 as of the close of the preceding calendar year; and

(4) Revolving charge accounts where the outstanding liability does not exceed \$10,000 as of the close of the preceding calendar year;

e. A list of all liabilities otherwise subject to disclosure pursuant to paragraph d above of the public employee or public officer, his or her spouse, and dependent children which have been forgiven by the creditor within 12 months of the statement date. For each such forgiven liability so listed, the name of the creditor to whom such liability was owed shall be stated;

f. A list of all sources of income of the public employee or public officer, his or her spouse, and dependent children including all compensated employment of whatever nature, all directorships or other fiduciary positions for which compensation has or will be claimed, all capital gains including a description of the individual sources of such gains, all contractual arrangements producing or expected to produce income, and all honorariums, lecture fees and other miscellaneous sources of income including, but not limited to interest, dividends, royalties and rents. The statement shall disclose sources of income for the twelve-month period immediately preceding the filing date of the statement. Amounts of income shall be disclosed by a public employee and his or her spouse for the calendar year immediately preceding the filing date provided, that is, the filing occurs after July 1, of any year, the amount of income disclosed shall be accurate through 30 days preceding the filing date. The amounts of such income received shall be listed and valued by category in the same manner of assets as set forth in paragraph c(i) through (vi) above. The amount of income of (1) the dependent children of a public employee, or (2) of a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission on Ethical Standards. Not required to be reported as a source of income are:

(1) Cash gifts in an aggregated amount of less than \$100 received during the preceding twelve months from a person;

(2) Non-cash gifts with an aggregated fair market value of less than \$200 received during the preceding twelve months from a person; and

(3) Gifts with an aggregated cash or fair market value of less than \$3,000 received during the preceding twelve months from a relative;

g. A list of any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the public employee or public officer, his or her spouse, and dependent children with any firm, corporation, association, partnership or business that either does business with or is licensed, regulated or inspected by a State agency.

2. Each statement shall contain a certification by the public employee or public officer that he or she has read the statement, that to the best of his or her knowledge and belief it is true, correct and complete and that he or she has not and will not transfer any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

3. a. Within ninety days from the effective date of this Order, each public employee and public officer who has not already done so shall file the signed and notarized statement required herein with the Office of the Governor and two (2) copies bearing an original signature with the Executive Commission on Ethical Standards. In furtherance of its duties under the Conflicts of Interest Law, N.J.S.A. 52:13D-12 *et seq.*

and pursuant to this Executive Order, the Executive Commission on Ethical Standards shall review each statement to determine its conformity with the provisions of this Order and other applicable provisions of the law. Upon approving such statement for filing, the Commission shall file and maintain a copy of it for public inspection and copying in accordance with the procedures set forth in N.J.S.A. 47:1A-1 *et seq.*

b. Each prospective public employee and public officer shall, before assuming the office to which he or she has been appointed, satisfy the filing requirements of this Order, unless the Attorney General grants to such officer an extension from the filing deadline. Such an extension shall not be granted more than twice and shall not be of more than thirty days each.

c. Updated statements shall be filed on the May 15 next succeeding the submission of the original statement and each May 15 thereafter provided, however, that public employees and public officers who file statements on or after January 16, 1990 but prior to May 14, 1990 need not file an updated statement on May 15, 1990 so long as the person who submitted such statement is a public employee or public officer of this State as defined in Section 7 of this Order.

4. The Executive Commission on Ethical Standards shall keep the approved statements on file for so long as the person submitting such statement is a public employee or public officer of this State, and for five years thereafter.

5. The Executive Commission on Ethical Standards shall have the primary responsibility for assuring the proper administration and implementation of this Order and shall have the power to perform the acts necessary and convenient to this end, including, but not limited to, preparing and distributing forms and instructions to be utilized by public employees and public officers in complying with this Order.

6. The willful failure of a public employee or public officer to comply with this Order shall constitute cause for his or her removal from office by those having the power of removal.

7. For the purpose of this Order:

a. "Public employee" shall mean any person holding any of the following offices in the Executive Branch of State government, together with any offices added to such list by subsequent gubernatorial executive order:

- (1) The Governor;
- (2) The head of a principal department;
- (3) The assistant or deputy heads of a principal department to include all assistant and deputy commissioners of such department;
- (4) The head and assistant heads of a division of a principal department, or any person exercising substantially similar authority for any board or commission which is organized as in but not of a principal department or any independent authority;
- (5) The executive or administrative head of (i) any board or commission which is organized as in but not of a principal department or (ii) any independent authority;
- (6) The following members of the staff of the Office of the Governor:
 - (i) Chief of Staff;
 - (ii) Director, Office of Management and Planning;
 - (iii) Legislative Counsel;
 - (iv) Chief Policy Advisor;
 - (v) Director of Communications;
 - (vi) Press Secretary;
 - (vii) Counsel to the Governor;
 - (viii) Executive Assistant to the Governor and any deputy or principal administrative assistant to any of the foregoing;

b. "Public officer" shall mean the members of the following boards, commissions or independent authorities, together with any offices or bodies added to such list by subsequent gubernatorial executive order:

- (1) Atlantic City Convention Center Authority;
- (2) New Jersey Building Authority;
- (3) Capital City Redevelopment Corporation;
- (4) Casino Reinvestment Development Authority;
- (5) New Jersey Economic Development Authority;
- (6) New Jersey Expressway Authority;
- (7) New Jersey Highway Authority;
- (8) New Jersey Transportation Trust Fund Authority;
- (9) New Jersey Turnpike Authority;
- (10) North Jersey District Water Supply Commission;
- (11) Passaic Valley Sewerage Commission;
- (12) Passaic Valley Water Commission;
- (13) New Jersey Public Broadcasting Authority;
- (14) Rahway Valley Sewerage Authority;
- (15) South Jersey Port Corporation;

- (16) New Jersey Sports and Exposition Authority;
- (17) Casino Control Commission;
- (18) Pinelands Commission;
- (19) Hackensack Meadowlands Development Commission;
- (ii) individuals appointed as a New Jersey member to the following interstate agencies:

- (1) Atlantic States Marine Fisheries Commission;
- (2) The Delaware River and Bay Authority;
- (3) Delaware River Basin Commission;
- (4) Delaware River Joint Toll Bridge Commission;
- (5) Delaware River Port Authority;
- (6) Delaware Valley Regional Planning Commission;
- (7) Education Commission of the States;
- (8) Interstate Sanitation Commission;
- (9) Northeast Interstate Low Level Radioactive Waste Commission;
- (10) Palisades Interstate Park Commission;
- (11) Port Authority of New York and New Jersey;
- (12) The Port Authority Trans Hudson Corporation;
- (13) South Jersey Port Corporation;
- (14) Waterfront Commission of New York Harbor;

(iii) together with any offices or bodies added to such lists by subsequent gubernatorial Executive Order;

c. "Government instrumentality" shall mean the Legislative, Judicial and Executive Branches of State government, including any office, department, division, bureau, board, commission, council, authority or agency therein and any county, municipality, district, public authority, public agency or other political subdivision or public body in the State;

d. "State agency" shall mean any of the principal departments in the Executive Branch of State government, and division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency;

e. "Relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, great-grandfather, great-grandmother, brother, sister, nephew, niece, uncle, or aunt. Relatives by adoption, half-blood, marriage or re-marriage shall be treated as relatives of the whole kinship.

8. Executive Order No. 2 of Governor Thomas H. Kean and any subsequent executive orders issued in conjunction therewith are rescinded, and any regulations adopted and promulgated thereunder shall be null and void.

9. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order Number 2(1990)
Environmental Prosecutor

Issued: January 24, 1990.

Effective: January 24, 1990.

Expiration: Indefinite.

EXECUTIVE ORDER NO. 2

WHEREAS, the State of New Jersey faces significant threats to its water, air and earth from pollution; and

WHEREAS, conquering those threats and ensuring a high quality of life for all New Jerseyans would be furthered by the creation of a system of coordinated, coherent and effective criminal, civil and administrative enforcement, including swift and sure criminal and/or civil and/or administrative enforcement in matters involving either a chronic environmental offender or a situation which poses a serious threat to public health or to the environment (hereinafter "priority cases"); and

WHEREAS, a coordinated enforcement policy and effective criminal and/or civil and/or administrative prosecution of priority cases would best be achieved by creation of the position of Environmental Prosecutor with centralized responsibility to achieve a coordinated enforcement policy and to oversee the prosecution of enforcement actions in priority cases;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of the State of New Jersey, do hereby ORDER and DIRECT:

1. The position of Environmental Prosecutor is hereby created in the Department of Law and Public Safety with the rank of Assistant Attorney General. The Environmental Prosecutor shall be appointed by and serve at the pleasure of the Governor, and shall serve under the supervision and direction of the Attorney General.

2. The Environmental Prosecutor shall have access to the support and resources of the Department of Law and Public Safety including, without limitation, such clerical and support staff as may be necessary to discharge his or her responsibilities, access to the Environmental Prosecution Unit within the Division of Criminal Justice and access to the Environmental Section of the Division of Law.

3. The Environmental Prosecutor shall establish a coordinated enforcement policy and shall oversee the prosecution of enforcement actions in priority cases.

In furtherance of these responsibilities, the Environmental Prosecutor shall, under the supervision of the Attorney General as aforesaid, have the following powers and obligations:

(A) The Environmental Prosecutor shall have access to all information concerning environmental enforcement which is in the possession of all State agencies. Such information will include agency inspection reports and license information, individual case files, and intelligence information such as that compiled and maintained by the Divisions of State Police and Criminal Justice.

(B) The Environmental Prosecutor shall meet on a regular basis with representatives of all State departments and agencies with environmental enforcement responsibilities: (i) to identify individual matters as priority cases; (ii) to set specific goals and strategies for the most effective resolution of each such case, whether by criminal or civil or administrative enforcement action or some combination thereof; and (iii) to formulate and evaluate proposals for legislative, administrative and/or judicial initiatives to strengthen environmental enforcement and to further a coordinated enforcement policy.

(C) The Environmental Prosecutor shall oversee the processing, progress and prosecution of individual priority cases. He or she shall work with the Directors of the Divisions of Law and Criminal Justice when such matters are receiving, or should receive, the attention of the Attorney General. He or she shall also work through the heads of other departments and agencies to oversee administrative enforcement activities in priority cases which do not involve direct Attorney General attention.

(D) In connection with environmental enforcement activities, the Environmental Prosecutor shall act as the liaison for the Executive Branch of government with agencies involved in environmental enforcement outside the Executive Branch including federal agencies and the judiciary. In this connection, an initiative currently being developed for the judiciary would, if adopted, create a chronic environmental offender program. Among other things, the program would involve the assignment of a judge to review pending cases in an effort to insure that egregious matters are moved and disposed of with dispatch. The Environmental Prosecutor would coordinate and link his or her activities with the overseer of any such judicial initiative.

4. All departments and agencies of State government with environmental enforcement responsibilities are hereby directed to cooperate with and to support fully the Environmental Prosecutor in the discharge of his or her responsibilities and obligations.

5. The Environmental Prosecutor shall report to the Governor and to the Attorney General after six (6) months of service, and at reasonable and appropriate intervals thereafter, as to the progress of his or her work and as to whether any further administrative and/or legislative action would be desirable to assist in the discharge of his or her duties.

6. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR**Governor James J. Florio****Executive Order Number 3(1990)****Areawide Water Quality****Management Plans****Delegation of Authority to Commissioner of
Environmental Protection**

Issued: January 26, 1990.

Effective: January 26, 1990 and retroactive as necessary.

Expiration: Indefinite.

WHEREAS, the Water Quality Planning Act, *N.J.S.A.* 58:11A-1 et seq., requires that the Governor adopt each areawide water quality management plan developed by the Department of Environmental Protection (DEP) or by planning agencies designated by the Governor; and

WHEREAS, the Federal Water Pollution Control Act (Clean Water Act), 33 *U.S.C.A.* 1251 et seq., as amended by Pub. L. 92-500 (1972), and the regulations promulgated pursuant thereto by the United States Environmental Protection Agency (USEPA) require that the Governor of each state certify water quality management plans for submission to the USEPA and designate management agencies to carry out such plans; and

WHEREAS, to further the water quality management planning process, the Clean Water Act was amended in 1987 to require that the Governor of each state submit assessment reports and management programs for nonpoint sources of water pollution to the USEPA; and

WHEREAS, the DEP has been and will continue to be the lead State agency in administering and supervising Statewide efforts toward adopting comprehensive water quality management plans including, but not limited to, the designation of the management agencies to implement such plans and the preparation of assessment reports and management programs for nonpoint sources of water pollution; and

WHEREAS, it is desirable for the Commissioner of Environmental Protection to be authorized to act on behalf of the Governor in the adoption and submission of water quality management planning documents as required by both Federal and State laws;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby **ORDER AND DIRECT**:

1. The Commissioner of Environmental Protection is designated to act on behalf of the Governor in the proposal and adoption of areawide water quality management plans and amendments thereto under the Water Quality Planning Act, *N.J.S.A.* 58:11A-1 et seq.

2. The Commissioner is designated to act on behalf of the Governor in the certification of water quality management plans and amendments thereto and the designation of management agencies to carry out such plans as required under the Clean Water Act.

3. The Commissioner is designated to act on behalf of the Governor in the submission of assessment reports and management programs to the USEPA for nonpoint sources of water pollution as required under the Clean Water Act.

4. The Commissioner may delegate to the Director of the Division of Water Resources the authority received from the Governor pursuant to paragraphs 1 and 2 of this Executive Order to propose and adopt areawide water quality management plans and amendments thereto, to designate management agencies and to certify the adoption of water quality management plans and amendments.

5. This Order shall take effect immediately and shall be retroactive to the extent necessary to ratify any actions taken by the Department pertaining to the certification, proposal or adoption of water quality management plans and amendments thereto or the designation of management agencies to carry out such plans prior to the date of this Order.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Interlocutory Review

Proposed Amendment: N.J.A.C. 1:1-14.10

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

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

Proposal Number: PRN 1990-74.

Submit written comments by March 22, 1990 to:

Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, CN 049
Building No. 9
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 1:1-14.10 provides that when an agency head grants a request to interlocutorily review an order or ruling of an administrative law judge, the agency head may, at the same time, stay the scheduling or conduct of the hearing until the order or ruling has been interlocutorily reviewed. The agency head may act on its own initiative or upon application. Applications should be submitted first to the presiding judge. If denied, the application may be resubmitted to the agency head.

It has been the usual practice for agencies to issue such stays when appropriate. Occasionally, however, questions arise as to the agencies' authority to issue stays because the interlocutory review rule has never specified that the agency head has this authority. The proposed amendment eliminates any ambiguity.

Social Impact

The proposed amendment eliminates any possible confusion to ensure that the parties understand that an agency head can delay a hearing, pending its interlocutory review of an ALJ ruling. It provides a process whereby a stay may be issued on an agency head's own initiative or upon application of a party.

Economic Impact

The proposed amendment does not alter current procedures and has no economic impact.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq. The amendment clarifies who may order a stay in an administrative hearing in the course of an interlocutory review.

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

1:1-14.10 Interlocutory review

(a)-(h) (No change.)

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless [the presiding judge determines that] a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. **Either the presiding judge or the agency head may order a stay of the proceedings, either on their own or upon application. Applications for stays should be made in the first instance to the presiding judge. If denied, the application may be resubmitted to the agency head.** Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j)-(m) (No change.)

BANKING

(b)

THE COMMISSIONER

Notice of Pre-Proposed Rulemaking and Joint Public Hearings

Compensation to Mortgage Bankers, Mortgage Brokers and Real Estate Licensees for Placing Mortgage Loans

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:11B-1, 2, 4, 13 and 14; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-4.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Brokers' Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest.

The **public hearings** concerning this pre-proposed rulemaking will be held at the following times and locations:

Wednesday, February 21, 1990 at 10:00 A.M.

Office of Administrative Law

185 Washington Street

Newark, New Jersey

(Overflow Date: Thursday, February 22, 1990, only if needed)

Wednesday, March 14, 1990 at 10:00 A.M.

Office of Administrative Law

Quakerbridge Plaza

Building 9

Trenton (Hamilton Township), New Jersey

(Overflow Date: Thursday, March 15, 1990, only if needed)

Interested persons wishing to make oral comments at the public hearings should appear and register to speak either on February 21, 1990 in Newark or on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the immediately following day in each location (February 22 in Newark and March 15 in Trenton) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing dates. No hearings will be conducted on the overflow days if all registered persons have been reached on the primary days.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ

Office of Administrative Law

185 Washington Street

Newark, New Jersey 07102

All written material submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson

may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other real estate licensees are participating with mortgage loan lenders in programs for computerized mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989.)

Issues

The hearings will address the following specific questions related to Banking:

1. Under what circumstances should a real estate broker or salesperson be deemed to be "engaged in the business of a mortgage banker or broker" within the meaning of the Mortgage Bankers and Brokers Act? N.J.S.A. 17:11B-1 et seq.?
2. Under what circumstances, if any, may a real estate salesperson employed by a real estate broker also be deemed to be a mortgage solicitor within the meaning of the Mortgage Bankers and Brokers Act?
3. (a) What dangers, if any, are posed to borrowers by the "steering" of mortgage loans by mortgage bankers, brokers or solicitors to lenders with whom they are in some way affiliated?
(b) What form do such "affiliations" typically assume in the industry?
(c) Is there some form of disclosure that would adequately protect the public from such dangers?
(d) Would a rule permitting mortgage bankers, brokers or solicitors to charge permitted fees only to borrowers, and only upon condition that disclosure be made, adequately protect the public against such dangers?
(e) Would the public be better served by such a rule than by a mere requirement for disclosure?
(f) What other or additional rules would be advisable to protect the public interest in these circumstances?

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Exemptions from Taxation

New Construction, Improvement and Conversion in Urban Enterprise Zone Municipalities

Proposed New Rules: N.J.A.C. 5:22-3

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner,
Department of Community Affairs.

Authority: P.L. 1989, c. 207, Section 3.

Proposal Number: PRN 1990-80.

Submit comments by March 22, 1990 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

P.L. 1989, c. 207, effective January 1, 1990, authorizes municipalities that contain urban enterprise zones to allow five-year tax abatements, in areas deemed to be "in need of rehabilitation," for new residential construction, improvements to existing residential properties, and conversion of nonresidential buildings to residential use. Section 3 of the act requires the Commissioner of Community Affairs to promulgate rules by which municipalities may determine if areas are in need of rehabilitation and if buildings or structures within such areas could be advantageously converted to "qualified residential property" or if vacant land within such areas could be advantageously used for the construction of such "qualified residential property." The rules are to take into consideration the existence of blighted areas in the municipality, deterioration of housing stock, age of housing stock, supply of and demand for housing in the municipality, and arrearage in real property taxes due on residential properties.

The proposed new rules provide that an area may be deemed to be "in need of rehabilitation" if it has previously been declared to be blighted, or if there are substantial housing or health code violations in at least 25 percent of the dwelling units, or if at least 25 percent of the dwelling units are in buildings at least 40 years old, or if at least 25 percent of the dwelling units are in buildings having at least one year's property tax arrearages, or if at least 10 percent of the land that is either tax foreclosed or privately-owned is vacant or has unoccupied buildings. Furthermore, there must be a finding that the demand for housing in the municipality exceeds the supply and that the housing to be created through improvement, conversion or new construction in the designated area will help meet that demand by increasing the supply of safe, decent and sanitary housing that is affordable to people needing housing in the municipality. The proposed new rules also make clear that the relocation statutes will be applicable in the event of any displacement due to improvement, conversion or new construction.

Social Impact

It is expected that these rules, and the statute they implement, will have a positive social impact in that they will encourage construction, conversion and improvement of buildings to help meet the demand for safe, decent, affordable housing in some of the more distressed municipalities in the State. The criteria set forth should be easily met in any area likely to be considered for designation as being "in need of rehabilitation."

Economic Impact

Tax abatement will require a municipality to forego for five years the taxes it would otherwise receive from "qualified residential property." However, it will receive payments in lieu of taxes according to either of two statutory schedules and, after the five-year period, it will have the benefit of full tax revenue from an improvement that might not have been undertaken were it not for the abatement. The reference to relocation assistance, like the similar reference with regard to improvements or conversions under P.L. 1979, c. 233 that is set forth at N.J.A.C. 5:22-2.5, is intended to make it clear that the reference in N.J.S.A. 20:4-2 is applicable. It does not, in the judgment of the Department, create a relocation assistance responsibility that would not otherwise exist.

Regulatory Flexibility Analysis

To the extent that the proposed rules, by implementing P.L. 1989, c. 207, help to bring new investment into urban enterprise zone municipalities, it will help the small businesses in those municipalities by providing housing to potential workers and customers. The standards themselves do not relate in any way to small businesses *per se* and there is no basis for any differential treatment for them. The reference to the relocation statute may help protect any small businesses that have to be relocated as a result of any improvements, conversions or new construction undertaken under P.L. 1989, c. 207 and these rules.

Full text of the proposal follows:

SUBCHAPTER 3. RESIDENTIAL NEW CONSTRUCTION, IMPROVEMENT AND CONVERSION IN URBAN ENTERPRISE ZONE MUNICIPALITIES

5:22-3.1 Purpose

This subchapter is adopted pursuant to section 3 of P.L. 1989, c. 207 for the purpose of setting forth standards by which municipalities that are deemed to be "qualified municipalities" under the statute may determine that one or more areas within the municipality are in need of rehabilitation and that one or more buildings in any such area could be advantageously converted to "qualified residential property," as defined in section 2 of the statute, or that vacant land in any such area could be advantageously used for the construction of such "qualified residential property."

5:22-3.2 Standards for municipal determinations

(a) In any municipality that is a "qualified municipality" as defined in Section 2 of P.L. 1989, c. 207, a determination may be made by the municipal governing body that an area within the municipality is in need of rehabilitation only if at least one of the following criteria is satisfied:

1. The area has been previously declared, pursuant to N.J.S.A. 40:55-21.1 et seq., to be blighted;
2. There is evidence of substantial housing or health code violations in at least 25 percent of the dwelling units in the area;

3. At least 25 percent of the dwelling units in the area are in buildings at least 40 years old;

4. At least 25 percent of the dwelling units in the area in buildings having real property tax arrearages in at least the amount of one year's taxes; or

5. At least 10 percent of the land within the area, including both privately-owned property and property that is municipally-owned as a result of tax foreclosure but excluding other public property, is vacant or has only unoccupied buildings on it.

(b) No area shall be deemed to be in need of rehabilitation unless the demand for housing in the municipality exceeds the supply and the improvement or conversion of one or more existing buildings in the area, or new residential construction in the area on one or more vacant lots, or lots that might be made vacant through demolition of existing substandard structures, is determined by the governing body to be likely to increase the overall supply of safe, sanitary and decent housing affordable to those in need of it.

5:22-3.3 Relocation assistance

The improvement, conversion or demolition of any building in conjunction with any tax abatement granted under P.L. 1989, c. 207 shall be deemed to be part of a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" within the meaning of N.J.S.A. 20:4-2.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Code Interpretations; Earthquake Zones

Proposed Repeal: N.J.A.C. 5:23-9.4

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

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner,
Department of Community Affairs.

Proposal Number: PRN 1990-79.

Submit comments by March 22, 1990 to:

Michael L. Tickin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In the 1989 Supplement to the 1987 Edition of the Building Officials and Code Administrators (BOCA) National Building Code, which is currently in force, the earthquake zones shown in the seismic map of New Jersey (figure 1113.1) were upgraded to require more protection in building design. New Jersey is divided into two zones numbered one and two, roughly dividing the State along a northeast-southwest diagonal and thereby creating a northern and a southern region. Each zone requires different calculations to determine building design requirements. Because the map in the BOCA National Building Code is drawn at a scale that makes it difficult to determine precisely where the border between the zones is, and where the borders between the interpolated subzones applicable to structures (but not to mechanical design) are, the Department has prepared this interpretation on the basis of the data used by BOCA, with necessary modification for administrative purposes and in order to avoid non-uniform interpolation.

The Bureau of Technical Services in the Department's Construction Code Element surveyed practicing architects, engineers and code officials to determine which of several methods of delineation would be most acceptable and workable in practice. It was determined that it would be best to define the dividing line between the zones and between subzones as following county borders. In addition, each county is assigned a numerical value or "Av" number necessary to calculate design seismic loads for structural design therein. (For mechanical design, the only variation is between zones and the Av numbers are not applicable.) While it is true that county lines only approximate geologic divisions, these lines provide a reasonable, safe and convenient basis for dividing the State without bisecting municipalities and without creating unprecedented regional dividing lines that might result in uncertainty in application.

Social Impact

The county-based numerical values provided in this interpretation allow ready calculation of design seismic loads for every municipality in New Jersey. Computation of loads ensures that the public's safety will be protected by buildings with appropriate features enabling them to withstand likely earthquake activity.

Economic Impact

County-wide designation of seismic values and zones will enable design professionals to easily determine what requirements must be met in each municipality. Requirements will be predictable and consistent.

Regulatory Flexibility Analysis

This interpretation, which specifies seismic zones and Av values on a county basis for New Jersey, involves no reporting requirements and can have no differential requirements for large and small businesses. It represents design value standards which must be observed to build safe, appropriate structures in the State. It will be beneficial to design professionals who qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by providing them with a readily available reference source and will benefit small businesses that occupy buildings constructed in the future by making sure that those buildings have the appropriate level of earthquake protection.

Full text of the proposed new rule follows:

5:23-9.4 Earthquake zones

(a) The State of New Jersey shall be divided into two Seismic Zones.

1. Seismic Zone I shall consist of and include the counties of Monmouth, Ocean, Burlington, Camden, Gloucester, Salem, Cumberland, Atlantic and Cape May.

2. Seismic Zone II shall consist of and include the counties of Sussex, Warren, Morris, Passaic, Bergen, Hudson, Essex, Union, Somerset, Hunterdon, Mercer and Middlesex.

(b) Seismic design requirements shall be met in all occupancies in Seismic Zone II to comply with Section 1113.0 of the 1989 Supplement to the BOCA National Building Code/87. All occupancies in the Seismic Zone I having an importance Factor I in Table 1113.1 of less than 1.5 shall meet only such requirements as are set forth in Sections 1113.4.3, 1113.11.1 and 1113.11.2 of the 1989 Supplement of the BOCA National Building Code/87.

(c) High-rise buildings as defined in Section 602.1 shall meet all the special seismic requirements of 602.14 for both Seismic Zone I and Seismic Zone II. This section requires that the life safety systems in high-rise buildings must be designed not only for the horizontal force factor, $C_p=0.3$ as specified in Table 1113.10, but also for the effect of structural drift, as noted in Note C of Table 1113.10 and Section 1113.14. Special consideration shall be given to relative movements at separation joints.

(d) All buildings designated as essential facilities in Table 1113.1 shall also be designed for both the horizontal force factor and structural drift as noted in (c) above for both Seismic Zone I and Seismic Zone II.

(e) All other buildings located in Seismic Zone II must have any machinery and equipment housed in the structure designed for the horizontal force factor, except as otherwise provided in Note f of Table 1113.10, which allows certain listed installations, otherwise required to be restrained, to be exempt from seismic restraint.

(f) Calculation of seismic forces shall be in accordance with formula $V=2.5AvIKCSW$, as required by the 1989 Supplement of the BOCA National Building Code/87, Section 1113.4. Av values shall be assigned by county as follows: (and as represented on the map following this subsection)

1. Seismic Zone I:
 - i. Monmouth: .095;
 - ii. Burlington and Ocean: .080;
 - iii. Camden: .075;
 - iv. Gloucester: .070;
 - v. Salem and Atlantic: .060;
 - vi. Cumberland and Cape May: .050.
2. Seismic Zone II:
 - i. Sussex: .125;
 - ii. Warren, Morris, Passaic and Bergen: .120;

- iii. Essex: .115;
- iv. Hunterdon, Somerset, Union and Hudson: .110;
- v. Mercer and Middlesex: .105.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction

Permits, Certificates, Hearings and Confidentiality Applicability

Proposed Amendment: N.J.A.C. 7:27-8.2

Take notice that the Department of Environmental Protection has discovered an error in the published text of the proposed amendment of N.J.A.C. 7:27-8.2(a)2, published in the February 5, 1990 New Jersey Register at 22 N.J.R. 292(a), at 299. The word "half" in the paragraph-ending phrase "one half gallon in any one hour" is proposed to be added, and should appear in boldface. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

7:27-8.2 [Permits and certificates required] Applicability

(a) New or altered **equipment and control apparatus** [and equipment] for which a permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1. All control apparatus, **except any control apparatus used solely to purify intake air fed into a source operation;**
 2. Equipment used in a manufacturing process involving surface coating including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, **surface stripping** or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one **half** gallon in any one hour;
 - 3.-17. (No change from published proposal.)
- (b) (No change from published proposal.)

(b)

GREEN ACRES PROGRAM

Green Acres Grant Program

Proposed New Rules: N.J.A.C. 7:36-8

Authorized By: Helen C. Fenske, Acting Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 13:8A-7, 25, and 41.

DEP Docket Number: 003-90-01.

Proposal Number: PRN 1990-84.

Submit written comments by April 23, 1990 to:

Donald J. Stout
Regulatory Officer
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules will require that a public hearing be held prior to the sale of, exchange for other lands or property, grant of an easement on or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water, or land and water acquired by the State with Green Acres assistance or that was not acquired with Green Acres assistance but is held by the Department.

The proposed new rules provide as follows:

N.J.A.C. 7:36-8.1 establishes the requirement that for any sale of, exchange for other lands or property, grant of an easement on or any

lease for a term of 25 years or more of any areas of land (including improvements thereon), water, or land and water acquired by the State with Green Acres assistance, the Green Acres Program shall conduct a public hearing at least 60 days in advance of the date on which the proposed sale, exchange, grant of an easement or lease is scheduled to be considered by the State House Commission.

N.J.A.C. 7:36-8.2 establishes the requirement that for any sale of, exchange for other lands or property, grant of an easement on or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water, or land and water not acquired with Green Acres assistance but held by the Department, the appropriate division or office within the Department shall conduct a public hearing at least 60 days in advance of the date on which the proposed sale, exchange, easement or lease is scheduled to be considered by the State House Commission or, if review by the State House Commission is not required, at least 60 days in advance of the sale, exchange, grant of an easement or lease.

N.J.A.C. 7:36-8.3 requires that the public hearing under N.J.A.C. 7:36-8.1 and 8.2 be conducted in the municipality in which the State owned land proposed to be sold, exchanged or encumbered by an easement or lease is located or as close thereto as can reasonably be arranged.

N.J.A.C. 7:36-8.4 sets forth the procedures to be followed by the Department in giving notice of the public hearing.

N.J.A.C. 7:36-8.5 requires that the appropriate agency within the Department conducting the public hearing under N.J.A.C. 7:36-8.1 or 8.2 submit to the Commissioner a summary of the written comments and testimony regarding the proposed sale, exchange, easement or lease within 30 days after the date on which the public hearing was held.

Social Impact

The proposed rules provide a positive social impact by giving the public notice of, and an opportunity to comment on, any proposed sale of, exchange for other lands or property, grant of an easement or any lease for a term of 25 years or more on Department-held land (including improvements thereon), water, or land and water acquired with Green Acres assistance or held by the Department.

Economic Impact

The primary economic impact of the proposed rules is the costs to be incurred by the Department in conducting the public hearings.

Environmental Impact

The proposed rules will have a positive environmental impact by providing that the public shall have notice of and an opportunity to comment on any proposed sale of, exchange for other lands or property, grant of an easement or any lease for a term of 25 years or more on Department-held land (including improvements thereon), water, or land and water acquired with Green Acres assistance or held by the Department. The proposed rules will provide a means of soliciting public comment to determine whether a proposed sale, exchange, easement or lease will be in the best interest of recreation and conservation of natural and historic resources, water supply, flood protection and other environmental purposes.

Regulatory Flexibility Statement

The purpose of the proposed rules is to require a public hearing prior to the sale of, exchange for other lands or property, grant of an easement or lease on Department-held land (including improvements thereon), water, or land and water acquired with Green Acres assistance or held by the Department. Accordingly, the Department has determined, pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 *et seq.*, that the proposed rules impose no reporting, record-keeping or other compliance requirements upon small businesses. Therefore, no regulatory flexibility analysis is required.

Full text of the proposal follows:

SUBCHAPTER 8. PUBLIC HEARING FOR THE SALE, EXCHANGE OF, EASEMENT ON OR LEASE OF DEPARTMENT-HELD LAND

7:36-8.1 Public hearing for the sale, exchange of, easement on or lease of Department-held land acquired with Green Acres assistance

For any sale of, exchange for other lands or property, grant of an easement on, or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water or land and water, acquired by the State with Green Acres assistance, the Green

Acres Program shall, in addition to the requirement of all other pertinent statutes, rules and procedures now or hereafter in effect, conduct a public hearing to set forth the details of the proposed sale, exchange, easement, or lease to be granted and the consideration therefor. The Green Acres Program shall conduct the public hearing at least 60 days in advance of the date on which the proposed sale, exchange, easement, or lease is scheduled to be considered by the State House Commission.

7:36-8.2 Public hearing for the sale, exchange of, easement on or lease of Department-held land not acquired with Green Acres assistance

For any sale of, exchange for other lands or property, grant of an easement on, or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water or land and water that was not acquired by the State with Green Acres assistance but is held by the Department, the division or office within the Department administering said land shall, in addition to the requirements of all other pertinent statutes, rules and procedures now or hereafter in effect, conduct a public hearing to set forth the details of the proposed sale, exchange, easement or lease to be granted and the consideration therefor. The administering division or office shall conduct the public hearing at least 60 days in advance of the date on which the proposed sale, exchange, easement, or lease is scheduled to be considered by the State House Commission, or if review by the State House Commission is not required under the pertinent statutes, rules and procedures now or hereafter in effect, at least 60 days in advance of the sale, exchange, grant of an easement or lease.

7:36-8.3 Location of public hearing

The public hearing required under N.J.A.C. 7:36-8.1 and 8.2 shall be conducted in the municipality in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located or in a municipality as close thereto as can reasonably be arranged.

7:36-8.4 Public notice procedures

(a) The Department shall provide notice of a public hearing under N.J.A.C. 7:36-8.1 and 8.2 at least 30 days prior to the date of the public hearing.

(b) To provide notice as set forth in (a) above, the Department shall:

1. Mail a copy of the notice to the following:
 - i. All parties to the proposed sale, exchange or easement; and
 - ii. The county clerk, mayor and municipal clerk of the county(ies) and municipality(ies) in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located;
2. Publish the notice in a daily or weekly newspaper of general circulation within the county(ies) or municipality(ies) in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located; and
3. Publish a notice in the New Jersey Register.

(c) The Department shall include the following information in all public notices in (a) above:

1. A general description of the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased. In the case of an exchange, the notice shall also include a general description of the land proposed to be conveyed to the State;
2. The name of the parties to the proposed sale, exchange, easement or lease;
3. A description of the current and proposed use of the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased;
4. The date, time and place of the public hearing;
5. A statement that the public may submit written comments to the Department on or before the date of the public hearing;
6. A brief description of the comment procedures;
7. The name and address of the person in the administering division or office designated to receive written comments and to contact for additional information; and
8. Any additional information considered by the Department to be necessary or proper.

7:36-8.5 Submission of summary of comments and testimony

The appropriate division or office within the Department conducting the public hearing required under N.J.A.C. 7:36-8.1 or 8.2 shall submit to the Commissioner a summary of the written comments received and the testimony heard at the public hearing pertaining to the proposed sale, exchange, easement or lease within 30 days after the date on which the public hearing was held.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Maternity, Outreach, and Management Services ("MOMS")

Uncompensated Care; Reports of Costs and Revenues

Proposed Amendments: N.J.A.C. 8:31B-4.38 and 4.61

Authorized By: David Knowlton, Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq. and N.J.S.A. 26:2H et seq., specifically 26:2H-5(b) and 26:2H-18(d).

Proposal Number: PRN 1990-76.

Submit comments by March 22, 1990 to:

Scott Crawford, Director
Health Care for the Uninsured Program
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments to N.J.A.C. 8:31B-4.38 and 4.61 would permit hospitals to receive charity care and bad debt reimbursement for health support services offered through the HealthStart Program, even if the patient is not eligible for HealthStart through the State Medicaid program. This program, entitled New Jersey Maternity, Outreach, and Management Services ("MOMS"), will enable all pregnant women in New Jersey to receive managed care; social/psychological assessment, guidance and counseling; nutrition assessment, guidance and counseling; home visits; health education; and referral to and follow-up with other community-based providers. A capitated rate for New Jersey MOMS Health Support Services would be set annually by the Hospital Rate Setting Commission, pursuant to the provisions of N.J.A.C. 8:31B.

The amendments also set up a new reporting category for these costs.

Social Impact

The proposed amendments will provide access to enhanced prenatal services to all New Jersey pregnant women, not just those eligible for Medicaid. In addition, the proposed amendments will increase the likelihood of positive outcomes for pregnancies in New Jersey. Empirical research has demonstrated that approximately one-third of babies born to program participants would attain a higher birthweight status, and low birthweight is strongly associated with adverse birth outcomes and complications.

Economic Impact

The proposed amendments, based on a capitated fee established by the Commission pursuant to the provisions of N.J.A.C. 8:31B, are expected to produce net savings to the Uncompensated Care Trust Fund of an estimated \$229,000, based solely on the shift to higher birthweights. Not all capitated fees would be paid through the Uncompensated Care Trust Fund; some portion would be paid by patients through a sliding fee scale based on income, pursuant to N.J.A.C. 8:31B-4.37. National research has confirmed that for every one dollar spent on prenatal care, three dollars in medical care costs are avoided. In addition to the \$229,000, additional savings would result from lower rates of rehospitalizations, institutionalizations, demand for family support services and other effects of preventable birth conditions. These amendments impose no additional costs on care providers. The participants in the program would be able

to obtain the services offered by the program at a reduced cost or at no cost.

Regulatory Flexibility Statement

The proposed amendments affect only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the amendments with fewer than 100 full-time employees. Therefore, the amendments have no impact on any institution which would qualify as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-4.38 Uncompensated care

(a) Uncompensated care includes only the reasonable cost of the following:

1.-4. (No change.)

5. Charity Care, as provided for in N.J.A.C. 8:31B-4.37, and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40, for HealthStart support services. HealthStart support services, as defined in N.J.A.C. 10:49-3.10, are provided by contracting hospitals through the HealthStart program to persons who are not eligible for HealthStart under the State Medicaid program. Reasonable costs shall be defined as the rate prospectively established by the Commission for these services, pursuant to N.J.A.C. 8:31B. Non-hospital provider costs shall not be included.

(b) Uncompensated care excludes the cost of the following:

1.-8. (No change.)

9. Services not paid pursuant to Chapter 83 except as provided in (a) [3 and 4] above.

(c) (No change.)

8:31B-4.61 Reports of costs and revenues

(a) "The financial elements . . . shall take into account a facility's income from all sources, including specific purpose grants and other funds from governmental sources, but excluding income and principal from board or donor restricted funds, gifts and special fund raising projects." (Chapter 83, P.L., 1978 section 10-d.) Expenses incurred and revenues generated by a hospital for items not included in the definitions of Services Related to Patient Care [i.e.] **that is, Routine Services, Ambulatory Services, Ancillary Services, Patient Care General Services, and Institutional Services** are classified as either other operating expenses and revenues (determined per N.J.A.C. 8:31B-4.131) or non-operating revenue and are to be accounted for separately to determine if and how they will be applied to Costs Related to Patient Care and the Capital Facilities Allowance to determine the hospital's total financial elements, or the Current Cost Base.¹ There are [three] **four** cases into which such reconciliations are classified:

1.-3. (No change.)

4. Case D—Expenses and revenues related to activities in which the hospital has selected to engage, which are an integral part of patient care, and which are reimbursed at a capitated rate set annually by the Hospital Rate Setting Commission, in accordance with N.J.A.C. 8:31B. These services are eligible for reimbursement of uncompensated care as permitted by N.J.A.C. 8:31B-4.37 through 4.40. Neither gains nor losses resulting from the netting of revenues and expenses are applied in determination of the Current Cost Base.

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

¹(No change.)

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Invalid Coaches and Ambulances

Manual of Standards for Licensure of Invalid Coach and Ambulance Services

Proposed Readoption: N.J.A.C. 8:40

Authorized By: Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 30:4D-6.2 et seq., specifically 30:4D-6.3 and 4.

Proposal Number: PRN 1990-97.

Submit comments by March 22, 1990 to:

George Leggett, Chief Administrator
Office of Emergency Medical Services
New Jersey Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

N.J.A.C. 8:40, which contains the requirements for licensure of non-volunteer invalid coaches and ambulances, will expire on April 15, 1990, pursuant to Executive Order No. 66 (1978). The Department has evaluated these rules and is now proposing their readoption without change. The chapter will be operative for a period of one year from the date of publication of the adoption in the New Jersey Register. This shorter operative period is intended to provide adequate time to evaluate the need for modifications in the rules, based on recent changes in national standards for ambulance equipment and technological advances. These modifications should be completed within the one year period.

As per N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 30:4D-6.2 et seq., specifically 30:4D-6.3 and 4, the Department has the responsibility to regulate non-volunteer invalid coach and ambulance services. (The legislature specifically exempted volunteer services in the enabling statutes.) Continuation of these rules will affect an estimated 200 agencies, including non-volunteer municipal emergency ambulance services which provide "street EMS", hospital-operated ambulance services, and private firms. Together, these services operate approximately 800 invalid coaches and ambulances. Departmental licensure surveys conducted on the vehicles of these services have proven the continued need for rules to protect the public's health and safety.

The rules are based on national standards developed by the National Academy of Sciences, American Heart Association, and various other national and federal agencies, as well as rules from other states. Readoption of these rules will ensure that regulated providers of invalid coach and ambulance services (who collectively receive over \$20 million from Medicaid and Medicare annually) will continue to provide quality patient care.

Social Impact

Readoption of these rules would continue to ensure that any care given to invalid coach and ambulance patients is of high quality and that value is received for the money spent. The rules would also continue to provide a fair marketplace by insuring that all like services meet the same standards.

Economic Impact

There should be no significant impact of the readoption except upon services which seek licensure in the future. Currently licensed services will need to continue to insure that their invalid coach or ambulance equipment is properly maintained to insure the health and safety of their patients. As operating expenses, such as insurance and gasoline, rise, there will be a corresponding increase in cost to the patients. These costs would be borne by the services regardless of the existence of rules. Since the original adoption in 1985, many marginal and poor quality invalid coach and ambulance service providers have ceased operation. This has provided an improved economic climate in which the good quality providers can operate.

Regulatory Flexibility Analysis

These rules allow each provider of service to design its own patient care forms, billing systems, staff policy and procedure manuals, personnel

records and other reporting forms. The forms and staff manuals need only contain certain key data but can be organized in any way. Providers have the flexibility to use either computer or manual recordkeeping systems. This flexibility allows each provider to run its company in its own fashion, to find the system that provides the greatest cost benefit and to operate with the least amount of government interference.

The limited number of recordkeeping functions which are required document activities occurring and care performed during the ambulance or invalid coach run and are ancillary to appropriate patient care and billing. The recordkeeping and reporting functions associated with becoming licensed and the annual relicensure requirements are minimal and forms have been specially designed to speed the licensure process. These requirements can be taken care of by existing staff and should not be considered overly burdensome to applicants which could be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Future changes to these rules will focus on providing greater flexibility than the chapter's current requirements concerning the medical equipment and supplies approved for use on licensed vehicles.

In proposing these rules for re-adoption, the Department has had to balance the economic impact of any possible added costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of these rules would endanger public health and safety and, therefore, no exception from coverage is provided.

Full text of the re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:40.

(a)

**DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council,
Robert Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1990-96.

A public hearing concerning the proposed amendments will be held on March 13, 1990 at 2:00 P.M. at the following address:

Department of Health
Room 804, 8th Floor
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by March 22, 1990 to:
Thomas T. Culkin, Pharm.D., M.P.H.
Executive Director
Drug Utilization Review Council, Room 108
New Jersey Department of Health
CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed hydromorphone tablets could then be used as a less expensive substitute for Dilaudid, a branded prescription medicine. Similarly, the proposed tolmetin sodium capsules could be substituted for the more costly branded product, Tolectin DS.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.: specifically over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or record-keeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or record-keeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

APAP/codeine 300 mg/30 mg tabs	Pharmafair
Albuterol tabs, 2, 4 mg	Barr
Albuterol tabs, 2, 4 mg	Cord
Albuterol tabs, 2, 4 mg	Lederle
Albuterol tabs, 2, 4 mg	Sidmak
Amiloride/HCTZ tabs 5/50	Barr
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Atropine sulfate ophth soln 1%	Pharmafair
Belladonna alks/phenobarbital elix	Cenci
Betamethasone valerate cream, oint 0.1%	Pharmafair
Betamethasone valerate lotion 0.1%	Pharmafair
Butalbital/APAP tabs	Pharmafair
Carbinoxamine/pseudoephedrine drops 2/25	Hi-Tech
Carbinoxamine/pseudoephedrine syr 4/60/5	Hi-Tech
Carisoprodol tabs 350 mg	Cord
Cephalexin caps 250, 500 mg	Bristol-Myer
Chlorzoxazone tabs 500 mg	Royce
Cyclobenzaprine tabs 10 mg	Cord
Dexchlorpheniramine syrup 2 mg/5 ml	PharmBasics
Digoxin tabs 0.125, 0.25 mg tabs	Halsey
Diphenoxylate/atropine 2.5/0.25 tabs	Pharmafair
Epinephrine (levo) ophth soln 1%, 2%	Pharmafair
Erythromycin base EC/ER tabs 250, 333 mg	Barr
Erythromycin ethylsucc. susp 200/5,400/5	Barr
Erythromycin ophth oint	Pharmafair
Erythromycin stearate tabs 500 mg	Barr
Fenopropfen calcium tabs 600 mg	Zenith
Flurazepam caps 15, 30 mg	Cord
Hydrochlorothiazide tabs 50 mg	Pharmafair
Hydromorphone tabs 1, 2, 3, 4 mg	Halsey
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Iodochlorhydroxyquin/HCl 3%/1% cream	Pharmafair
Lidocaine topical soln 4%	PharmBasics
Lithium citrate syrup 8 mEq/5 ml	PharmBasics

Metoclopramide tabs 10 mg
 Morphine sulfate oral solution 20 mg/ml
 Morphine sulfate suppos. 5, 10, 20, 30 mg
 Naphazoline/pheniramine .025%/.3% ophth
 Nifedipine caps 10 mg
 Nifedipine caps 10 mg
 Norethindrone/Ethin. estra. tabs 1/.035
 Oxybutynin tabs 5 mg
 Pancrelipase caps
 Phenylephrine ophth soln 10% (viscous)
 Phenylephrine ophth soln 2.5%
 Phenylephrine/pyrilamine/CP tannate susp
 Phenylephrine/pyrilamine/CP tannate tabs
 Potassium chloride powder 20 mEq
 Potassium chloride soln 40 mEq/15 ml
 Potassium gluconate elixir 20 mEq/15 ml
 Prednisone oral soln 5 mg/5 ml
 Propoxyphene napsylate/APAP 100/650
 Propranolol tabs 10, 20, 40, 60, 80, 90 mg
 SMZ/TMP susp 200/40
 Salsalate tabs 500, 750 mg
 Silver sulfadiazine cream 1%
 Sodium fluoride tabs 2.2 mg
 Sulindac tabs 150, 200 mg
 Sulindac tabs 150, 200 mg
 Thioridazine tabs 10, 25, 50 mg
 Tolmetin sodium caps 400 mg
 Trazodone tabs 50, 100 mg
 Triamcinolone/nystatin cream, oint

Cord
 Upsher-Smith
 Roxane
 Pharmafair
 Chase
 Cord
 Gedeon-Richter
 Sidmak
 Ph.Del.Sys.
 Pharmafair
 Pharmafair
 Copley
 Copley
 USA American
 Cenci
 Cenci
 PharmBasics
 Cord
 Sidmak
 Barr
 Cord
 Sherwood
 Pharmafair
 Cord
 Lemmon
 Mutual
 Purepac
 Cord
 Pharmafair

applicant is married, the applicant's income, combined with that of the spouse, must be less than \$21,000 per annum.

There is also a resource standard for the Program. An applicant's resources must be less than \$15,000. The same resource standard applies equally to both single and married individuals. Only liquid assets, such as stocks, bonds, savings accounts, etc. are considered as resources. Real property is not considered as an available resource unless it is sold. The proceeds of the sale of real property would be considered an available resource.

An applicant shall be in need of long term home care services. In addition, the total cost of services for the individual in the community may not exceed an established percentage of the cost of institutional care. Also, an applicant shall be eligible for Medicare or have other health care insurance which includes hospital and physician coverage.

Applicants who are 65 years of age or older must be financially eligible, medically in need of long term home care services, and be eligible for Medicare or other health care insurance which includes both hospital and physician coverage. Applicants who are under age 65 must also be financially eligible and be determined permanently and totally disabled by either the Social Security Administration or the Division's Disability Review Section, and be eligible for Medicare or other health care insurance which includes both hospital and physician coverage. (N.J.S.A. 30:4E-5 et seq. refers to the Bureau of Medical Affairs within the Division of Public Welfare. This Bureau was transferred administratively to the Division of Medical Assistance and Health Services and is now referred to as the Disability Review Section).

There is no retroactive eligibility coverage under the Program.

Applicants who are eligible for the Community Care Program for the Elderly and Disabled (CCPED) shall be eligible for HCEP if CCPED services are not available in the applicant's county of residence.

The services available under the Program are case management, home health care, homemaker, medical day care, social adult day care, non-emergency medical transportation, and respite care.

Beneficiaries may be required to share in the cost of services. This is determined on a case-by-case basis. The Bureau of PAAD will be responsible for the billing and collection of the beneficiary's cost-share liability. Cost-share is calculated by the case manager on a monthly basis and shall be the amount of the beneficiary's monthly income in excess of a standard monthly maintenance allowance plus allowable medical or remedial care expenses paid that month. Beneficiaries are then billed monthly if this determination indicates that cost-share is owed.

If a beneficiary is terminated from the Program, he or she may file an appeal of the termination. Reasons for termination include, but are not limited to, excess income and/or resources, failure to pay cost-share payments for two months, and an assessment that the patient no longer requires long term home care services.

Beneficiaries who are terminated from the program have the right to reapply. Applicants in this category must satisfy all program eligibility criteria in order to be determined eligible for HCEP benefits. If there is any money owed to the HCEP, this amount must be paid before the applicant will be declared eligible.

Beneficiaries will be liable for repayment of all monies paid for HCEP services from the beginning of the calendar year if they are found ineligible due to an increase in annual income or resources.

There is a codification change which must be mentioned. The Home Care Expansion Program is being codified as N.J.A.C. 10:60-4. The current text of subchapter 4, Community Care Program for the Elderly and Disabled, will be recodified as N.J.A.C. 10:60-5.

Social Impact

The proposed new rules will impact on those persons who are in need of long term home care services and who wish to remain in the community and receive these services. It is anticipated that the provision of home care services will delay or avoid institutionalization.

The proposed new rules will impact on those providers who render services to individuals who are eligible under the Program.

Economic Impact

The New Jersey Legislature has appropriated eight million dollars from the Casino Revenue Fund for this Program, which is completely State-funded. The Division will use existing administrative mechanisms to determine eligibility and to provide services.

Persons who qualify for HCEP may be required to contribute to the cost of their care, in accordance with proposed N.J.A.C. 10:60-4.3(d).

Providers will be reimbursed on a fee-for-service basis in accordance with the Medicaid policies, procedures and fee schedules.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Home Care Services Manual
 Home Care Expansion Program**

Proposed New Rules: N.J.A.C. 10:60-4

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

Authority: N.J.S.A. 30:4D-7, 30:4D-7a,b,c,i; N.J.S.A. 30:4E-5 et seq., specifically 30:4E-14.

DMAHS Control Number: 89-P-11.

Proposal Number: PRN 1990-83.

Submit comments by March 22, 1990 to:

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

The agency proposal follows:

Summary

This proposal concerns the Home Care Expansion Program (HCEP), which became effective May 1, 1989. The purpose of the proposed new rules is to set forth the eligibility criteria for HCEP, the services which are available, reimbursement, termination procedures, and general administrative requirements.

The intent of the Home Care Expansion Program, hereinafter referred to as the Program, is 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 the Community Waiver Programs. The Program is available on a State-wide basis, and will be administered by the Division of Medical Assistance and Health Services (the Division).

Eligibility will be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) on an annual basis. The eligibility standards contain both financial and non-financial criteria. A single applicant's income must be less than \$18,000 per annum. If the

Regulatory Flexibility Analysis

In general, the proposed new rules do not impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The applications will be filed by individuals who wish to obtain home care services. The applications will be processed, and eligibility will be determined, by the Division of Medical Assistance and Health Services, which is a governmental entity. Therefore, a regulatory flexibility analysis is not required for that portion of the rules concerning eligibility.

The rules might impact on small businesses because providers of home care expansion services might come within this definition. Providers will be required to maintain patient records and to submit a form to the Division's Fiscal Agent in order to be reimbursed. The reporting, recordkeeping and other compliance requirements are necessary to comply with the New Jersey Medicaid Statute which requires that providers keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, date and nature of service, etc. (N.J.S.A. 30:4D-12). The law further requires that providers are not entitled to reimbursement unless they can document the services that were rendered. The Division believes the recordkeeping requirements are necessary for the health, safety and welfare of the persons who qualify for HCEP, and to insure that there is sufficient documentation for paying a claim. There is no differentiation between small and large businesses. The need to maintain patient records and submit a claim for reimbursement is the same for all providers.

There are no capital costs associated with these rules.

The Division has tried to minimize any adverse economic impact on small businesses by requiring providers to record and report services rendered to Medicaid patients as part of their normal course of business. This documentation is required by the New Jersey Medicaid Statute cited above.

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

SUBCHAPTER 4. HOME CARE EXPANSION PROGRAM**10:60-4.1 Scope and Authority**

(a) The Home Care Expansion Act (L.1988, c.92) was signed into law August 4, 1988 and its program, the Home Care Expansion Program (HCEP), became effective May 1, 1989. The intent of the program is to offer home care services to elderly and disabled persons in New Jersey who are in need of long-term home care services and whose income or resources exceed the financial requirements for Medicaid or the Division of Medical Assistance and Health Services' Home and Community-Based Waiver Programs. It is anticipated that the provision of home care services will delay or avoid institutionalization.

(b) The Home Care Expansion Program (HCEP) is administered by the Division of Medical Assistance and Health Services and is available Statewide. Program slots are allocated to each county. It is anticipated that present funding will allow HCEP to serve approximately 600 individuals at any one time. Each county has a designated home and community-based program case management site which is utilized for HCEP.

10:60-4.2 Eligibility requirements for HCEP

(a) Financial eligibility will be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) initially and on an annual basis using existing PAAD processes and policies where applicable.

(b) To qualify for services, an applicant shall meet the following criteria:

1. Be a resident of New Jersey for at least 30 days;
2. Have an annual income of less than \$18,000, if single, or if married, less than \$21,000 in combination with that of a spouse;
3. Have resources of less than \$15,000, as an individual or in combination with a spouse.

i. Real property is not considered an available resource for purposes of determining eligibility for HCEP. However, if real property is sold, then the proceeds of the sale would be considered as an accountable resource.

ii. The Home Care Expansion Program considers only liquid resources. Examples of liquid resources are cash or any item which can be readily converted to cash. These can include, but are not limited to, stocks, bonds, mutual funds, money market funds, certificates of de-

posit, savings accounts, checking accounts, trusts, annuities, savings bonds, treasury notes, treasury bills and treasury bonds;

4. Be eligible for, or receiving, Medicare benefits, or have other health care insurance which includes hospital and physician coverage;

5. Be 65 years or older, or, if under 65 years of age be determined permanently and totally disabled by the Social Security Administration (SSA) or by the Division of Medical Assistance and Health Services, Disability Review Section.

i. The beneficiary shall be responsible for costs incurred relevant to the disability determination, that is, physician's examination, etc.; and

6. Be in need of long-term home care services which are medically necessary to avoid or delay institutionalization.

(c) Applicants who are eligible for the Community Care Program for the Elderly and Disabled (CCPED) shall be eligible for HCEP if CCPED services are unavailable in the applicant's county of residence.

(d) The total cost of services for the beneficiary in the community may not exceed 70 percent of the cost of institutional care.

(e) The following relate to identifying the beneficiary eligible for HCEP services:

1. Although HCEP is not a Title XIX (Medicaid) Program, a standard Medicaid Eligibility Identification (MEI), FD-73/178, card is issued to the beneficiary by the fiscal agent.

2. Program services for which the beneficiary is eligible are listed on the MEI card in the upper right hand corner.

(f) There is no retroactive eligibility in HCEP. No service received prior to the date of enrollment can be reimbursed by HCEP. The date of enrollment is the date that financial eligibility and medical need for services are established, and a program slot is available.

10:60-4.3 Services available under HCEP

(a) The seven services provided under HCEP are:

1. Case Management: a system in which a social worker or professional nurse is responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the beneficiary being served. The case manager is responsible for the initial assessment of the beneficiary's need for home care services, the determination of cost-share liability, and is the pivotal person in establishing a service package to meet those needs.

i. Case Management is not provided when a beneficiary is in an inpatient hospital setting and the stay extends beyond a full calendar month;

2. Home Health Care: provided by a licensed home health agency and ordered by a physician, which may include skilled nursing care; homemaker/home health aide services; physical and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies are limited to a maximum of \$50.00 a month. Covered home care services are provided according to medical, nursing and other health-related needs, as documented in the beneficiary's plan of care;

3. Homemaker: personal care, household tasks, and activities of daily living, provided to a beneficiary in the home by either a home health agency or a homemaker agency;

4. Medical Day Care: a program of medically supervised, health and health-related services provided in an ambulatory care setting to a beneficiary who is a non-resident of the medical day care center;

5. Social Adult Day Care: a comprehensive social and health-related outpatient program for the frail, moderately handicapped, slightly confused beneficiary who needs care during the day;

6. Medical Transportation: Non-emergency transporting of a beneficiary by an approved, suitable vehicle to obtain health services. Transportation may be provided by invalid coach or by lower modes of service that are arranged/provided by the county welfare agency/board of social services; and

7. Respite Care: a temporary service offered on an intermittent basis to a beneficiary being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite Care can be rendered, by approved providers, in the beneficiary's home by a home health agency, homemaker agency, or in a long-term care facility for limited periods of time.

(b) The services, listed under (a) above, may be limited in duration or amount depending upon the medical needs of the beneficiary; the

availability and cost of the care; and program openings allowed by program funding. Services are rendered by providers approved by the Division of Medical Assistance and Health Services for the Community Care Program for the Elderly and Disabled.

(c) Services other than the seven in (a) above are not available to the beneficiary eligible for HCEP.

(d) Cost-sharing for HCEP is as follows:

1. Beneficiaries may be required to share in the cost of their care. Cost-share is calculated by the case manager on a monthly basis and shall be the amount of the beneficiary's monthly income in excess of a standard monthly maintenance allowance plus allowable medical or remedial care expenses paid that month. Beneficiaries are then billed monthly if this determination indicates that cost-share is owed.

2. The Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) is responsible for the billing and collection of the beneficiary's cost-share liability.

3. Non-payment of cost-share for two consecutive months will result in termination from the program. Partial payment will be allowed for one month; cost-share must be paid in full (current and arrears) within 60 days of the date of the initial bill.

10:60-4.4 Procedures used as financial controls for HCEP

(a) Total program costs are limited to the amount appropriated by the State legislature.

(b) Program cost is controlled by the number of beneficiaries served and per beneficiary costs.

(c) A case manager is responsible for the development of the service plan with each beneficiary/family, with input from provider agencies. The case manager is responsible for monitoring the cost of the service package as per program guidelines.

(d) HCEP Statewide service cost caps and allocation of program slots will be coordinated by the Division of Medical Assistance and Health Services, Office of Home Care Programs.

10:60-4.5 Basis for reimbursement

(a) A fee-for-service reimbursement methodology will be utilized for HCEP services utilizing a MC-14, Independent Outpatient Health Facility form (See Exhibit IV). Transportation providers will utilize the MC-12 form, Transportation Claim.

10:60-4.6 Termination from HCEP

(a) A beneficiary will be terminated from HCEP if:

1. His or her income is above program requirements;
2. His or her resources are above program requirements;
3. He or she is assessed as no longer in need of long-term home care services; or
4. His or her cost-share payments are not paid in full for two consecutive months.

(b) A beneficiary found ineligible because of an increase in annual income or resources is liable for repayment of all monies paid for HCEP services from the beginning of the calendar year, not only for those payments made after income or resources were increased. Program eligibility is based upon annual income and resources.

(c) A beneficiary terminated from HCEP will be billed by the Bureau of Pharmaceutical Assistance to the Aged and Disabled for services rendered during a period of ineligibility.

(d) The Director may, in his or her discretion, take all necessary action to recover the cost of benefits incorrectly paid on behalf of the beneficiary. The Director may waive the Division's right to recover, when appropriate.

(e) A beneficiary who is terminated may exercise his or her right to appeal the decision by submitting a request for a fair hearing in accordance with N.J.A.C. 10:49-5.3. Such requests shall be submitted within 20 days from the date of the letter of termination.

1. If a hearing is granted in a situation where the beneficiary is assessed as no longer in need of home care services or cost-share has not been paid in full for two consecutive months, and the beneficiary is receiving services under HCEP, payment for these services can continue until a final decision is made. However, if the beneficiary chooses to continue to receive services and the termination is upheld at the fair hearing, the beneficiary will be billed for any service received after five days from the date of the Office of Home Care Programs' denial letter.

2. If a hearing is granted in a situation where the beneficiary's income or resources are above program requirements, payment for the services will cease at the point that the ineligibility determination was made.

(f) A previously terminated beneficiary may be eligible for HCEP if:

1. His or her income and resources meet program requirements;
2. Home care services are needed to avoid institutionalization; and
3. His or her cost-share payments and any other monies owed to HCEP are paid.

SUBCHAPTER [4.]5. COMMUNITY CARE PROGRAM FOR THE ELDERLY AND DISABLED

Recodify 10:60-4.1 through 4.3 as 5.1 through 5.3 (No change in text.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Home Energy Assistance

General Provisions; Program Eligibility; Program Benefits; Application Process; Other Program Requirements

Proposed Readoption with Amendments: N.J.A.C. 10:89

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

Authority: N.J.S.A. 30:4B-2.

Proposal Number: PRN 1990-71.

Submit comments by March 22, 1990 to:

Marion E. Reitz, Director
 Division of Economic Assistance
 CN 716
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 10:89 will expire on September 11, 1990. The readoption of the rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption, if filed prior to the chapter expiration date. The amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

The Home Energy Assistance (HEA) program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low-income households meet continuing costs of home heating and cooling.

Emergency energy assistance is available to eligible individuals and families who are without heat or in danger of being without heat and lack sufficient income to purchase the necessary heating fuel or service.

N.J.A.C. 10:89 is the compilation of rules and procedures related to the Home Energy Assistance program. The rules are necessary and responsive to the purpose for which they were promulgated, inasmuch as they serve as a link between Federal legislation and program administration by the State of New Jersey. Failure to readopt these rules would leave the Home Energy Assistance program without administrative direction.

The Department's Division of Economic Assistance (DEA) has recently conducted a review of N.J.A.C. 10:89 prior to this proposed readoption. After the review, it was determined that the rules, with the addition of amendments, are adequate, reasonable and responsive to the purposes for which they were promulgated.

Subchapter 1 provides information regarding the purpose of the Home Energy Assistance program. The subchapter also provides rules pertaining to requests for fair hearings and explains the principles of the "prudent person concept" under which individuals who administer the program are expected to act when situations arise which are not specifically covered by the provisions of N.J.A.C. 10:89.

Subchapter 2 sets forth the eligibility requirements of the Home Energy Assistance Program. These requirements are financial and non-financial.

The non-financial requirements are concerned with State residency, household definitions, alien status and whether or not an applicant is a striker. Financial requirements include income eligibility limits and rules for the determination of countable income. Since the last re adoption, subchapter 2 has been amended as follows:

N.J.A.C. 10:89-2.1 was amended to specify that all program benefits must be used to pay current home energy expenses.

N.J.A.C. 10:89-2.2(a)1 was amended to provide an expanded definition of the term "household" as it pertains to program eligibility. The types of households are defined on the basis of criteria such as how home energy is obtained and how payments for home energy are made.

N.J.A.C. 10:89-2.2(a)3 and 4 were amended to stipulate that strikers and illegal aliens are ineligible for program benefits.

N.J.A.C. 10:89-2.4(g), which is the Gross Income Eligibility Limit for Home Energy Assistance, has been amended annually to reflect increases in the Federal Poverty Level Guidelines.

Subchapter 3 provides a description of the types of benefits available under the Home Energy Assistance program. "Automatic Payment" benefits are available to certain public assistance households based on information provided by the household at the time of application for public assistance. "Special Energy Assistance" benefits are explained as home energy paid to a financially eligible household which does not qualify for automatic payments and must apply for such benefits. Subchapter 3 also provides payment schedules under which benefits for different household and heating situations are determined, and information with respect to eligibility for cooling assistance and for emergency assistance under the Home Energy Assistance program. Since the last re adoption, subchapter 3 has been amended as follows:

N.J.A.C. 10:89-3.3 was amended to stipulate that residents of drug rehabilitation centers are ineligible for cooling assistance benefits.

N.J.A.C. 10:89-3.4(a) was amended to specify eligibility for emergency energy assistance is dependent upon the absence of heating fuel and the lack of funds needed to obtain fuel. N.J.A.C. 10:89-3.4(a)5 was added to specify that the county welfare agency must act to resolve an emergency energy situation within 48 hours of learning of the problem.

N.J.A.C. 10:89-3.4(a)6 was added to specify that the county welfare agency must act to resolve a home energy emergency situation within 18 hours of learning of the problem if a potential threat to life exists.

N.J.A.C. 10:89-3.4(d) was amended to provide rules for payment of furnace repair benefits.

N.J.A.C. 10:89-3.4(e) was amended to change eligibility for temporary housing benefits from 60 days to two calendar months.

N.J.A.C. 10:89-3.4(f) was amended to provide rules for emergency payment of rent or mortgage arrearages in order to prevent eviction if heating costs are included in a single monthly rental charge or mortgage payment.

N.J.A.C. 10:89-3.5(a) was amended to stipulate that the \$900.00 maximum program benefit pertains only to payments received to pay for heating fuel. Payments received for emergency housing or furnace repairs are independent of the \$900.00 limitation.

N.J.A.C. 10:89-3.6 has been amended periodically to reflect the cost of home energy.

Subchapter 4 contains provisions which pertain to the application process for the Home Energy Assistance program. Verification and documentation procedures are detailed. The principle of providing prospective recipients the opportunity to apply is established in this subchapter. Since the last re adoption, subchapter 4 has been amended as follows:

N.J.A.C. 10:89-4.1(d) was amended to stipulate that a Home Energy Assistance applicant secure issuance, as an eligibility requirement, of a Social Security number if he or she does not already have one. The subsection was further modified to specify that information regarding gross income and expenditures of an applicant must be verified and documented if such information appears to be questionable.

Subchapter 5 provides a compendium of program requirements and procedures which pertain to the administration of the program which has not previously been addressed. Requirements include the establishment of Home Energy Assistance Units within county welfare agencies, adequate notice of agency action and appeal rights, overpayment recovery procedures and outreach activities. Since the last re adoption, subchapter 5 has been amended as follows:

N.J.A.C. 10:89-5.3(a)1 was amended to stipulate that any recipient households which received more than \$900.00 in regular program benefits since October 1987 were overpaid and subject to recoupment.

As a result of a continuous review process, the following are significant changes which are being addressed as part of the proposed re adoption of N.J.A.C. 10:89.

N.J.A.C. 10:89-2.2(a)4 has been amended to raise the monthly income exemption amount used in the determination of income from an illegal alien which must be considered available to a household. The exemption amount has been increased from \$238.00 to \$255.00 and is based upon poverty income guidelines.

N.J.A.C. 10:89-2.2(a) has been amended to temporarily disqualify certain newly legalized aliens from receipt of Home Energy Assistance benefits. This is based on Action Transmitted 89-3, dated 8/9/89, from the United States Department of Health and Human Services.

N.J.A.C. 10:89-2.3(g) has been amended to provide updated gross income limits for the Home Energy Assistance program. This amount is based on 150 percent of the Federal Poverty Level.

N.J.A.C. 10:89-3.1(a)1ii has been amended to authorize single automatic payments through March.

N.J.A.C. 10:89-3.2(c) has been amended so that policy regarding the eligibility of households who are residing in public housing, or are receiving rental subsidies, is consistent throughout the HEA handbook.

N.J.A.C. 10:89-3.4(a)8 authorizes emergency energy assistance during the months of December, January, February, March, and April, and deletes the provision for emergency energy assistance payments during May.

N.J.A.C. 10:89-4.1(a) and (c) revise the HEA application process to accept heating assistance applications through March 31 (current deadline is April 30), and cooling assistance applications through May 31 (current deadline is June 30). It also clarifies existing policy with regard to mail application procedures.

Social Impact

The social impact of the Home Energy Assistance program in New Jersey is substantial, inasmuch as the benefits received by households help to preclude or mitigate hardship due to inadequate heating or cooling. The average number of households per year which received program benefits from 1981 through 1987 was about 150,000. Failure to re adopt N.J.A.C. 10:89 would cause the State's low income population unacceptable and unnecessary suffering. In general, the amendments proposed with this re adoption will have a favorable impact on recipients. Increases in income deductions and gross income limits will expand eligibility. Provisions for mailing applications and the extension of automatic payments through March will simplify the receipt of benefits for program participants. There may be a negative impact due to some households not applying by the new deadlines; however, the county welfare agencies have been asked to publicize the changes in advance of the deadline.

Economic Impact

Inasmuch as the Home Energy Assistance program is funded entirely by the Federal Government, there is no direct impact upon New Jersey taxpayers. There will be an indirect benefit to the public as a whole, since there will be an influx of Federal dollars into the State's economy. Since expenditures for the Home Energy Assistance program from 1981 to 1987 in New Jersey averaged approximately 59 million dollars per year, the program has a great economic impact on the lives of the poor. Amendments proposed with this re adoption pertaining to the ineligibility of certain legal aliens and certain public housing residents will result in negligible savings to the taxpayers.

Regulatory Flexibility Statement

This chapter has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules and proposed amendments impose no reporting, recordkeeping 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 Home Energy Assistance program for a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed re adoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:89.

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

10:89-2.2 Eligibility requirements

- (a) The household members shall be residents of New Jersey.
1.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of [\$238.00] **\$255.00**, the amount in excess of [\$238.00] **\$255.00** shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

5. **Certain aliens legalized under the Immigration Reform and Control Act of 1986 are temporarily ineligible for HEA benefits (see also N.J.A.C. 10:87-3.8(a)1, and (a)8 through 11 for limitations.)**

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

10:89-2.3 Income eligibility

(a)-(f) (No change.)

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	\$ [721] 748
2	[966] 1003
3	[1211] 1258
4	[1456] 1513
5	[1701] 1768
6	[1946] 2023
7	[2191] 2278
8	[2436] 2533
9	[2681] 2788
10	[2926] 3043
Each Additional Member	+ [245] 255

10:89-3.1 Automatic payments to certain households

(a) [Receipt] **Recipient** households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Economic Assistance. Where the household receives FS as a public assistance (PA) household and the PA/FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA/FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

i. (No change.)

ii. The entitlement will be paid in two installments to households found eligible for automatic payments prior to December 31. New cases found eligible after December 31 shall receive the entitlement in a single payment through [February] **March**.

iii. (No change.)

2.-3. (No change.)

10:89-3.2 Special energy assistance

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

(c) No special assistance shall be authorized to households residing in publicly operated housing or receiving a rent subsidy, unless the household can demonstrate that it has direct responsibility for payment of its heating costs.

(d)-(f) (No change.)

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1.-7. (No change.)

8. Emergency energy assistance will be authorized only during the months of December, January, February, March, and April [, and May].

(b)-(g) (No change.)

10:81-4.1 Opportunity and decision to apply

(a) Any individual(s) who believes he or she or his or her household is eligible for HEA must be given the opportunity to apply

without delay. Heating assistance applications shall be accepted from November 1 through [April 30] **March 31** of each year. Cooling assistance applications shall be accepted from November 1 through [June 30] **May 31** of each year. Applicants will be informed about eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined. Upon completion of the application process, the application shall be transmitted to [DPW] **DEA** in accordance with (e) below.

1. (No change.)

(b) (No change.)

(c) Households desiring HEA assistance must complete a separate Form EP-1, Home Energy Assistance Application. The application must be completed and signed at sites designated by the CWA of the county in which the household resides. The application shall be signed by the household member responsible for payment of heating or cooling costs or by his or her authorized representative and by the CWA worker and supervisor.

1. Households consisting of persons who are 60 years of age or over, or persons who are disabled, may mail the application to the CWA. **Other households may apply by mail at the discretion of the CWA.**

2.-5. (No change.)

(d)-(j) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Manner of Determining Premium for Perpetual Homeowners Insurance

Proposed New Rules: N.J.A.C. 11:2-31

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq. and 54:18A-1 et seq.

Proposal Number: PRN 1990-98.

Submit comments by March 22, 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

Mutual Assurance Company, which is authorized to write perpetual homeowners insurance in this State, brought an action seeking a determination that premium deposits for perpetual homeowners insurance were not subject to any premium taxation. *Mutual Assurance Company v. Gluck*, 9 N.J. Tax 55 (1987). Perpetual homeowners insurance is a homeowners policy and related endorsements, including all perils insured thereunder, which remains in effect continuously unless cancelled and is purchased by a deposit of a sum of money, which is refundable to the insured upon cancellation of the policy. Mutual Assurance argued that because these premium deposits are refundable, they are not consideration for the policies and therefore are not premiums subject to premium taxation. The Commissioner of Insurance (Commissioner) argued that the total premium deposit is a premium subject to taxation.

The court determined the manner of taxing perpetual homeowners insurance premium deposits by stating that the portion of a policyholder's premium deposit which represents the cost of the use of deposit money (determined by multiplying the amount of the deposit by an interest rate representing the cost of money) is subject to the premiums tax. The Commissioner has determined, for the purpose of determining the cost of the use of the deposit money, to use the average annual interest rate on one-year U.S. Treasury bills. The one-year Treasury bill rate is an

average which takes into account "highs" and "lows" in the interest rate during the year. This interest rate is not difficult for insurers to obtain (it is available in various publications) and provides the most accurate cost of money in a risk-free environment. In other words, it provides an average rate of return that a policyholder would have received had he or she put the premium deposit in a risk-free investment, such as a one-year Treasury bill.

Pursuant to the decision in *Mutual Assurance Company v. Gluck*, the Department of Insurance (Department) proposes these new rules to determine the premium for perpetual homeowners insurance. Because other statutory fees, surcharges, taxes or assessments are based on premium, the proposed rules apply to those fees, surcharges, taxes or assessments as well (that is, the FAIR Plan assessment pursuant to N.J.S.A. 17:37A-20 and the Fraud assessment, pursuant to N.J.S.A. 17:33A-8).

Proposed N.J.A.C. 11:2-27.1 and 11:2-27.2 set forth the purpose and scope of the proposed new rules. Proposed N.J.A.C. 11:2-27.3 sets forth the definitions of terms used in the subchapter. Proposed N.J.A.C. 11:2-27.4 describes the determination of premium for perpetual homeowners insurance. Proposed N.J.A.C. 11:2-27.5 requires that insurers provide a list, with the annual statement, of the lines of business under which perpetual homeowners insurance is written. It also requires that all data submitted by an insurer be examined by the Commissioner and allows the Commissioner to make any further audit, investigation or reaudit as necessary. Proposed N.J.A.C. 11:2-27.6 sets forth the penalties for violation of this subchapter.

Social Impact

The proposed new rules implement the court decision of *Mutual Assurance Company v. Gluck*. The primary impact of the proposed new rules is that insurers transacting the business of perpetual homeowners insurance will now pay any applicable statutory fee, surcharge, tax or assessment. This brings this type of policy in line with other policies on which premiums are taxed. Insurance companies that write perpetual homeowners policies will now share an equitable portion of the taxing burden imposed on insurers writing other types of policies.

The Department will benefit in that the issue of what part of a premium deposit is subject to taxation has been determined in the court decision and is set forth clearly in the proposed new rules. Insurers transacting the business of perpetual homeowners insurance will also benefit in that they will have specific guidelines as to what part of a premium deposit is subject to taxation and the method by which it is calculated.

Economic Impact

The economic impact on insurers transacting the business of perpetual homeowners insurance in this State is two-fold.

First, they will be required to pay any applicable statutory tax. This, however, is required of insurers writing other types of policies. The proposed new rules merely create the same requirements for insurers writing perpetual homeowners policies as for other insurers who receive the benefit of transacting the business of homeowners insurance in this State.

Second, there will be some added record generating costs in obtaining the interest rate and in performing the calculation to determine what part of the premium deposit is a premium subject to taxation. However, obtaining the average annual interest rate on one-year U.S. Treasury bills and the calculation to determine premium are straightforward. Therefore, no great burden is imposed on companies.

Any administrative costs expected to be incurred by the Department will be absorbed within the current budget.

Regulatory Flexibility Analysis

The proposed new rules may apply to a small number of "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

To the extent that the proposed new rules apply to "small businesses," they will be businesses transacting the business of perpetual homeowners insurance in this State. The reporting, recordkeeping, or other compliance requirements are clearly and fully set forth in the proposed new rules. The types of professional services needed to comply would be similar to those needed to comply for any applicable statutory fee, surcharge, tax or assessment. These services would include those of accountants and actuaries. The initial capital cost for compliance would be those costs associated with obtaining the average annual interest rate on one-year U.S. Treasury bills for the year of inception of a perpetual homeowners insurance policy and each subsequent calendar year each perpetual homeowners insurance policy is in force. There will also be added costs to insurers in performing the calculation to determine the part of the

premium deposit which is a premium, subject to taxation. The annual compliance costs will be similar to the initial cost. To the extent that the proposed new rules apply to "small businesses," they will impose a greater economic burden on "small businesses" in that they will have to devote proportionately more staff to obtaining the interest rates on U.S. Treasury bills, and in performing the calculation to determine what amount of the premium deposit is premium, than would larger businesses. The Department, however, believes that any such impact is minimal due to the straightforward nature of obtaining and generating the data required.

The proposed new rules provide no different compliance or reporting requirements for "small businesses." The proposed new rules implement the court decision of *Mutual Assurance Company v. Gluck* which sets forth the standards by which premium is determined for perpetual homeowners insurance. In the interests of consistency and uniformity in the taxation and assessment of insurers and due to the minimal nature of any additional burden imposed, no differentiation in compliance requirements is proposed based on insurer size.

Full text of the proposal follows:

SUBCHAPTER 31. MANNER OF DETERMINING PREMIUM FOR PERPETUAL HOMEOWNERS INSURANCE

11:2-31.1 Purpose

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

11:2-31.2 Scope

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

11:2-31.3 Definitions

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

"Annual adjustments" means any adjustments in the premium deposit account during the calendar year, exclusive of dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of premium deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

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

"Insurer" means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

"Net premium deposits" means the total premium deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

"Perpetual homeowners insurance" means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

"Premium deposit" means a payment by a policyholder for perpetual homeowners insurance.

11:2-31.4 Determination of premium

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net premium deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above.

11:2-31.5 Data filed; examination

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which per-

petual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23-4.

11:2-31.6 Penalties

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

(a)

DIVISION OF THE REAL ESTATE COMMISSION Notice of Pre-Proposed Rulemaking and Joint Public Hearings Compensation to Real Estate Licensees for Placing Mortgage Loans

Authorized By: New Jersey Real Estate Commission,
Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-3, 6, 16 and 17: *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-3.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 *et seq.* and the Mortgage Bankers and Brokers' Act, N.J.S.A. 17:11B-1 *et seq.*, to protect real estate consumers and further the public interest.

The **public hearings** concerning this pre-proposed rulemaking will be held at the following times and locations:

Wednesday, February 21, 1990 at 10:00 A.M.
Office of Administrative Law
185 Washington Street
Newark, New Jersey
(Overflow Date: Thursday, February 22, 1990, only if needed)
Wednesday, March 14, 1990 at 10:00 A.M.
Office of Administrative Law
Quakerbridge Plaza
Building 9
Trenton (Hamilton Township), New Jersey
(Overflow Date: Thursday, March 15, 1990, only if needed)

Interested persons wishing to make oral comments at the public hearings should appear and register to speak either on February 21, 1990 in Newark or on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the immediately following day in each location (February 22 in Newark and March 15 in Trenton) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing dates. No hearings will be conducted on the overflow days if all registered persons have been reached on the primary days.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ
Office of Administrative Law
185 Washington Street
Newark, New Jersey 07102

All written material submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other estate brokers are participating with mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989.)

Issues

The hearings related to Real Estate are intended to consider the following specific topics or areas of discussion and other related areas, including those within the purview of the Department of Banking.

1. What are the various financial and contractual relationships which exist between real estate licensees and mortgage lenders in New Jersey?
2. Do any of the financial relationships between New Jersey real estate licensees and mortgage lenders constitute violations of N.J.S.A. 45:15-17i, when mortgage services are provided to the buyer in the same transaction, where a sales commission is received from the seller?
3. What regulation of the mortgage financing activities of real estate licensees would be appropriate and in the public interest under Real Estate Licensing Law? For example:
 - (a) Have particular problem areas been identified in the hearing which should be addressed by regulation?
 - (b) Would regulations requiring written disclosure of the financial relationships between a real estate licensee and a mortgage lender benefit the involved consumer?
 - (c) Can the provisions of the federal Real Estate Settlement Procedures Act (RESPA) and its regulations serve as a model for state regulation of these activities?
 - (d) Would it be appropriate for agency regulations to differentiate between commercial and residential real estate transactions?

LABOR

(b)

OFFICE OF THE CONTROLLER Contributions, Records and Reports Proposed Readoption with Amendments: N.J.A.C. 12:16

Authorized By: Charles Serrano, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 43:21-1 *et seq.*, specifically 43:21-11.

Proposal Number: PRN 1990-87.

Submit comments by March 22, 1990 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 12:16 will expire on April 1, 1990.

The Department has reviewed the content of this chapter, and has determined it to be necessary, reasonable and proper for setting forth standards for the basic provisions of the New Jersey Unemployment Compensation Law.

Therefore, the Department is proposing to readopt the entire chapter, with some amendments.

N.J.A.C. 12:16-1 discusses the importance of a Social Security number in identifying workers who are subject to the Unemployment Compensation Law. This subchapter is not being amended.

N.J.A.C. 12:16-2 requires employers to keep certain records, including payroll records, an individual worker record (including, inter alia, name, address, social security number, total remuneration paid per pay period, and date of hire) for each worker, and Federal and State tax returns. The subchapter also requires that records be kept at the place of business of the employing unit and be maintained for the current calendar year and the four preceding years. No changes to this subchapter are proposed.

N.J.A.C. 12:16-3 lists the requirements to be met for granting a power of attorney for purposes of representing an employer before the Employment Security Agency. The subchapter is not being changed for re-adoption.

N.J.A.C. 12:16-4 addresses remuneration. N.J.A.C. 12:16-4.1 defines remuneration, and the section is being amended to include four additional remuneration issues: personal use of a company vehicle; dependent care assistance programs; interest on below-market interest rate loans; and Internal Revenue Code section 125 cafeteria plans.

The Department has amended the rules to include these four items as remuneration to conform with the Federal Internal Revenue Code, which currently considers these items as taxable remuneration.

N.J.A.C. 12:16-4.3, concerning fringe benefit payments, proposes to add four additional fringe benefits which may be taxed, including: wages paid after death to the estate or beneficiaries within the same calendar year as the death; moving expense payments to the employee to the extent the payments exceed actual employee expenses; the value of benefits received or amounts reimbursed under a legal services plan pursuant to Section 120 of the Internal Revenue Code; and expense allowances for which no accounting is made to the employer. The subchapter is being amended so that the taxing provisions in New Jersey are consistent with the Federal provisions.

Four new sections, N.J.A.C. 12:16-4.11 through 12:16-4.14, are being proposed. These sections are included to explain, in detail, how personal use of a company vehicle, dependent care assistance programs, interest on a below-market interest rate loan and Section 125 cafeteria plans, respectively, are considered as taxable remuneration. The sections cite the applicable Internal Revenue Code citations which address these areas.

N.J.A.C. 12:16-5 concerns contributions by employers. The subchapter sets forth procedures for filing quarterly contribution reports, and discusses first contributions of a newly subject employer, installment payments, voluntary payment of additional contributions, and special fringe benefit agent accounts. The subchapter is not being amended.

N.J.A.C. 12:16-6 discusses the ability of non-profit organizations to reimburse the Unemployment Trust Fund for benefits paid to its former employees. The subchapter sets forth financial security requirements, and addresses the circumstances under which the Controller of the Department of Labor can terminate an organization's election to make payments in lieu of contributions. No amendments are proposed for this subchapter.

N.J.A.C. 12:16-7 discusses the contributory option for governmental employers. The subchapter outlines the condition under which an employer can choose the contributory option and states when a governmental entity who chooses this option can use the surplus amount remaining in an unemployment trust fund. The Department is not proposing any amendments to this subchapter.

N.J.A.C. 12:16-8 sets forth requirements for employers who wish to establish, with other employers, a group account for the purpose of sharing the risk of unemployment benefit costs. The subchapter describes how group accounts are established, defines those employers eligible to participate, and the liability, termination and dissolution of such arrangements. The subchapter is not being changed.

N.J.A.C. 12:16-9 discusses worker contributions to the Unemployment Compensation Fund and the State Disability Benefits Fund, the statement which must be given to employees concerning their deductions, and how the employer is to report and pay the worker contributions. The subchapter is not being amended.

N.J.A.C. 12:16-10 is reserved.

N.J.A.C. 12:16-11 discusses excess worker deductions for situations in which a worker receives wages from more than one employer. The subchapter requires employers to provide employees with wage deduction statements. No amendments are proposed.

N.J.A.C. 12:16-12 addresses concurrent employment by related employers, and describes the situation of a common paymaster. The Department is not amending this subchapter.

N.J.A.C. 12:16-13 outlines the reports required to be submitted by employers. These reports include contribution and statistical reports and reports of wages paid to workers. Additionally, employers are required to file such reports with the Controller as may be necessary to determine an employer's status. The subchapter sets forth the penalties applicable for failure to file reports, establishes a procedure for penalty abatement, and discusses wage reporting requirements. The subchapter has been amended by adding a section which describes how an employer can withdraw to inactive status.

N.J.A.C. 12:16-14 concerns election of coverage, which means that an employing unit can elect to become subject to the Unemployment Compensation and Temporary Disability Benefit Laws, to become an employer, or to extend its coverage to individuals performing services which do not constitute employment. Such election is subject to the Controller's approval. The subchapter is not amended upon re-adoption.

N.J.A.C. 12:16-15 concerns joint accounts, which allows two or more employers to have their accounts joined for the purpose of the Unemployment Compensation Law. The subchapter also addresses the effective date, duration, modification and dissolution of such an arrangement. The Department has not amended the subchapter.

N.J.A.C. 12:16-16 requires employers to provide notice to employees that the employer has coverage under the Unemployment Compensation Law, and, if such coverage is terminated, the employers must be notified that the employing unit has ceased to be a subject employer. No changes have been proposed.

N.J.A.C. 12:16-17 provides for witness fees and mileage allowances for individuals who must attend a hearing. The subchapter contains no amendments.

N.J.A.C. 12:16-18 discusses the transfer of employment experience from one employer to a successor in interest. The subchapter provides for the transfer of part of a predecessor's experience, and the assignment of contribution rates for interim periods. The subchapter remains unchanged.

N.J.A.C. 12:16-19 addresses benefit charges, and provides that the Department must notify the employer of the benefits charged to his or her account. No changes are proposed.

N.J.A.C. 12:16-20 concerns work relief and work training programs, and sets forth the characteristics required for such a program. The Department has not amended this subchapter.

N.J.A.C. 12:16-21 addresses zip code reporting, and requires employers to report employee statistics concerning zip codes to the Department of Transportation. The subchapter has not been amended.

N.J.A.C. 12:16-22 discusses hearings, and outlines the procedures for hearings involving questions of coverage, status, liability for contributions, reporting, refunds or rates of contributions. The subchapter provides for informal conferences, formal hearings, and appeals of Commissioner decisions. The subchapter contains no amendments.

Social Impact

The re-adoption of this chapter will enable the Department of Labor to maintain an efficient method of providing unemployment and temporary disability insurance benefits to workers. The rules require employers to submit detailed records concerning wages, contributions and benefits paid. This, in turn, will assure that workers receive benefits that are due in a timely manner. The amendments to the existing chapter bring the rules into conformance with the Federal withholding requirements, which will help eliminate confusion among employers concerning withholding requirements.

Economic Impact

The proposed re-adoption does impose reporting requirements on employers, and this will result in cost to employers, as they will have to expend resources on establishing bookkeeping and accounting procedures.

The proposed amendments will require employees to report certain events as taxable income and therefore, they may experience a reduction in their net pay as a result of increased withholdings. Balanced against these increased costs, however, is the fact that the Department will be able to maintain a program which will provide much-needed benefits to disabled and unemployed workers.

The Department does not expect to be affected economically by the re-adoption.

Regulatory Flexibility Analysis

The readoption and proposed amendments do impose reporting, recordkeeping and compliance requirements on businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All employers are required to submit records concerning withholding, payroll records, remuneration paid, contribution reports, and zip code information to the Department, and must provide employees with certain notices and worker contribution statements. Some employers may have to employ the services of bookkeepers and/or accountants to prepare the necessary documentation.

This information must be reported by all employers as the success of the unemployment and temporary disability insurance programs is dependent on accurate information. Therefore, no lesser requirements or exemptions are available for small businesses. However, the recordkeeping and reporting costs for small businesses will be less than the costs for larger employers, as the costs are directly proportionate to the amount of workers employed.

Full text of the proposed readoption can be found at N.J.A.C. 12:16.

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

12:16-4.1 Remuneration defined

(a) (No change.)

(b) The following remuneration issues are discussed in N.J.A.C.

12:16-4.2 through [4.9] 4.14:

1.-9. (No change.)

10. Personal use of a company vehicle;

11. Dependent care assistance programs;

12. Interest on below-market interest rate loans; and

13. Section 125 Cafeteria plans.

12:16-4.3 Fringe benefit payments

(a) (No change.)

(b) Taxable fringe benefits may include:

1.-7. (No change.)

8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;

9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses;

10. The value of benefits received or amounts reimbursed under a legal services plan qualified under Section 120 of the Internal Revenue Code; and

11. Expense allowances for which no accounting is made to the employer.

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

12:16-4.11 Personal use of a company vehicle

(a) The personal use of a company vehicle shall be taxable remuneration.

1. Such personal use shall be valued pursuant to Section 61 of the Internal Revenue Code.

(b) If personal use is present (except for de minimis usage such as a lunch stop during company business), and such personal use has not been properly reported, the personal use shall be valued at the highest manner available.

12:16-4.12 Dependent care assistance programs

(a) Employer contributions on behalf of, or reimbursements to, an employee under a Dependent Care Assistance Program (Section 129 of the Internal Revenue Code) shall be taxable remuneration.

(b) If a Dependent Care Assistance Program is financed by an employee voluntary salary reduction, the amount of remuneration received under the program shall be determined as that amount which the employee could have elected to receive in lieu of making the contribution.

12:16-4.13 Interest on a below-market interest rate loan

The amount of remuneration generated by a below-market interest rate loan shall be the same amount as that computed for purposes of F.U.T.A.

12:16-4.14 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code (1986) shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of making the contribution.

12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have his or her account withdrawn to an inactive status upon written application to the controller.

1. The inactivity date shall not be earlier than the last day of the preceding calendar quarter.

(a)

OFFICER OF THE CONTROLLER**Definitions for Division of Employment Security and Special Employment Relationships****Proposed New Rules: N.J.A.C. 12:19-1**

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-1 et seq., specifically 43:21-11.

Proposal Number: PRN 1990-88.

Submit comments by March 22, 1990 to:

Alfred B. Vuocolo, Jr.

Chief Legal Officer

New Jersey Department of Labor

CN 110

Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Department has decided to propose these new rules in an effort to clarify certain words and phrases which have been interpreted and applied inconsistently in Division of Employment Security programs. The proposed new rules will help to minimize confusion associated with the application of these terms, and will thus provide one standard by which all situations are evaluated. In some instances, the Department has, by definition, merely codified internal procedures which are currently followed. In other cases, the definitions provided have been developed by the Department to provide a name for activities which currently exist but for which no defining term has been established. The definitions are to be used for terms used throughout N.J.A.C. 12:15 through 19.

N.J.A.C. 12:19-1.1 sets forth the purpose of the new rules; namely, to offer definitions for use throughout N.J.A.C. 12:15 through 12:19.

N.J.A.C. 12:19-1.2 is the actual definition section, which offers detailed definitions of key terms, such as: "agricultural labor"; "base of operations"; "domestic service"; and "New Jersey Service", among others.

N.J.A.C. 12:19-1.3 discusses partnerships, and specifies conditions to be met by partnerships desiring a separate registration number and experience rating.

N.J.A.C. 12:19-1.4 addresses special employers, specifically crew leaders and employment agencies, and provides a detailed explanation of when these situations exist. These employment situations have presented problems with regard to unemployment tax problems, and have become the subject of contested cases before the Office of Administrative Law. The Department has, therefore, determined that clarification of these special situations would prevent future problems.

Social Impact

The proposed new rules will benefit employers by allowing them to accurately report taxable employment, thus avoiding the imposition of penalties by the Department. No social impact is expected for employees, as the definitions merely codify existing practices. The proposed new rules will benefit the Department, as there will be more conformity in interpretation and less need for explanation of the terms to employers.

Economic Impact

The proposed new rules offer definitions and describe special employment situations which will require employers to report employees to the State of New Jersey for tax purposes. This will affect employees in that they will now have taxes withheld for New Jersey service. Additionally,

employers may experience increased costs associated with reporting requirements and additional bookkeeping services. However, the proposed new rules will protect employees by assuring that they are registered as employees for purposes of the Unemployment Compensation and Temporary Disability Insurance Laws.

The Department does not expect to be affected economically by the proposed new rules.

Regulatory Flexibility Analysis

The proposed new rules do impose additional recordkeeping, reporting, and compliance requirements on businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Employers are required for tax purposes to now report to the State of New Jersey persons performing services which were not previously identified as "employment." This will also require employers to change withholding amounts.

All employees must comply with the provisions of the proposed new rules, as the success of the unemployment and temporary disability insurance programs are dependent on the accurate reporting of covered employees and on receiving the assessments due. Therefore, no lesser requirements or exemptions are available for small businesses.

Full text of the proposal follows:

SUBCHAPTER 19. DEFINITIONS FOR DIVISION OF EMPLOYMENT SECURITY AND SPECIAL EMPLOYMENT RELATIONSHIPS

12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions to be used throughout N.J.A.C. 12:15 through 12:19, and to provide examples illustrating the definitions and, in some instances, exceptions to the definitions.

12:19-1.2 Definitions

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

"Agricultural labor" means the following activities:

1. Service performed on a farm in connection with cultivation of the soil; raising or harvesting any agricultural or horticultural product; raising, feeding, caring for, and managing livestock, bees, poultry or fur-bearing animals; handling, packaging, or processing any agricultural or horticultural commodity in its unmanufactured state; repair and maintenance of equipment or real property used in the agricultural activity; and transport of agricultural or horticultural supplies or products if not in the usual course of a trucking business;

2. Service performed in a greenhouse or nursery if over 50 percent of the gross sales volume is attributable to products raised in the greenhouse or nursery; and

3. Service performed by a cooperative of which the producer of the agricultural product is a member if the service performed is incidental and necessary to the delivery of the product to market in a finished state.

Agricultural labor does not include:

1. Service performed at a racetrack;

2. Service in the breeding, care, or boarding of domesticated animals of a kind normally found in a home, such as dogs and cats;

3. Service in a retail enterprise selling the product of an agricultural enterprise if the retail enterprise is not located on or contiguous to the site of production; or

4. Service in a retail enterprise located on or contiguous to the site of production if greater than 50 percent of the gross sales volume of the retail enterprise is attributable to items not produced at that site.

"Base of operations" means the place or fixed center of more or less permanent nature from which the employee starts work and customarily returns to in order to accomplish any of the following:

1. Receive instructions from the employer;

2. Receive instructions from customers or other persons;

3. Replenish stocks and materials;

4. Repair equipment; or

5. Perform any other functions necessary to the exercise of a particular trade or business.

Examples: A repairman reports to a New Jersey site daily to stock his repair truck and receive his assignments for that day. The repairman performs services both in New Jersey and other states. This individual must be reported by the employer to New Jersey as his base of operations is in New Jersey and some services are performed in New Jersey.

A salesman, who is a New Jersey resident, works out of his home for a non-New Jersey entity. The entity does not provide office space for the salesman. The salesman receives his calls, correspondence, and communication from his employer at his home. The salesman sells in a variety of states and does not perform 90 percent or more of his services in any state. This salesman must be reported by the employer to New Jersey as his base of operations is his home, which is in New Jersey, and some services are performed in New Jersey.

"Controller" means the Controller of the Department of Labor.

"Domestic service" means service of a personal nature performed outside of a business enterprise for a householder. Domestic service is normally performed in a private residence, but may be performed in other settings such as a nursing home, or a yacht. A domestic service would include, but not be limited to, the following occupations: maids, butlers, cooks, valets, gardeners, chauffeurs, personal secretaries, baby-sitters, and nurses' aides.

"Employing unit" means an entity which has in its employ one or more individuals performing services for it within New Jersey, and includes:

1. The State of New Jersey; its instrumentalities or political subdivisions or any instrumentality of New Jersey and one or more other states or political subdivisions; individual proprietorships; partnerships; associations; trusts; estates; joint stock companies; domestic or foreign insurance companies and corporations; receivers; trustees in bankruptcy and their successors; and legal representatives of deceased persons.

"Employment" means any service performed by an individual for remuneration unless specifically excluded by statute or regulation.

"Good cause" means, as used in N.J.S.A. 43:21-7(c)7(A) and N.J.A.C. 12:16-18.1(b), any situation over which the employer did not have control and which was so compelling that it would prevent the employer from acting in a timely manner. Good cause does not include: negligence, including that of an agent such as an accountant or attorney; or a mistake of law or fact.

"Home to home salesperson" means an individual who sells door to door in a residential area, and does not mean an individual who sells on a lead basis or an individual who sells to a business clientele.

"Merchandise" means tangible personal property which would normally be found and used in a personal residence. Merchandise does not include:

1. Capital improvements such as siding or roofing, storm windows or doors, replacement windows or doors, or concrete sidewalks, steps, or driveways; or

2. Memberships in clubs, organizations or associations.

"Motor vehicle weighing 18,000 pounds or more" means, for purposes of N.J.S.A. 43:21-19(i)7(X), the aggregate weight of the gross unloaded weight of the truck or tractor and the gross unloaded weight of an attached trailer, if the normal use of the truck or tractor would require the use of that trailer.

"New Jersey service," as defined in N.J.S.A. 43:21-19(i)(2), means the performance of meaningful and substantial duties of a position for which an employee was hired which is:

1. Localized in New Jersey;

2. Not localized in any other state and which is partially performed in New Jersey, and the employee's base of operations is in New Jersey;

3. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform service in any state in which the employer has a base of operations, but the place from which the employer exercises general direction and control is in New Jersey; or

4. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform any services in a state in which the employer has a base of operations or place of direction and control, but the employee's residence is in New Jersey.

"Place from which service is directed and controlled" means the place from which the employer's basic authority and general control emanates. This is not necessarily the place at which a foreman directly supervises the performance of services under general instructions from the place of direction and control.

Example: A consultant performs services in a variety of states. He does not have a base of operations as he reports directly to the job site, where he receives his communication and directions from his employer. His employer's headquarters, from which he receives general direction and control, are in New Jersey. Less than 90 percent of his services are performed in any one state. This individual must be reported by the employer to New Jersey as he has no base of operations, the place from which he is directed and controlled is in New Jersey, and some services are performed in New Jersey.

"Real estate broker" means a person or entity that:

1. Lists for sale, sells, exchanges, buys or rents, or offers to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein; or
2. Collects or attempts to collect rent for the use of real estate; or
3. Negotiates or offers to negotiate a loan secured or to be secured by a mortgage or other encumbrance; or
4. Conducts a public or private competitive sale of lands or any interest in lands; or
5. Sells lots or parcels of real estate on behalf of the owners of such real estate; and
6. Is licensed by the New Jersey Real Estate Commission.

"Real estate salesperson" means an individual who:

1. Is employed by and operates under the supervision of a licensed real estate broker; or
2. Sells or offers to sell, or buys or offers to buy or negotiate the purchase, sale or exchange of real estate; or
3. Solicits for prospective purchasers or lessees of real estate; or
4. Sells or offers to sell lots or other parcels of real estate; and
5. Is licensed by the New Jersey Real Estate Commission.

"Residence" means the principal place of abode for an individual as determined for a particular calendar year.

Example: A management consultant, who is a resident of New Jersey, performs consulting work for an entity in a variety of states, including New Jersey, at varying job sites. Less than 90 percent of his services are performed in any one state. He has no base of operations as he receives his instructions from his employer at his varying job sites. He performs no consulting services in the state from which direction and control is provided. This individual must be reported by the employer to New Jersey as he has no base of operations in New Jersey; this individual does not perform services in the state from which direction and control is provided, but this individual does live in New Jersey and has provided some services in New Jersey.

"Wholly commissioned" means an individual who receives a draw against commission where:

1. Any excess of draw over commission earned in an individual's draw account is not forgiven upon separation from service, whether voluntary or not; and
2. A settlement of the draw account must be made at least once in each calendar year with a repayment to the employing unit by the commissioned individual if the draw exceeds commissions earned.

12:19-1.3 Partnerships

(a) A separate registration number and experience rating shall be assigned to each partnership of a group of two or more partnerships composed of identical partners with identical interests, if all of the following conditions are met:

1. Each separate partnership joins in such a request to the Controller or the Controller determines that individual reporting is appropriate;
2. A separate written partnership agreement exists for each partnership;
3. The accounting records for each partnership are separately maintained; and
4. There is no commingling of the employment of the two or more partnerships.

12:19-1.4 Special employers

(a) The following situations outline special employment relationships which exist for tax purposes:

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:
 - i. The agreement between the farmer and the crew leader complies with all Federal and State laws and regulations, including the payment of applicable employment taxes and minimum wage;
 - ii. The crew leader has completed and submitted, to the office of the Controller, form UC-ICL, "Status Report of Crew Leader Employing Unit"; and
 - iii. The crew leader has met all the requirements of the Federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801 et seq., and the New Jersey Crew Leader Registration Act, N.J.S.A. 34:8A-7 et seq.

2. The entity for whom the services of the crew are performed shall be considered the employer of both the crew leader and the crew if the registration of the crew leader under the Federal Migrant and Seasonal Agricultural Worker Protection Act and the New Jersey Crew Leader Registration Act is revoked. The entity will be considered the employer from the first day on which services were performed following revocation.

3. For purposes of N.J.S.A. 34:8-24 et seq., an employment agency is not an "employer," but maintaining a license as an employment agency in no way precludes the Commissioner of Labor from determining that the employment agency is an "employer" for purposes of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

i. Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the Controller's Chief Auditor for a determination as to its status under N.J.S.A. 43:21-1 et seq.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Excavations

Proposed Amendment: N.J.A.C. 12:100-5.2

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1990-89.

Submit comments by March 22, 1990 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference in N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

On October 20, 1989, Federal OSHA issued a final rule on Excavations. This rule was published in the Federal Register on October 31, 1989. The rule becomes effective on March 5, 1990. It replaces the original final rule which Federal OSHA issued on December 30, 1971.

The new final rule dated October 20, 1989 amends the Federal OSHA standards for Excavations by revising Subpart P of 29 CFR Part 1926. This 29 CFR Part 1926, Subpart P, addresses operations involving Excavations and Trenching. The revised standard uses performance criteria where possible rather than specification requirements, adds and clarifies definitions, and provides a consistent method of soil classification. OSHA issued the final rule after appropriate consultation with the Advisory Committee on Construction Safety and Health

This subpart consists of three rules and six appendices. The standards include, from 1926.650 through 1926.652, the scope, application and definitions applicable to this subpart, general requirements and requirements for protective systems, respectively.

The appendices, from A through F, address soil classification, sloping and benching, timber shoring for trenches, aluminum hydraulic shoring for trenches, alternatives to timber shoring, and selection of protective systems, respectively.

N.J.S.A. 34:6A-39 states, in part: ". . . the Commissioner shall provide, at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970." The new Federal rule 29 CFR Part 1926, Subpart P, Excavations, is a revision as described above and is the rule which the Division of Workplace Standards of the Department of Labor proposes to adopt herein by reference. This new rule, 29 CFR Part 1926, Subpart P, can be adopted by reference by amending N.J.A.C. 12:100-5.2(a).

The date stated as effective for the final rule, in the Federal Register notice of December 27, 1989 is March 5, 1990. This date of March 5, 1990 is accepted by the Commissioner as the effective date of adoption for N.J.A.C. 12:100.

Social Impact

This proposed amendment will protect the health, safety and welfare of public employees engaged in certain excavation and trenching operations. Implementation of this amendment will reduce injuries and fatalities occurring among public employees. The proposed amendment will improve working conditions, will reduce the demoralization and disorganization caused by such accidents, and it will enhance the welfare and morale of public employees affected.

Economic Impact

Compliance with these proposed amendments will impose some increased costs on public employers. Balanced against this recognized increase in costs associated with implementing these amendments are the savings in workers' compensation payments and medical and social security payments resulting from safer working conditions.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as only public employers in the State of New Jersey will be affected. Therefore, no regulatory flexibility analysis is required.

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

12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards with the amendments published in the Federal Register through [June 16, 1988] **October 31, 1989**, are adopted as occupational safety and health standards for the protection of public employees engaged in construction operations and shall include:

- 1.-13. (No change.)
14. Subpart P—Excavations[, Trenching, and Shoring].
15. (No change.)
- (b)-(c) (No change.)

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

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

Micro-Loan Program

Proposed New Rules: N.J.A.C. 12A:31-1

Authorized By: Development Authority for Small Businesses,
Minorities' and Women's Enterprises, Yvonne Bonitto-
Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).
Proposal number: PRN 1990-107.

(CITE 22 N.J.R. 608)

Submit comments by March 22, 1990 to:

Bernard McBride
Executive Assistant to the Commissioner's Office
Department of Commerce, Energy
and Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement the programs of the Development Authority for Small Businesses, Minorities' and Women's Enterprises. The provisions of these rules establish a micro-loan program available to defined eligible businesses, to use for working capital, contract financing or the acquisition of fixed assets. These loans will be for up to \$50,000 with short repayment periods.

Some key provisions of the proposed rules include:

1. N.J.A.C. 12A:31-1.3 which provides information on what must be contained in an application for a micro-loan; and
2. N.J.A.C. 12A:31-1.4 which provides information on what type of micro-loans are available from the Authority.

Social Impact

The social impact of these rules should be positive in nature. This program will provide additional possibilities of capital for the enhanced growth and establishment of small businesses, minority-owned businesses, and women-owned businesses. Consequently, through the availability of otherwise unavailable capital, entrepreneurs in the State should have a greater chance at success.

Economic Impact

The economic impact of these rules should be positive in nature. By providing low cost capital for eligible businesses which have been unable to obtain capital, additional business growth and activity should result. The cost of the program to the State is relatively minor in that the current program funds available to the Authority have been derived from Casino Reinvestment funds. The administrative cost associated with the program will be covered by the application fees provided by the applicant.

Regulatory Flexibility Analysis

The proposed new rules set forth eligibility standards and application procedures for micro-loans to small businesses, minority-owned businesses, and women-owned businesses. The first business type, and many of the latter two types, are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose compliance requirements on such businesses in applying for loans from the Authority, and reporting requirements on loan recipients. A \$250.00 fee is charged per application. Whether an applicant will require outside professional services, such as an accountant, in providing the information required under N.J.A.C. 12A:31-1.3(d) will depend upon the applicant's internal records and management resources. As this loan program is designed to be of benefit largely to small business-sized enterprises, no differentiation in requirements or exemptions is provided. The application fee and application and loan requirements are the minimum necessary for the operation of an efficient lending program.

Full text of the proposal follows:

CHAPTER 31

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

SUBCHAPTER 1. MICRO-LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a micro-loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

(b) This program provides for the Authority to provide, for eligible businesses, small term loans with short repayment periods.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-1.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a micro-loan.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Eligible business" means a small business, minority business or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Micro-loan" or "ML" means a short term loan advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; or
3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business in which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Loan recipient" means an eligible business which has been approved to receive or has received an ML.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the business is held by women, and in which the majority of the management are women.

12A:31-1.3 Application for a micro-loan

(a) Each application for an ML shall be accompanied by a nonrefundable application fee of \$250.00.

(b) Each application for an ML shall be accompanied by written evidence that the applicant has been unable to acquire like or similar financing as that sought from the Authority.

(c) Each application for an ML shall be accompanied by a five-year business plan of the applicant, provided in a format as determined by the Authority.

(d) Each application for an ML shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;
2. A representative list of the current and prior clients of the applicant for the past two years where applicable;
3. The resumes of the principals and key employees of the applicant business;

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years. All financial and operating statements submitted must be prepared by certified public accountants utilizing generally accepted accounting principles (GAAP);

5. The projected financial and operating statements of the applicant for the next three years;

6. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by minorities or females; and

7. Any other information that the Authority deems necessary.

12A:31-1.4 Micro-loan assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and 50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restrictions established by that act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority by the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide micro-loans to an eligible business in the following manners:

1. For the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed five years. The maximum amount of the loan shall not exceed \$50,000.

2. For the purpose of working capital for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of five years. The maximum amount of the loan shall not exceed \$50,000.

3. For the purpose of contract financing for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of one year. The maximum amount of the loan shall not exceed \$50,000.

12A:31-1.5 Time of application for a micro-loan

An applicant may apply to the Authority at any time for a micro-loan. However, the Authority may establish deadlines for receipt and approval of applications, as it deems necessary.

12A:31-1.6 Evaluation of applications for micro-loans

(a) The Executive Director shall evaluate each application for an ML considering the following factors:

1. The debt to equity ratio of the applicant;
2. The general financial condition of the applicant;
3. The likelihood that the applicant will not default on the ML; and
4. The length of time that the applicant has been in existence as well as the success and growth of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Board for its consideration.

(c) The Authority shall have 120 days in which to review the application and advise the applicant that:

1. The application has been approved;
2. The application has been approved contingent on modification;
3. The application has been rejected; or
4. The application is continuing to be considered pending additional information being received.

(d) No micro-loan approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent or \$100.00, whichever is greater, and a closing fee of one-half of one percent of the amount of the micro-loan which has been approved by the Board.

12A:31-1.7 Reporting and compliance

(a) Upon receipt of an ML from the Authority, the loan recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan recipient;
2. Any financial or technical assistance which the loan recipient has obtained;
3. Any substantive change in ownership or financial condition of the loan recipient; and
4. Any other information which the Authority may require.

(b) Upon receipt of an ML from the Authority, the loan recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of a micro-loan, the micro-loan recipient shall inform the Authority of any contemplated substantive changes in the business and shall not commence with the change until approval of the Board is given.

12A:31-1.8 Rescission of a micro-loan

(a) The Authority may, at its discretion, rescind all or part of an ML when it has become reasonably evident that:

1. Other commitments of financial resources to the loan recipient have been withdrawn or have been amended in such a manner as to undermine the ability of the loan recipient to repay the ML;
2. The loan recipient is judged no longer capable of meeting any financial obligations made to the Authority;
3. The loan recipient has been found to have supplied false, or incorrect information, or has misrepresented information of a material matter, whether oral or written, upon which the Authority relied when approving the ML; or
4. The loan recipient is found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that an ML shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing them of the rescission.

12A:31-1.9 Information confidentiality

(a) All information and documents submitted to the Authority as part of an ML application relating to the financial status of the applicant or which is given with the expressed or implicit expectation of confidentiality shall be disclosed only with the permission of the applicant and at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive a micro-loan.

(a)

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

Loan Guarantee Program

Proposed New Rules: N.J.A.C. 12A:31-2

Authorized By: Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1990-108.

Submit comments by March 22, 1990 to:

Bernard McBride
Executive Assistant to the Commissioner's Office
Department of Commerce, Energy and
Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement the programs of the Development Authority for Small Businesses, Minorities' and Women's

Enterprises. The provisions of these rules establish a loan guarantee program eligible to defined eligible businesses, for the purpose of fixed assets or working capital acquisition. The maximum term of the guarantee is 10 years, and the guarantee will be for either 90 percent of the loan, or \$1,000,000 (fixed assets) or \$600,000 (working capital), whichever is less.

Some key provisions of the proposed rules include:

1. N.J.A.C. 12A:31-2.3 which provides information on what must be contained in an application for a loan guarantee; and
2. N.J.A.C. 12A:31-2.4 which provides information on what type of loan guarantees are available from the Authority.

Social Impact

The social impact of these rules should be positive in nature. This program will provide additional possibilities of capital acquisition for the enhanced growth and establishment of small businesses, minority-owned businesses and women-owned-businesses. Consequently, through the availability of otherwise unavailable capital, entrepreneurs in the State should have a greater chance at success.

Economic Impact

The economic impact of these rules should be positive in nature. By guaranteeing capital for eligible businesses which have been unable to obtain capital, additional business growth and activity should result. The cost of the program to the State is relatively minor in that the current program funds available to the Authority have been derived from Casino Reinvestment funds. The administrative cost associated with the program will be covered by the application fees provided by the applicant.

Regulatory Flexibility Analysis

The proposed new rules set forth eligibility standards and application procedures for loan guarantees to small businesses, minority-owned businesses and women-owned businesses. The first business type, and many of the latter two types, are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose compliance requirements on such businesses in applying for loan guarantees from the Authority, and reporting requirements on guarantee recipients. A \$500.00 fee is charged per application. Whether an applicant will require outside professional services, such as an accountant, in providing the information required under N.J.A.C. 12A:31-2.3(d) will depend upon the applicant's internal records and management resources. As this loan guarantee program is designed to be of benefit largely to small business-sized enterprises, no differentiation in requirements or exemptions is provided. The application fee and application and loan guarantee requirements are the minimum necessary for the operation of an efficient guarantee program.

Full text of the proposal follows:

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a loan guarantee program for eligible businesses to help those businesses acquire private sector financing that would not otherwise be available without a guarantor for the loan.

(b) This program provides for the Authority to make available, for eligible businesses, loan guarantees to help those businesses obtain private sector financing.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-2.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a loan guarantee.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Eligible business" means a small business, minority businesses or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan guarantee" means a guarantee for the repayment of commercial private source loans, which guarantee does not exceed 90 percent of the loan amount.

"Loan guarantee recipient" means an eligible business which has been approved to receive or has received a loan guarantee.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or

2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America or the Caribbean islands, regardless of race; or

3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the management are women.

12A:31-2.3 Application for loan guarantee

(a) Each application for a loan guarantee shall be accompanied by a non-refundable application fee of not less than \$500.00.

(b) Each application for a loan guarantee shall be accompanied by written evidence that the applicant has been unable to acquire like or similar guarantees as that sought from the Authority.

(c) Each application for a loan guarantee shall be accompanied by a five-year business plan of the applicant, provided in a format as determined by the Authority.

(d) Each application for a loan guarantee shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;

2. A representative list of the current and prior clients of the applicant for the past two years where applicable;

3. The resumes of the principals and key employees of the applicant business;

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years. All financial and operating statements submitted must be prepared by certified public accountants utilizing generally accepted accounting principles (GAAP);

5. The projected financial and operating statements of the applicant for the next three years;

6. Any proof of certification by a public entity which certification is at least in part, a certification based upon the business being beneficially owned by minorities or females; and

7. Any other information that the Authority deems necessary.

12A:31-2.4 Loan guarantee assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and

50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restrictions established by the act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide loan guarantees to an eligible business in the following manners:

1. Loan guarantees from the Authority for the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$1,000,000 or 90 percent of the loan, whichever is less.

2. Loan guarantees from the Authority for the purpose of acquiring working capital for an eligible business at Authority designated rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$600,000 or 90 percent of the loan, whichever is less.

12A:31-2.5 Time of application for a loan guarantee

An applicant may apply to the Authority at any time for a loan guarantee. However, the Authority may establish deadlines for receipt and approval of applications as it deems necessary.

12A:31-2.6 Evaluation of applications for loan guarantees

(a) The Executive Director shall evaluate each application for a loan guarantee considering the following factors:

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;

3. The likelihood that the applicant will not default on the loan for which it seeks the guarantee; and

4. The length of time that the applicant has been in business as well as the success and growth of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Board for their consideration.

(c) The Authority shall have 120 days in which to review the application and advise the applicant that:

1. The application has been approved;

2. The application has been approved contingent on modification;

3. The application has been rejected; or

4. The application is continuing to be considered pending additional information being received.

(d) No loan guarantee approved by the Authority shall be disbursed to an eligible business until it has forwarded to the Authority a commitment fee of one-half of one percent of the amount of the loan guarantee and a guarantee fee of one half of one percent of the amount of the loan guarantee times the number of years that the guarantee is to be in effect.

12A:31-2.7 Reporting and compliance

(a) Upon receipt of a loan guarantee, the loan guarantee recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan guarantee recipient;

2. Any financial or technical assistance which the loan guarantee recipient has obtained;

3. Any substantive change in ownership or financial condition of the loan guarantee recipient; and

4. Any other information which the Authority may require.

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of a loan guarantee, the loan guarantee recipient shall inform the Authority of any contemplated substantive changes in the business and shall not commence with the change until approval of the Board is given.

12A:31-2.8 Information confidentiality

(a) All information and documents submitted to the Authority as part of a loan guarantee application relating to the financial status of applicant or which is given with the expressed and implicit expectation of confidentiality shall be disclosed only with the permission of the applicant or at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive the loan guarantee.

(a)

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

Direct Loans

Proposed New Rules: N.J.A.C. 12A:31-3

Authorized By: Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1990-86.

Submit comments by March 22, 1990 to:

Bernard McBride
Executive Assistant to the Commissioner's Office
Department of Commerce, Energy and Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement the programs of the Development Authority for Small Businesses, Minorities' and Women's Enterprises. The provisions of these rules establish a direct loan program available to defined eligible businesses, to use for real estate acquisition, fixed asset acquisition or working capital. These loans will be for amounts between \$50,000 and \$200,000, and, depending upon the loan's purpose, for maximum terms of either 10 or 15 years.

Some key provisions of the proposed rules include:

1. N.J.A.C. 12A:31-3.3 which provides information on what must be contained in an application for a direct loan; and
2. N.J.A.C. 12A:31-3.4 which provides information on what type of direct loans are available from the Authority.

Social Impact

The social impact of these rules should be positive in nature. This program will provide additional possibilities of capital for the enhanced growth and establishment of small businesses, minority-owned businesses and women-owned businesses. Consequently, through the availability of otherwise unavailable capital, entrepreneurs in the State should have a greater chance at success.

Economic Impact

The economic impact of these rules should be positive in nature. By providing low cost capital for eligible businesses which have been unable to obtain capital, additional business growth and activity should result. The cost of the program to the State is relatively minor in that the current program funds available to the Authority have been derived from Casino Reinvestment funds. The administrative cost associated with the program will be covered by the application fees provided by the applicant.

Regulatory Flexibility Analysis

The proposed new rules set forth eligibility standards and application procedures for direct loans to small businesses, minority-owned businesses and women-owned businesses. The first business type, and many of the latter two types, are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose compliance requirements on such businesses in applying for loans from the Authority, and reporting requirements on loan recipients. A \$250.00 fee is charged per application. Whether an applicant will require outside professional services, such as an accountant, in providing the information required under N.J.A.C. 12A:31-3.3(c) will depend upon the applicant's

internal records and management resources. As this loan program is designed to be of benefit largely to small business-sized enterprises, no differentiation in requirements or exemptions is provided. The application fee and application and loan requirements are the minimum necessary for the operation of an efficient lending program.

Full text of the proposal follows:

SUBCHAPTER 3. DIRECT LOANS

12A:31-3.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for real estate acquisition, fixed asset acquisition or working capital.

(b) This program provides for the Authority to issue, for eligible businesses, loans of up to \$200,000 with a repayment of from one to 15 years.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-3.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a direct loan.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Direct loan" means a loan advanced by the Authority to an eligible business for the purpose of real estate acquisition, fixed asset acquisition, or working capital.

"Eligible business" means a small business, minority or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan recipient" means an eligible business which has been approved to receive or has received a direct loan.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; or
3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii, or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business in which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the business is held by women, and in which the majority of the management are women.

12A:31-3.3 Applications for a direct loan

(a) Each application for a direct loan shall be accompanied by a nonrefundable application fee of \$250.00.

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire like or similar financing as that sought from the Authority.

(c) Each application for a direct loan shall be accompanied by a five year business plan of the applicant, provided in a format as determined by the Authority.

(d) Each application for a direct loan shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;
2. A representative list of the current and prior clients of the applicant for the past two years where applicable;
3. The resumes of the principals and key employees of the applicant business;
4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years in addition to any business financial and operating statements. All financial and operating statements submitted must be prepared by certified public accountants utilizing generally accepted accounting principles (GAAP);
5. The projected financial and operating statements of the applicant for the next three years; and
6. Any other information that the Authority deems necessary.

12A:31-3.4 Direct loan assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and 50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restriction established by that act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide direct loans to an eligible business in the following manners:

1. Direct loans from the Authority in the form of permanent mortgage financing for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 15 years. The maximum amount of the loan shall not exceed \$200,000. The minimum amount of the loan shall be \$50,000.
2. Direct loans from the Authority for the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 10 years. The maximum amount of the loan shall not exceed \$200,000. The minimum amount of the loan shall be \$50,000.
3. Direct loans from the Authority for the purpose of working capital for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 10 years. The maximum amount of the loan shall not exceed \$200,000. The minimum amount of the loan shall be \$50,000.

12A:31-3.5 Time of application for a direct loan

An applicant may apply to the Authority at any time for a direct loan. However, the Authority may establish deadlines for the receipt and approval of applications, as it deems necessary.

12A:31-3.6 Evaluation of applications for direct loans

(a) The Executive Director shall evaluate each application for a direct loan considering the following factors:

1. The debt to equity ratio of the applicant;
2. The general financial condition of the applicant;
3. The likelihood that applicant will create new permanent full-time employment;

4. The likelihood that the applicant will not default on the direct loan; and

5. The length of time that the applicant has been in business as well as the success and growth of the business.

(b) After the evaluation of the application by the Executive Director, the Executive Director will forward the application to the Board for its consideration.

(c) The Authority shall have 120 days in which to review the application and advise the applicant that:

1. The application has been approved;
2. The application has been approved contingent upon modification;
3. The application has been rejected; or
4. The application is continuing to be considered pending additional information being received.

(d) No direct loans approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the loan and a closing fee of one-half of one percent of the amount of the direct loan.

12A:31-3.7 Reporting and compliance

(a) Upon the receipt of a direct loan from the Authority, the loan recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan recipient;
2. Any substantive change in the ownership or financial condition of the loan recipient; and
3. Any other information which the Authority may require.

(b) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of a loan guarantee, the loan guarantee recipient shall inform the Authority of any contemplated substantive changes in the business and shall not commence with the change until approval of the Board is given.

12A:31-3.8 Rescission of a direct loan

(a) The Authority may, at its discretion, rescind all or part of a direct loan when it has become reasonably evident that:

1. Other commitments of financial resources made to the loan recipient have been withdrawn or have been amended in such a manner so as to undermine the ability of the loan recipient to utilize the loan in the manner it proposed to the Authority;
2. The loan recipient is judged no longer capable of meeting any financial obligations made to the Authority;
3. The loan recipient has been found to have supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing a direct loan; or
4. The loan recipient is found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a direct loan shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing them of the rescission.

12A:31-3.9 Information confidentiality

(a) All information and documents submitted to the Authority as part of a direct loan application relating to the financial status of the applicant or which is given to the Authority with the expressed and implicit expectation of confidentiality shall be disclosed only with the permission of the applicant or at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive a direct loan.

LAW AND PUBLIC SAFETY (a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

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

Proposed Repeals: N.J.A.C. 13:18-3 and 13:18-7

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-4e, 39:3-43, 39:3-84, 39:4-54, 52:14B-3(1), 54:39A-8 and 54:39A-24.

Proposal Number: PRN 1990-100.

Submit comments by March 22, 1990 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery St., 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles (Division) proposes to readopt the provisions of N.J.A.C. 13:18-1 to N.J.A.C. 13:18-11, inclusive, concerning executive and administrative service in accordance with the "sunset" and other provisions of Executive Order 66 (1978). These rules expire on April 1, 1990.

The rules contained in N.J.A.C. 13:18 implement various provisions of the Motor Vehicle and Traffic Law, N.J.S.A. 39:1-1 et seq., pertaining to permits for overdimensional and overweight vehicles; standards for connecting devices and towing methods; procedures for Division notification upon insurance termination; and guidelines for the posting of security deposits by uninsured owners and drivers. The rules also implement the provisions of the Motor Fuels Use Tax Act of 1963, N.J.S.A. 54:39A-1 et seq. The chapter also contains the Division's organizational rule as required by N.J.S.A. 52:14B-3(l). The Division has reviewed N.J.A.C. 13:18-1 to N.J.A.C. 13:18-11 in accordance with Executive Order No. 66 (1978) and has determined that said rules, with the exception of N.J.A.C. 13:18-3 and 13:18-7 which the Division proposes to repeal, are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." Many of these rules implement the public policy of this State as set forth in the Motor Vehicle and Traffic Law; namely, to foster highway safety by providing standards for the operation of certain classes of motor vehicles.

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

Subchapter 1, Permits for Overdimensional or Overweight Vehicles, sets forth the Division's permit procedures for vehicles which exceed statutory dimension and weight requirements. The subchapter establishes fees, expiration dates, and minimum insurance coverages for said vehicles and specifies escort vehicle, warning sign, warning flag and vehicle lighting requirements. The proposed amendment to N.J.A.C. 13:18-1.10 will allow oversized vehicles to operate on Saturdays until 12:00 noon.

Subchapter 2, Unsatisfied Claim and Judgment Fund Board, has been repealed by the Division pursuant to a Notice of Adoption of the repeal which is published elsewhere in this edition of the New Jersey Register (see also 21 N.J.R. 3432(a) as to the Notice of Proposed Repeal). This subject matter is now covered by rules promulgated and adopted by the Department of Insurance effective May 15, 1989 (see 21 N.J.R. 688(a) and 21 N.J.R. 1363(a)).

Subchapter 3, Overwidth Vehicles, sets forth the Division's annual permit procedures for overwidth trucks and semitrailers which transport concrete pipe and conduit. This subchapter is being repealed in light of P.L. 1983, c. 349 which repealed N.J.S.A. 39:3-84a. The Division no longer issues overwidth permits pursuant to this subchapter.

Subchapter 4, Motor Fuels Use Tax Act, contains provisions pertaining to the registration of motor fuel users and submission of tax reports and payments. The Division intends to promulgate extensive amendments to this subchapter shortly.

Subchapter 5, Connecting Devices and Towing Methods, sets forth the procedures and standards for the Director's approval of motor vehicle connecting devices offered for sale for use in New Jersey.

Subchapter 6, Insurance, pertains to the submission of notice of insurance termination information to the Division by an insurer when a motor vehicle liability insurance policy is cancelled or lapses due to nonpayment of premiums. The Division has prepared extensive changes to this subchapter which it anticipates will be promulgated in the very near future.

Subchapter 7, Payment and Collection of Bus Excise Tax, is being repealed in light of *Continental Trailways v. Director, Division of Motor Vehicles*, 102 N.J. 526 (1986), *certiorari dismissed* 481 U.S. 1001 (1987) which held that the bus excise tax imposed an unconstitutional burden on interstate commerce. The Division does not now collect taxes under the act.

Subchapter 8, Overhangs, specifies the overhang enforcement standard for vehicles designed, built and used to transport other motor vehicles.

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

Subchapter 10, Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits Paid by Insurers, has been repealed by the Division pursuant to a Notice of Adoption of the repeal which is published elsewhere in this edition of the New Jersey Register (see also 21 N.J.R. 3432(a) as to the Notice of Proposed Repeal). This subject matter is now covered by rules promulgated and adopted by the Department of Insurance effective May 15, 1989 (see 21 N.J.R. 688(a) and 21 N.J.R. 1363(a)).

Subchapter 11, Organization of the Division of Motor Vehicles, contains the Division's organizational rule.

Social Impact

The readoption of N.J.A.C. 13:18 will have a beneficial social impact in that the rules contained therein enhance highway safety and provide a source of recovery for individuals who are injured by uninsured drivers. Operators of overdimensional or overweight vehicles must comply with the permit provisions of subchapter 1 which are designed to ensure that these vehicles are operated on the public highways in a manner that does not unduly infringe on the safety of other motorists. The proposed amendment to N.J.A.C. 13:18-1.10 which will allow oversized vehicles to operate on Saturdays until 12:00 noon will reduce the volume of such traffic on Friday afternoons and Monday mornings. This proposed amendment will enhance highway safety. Subchapter 5, Connecting Devices and Towing Methods, promotes highway safety in that coupling devices used on trailers and semitrailers must be of a type approved by the Director. Subchapter 8, Overhangs, also promotes highway safety in that it establishes an enforcement standard for motor vehicles used to transport other motor vehicles on the public highways. The overhang standard is designed to reduce the possibility of collision between tractor trailers and other motor vehicles using the highways. Subchapter 9, Uninsured Motorists, promotes the public welfare in that it provides a source of recovery for persons who have been injured or damaged by uninsured owners and operators. This subchapter also protects the financial integrity of the Unsatisfied Claim and Judgment Fund by requiring a monetary deposit by an uninsured owner or driver when a qualified individual files a claim against the Fund for payment of personal injury protection benefits. Subchapter 4, Motor Fuels Use Tax Act, promotes the efficient administration of the Motor Fuels Use Tax Act resulting in the collection of State revenues.

Economic Impact

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

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

There is an economic impact on those entities subject to the permit provisions of subchapter 1 since they are subject to the fees specified for the issuance of said permits. The proposed amendment to N.J.A.C. 13:18-1.10 will permit entities to move oversized construction equipment and machinery in a more efficient manner.

Regulatory Flexibility Analysis

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

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

Pertaining to N.J.A.C. 13:18-4, N.J.S.A. 54:39A-9 provides as follows:

"Every user shall keep records, in such form as the director reasonably may prescribe, as will enable the user to report and enable the director to determine the total number of over-the-road miles traveled by his entire fleet of motor vehicles, the total number of over-the-road miles traveled in New Jersey by said entire fleet, the total number of gallons of motor fuel used by said entire fleet and the total number of gallons of motor fuel purchased in New Jersey for said entire fleet. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and availability for inspection by the director or any authorized assistant engaged in the administration of this act. Upon application in writing, stating the reasons therefor, the director may in his discretion, consent to the destruction of any such records at any time within said period. The director or his authorized agents and representatives may, at any reasonable time, inspect the books and records of any user subject to the tax imposed by this act. The director shall provide by regulation for any such examination of books and records to be conducted at the office or offices of the user where such books and records are maintained."

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

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

Manufacturers or vendors of vehicle connecting devices sought to be sold in New Jersey must obtain Division approval for such devices pursuant to N.J.A.C. 13:18-5. An undetermined number of such manufacturers and vendors may be small businesses. The rules require the submission to the Division of an independent testing laboratory report on any such device, cost to be borne by the manufacturer/vendor; however, this requirement may be waived pursuant to N.J.A.C. 13:18-5.4. An approval application and, if requested, a sample of the device must be submitted to the Division along with the lab report. As this approval requirement is in the interest of public safety, to avoid injury due to failure of such devices, no requirement differentiation or exemption is provided.

N.J.A.C. 13:18-6 imposes an administrative responsibility on motor vehicle insurers to notify the Division whenever a motor vehicle insurance policy is canceled or otherwise terminated. The rule specifies the information to be supplied in the notice and provides a notice deadline. While some insurers affected may be small businesses, the cost of this reporting requirement is minimal. The Division intends in the near future to substantially revise the requirements of this subchapter.

N.J.A.C. 13:18-8 contains no reporting, record keeping or compliance requirements, but sets forth the methodology for the Director's determination of the overhang enforcement standard under N.J.S.A. 39:3-84.

N.J.A.C. 13:18-9 sets forth the circumstances under which the Division may require an uninsured motor vehicle owner or operator to make a deposit with the Division to secure payment of reimbursement or a judgment arising out of an accident in which such person, or, possibly, small business, was involved. While such deposits may be required of a

subject small business, the rule's purpose (the protection of injured party(ies)) does not allow for exemptions or lesser requirements for such businesses.

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

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:18-3 and 13:18-7.

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

13:18-1.10 Invalidity of oversize permits

(a) (No change.)

(b) An oversize permit shall not be valid for the operation of a vehicle or combination of vehicles **after 12:00 noon** on Saturdays, **or at any time on Sundays [or]** and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day. If the holiday falls on a Sunday, the operation shall not be permitted on the next Monday. If the holiday falls on a Saturday, the operation shall not be permitted on the preceding Friday.

(c) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

All Utilities

Applications; Proof of Identity; Proof of Prior Address

Reproposed Amendment: N.J.A.C. 14:3-3.2

Authorized By: Board of Public Utilities,

Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX88081017U.

Proposal Number: PRN 1990-90.

A **public hearing** concerning this proposed amendment will be held on:

March 8, 1990 at 10:00 A.M.

Board's Hearing Room

Two Gateway Center, 10th Floor

Newark, New Jersey 07102

Submit written comments by March 22, 1990 to:

Karen Kennedy, Esq.

Assistant Secretary

Board of Public Utilities

Two Gateway Center, 10th Floor

Newark, New Jersey 07102

The agency proposal follows:

Summary

An amendment to N.J.A.C. 14:3-3.2 was proposed at 21 N.J.R. 2004(a) in the July 17, 1989 issue of the New Jersey Register. As a result of comments received, Board staff re-examined the proposal and has made substantive changes in the proposed amendment. The Board is therefore re-proposing the amendment to reflect the changes. In addition, a public hearing has been scheduled for the re-proposal. The re-proposed amendment differs from the previously published amendment by the addition of student and military IDs to those which an applicant can use as a means of identification and the addition of letters of credit worthiness from previous utilities rendering that customer service as a means to establish prior address.

This re-proposed amendment would require a utility, should it request proof of identity from a prospective customer applying for service, to accept any one of the following items to establish a customer's identity:

1. A valid driver's license;
2. Employment identification;
3. An unexpired foreign passport;
4. A U.S. passport;

5. An alien registration card with photograph;
6. A county identification card;
7. A county welfare identification card;
8. A student identification card; or
9. A military identification card.

The amendment would require a utility, when proof of a prospective customer's prior address is requested, to accept any one of the following items to establish a customer's prior address:

1. A notarized lease, deed or letter from present landlord;
2. A current auto insurance policy;
3. A bank statement;
4. A credit card statement;
5. Mailing envelopes addressed to the applicant at the previous address, post-marked within two months of the date of the application; or
6. A letter of credit worthiness from a utility.

Social Impact

The repropoed amendment will protect prospective customers from arbitrary demands by a utility in respect to proof of identity or proof of a prior address when applying for service.

Economic Impact

The proposed amendment would have no economic impact on the Board, the public or affected utilities. It would establish the right of a utility to require proof of identity and prior address from a prospective customer, thereby enabling them to more readily establish the same and thereafter collect outstanding bills, if any.

Regulatory Flexibility Analysis

The amendment imposes requirements on one small electric utility, over 100 small water and sewer utilities, and approximately 600 small solid waste utilities, as the term "small business" is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment does not establish differing requirements for small businesses, nor does it require any reporting or recordkeeping. The Board does not consider it appropriate to differentiate between small and large businesses. The amendment, utilizing performance standards, permits small and large businesses alike to request proofs of identity and of prior residence from applicants for service, and specifies what forms of such proofs may be required. The utilities are not permitted to require any other proofs of the applicant.

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

14:3-3.2 Applications

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

(c) A utility may require proof of identity with an application for service. An applicant for service may provide any one of the following items to establish identity:

1. A valid driver's license;
2. Employment identification;
3. An unexpired foreign passport;
4. A U.S. passport;
5. An alien registration card with photograph;
6. A county identification card;
7. A county welfare identification card;
8. A student identification card; or
9. A military identification card.

(d) A utility may require proof of prior address with an application for service. An applicant for service may provide any one of the following items to establish prior address:

1. A notarized lease, deed, or letter from the present landlord;
2. A current auto insurance policy;
3. A bank statement;
4. A credit card statement;
5. Mailing envelopes addressed to the applicant at the previous address, post-marked no later than two months prior to the date of application; or
6. A letter of credit worthiness from a utility.

(a)

BOARD OF PUBLIC UTILITIES

Basis of Discontinuance of Service

Repropoed Amendment: N.J.A.C. 14:3-3.6

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX88081013U.

Proposal Number: PRN 1990-91.

A public hearing concerning this proposed amendment will be held on:

March 8, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by March 22, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

An amendment to N.J.A.C. 14:3-3.6 was proposed at 21 N.J.R. 1650(a) in the June 19, 1989 issue of the New Jersey Register. As a result of comments received, Board staff re-examined the proposal and has made substantive changes in the proposed amendment. The Board is therefore repropoing the amendment to reflect the changes. In addition, a public hearing has been scheduled for the repropoal. The repropoed amendment differs from the previously published amendment in that the word residential has been reintroduced to describe the group of customers who are affected by the rule. The previous proposal had deleted the term residential thus broadening the scope of application.

The repropoed amendment to N.J.A.C. 14:3-3.6(a)3i prohibits a utility from discontinuing service for non-payment of a customer's repair charges, merchandise charges, and non-tariff contracted service charges between the customer and the utility.

The repropoed amendment to N.J.A.C. 14:3-3.6(c) limits utilities' discontinuance of residential service to between the hours of 8:00 A.M. and 4:00 P.M. Monday through Thursday, unless there is a safety related emergency. It prohibits discontinuance of residential service on Fridays, Saturdays and Sundays or on the day before a holiday or on a holiday, absent such emergency.

Social Impact

The amendment to N.J.A.C. 14:3-3.6(a)3i gives customers the right to have basic utility services uninterrupted for non-payment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, provided that the tariff services are paid for.

The amendment to N.J.A.C. 14:3-3.6(c) will allow customers to make arrangements for restoration of utility services during normal business hours of a utility, including the opportunity to contact social service agencies for monetary help during normal business hours. It would prohibit discontinuance of residential service on Fridays, thereby minimizing the potential for tragedy during weekends due to a lack of utility service.

Economic Impact

The repropoed amendments will have no impact on the Board and minimal impact on the affected utilities.

The amendment to N.J.A.C. 14:3-3.6(a)3i follows previously established utility policy concerning discontinuance of service for non-payment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility so there would be minimum impact upon the utilities.

The current rule prohibits discontinuance of residential service on weekends and holidays, and after 1:00 P.M. on a Friday or day before a holiday, and utilities assert that most discontinuances are made between 8:00 A.M. and 4:00 P.M. There will be minimal economic impact on utilities inasmuch as utilities will not be permitted to discontinue service to residential accounts on Fridays or the day before a holiday thereby reducing the utilities' ability to make collection on those days. The benefit

of this amendment outweighs the minimal economic impact by affording the customer more of an opportunity to seek appropriate payment solution.

Regulatory Flexibility Analysis

The repropoed amendments will apply to one small municipal electric utility and more than 100 small water and sewer utility businesses, as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no small gas utility businesses.

Since the proposed amendments closely follow presently established procedures or rules, there will be little capital cost or annual cost of compliance arising therefrom. There are no additional reporting or recordkeeping requirements which these amendments would impose. No differential 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]):

14:3-3.6 Basis of discontinuance of service

(a) The utility shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1.-2. (No change.)

3. For any of the following acts or omissions on the part of the customer:

i. Nonpayment of a valid bill due for service furnished at a present or previous location. However, nonpayment for business service shall not be a reason for discontinuance of residence service[(:)], except in cases of diversion of service pursuant to N.J.A.C. 14:3-7.16, **and service shall not be discontinued for nonpayment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, nor shall notice threatening such discontinuance be given.**

ii.-ix. (No change.)

4. (No change.)

(b) (No change.)

(c) Public utilities [may] **shall** not discontinue residential service [on Saturday, Sunday or a holiday on which the utility company's commercial offices are closed or after 1:00 P.M. of the business day prior to a weekend or such holiday for non-payment.] **except between the hours of 8:00 A.M. and 4:00 P.M. Monday through Thursday, unless there is a safety related emergency. There shall be no termination of service on Fridays, Saturdays, and Sundays or on the day before a holiday or on a holiday, absent such emergency.**

(d) (No change.)

(a)

BOARD OF PUBLIC UTILITIES

Tests by Utility on Request and Meter Replacement Repropoed Amendments: N.J.A.C. 14:3-4.5 and 4.10

Authorized By: Board of Public Utilities,

Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX88030431.

Proposal Number: PRN 1990-92.

A **public hearing** concerning these repropoed amendments will be held on:

March 8, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by March 22, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

Amendments to N.J.A.C. 14:3-4.5 and 4.10 were proposed at 21 N.J.R. 1650(b) in the June 19, 1989 issue of the New Jersey Register. As a result of comments received, Board staff reexamined the proposal and has made substantive changes in the proposed amendments. The Board is therefore repropoing the amendments to reflect the changes. In addition, a public hearing has been scheduled for the repropoal. The repropoed amendments differ from the previously proposed amendments in that a subsection has been added to each giving examples of instances considered appropriate for meter testing arising from a billing dispute.

The repropoed amendment of N.J.A.C. 14:3-4.5 would require an electric, gas or water utility, where a bill dispute exists, to advise the customer involved that the customer has the option of obtaining a Board witnessed or conducted test of the customer's meter. The repropoed amendment of N.J.A.C. 14:3-4.10 would require an electric, gas or water utility, where a bill dispute exists and where the utility has tested the meter of the customer involved, to retain the meter for 30 days before it resets the meter, thereby allowing the customer time to obtain a test or examination of the meter by the Board.

Social Impact

The repropoed amendments will allow customers of electric, gas or water utilities greater access to the meter test options authorized by the Board. Customers should benefit by an earlier involvement of Board staff in a bill dispute involving such utilities. The amendments will also shorten the time needed to resolve a bill dispute where a customer questions the accuracy of a meter of such utilities.

Economic Impact

The repropoed amendments should have minimal economic impact on the Board because the meter testing procedure is already in place. N.J.S.A. 48:2-56E.(15) requires the Board to charge a \$5.00 fee for a Board inspection or test of an electric, gas or water meter. Customers will continue to have the option of having the meter tested by the utility without charge, so the economic impact upon customers remains unchanged. There should be little economic impact upon the utilities since they will likely test the meter regardless of the Board's involvement. These proposed amendments may increase the number of meter tests performed by utilities, and may increase the number of meter tests in which Board staff is involved. This increased Board involvement, however, should expedite the resolution of bill disputes brought before the Board.

The repropoed amendment of N.J.A.C. 14:3-4.10, to require the retaining by the utilities of meters for 30 days before resetting same, will have no economic impact on the Board or utility customers. The utilities, however, may have to increase their inventory of meters, thus causing an economic impact upon them to that extent.

Regulatory Flexibility Analysis

There are no small gas utility businesses but there is one small electric utility business and more than 100 small water utility businesses, as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the repropoed amendments would apply. The repropoed amendments will require all electric, gas and water utilities to maintain records of meter tests conducted by them as a result of a billing dispute. The records must be so noted that the tested meters will be retained by the utility for 30 days. Existing reporting and recordkeeping requirements are contained in N.J.A.C. 14:3-4.8, Meter test reports, and N.J.A.C. 14:3-4.9, Meter records. Since the repropoed amendments will follow previously established procedures, there will be little initial capital cost and little or no annual cost of compliance. The repropoed amendments will expedite the processing of bill disputes brought before the Board which should shorten the time needed to resolve bill disputes. No differentiation in compliance 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]):

14:3-4.5 Tests by utility on request

(a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.

(b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file

at the office of the utility in accordance with [Section 4.9 (Meter records) of this Chapter] N.J.A.C. 14:3-4.9, Meter records.

(c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board either conduct a test of the meter or witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

(d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.

14:3-4.10 Meter replacement

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

(c) When a billing dispute is known to exist and the meter has been tested by an electric, gas or water utility, such utility shall retain the meter for 30 days before it is reset, unless otherwise authorized or directed by the Board, to permit a retest of the meter by the Board or a retest of the meter by the utility witnessed by a Board representative and in either event the customer may have the test witnessed by a third party.

(d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.

(a)

BOARD OF PUBLIC UTILITIES

Adjustment of Charges and Determination of Water Meter Accuracy

Reproposed Amendments: N.J.A.C. 14:3-4.7 and 14:9-3.3

Authorized By: Board of Public Utilities,

Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX88081015U.

Proposal Number: PRN 1990-93.

A public hearing concerning these reproposed amendments will be held on:

March 8, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by March 22, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

Amendments to N.J.A.C. 14:3-4.7 and 14:9-3.3 were proposed at 21 N.J.R. 1651(a) in the June 19, 1989 issue of the New Jersey Register. As a result of comments received, Board staff re-examined the proposal and has made substantive changes in the proposed amendments. The Board is therefore reproposing the amendments to reflect the changes. In addition, a public hearing has been scheduled for the reproposal. The reproposed amendments differ from the previously published amendments in that utilities will be required to test water flow at intermediate and full flow levels instead of the low, intermediate and full flow levels proposed previously.

The reproposed amendments to N.J.A.C. 14:3-4.7, Adjustment of charges, and N.J.A.C. 14:9-3.3, Determination of water meter accuracy, would reduce the measurement of accuracy for water meters from two percent to one and one half percent, thereby conforming the standard of accuracy in these rules to the uniform standards of the American Water Works Association.

The amendment to N.J.A.C. 14:3-4.7 would also prohibit a utility from re-billing a customer for consumption previously not billed for due to a slow meter, a practice which utilities have informally stopped at the request of the Board's staff.

Social Impact

The amendment to N.J.A.C. 14:3-4.7 would affect all utilities which use meters to measure service provided to customers and the customers of such utilities. It would modify and clarify the standards for adjustment of charges. The amendment to N.J.A.C. 14:9-3.3 would revise the standards for determining water meter accuracy.

The reproposed amendments should reduce and expedite the processing of meter adjustments and bill disputes brought before the Board.

Economic Impact

The reproposed amendments will have no economic impact on utilities because the reproposed amendments codify existing industry standards or practices. The reproposed amendments will have a favorable economic impact upon utility customers. A utility customer may not be re-billed for consumption underbilled due to a slow meter. In the case of a fast water meter, the adjustment of charges is calculated when the water meter is tested at one and one half percent fast rather than two percent fast.

Regulatory Flexibility Analysis

The amendment to N.J.A.C. 14:3-4.7 will apply to all utilities which use meters to measure service, that is, gas, electric and water utilities. There are no small gas utilities to be affected, but there is one small municipal electric utility and more than 100 small water utilities which will be affected, as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments will not impose any additional reporting or recordkeeping requirements and should not impose any initial capital costs or annual compliance costs. 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]):

14:3-4.7 Adjustment of charges

(a) Whenever a meter is found to be registering fast by **more than two per cent**, or **in the case of water meters, more than one and one half per cent**, an adjustment of charges shall be made in accordance with the following:

1. If the date when the meter had first become inaccurate can be definitely ascertained, then the adjustment shall be such percentage as the meter is found to be in error at the time of test **adjusted to 100 percent** on the amount of the bills covering the entire period that the meter had registered inaccurately.

2. In all other cases the adjustment shall be such percentage as the meter is found to be in error at the time of test on [1/2] **one-half** of the total amount of the billing affected by the fast meter **adjusted to 100 percent** since the previous test, but not to exceed a period of six years for electric meters subject to testing by an approved scientific sampling technique.

(b) (No change.)

(c) **No adjustment shall be made for a meter that is found to be registering less than 100 percent except in the case of meter tampering.**

14:9-3.3 Determination of Water Meter Accuracy

(a) A water meter shall be considered correct if, when [passing] flowing water at [full capacity] **both intermediate and full flow capacities, as set forth in the American Water Works Association M-6 Manual**, it shows an error which is not greater than [two percent] **one and one half percent**.

(b) **An error at any flow capacity in excess of one and one half percent shall be subject to an adjustment of charges as defined in N.J.A.C. 14:3-4.7.**

(a)

BOARD OF PUBLIC UTILITIES**Return of Deposits****Reproposed Amendment: N.J.A.C. 14:3-7.5**

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

DPU Docket Number: AX88081012U.

Proposal Number: PRN 1990-94.

A public hearing concerning this reproposed amendment will be held on:

March 8, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by March 22, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

An amendment to N.J.A.C. 14:3-7.5 was proposed at 21 N.J.R. 1652(a) in the June 19, 1989 issue of the New Jersey Register. As a result of comments received, Board staff re-examined the proposal and has made substantive changes in the proposed amendment. The Board is therefore reproposing the amendment to reflect the changes. In addition, a public hearing has been scheduled for the reproposal. The reproposed amendment differs from the previously published amendment in that utilities will be required to give their customers the option of refunding their deposits either by credit or as was previously proposed by issuance of a check. Also, the period in which the utility must make the refund will not exceed a billing cycle and the 30 day limit was deleted.

The reproposed amendment of N.J.A.C. 14:3-7.5(b) would require utilities, after satisfactory credit has been established, to issue a separate check to refund a deposit if so requested by the customer. Otherwise, the deposit refund may be credited to the customer's account.

Social Impact

Utilities presently apply a deposit refund to a customer's account and deduct the current bill from the customer's credit balance. The effect of this procedure is that the customer pays a bill without seeing it, is deprived of the 10 day period to pay the bill provided by N.J.A.C. 14:3-7.12, and, where a bill dispute exists, pays a bill which has not been accepted or determined to be valid.

The reproposed amendment will allow utility customers who have made a deposit to establish credit access to a refund of same and discretion in determining what to do with it.

Economic Impact

The reproposed amendment will have minimal impact upon utilities by requiring them upon the customer's request to issue a check to refund deposit monies rather than crediting the customer's account. They are now required by N.J.A.C. 14:3-7.5(b) to refund deposit monies. Additionally, rate structures and rates of return are determined with the return of deposit rules currently in effect. The form of the credit will have no effect on rates. There will be no additional cost to the Board of Public Utilities.

Regulatory Flexibility Analysis

The reproposed amendment will apply to one small municipal electric utility, more than 100 small water and sewer utility businesses and over 600 small solid waste businesses, as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no small gas utility businesses.

The reproposed amendment will require all utilities to refund a deposit by check when requested by the customer and after the requirements of N.J.A.C. 14:3-7.5(b) have been met. The amendment should involve little capital cost and a modest cost for compliance. The reporting and recordkeeping requirements of this proposed amendment are defined in N.J.A.C. 14:3-7.4 and N.J.A.C. 14:3-7.5. Thus, there are no additional

reporting or recordkeeping requirements. No differentiation in requirements or exemptions, therefore, are granted based upon business size.

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

14:3-7.5 Return of deposits

(a) (No change.)

(b) Each utility shall review a residential customer's account at least once every year and a nonresidential customer's account at least once every two years and if such review indicates that the customer has established credit satisfactory to the utility, then the outstanding deposit shall be refunded to the customer. **Each utility shall afford its customers the option of having the deposit refund applied to the customer's account in the form of a credit or of having the deposit refunded by separate check in a period not to exceed one billing cycle.**

(c) (No change.)

(b)

BOARD OF PUBLIC UTILITIES**Disputes as to Bills****Reproposed Amendment: N.J.A.C. 14:3-7.13**

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX88081014U.

Proposal Number: PRN 1990-95.

A public hearing concerning this reproposed amendment will be held on:

March 8, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by March 22, 1990, to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

An amendment to N.J.A.C. 14:3-7.13 was proposed at 21 N.J.R. 1652(b) in the June 19, 1989 issue of the New Jersey Register. As a result of comments received, Board staff re-examined the proposal and has made substantive changes in the proposed amendment. The Board is therefore reproposing the amendment to reflect the changes. In addition, a public hearing has been scheduled for the reproposal. The reproposal differs from the previously published amendment in that the grace period from the time a utility bill is received by a non-residential customer until a late payment charge may be assessed is being changed from the originally proposed 45 day grace period to a 25 day grace period. Residential customers have been added, along with governmental entities, to the group who will not be charged a late payment charge under any circumstance.

The reproposed amendment to N.J.A.C. 14:3-7.13 would require a utility to allow a customer at least 25 days to make payment before it could assess a late payment charge. A late payment charge could be assessed only under a rate schedule approved by the Board which provides for such a charge. In addition, the amendment would prohibit late payment charges to a state, county or municipal government entity or residential customer.

Social Impact

The reproposed amendment will allow a customer provided service under a rate schedule which permits late payment charges 25 days to make payment before such charges are assessed. This should provide sufficient time for such customer, usually business or commercial, to make payment before a late payment charge is assessed. The reproposed amendment will provide an incentive to a customer to make timely payments to avoid late payment charges.

Service to a government entity, be it state, county or municipal, or residential customers, will not be subject to a late payment charge.

Economic Impact

The repropoed amendment will benefit government entities which will be exempt from late payment charges, thereby creating a savings for such of them as would otherwise be subject thereto. As a matter of policy residential customers have not been assessed late payment charges in the past so there would be no economic impact on residential customers.

Late payment charges are assessed based upon the provisions of the utility's rate schedules. The repropoed amendment will establish a minimum time period for the customer to make payment before the utility may assess late payment charges. Utilities will be adversely affected by the amendment in two ways. First, the utilities will experience a decrease in revenues attributable to the loss of late payment charges from government entities. Secondly, the utilities will incur minor costs in adjusting their billing systems to conform with the amendment.

Regulatory Flexibility Analysis

There are no small gas or telephone utilities to which the amendment would apply. There are, however, approximately 100 small water and sewer utilities, approximately 600 small solid waste utilities and one small electric utility to which it would apply, as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Affected utilities which now assess late payment charges to government entities will have to revise their recordkeeping and billing systems to comply with this amendment. Such revision should involve only a minimal initial capital cost and no annual cost of compliance. No differentiation in requirements or exemptions are, therefore, provided based upon business size.

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

14:3-7.13 Disputes as to bills

(a)-(e) (no change.)

(f) A utility shall not assess a late payment charge on an unpaid bill unless such charge is provided for in the utility's applicable rate schedule approved by the Board.

1. A late payment charge shall not be approved if it is applicable to bills less than 25 days after rendering.

2. A late payment charge shall not be approved for a rate schedule applicable to a state, county or municipal government entity or any residential customer.

PUBLIC ADVOCATE**(a)****THE PUBLIC ADVOCATE****Procedure for Filing a Rulemaking Petition****Proposed New Rule: N.J.A.C. 15A:2-1.2**

Authorized By: Alfred A. Slocum, Public Advocate, Department of the Public Advocate.

Authority: N.J.S.A. 52:27E-1 et seq., specifically 52:27E-4.

Proposal Number: PRN 1990-81.

Submit comments by March 22, 1990 to:

Alma L. Saravia, Director
Legislative/Regulatory Affairs
Department of the Public Advocate
CN 850
Trenton, NJ 08625

The agency proposal follows:

Summary

The Administrative Procedure Act ("the Act"), at N.J.S.A. 52:14B-4(f), authorizes interested persons to petition a State agency "to promulgate, amend or repeal any rule." The Act also directs State agencies to "prescribe the form for the petition and the procedure for the submission, consideration and disposition" of any such petition. N.J.A.C. 1:30-3.6(d) also requires that each agency prescribe by rule the form of a petition and the procedures for its submission. The Department prepares the following rulemaking petition procedures in order to satisfy this mandate.

The proposed new rule provides that all petitions must be in writing and contain the substance or nature of the rulemaking which is requested,

the reasons for the request and the petitioner's interest in the request, and reference to the authority of the agency to take the required action.

Within 15 days of receipt of a petition, the Department will file a notice, stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rule further requires that the agency take action on the petition within 30 days of its receipt. The action taken by the Department may consist of either a denial of the petition; action upon the petition, which may include the initiation of a formal rulemaking proceeding; or referral of the matter to the appropriate unit within the Department for further deliberation.

Social Impact

The proposed new rule will have a positive social impact on the public by establishing procedures for the filing and consideration of rulemaking petitions.

Economic Impact

No direct economic impact on the general public is expected to result.

Regulatory Flexibility Analysis

The proposed new rule would apply to any member of the public seeking amendment, promulgation or repeal of Department rules, including small businesses as defined as in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the rule contains certain requirements relating to the contexts of the petition, such requirements impose no costs on petitioners, nor should they require the engagement of professional services. Therefore, and because the petition process is voluntary, no differentiation in requirements based upon petitioner business size is made.

Full text of the proposal follows:

15A:2-1.2 Procedure to petition for a rule

(a) This section shall constitute the Department of the Public Advocate's rules regarding the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of the Public Advocate to promulgate, amend or repeal any rule of the Department of the Public Advocate. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority under which the Department of the Public Advocate may take the requested action; and
6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of the Public Advocate shall be addressed to:

Department of the Public Advocate
Commissioner's Office
Hughes Justice Complex
CN-850
Trenton, NJ 08625

(d) Any document submitted to the Department of the Public Advocate that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

(e) Upon receipt by the Department of petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
2. The petition shall be referred to the relevant Department division or other Department office, as appropriate; and
3. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) In accordance with N.J.A.C. 1:30-3.6(c), the Department's action on the petition may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of preproposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

TRANSPORTATION

(a)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT

BUREAU OF MAINTENANCE

Notice of Public Meeting on Pre-Proposed Rulemaking

Outdoor Advertising Tax Act

Outdoor Advertising on Limited Access Highways and Nonlimited Access Highways on the Federal Aid Primary System

Pre-Proposed Amendments: N.J.A.C. 16:41-8 and 16:41A

Take notice that a public meeting will be held on Wednesday, March 14, 1990, at 1:00 P.M. to 4:00 P.M. in the Multipurpose Room, First Floor, Engineering and Operations Building, 1035 Parkway Avenue, Trenton, New Jersey, 08625, concerning the Department of Transportation's pre-proposal PPR 1990-1, published in the New Jersey Register of January 16, 1990 at 22 N.J.R. 157(b).

The purpose of this meeting is to receive comments concerning N.J.A.C. 16:41-8, Outdoor Advertising on Limited Access Highways and Nonlimited Access Highways on the Federal Aid Primary System, and N.J.A.C. 16:41A, Outdoor Advertising Tax Act, as a means of improving existing outdoor advertising programs in view of the changes in outdoor advertising technologies.

Persons desiring to make presentation at this meeting are requested to present a written transcript for inclusion in the docket. Presentations will be limited to five minutes, and will be tape recorded.

Written comments pertaining to this pre-proposal should be submitted no later than March 15, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(b)

DIVISION OF PROJECT PLANNING AND DEVELOPMENT

Bureau of Project Location

Route Location Approval

Proposed Repeal: N.J.A.C. 16:48

Authorized By: Robert A. Innocenzi, Acting Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4.

Proposal Number: PRN 1990-78.

Submit comments by March 22, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN-600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 18, 1989, the Department proposed to repeal N.J.A.C. 16:23, Public Hearings. The notice of proposal appeared in the New Jersey Register of that date at 21 N.J.R. 2913(a), wherein the Department considered the retention of N.J.A.C. 16:48, Route Location Approval, despite being duplicative in nature. A further review of N.J.A.C. 16:48, by the staff of the Bureau of Project Location, in compliance with the "sunset" and other provisions of Executive Order No. 66(1978) and the Department's ongoing rulemaking and review procedures, recommended that N.J.A.C. 16:48 should be repealed because the rule did not provide substantive guidance in the area of public hearings, and because a public hearing is already required by N.J.S.A. 27:7-66, for which the Bureau of Community Involvement is primarily responsible, whenever the Commissioner approves the location of a proposed line of any new State highway.

The Department therefore proposes to repeal N.J.A.C. 16:48.

Social Impact

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), in that the Department has removed rules and regulations no longer needed for the purposes for which promulgated. Additionally, the Department has removed a rule to preclude confusion and duplication.

Economic Impact

The proposed repeal will not have any economic impact on the local governments since it was duplicative in nature and purpose. The Department will incur direct and indirect costs for personnel and rulemaking requirements. The State will realize substantial savings in not having to reprint rules no longer required.

Regulatory Flexibility Statement

The proposed repeal does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects internal operations.

Full text of the chapter proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:48.

TREASURY-GENERAL

(c)

STATE PLANNING COMMISSION

Municipal and County Cross-Acceptance of State Development and Redevelopment Plan

Proposed Amendments: N.J.A.C. 17:32-3, 4

Authorized By: State Planning Commission, John W. Epling,

Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1990-85.

Submit comments by March 22, 1990 to:

John W. Epling, Secretary and Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
150 West State Street, CN 204
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Planning Act of 1985 (N.J.S.A. 52:18A-196 et seq.) creates a State Planning Commission and an Office of State Planning in the Department of the Treasury for the purposes of establishing a cooperative planning process that involves the full participation of State, county and local governments. According to the Act, New Jersey needs integrated and coordinated planning in order to conserve its natural resources, to revitalize its urban centers, to provide affordable housing and adequate public facilities at a reasonable cost, to promote equal social and economic opportunity for New Jersey's citizens, and to prevent sprawl and promote the suitable use of land.

The centerpiece of the Act's program for promoting vertical coordination and integration of State, county and local plans is the "cross-

acceptance" process. The Act contemplates that the Commission will prepare a preliminary plan, submit it to county and municipal governments, and then negotiate resolution of inconsistencies which might exist between the preliminary plan and county and municipal plans.

The State Planning Commission has received a petition for rulemaking dated November 20, 1989, from the law firm of Hutt and Berkow, on behalf of petitioner the New Jersey Builders Association (see the January 16, 1990 New Jersey Register, 22 N.J.R. 259(b)). In essence, the petition asserts that the existing State Planning Rules (N.J.A.C. 17:32) do not adequately address the process to be used during the negotiation phase of cross-acceptance. The main issues raised by the petition and the response of the State Planning Commission to these issues follows:

1. **ISSUE:** The three phases of cross-acceptance are not adequately defined in the existing State Planning Rules.

RESPONSE: The proposed amendments further describe the first two phases of cross-acceptance, comparison and negotiation, and more specifically define the requirements for conducting the second, or negotiation, phase. Rules for conducting the third phase, issue resolution, will be considered by the Commission at a later date, but prior to the actual commencement of that phase. The proposed amendments establish March 30, 1990, as the completion date for the comparison phase and March 31, 1990, as the date for the commencement of the negotiation phase. Approval of the Interim State Development and Redevelopment Plan by the Commission would mark the end of the negotiation phase.

2. **ISSUE:** State Planning Commission and county representation during the negotiation phase are not adequately described.

RESPONSE: Pursuant to the State Planning Act, N.J.S.A. 52:18A-202, the proposed amendments state that the Commission shall negotiate plan cross-acceptance with each county planning board. Each county planning board, may, at its option, and by duly authorized resolution, appoint a committee to represent the full board at negotiation sessions. The amendments further state that the Commission may authorize an appropriate committee of its members to represent the Commission during the negotiation phase. Municipalities shall be represented by a committee duly authorized by the municipal governing body.

3. **ISSUE:** The procedure for conducting negotiations and the role and decision making authority of the Commission's negotiating committee are unclear.

RESPONSE: The proposed amendments establish a four-step negotiation process with specific participants and/or actions assigned to each step. The composition of the Commission's negotiating committee is also defined, as well as the minimum number of members required to be present at a given negotiation session. The proposed amendments further make clear that any action taken by the Commission's negotiating committee in the course of the negotiation phase of cross-acceptance shall be subject to approval by the Commission as a whole in accordance with the requirements set forth in N.J.S.A. 52:18A-198.

4. **ISSUE:** The role of Volume III of the Preliminary State Development and Redevelopment Plan is not adequately described.

RESPONSE: The petition for rulemaking filed with the Commission indicates that the Commission should define the role of Volume III of the Preliminary State Development and Redevelopment Plan. The role of Volume III is described in detail under "Purpose and Intent," p. iii of Volume III, and in succeeding sections of the Preface. The Commission is presently in the process of developing a State Development and Redevelopment Plan. It is not certain at this point in time what the finally adopted Plan will include relative to any of its volumes.

The Commission recognizes that some of the dates established in the proposed amendments for the commencement or completion of certain elements of the cross-acceptance process will have expired prior to the adoption of these amendments. One of the purposes of the proposed amendments is to codify or lend recognition to events that have already or are about to take place. The cross-acceptance process has proven to be an evolving and dynamic process which has not always progressed in the expected manner. As an example, the comparison phase was originally anticipated to be completed by July 9, 1989. Due to the inability of many counties to complete their comparison phase reports by that date, the Commission felt it was necessary to set a date certain for the completion of phase I, March 30, 1990, and the commencement of phase II, March 31, 1990. This action is intended to ensure an orderly and timely progression of the overall cross-acceptance process. The participating parties in cross-acceptance have been notified of these dates.

Social Impact

The proposed amendments pertain to a preliminary stage in the overall process of developing and adopting a State Development and Redevelopment Plan, which at this time is anticipated to occur sometime in early 1991. It is anticipated that the proposed amendments, by more specifically describing the first two phases of the cross-acceptance process, will have a positive social impact by ensuring that the parties to the process will participate in full and thorough discussion of the Plan. To the extent that the Plan itself will have social impacts, such impacts are beyond the scope of the proposed rules. However, an Interim State Development and Redevelopment Plan will be prepared at the end of the negotiation phase of cross-acceptance. Assessments will be prepared of the impacts the Interim Plan will have on the economy, environment, fiscal capacity of governments, community life and intergovernmental relations within New Jersey. These assessments will be prepared and made available to the general public well in advance of the adoption of a final State Plan.

Economic Impact

The proposed amendments will have a fiscal impact on municipalities and the counties in that commitment of staff and/or consultant resources and expenditures will vary from county to county and from municipality to municipality. Variables such as size (county sizes range from 12 to 70 municipalities), basic interest in the overall planning process, available staff/expertise either in-house or consultant, complexity of tier designations and extant local issues will all affect the level of effort in a particular jurisdiction. However, it is expected that any fiscal impact experienced by counties and municipalities, as a result of their participation in the cross-acceptance process, is warranted in view of the positive fiscal consequences which will result from the development and adoption of a State Development and Redevelopment Plan at the conclusion of the process.

The overall economic impact, as well as the impact on the environment, fiscal capacity of governments, community life and intergovernmental relations, will be assessed upon the completion of the Interim State Plan. These assessments will be prepared and made available to the general public well in advance of the adoption of a final State Plan.

Regulatory Flexibility Statement

The proposed amendments affect the planning activities of State, county and local governments and their planning agencies and boards and will not impose recording, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is, therefore, not required.

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

SUBCHAPTER 3. PROCEDURES FOR CONDUCTING THE COMPARISON PHASE OF CROSS-ACCEPTANCE

17:32-3.1 Commencement of the comparison phase

The comparison phase of cross-acceptance shall commence with release of the Preliminary State Development and Redevelopment Plan by the State Planning Commission.

Recodify existing 17:32-3.1 through 3.10 as **3.2 through 3.11** (No change in text.)

17:32-[3.11]3.12 Negotiating entity reports

[a] Within six months of the date of release of the Preliminary State Development and Redevelopment Plan, each negotiating entity shall prepare and file with the State Planning Commission a formal report of findings, recommendations and objections concerning the Plan in the form specified by the Office of State Planning in the Cross-Acceptance Manual and any amendments thereto.]

(a) **Each negotiating entity shall prepare and file with the State Planning Commission by February 28, 1990, a formal report of findings, recommendations and objections concerning the Plan in accordance with the State Planning Act, N.J.S.A. 52:18A-202 and pursuant to the Office of State Planning Cross-Acceptance Manual and the County Cross-Acceptance Work Program approved pursuant to N.J.A.C. 17:32-3.5(a).**

(b) **Any negotiating entity report, or any parts thereof, not filed by February 28, 1990, may, at the discretion of the State Planning Commission, be given consideration by the State Planning Commission or**

be an item of negotiation during the negotiation phase of cross-acceptance.

(c) Should a county fail to file a negotiating entity report, or any part thereof, in substantial compliance with this chapter, the county shall be deemed to be in agreement with the goals, objectives, strategies, policies, guidelines, maps or projections of the Preliminary State Development and Redevelopment Plan as they pertain to those parts of the report not filed or deemed not to be in substantial compliance.

[(b)](d) The final reports of each negotiating entity shall not be filed with the State Planning Commission until the governing body of each such county, or the designated negotiating entity, shall have authorized the transmittal of the Final Report at a public hearing.

17:32-[3.12]3.13 Individual municipal reports in regard to cross-acceptance

(a) If a municipality is not satisfied with the cross-acceptance report, in whole or in part, prepared by the negotiating entity, the municipality may file a separate report in the form specified by the Office of State Planning in the Cross-Acceptance Manual not later than 30 days after the negotiating entity for the county in which the municipality is located files its formal report of findings, recommendations and objections pursuant to N.J.S.A. 52:18A-202. The individual municipal report shall also be filed with the appropriate county or negotiating entity at the same time as it is filed with the State Planning Commission.

(b) In the event that a negotiating entity report is not filed with the State Planning Commission by February 28, 1990, a municipality may still file a separate report, comments or recommendations with the State Planning Commission and they will be given full consideration.

[(b)](c) Should a municipality fail to participate in the negotiation of cross-acceptance and/or fail to file an individual municipal report, the municipality shall be deemed to have concurred and agreed in the final report filed by the negotiating entity and to have waived its statutory right to file a separate report under N.J.S.A. 52:18A-202.

[17:32-3.13 Office of State Planning Report on cross-acceptance

(a) As soon as practicable after the deadline for receipt of negotiation entity final reports, the Office of State Planning shall prepare and transmit to the State Planning Commission for its consideration a staff report on cross-acceptance which includes proposed revisions, if any, on the Preliminary Plan Map and which summarizes the findings, recommendations and objections contained in the reports of the negotiating entities and municipalities in a manner sufficient for the State Planning Commission to effectively and efficiently consider appropriate revisions to the Preliminary Plan.

(b) The report shall include recommendations for amendments to the provisions and maps of the Preliminary Plan and shall describe any provision of existing state law, or the absence thereof, that poses an obstacle to achieving compatibility between state, regional, county and municipal plans.]

[17:32-3.14 Adoption of the State Development and Redevelopment Plan

(a) Upon receipt of the cross-acceptance report required by N.J.A.C. 17:32-3.11, the State Planning Commission shall give due public notice and shall hold no fewer than six public hearings at geographically dispersed sites throughout the State.

(b) As soon as practicable thereafter, the State Planning Commission shall consider and adopt the State Development and Redevelopment Plan.]

17:32-3.14 Completion of comparison phase of cross-acceptance.

The comparison phase of cross-acceptance shall conclude on March 30, 1990.

SUBCHAPTER 4. PROCEDURES FOR CONDUCTING THE NEGOTIATION PHASE OF CROSS-ACCEPTANCE

17:32-4.1 Commencement of the negotiation phase

(a) The negotiation phase of cross-acceptance shall commence on March 31, 1990. Any time thereafter, the State Planning Commission can convene a negotiation session with any county that has submitted a cross-acceptance report in accordance with N.J.A.C. 17:32-3.12, or

any municipality that has submitted an individual report in accordance with N.J.A.C. 17:32-3.13.

(b) The State Planning Commission shall provide each county or municipality submitting a report pursuant to this chapter, an opportunity for at least one negotiation session. The State Planning Commission shall provide a minimum of 45 days public notice in a newspaper of general circulation of an initial negotiation session with each county or municipality and appropriate notice of all subsequent negotiation sessions.

17:32-4.2 State Planning Commission representation during the negotiation phase of cross-acceptance

(a) The State Planning Commission may authorize an appropriate committee to represent the Commission during the negotiation phase of cross-acceptance by a duly adopted resolution of the Commission.

(b) A minimum of three members of the authorized negotiating committee, and one member of the staff of the Office of State Planning, authorized by the Director, shall be present at any given negotiation session. Each negotiation session shall be chaired by the committee chairman or a duly authorized substitute.

(c) In the event that at least three members of the authorized committee are unable to attend a scheduled negotiation session, the Chairman of the State Planning Commission is authorized to appoint other members of the Commission to participate in the negotiation session.

17:32-4.3 County representation during the negotiation phase of cross-acceptance

(a) Pursuant to N.J.S.A. 52:18A-202(b), the State Planning Commission shall negotiate plan cross-acceptance with each county planning board.

(b) A county planning board may, at its option, and by duly adopted resolution, appoint a committee from among its members and staff, including at least, but not limited to, two county planning board members, to represent the full board at negotiation sessions.

17:32-4.4 Municipal representation during the negotiation phase of cross-acceptance

Municipalities that are involved in individual negotiation sessions pursuant to N.J.A.C. 17:32-4.1 shall be represented at those sessions by a committee duly authorized by the municipal governing body. A member of the county planning board or a member of its duly authorized negotiating committee shall also be present at these sessions.

17:32-4.5 The negotiation process

(a) The purpose of the negotiation phase is to attain compatibility between local, county and State Plans.

(b) Negotiations shall be conducted in four steps:

1. The staff of the Office of State Planning will meet with the authorized representative of the county planning board, to reach agreement on issues raised in county or municipal reports and to identify unresolved issues requiring negotiation between the committee and the county.

2. The committee and the county will meet to confirm agreements and to negotiate any unresolved issues identified in Step 1.

3. Municipalities that submit individual municipal reports, pursuant to N.J.A.C. 17:32-3.13, may choose to discuss and negotiate the issues in their report with the committee, with the appropriate county represented. Prior to such discussion and negotiations, municipalities shall meet with the staff of the Office of State Planning to identify unresolved issues and to recommend revisions to the Preliminary State Development and Redevelopment Plan requiring negotiation between the committee and the municipality.

4. Agreements reached during these sessions shall be published by the Office of State Planning in periodic reports which shall be made available to the parties involved and the general public.

17:32-4.6 Public participation in the negotiation phase of cross-acceptance

(a) The public may participate in the negotiation phase of cross-acceptance through the following means:

1. Recommendations of State Plan Advisory Committees;

2. Comments presented at monthly meetings of the State Planning Commission during the public comment period;

3. Communications with municipal and/or county officials involved in negotiations;

4. Written communication with the State Planning Commission, or the Office of State Planning;

5. Comments presented at periodic public meetings to be conducted by the State Planning Commission's negotiating committee, for the purpose of taking public comment on recommended changes to the Preliminary Plan published in periodic reports; and

6. Public comment at negotiation sessions.

17:32-4.7 Completion of the negotiation phase of cross-acceptance

(a) When the State Planning Commission's negotiating committee believes that the county and municipal negotiations have produced the highest degree of agreement among the negotiating parties, the committee shall submit a summary of its findings, including a list of agreements and disagreements resulting from each negotiation session, to the State Planning Commission, the subject county and each county's respective municipalities.

(b) The Committee shall forward to the State Planning Commission for its consideration and approval, an Interim State Development and Redevelopment Plan reflecting recommended changes to the Preliminary State Development and Redevelopment Plan resulting from the comparison and negotiation phases and any other relevant information and materials.

(c) Approval of the Interim State Development and Redevelopment Plan by the State Planning Commission shall complete the negotiation phase of cross-acceptance.

(d) Pursuant to N.J.S.A. 52:18A-202(c), there shall be no fewer than six public hearings on the Interim State Development and Redevelopment Plan. Upon approval of the Interim Plan, the State Planning Commission shall establish the total number of public hearings it intends to hold.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Multi-Casino Progressive Slot Systems; Annuity Jackpots

Proposed Amendment: N.J.A.C. 19:45-1.40A

Proposed New Rules: N.J.A.C. 19:45-1.39A, 1.40B and 1.40C

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69, and 5:12-70(f), (1) and (m).

Proposal Number: PRN 1990-82.

Submit comments by March 22, 1990 to:

Mark Neary, Assistant Counsel
Casino Control Commission
3131 Princeton Pike, Bldg. 5
CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Casino Control Commission recently approved the use of multi-casino progressive slot systems in Atlantic City casinos. These systems allow progressive slot machines in more than one casino to be "linked" together. In other words, every coin or token placed in any slot machine connected to the link increases the amount of the progressive jackpot available on each slot machine in the system. The amount of the progressive jackpot available at any time is registered on a payoff display on the face of each slot machine; when the progressive jackpot is won, each slot machine in the system resets to a specified minimum amount.

Proposed new rules N.J.A.C. 19:45-1.39A and 1.40C are intended to control the authorization and implementation of multi-casino progressive slot systems. Since any multi-casino progressive slot system will present

unique operational issues, N.J.A.C. 19:45-1.39A requires the prior approval of such systems by the Commission and the submission by casino licensees of accounting and internal control systems which demonstrate how the requirements of the Casino Control Act and the Commission's rules concerning slot operations will be satisfied. Proposed new rule N.J.A.C. 19:45-1.40C establishes procedures for jackpot payouts of cash or tokens which will be included in the gross revenue calculations of two or more casino licensees as part of a multi-casino progressive slot system. Except as otherwise specifically provided in N.J.A.C. 19:45-1.40C, these payouts will also be subject to all procedural or documentation requirements presently codified in N.J.A.C. 19:45-1.40.

The Commission also recently approved, for the first time, the offering of annuity jackpots by casino licensees. For purposes of the rule, "annuity jackpot" refers to any slot machine jackpot pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. The Commission has determined that an annuity is a "thing of value" which may be offered as a slot machine jackpot in accordance with the provisions of N.J.S.A. 5:12-45. The proposed new rule N.J.A.C. 19:45-1.40B establishes the terms under which annuity jackpots may be offered by casino licensees to the gaming public.

The proposed rule requires, among other things, that any casino licensee or group of casino licensees planning to offer an annuity jackpot establish a trust fund which will be used to make all future payments to jackpot winners. The trust will also be required to purchase annuity contracts from licensed insurance companies to assure that monies will be available to make future jackpot payments when due. Moreover, N.J.A.C. 19:45-1.40B clearly establishes the liability of every casino licensee offering an annuity jackpot to make any jackpot payment to the winning patron should the trust fail to do so. Subsection (h) of the proposed new rules requires casino licensees to address the income tax implications of annuity jackpots for winning patrons prior to offering such jackpots to the public. Finally, subsections (d) through (g) of N.J.A.C. 19:45-1.40B and the proposed amendments to N.J.A.C. 19:45-1.40A impose various procedural and recordkeeping requirements on casino licensees relating to the authorization of annuity jackpots.

Social Impact

It is not anticipated that the introduction of either multi-casino progressive slot systems or annuity jackpots in Atlantic City casinos will have any significant social impact on the gaming public. The proposed new rules and amendments are intended, however, to assure that the public confidence and trust in the integrity and regulation of casino gaming in New Jersey is maintained and thus should be beneficial in achieving one of the underlying goals of the Casino Control Act.

Economic Impact

Certain administrative and operational expenses will be incurred by a casino licensee if it decides to participate in a multi-casino progressive slot system or to offer an annuity jackpot. It should be noted, however, that both of these gaming innovations are optional. Moreover, if successful, any costs incurred by a casino licensee should be offset by increased gaming revenues.

If either of these new gaming concepts results in increased patron interest in New Jersey casinos, additional gross revenue tax could be generated which would inure to the benefit of New Jersey's senior and disabled citizens. Any attempt to project the effect of these rule proposals on gaming revenues and taxes at this point in time would be highly speculative at best.

The rule proposals are not anticipated to have any significant impact on the regulatory costs of the Commission or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

The proposed new rules and amendments will only affect the operation of casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.39A Progressive slot machines interconnected in more than one casino

(a) Two or more casino licensees may, with the prior approval of the Commission, operate a multi-casino progressive slot system in which certain progressive slot machines are interconnected in the participating casinos.

(b) Any multi-casino progressive slot system approved by the Commission shall be operated in accordance with all relevant requirements of the Act and the Commission's regulations governing casino licensees and the conduct of gaming. Any casino licensee seeking approval to participate in a multi-casino progressive slot system shall submit for Commission approval a system of accounting and internal controls specifying the manner in which participating casino licensees will satisfy the requirements of the Act and the Commission's regulations concerning the operation of slot machines.

(c) A casino licensee may, with the prior approval of the Commission, designate one or more casino key employees to represent the interests of the casino licensee in the operation and control of a multi-casino progressive slot system. Any designated representative shall only be permitted to exercise the duties and responsibilities he or she is authorized to perform for the casino licensee pursuant to N.J.A.C. 19:45-1.11; provided, however, a designated representative may also communicate information and directions concerning the operation and control of the system to or from other employees of the casino licensee who are authorized to exercise responsibility for such matters.

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a) This section shall apply to all jackpot payouts of merchandise or other things of value, including annuity jackpots as defined in N.J.A.C. 19:45-1.40B, except where such annuity jackpots are specifically exempted herein.

[(a)](b) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such [payout] merchandise or thing of value shall have a cash equivalent of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine. [(b)] The cash equivalent value of such [payout] merchandise or thing of value shall be determined in accordance with the following requirements:

1.-4. (No change.)

(c) The casino licensee shall retain and make available to the Commission and Division upon request [any] supporting documentation relating to the acquisition and valuation of any merchandise or thing of value to be offered as a payout and shall accumulate the total [dollar amount] cash equivalent value and number of such payouts. The supporting documentation shall include a detailed description of the merchandise or thing of value and shall specifically identify which slot machines offer which merchandise or things of value as payouts. **If the payout is in the form of an annuity jackpot, the documentation shall include all annuity contracts purchased pursuant to N.J.A.C. 19:45-1.40B.** In addition, a quarterly report shall be filed with the Commission, on a form prescribed by the Commission, which shall, at a minimum, provide the current quarter and year-to-date total [dollar amount] cash equivalent value and number of payouts of merchandise or things of value.

(d) Whenever a patron wins a jackpot which includes any merchandise or thing of value, an accounting representative, with no incompatible functions, shall prepare a Payout Slip ("Slip"). Such Slips shall be serially prenumbered forms [and], each series of Slips shall be used in sequential order, **and the series of numbers of all Slips received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department.** All original and duplicate void Slips shall be marked "Void" and shall require the signature of the preparer.

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

(g) On the original and all copies of the Slip, or in stored data, the preparer shall record, at a minimum, the following information:

1. The casino number of the slot machine on which the jackpot was registered;
2. The winning [combinations] combination of characters constituting the jackpot;
3. The date, shift and time when the jackpot occurred;
4. [The] A description of the merchandise or thing of value won and, **unless the jackpot is an annuity jackpot,** its cash equivalent value;
5. The selection of merchandise or its cash equivalent value as made by the patron;

6. The time of the Slip's preparation; and
7. The signature or, if computer prepared, identification code of the preparer.

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

(l) [Each casino licensee offering slot machine payouts of tokens redeemable for any merchandise or thing of value shall submit, at a minimum, to the Commission and Division a description of the internal procedures governing such payouts, which shall include, without limitation, access to and security over the slot machines, accountability and control over the tokens and such other controls as are necessary to ensure integrity of the game and fairness to the patron equivalent to that provided by these regulations for payouts based on slot machine character combinations.] **(Reserved.)**

(m) **Except when the payout is an annuity jackpot, the [The] casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value.** However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37(f) and 19:46-1.26(e). If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n) Any advertising involving slot machine payouts of any merchandise or thing of value by the casino licensee shall include an accurate description of the merchandise or thing of value offered **and, except for annuity jackpots,** the cash equivalent value of the merchandise or thing of value offered and the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value. [Any statements or depictions contained in the advertisement shall not be contrary to the provisions of the Casino Control Act or the Commission's regulations.] **Any advertising concerning annuity jackpots shall also provide clear notice of the following:**

1. That the jackpot will be paid over time and not in one lump sum; and

2. The number of payments and the time interval between payments.

(o) Until the expiration of any time limit established in accordance with (n) above or, if no such time limit is initially established by the casino licensee, **or the payout is an annuity jackpot,** until the merchandise or thing of value offered as a slot machine payout is won by a patron, a casino licensee shall not change the odds of winning the merchandise or thing of value, the denomination of the machine, nor in any other way vary the terms upon which the merchandise or thing of value is offered to the public until it is won by a patron. Repair or replacement of a slot machine offering any merchandise or thing of value shall be governed by the restrictions applicable to progressive jackpot machines pursuant to N.J.A.C. 19:45-1.39, whether or not the merchandise or thing of value is offered in conjunction with a progressive jackpot payout.

19:45-1.40B Jackpot payouts in the form of an annuity

(a) **For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from encumbering, assigning or otherwise transferring in any way his or her right to receive the future cash payments, except for transfer of the payments to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.**

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make the future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. Any casino licensee participating in offering the annuity jackpot serve as trustee for the trust fund;

2. The monies in the trust fund be used to purchase annuity contracts, naming the trust fund as beneficiary, to assure that there will be sufficient funds to make all payments required under the terms of the annuity jackpots won. An annuity contract shall be purchased for each annuity jackpot won prior to the time the first annuity payment is scheduled to be made to the winner of the jackpot. All annuity contracts shall be issued by an insurance company which:

i. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;

ii. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and

iii. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed;

3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts required under (b)2 above as annuity jackpots are won;

4. The trust fund continue to be maintained until all payments owed to winners of the annuity jackpots have been made; and

5. The trustees obtain an annual audit by an independent certified public accountant licensed to practice in the State of New Jersey attesting to:

i. The financial position of the trust fund, including whether the trust will be able to pay all of its obligations when due; and

ii. Disclosing whether the records and control procedures examined are maintained in accordance with the Act, the Commission's regulations, and generally accepted accounting principles.

(c) Any casino licensee or group of casino licensees which offers an annuity jackpot shall be strictly and immediately liable for any payment which is owed to the winner of such a jackpot in the event that the payment is not made by the trustees when due. Where the annuity jackpot is offered as part of a multi-casino progressive slot system, each casino licensee participating in the system when the jackpot is won shall be jointly and severally liable for each jackpot payment required to be made under this subsection.

(d) All annuity payments received by the trustees under the annuity contracts shall be restrictively endorsed "for deposit only" to the bank account of the trust and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

1. The date the payment is received;
2. The amount of the payment;
3. The name of the insurance company issuing the payment; and
4. The signature of the person making the entry.

(e) The trustees shall make all payments owed to a patron as the result of that patron winning an annuity jackpot by check made payable to the winning patron. Such payments shall be recorded on an Annuity Payment Log which shall contain, at a minimum, the following:

1. The patron's name and address;
2. The check number and the date the check was mailed or presented to the patron;
3. The amount of the check;
4. The date the payment was due;
5. The names of the persons signing the check; and
6. The signature of the person making the entry.

(f) The trustees shall also maintain an Annuity Jackpot Summary Log for each patron who wins an annuity jackpot to summarize the payments owed and made to the winning patron. The Annuity Jackpot Summary Log shall be prepared when a patron wins an annuity jackpot.

1. At the time of preparation, the Log shall contain, at a minimum, the following information:

- i. The patron's name and address;
- ii. The date the annuity jackpot was won;
- iii. The total amount of the annuity jackpot;
- iv. The amount of each annuity payment;
- v. The date each annuity payment is due; and
- vi. The signature of the preparer.

2. As annuity payments are made to the patron, the following information, at a minimum, shall be entered in the Log:

- i. The date of the payment;
- ii. The amount of the check;
- iii. The check number; and
- iv. The signature of the person making such an entry.

(g) Any casino licensee or group of casino licensees which offers an annuity jackpot shall comply with the display and sign requirements established in N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5, except that the display or sign need not include the cash equivalent value. In addition, each such display or sign shall provide clear notice of the following:

1. That the displayed jackpot will be paid over time and not in one lump sum;

2. The number of payments and the time interval between payments; and

3. That the right to receive the jackpot payments may not be encumbered, assigned, or otherwise transferred in any way except to the estate of the winner upon his or her death, and that any attempt to make a prohibited transfer may result in the winner forfeiting the right to receive future payments.

(h) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall first be required to establish to the satisfaction of the Commission either that:

1. A winning patron will not be liable for income tax on the deferred portion of the annuity jackpot in the tax year in which the jackpot is won; or

2. Reasonable accommodations have been made to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot which is incurred in the tax year in which the jackpot is won.

19:45-1.40C Multi-casino slot system jackpot payouts of cash

(a) Any slot machine jackpot payout of cash or tokens which will be included in the calculation of gross revenue by two or more casino licensees as part of a multi-casino progressive slot system shall be subject, except as otherwise provided in this section, to any procedural or documentation requirement established in N.J.A.C. 19:45-1.40. All forms utilized in the preparation or payment of a multi-casino progressive slot system jackpot shall be clearly identified as forms used for such purpose.

(b) For establishments in which Jackpot Payout Slips ("Payouts") are manually prepared, a separate series of Multi-Casino Jackpot Payout Slips ("Multi-Casino Payouts") shall be used in lieu thereof and shall be subject to the following additional procedures and requirements:

1. Each series of Multi-Casino Payouts shall be a four-part form, at a minimum, and shall be inserted in a locked dispenser that will:

i. Permit an individual Multi-Casino Payout in the series and its copies to be written upon simultaneously while still locked in the dispenser; and

ii. Discharge the original, duplicate and triplicate while the quadruplicate remains in a continuous, unbroken form in the dispenser;

2. The duplicate and triplicate Multi-Casino Payouts shall be treated like a duplicate Payout under N.J.A.C. 19:45-1.40, except that:

i. The amount of the Multi-Casino Payout shall not be included in the daily calculation of the Slot Win Sheet but shall be reported as a periodic adjustment in a manner approved by the Commission; and

ii. At the end of each gaming day, at a minimum, the triplicate Multi-Casino Payout shall be forwarded by the accounting department to the casino licensee or group of casino licensees approved to operate the slot system ("slot system operator") for comparison and agreement with the combined system readings and reports, and for calculation of tax deductions and cash reimbursements, if applicable; and

3. The quadruplicate Multi-Casino Payout shall be treated like a triplicate Payout under N.J.A.C. 19:45-1.40.

(c) For establishments in which Payouts are computer prepared, a separate series of Multi-Casino Payouts shall be used in lieu thereof and shall be subject to the following additional procedures and requirements:

1. Each series of Multi-Casino Payouts shall be a three-part form, at a minimum, and shall be inserted in a printer which shall:

i. Simultaneously print an original, duplicate and triplicate Multi-Casino Payout while the computer stores, in machine-readable form, all information printed on the Multi-Casino Payout; and

ii. Discharge the original, duplicate and triplicate;

2. Stored data shall not be susceptible to change or removal by any personnel after preparation of a Multi-Casino Payout; and

3. The duplicate and triplicate Multi-Casino Payout shall be treated like a duplicate Payout under N.J.A.C. 19:45-1.40, except that:

i. The amount of the Multi-Casino Payout shall not be included in the daily calculation of the Slot Win Sheet but shall be reported as a periodic adjustment in a manner approved by the Commission; and

ii. At the end of each gaming day, at a minimum, the triplicate Multi-Casino Payout shall be forwarded by the accounting department to the slot system operator for comparison and agreement with the combined system readings and reports, and for calculation of tax deductions and cash reimbursements, if applicable.

(d) If a multi-casino slot machine system will not permit slot department personnel employed by the casino licensee where the jackpot is

won to determine from the slot machine or the progressive display the actual amount of the jackpot payout of cash or tokens won by the patron, the following additional requirements shall apply:

1. The slot cashier who is responsible for preparing the Multi-Casino Payout shall request the slot system operator to provide documentation of the actual amount of the jackpot payout of cash or tokens won by the patron;

2. The slot system operator shall provide, in a form and manner approved by the Commission, documentation of the actual amount of the jackpot payout to the slot cashier, who shall use the documentation in the preparation of the Multi-Casino Payout and attach the documentation to the original Multi-Casino Payout; and

3. The documentation required by (d)1 above shall include the winning jackpot amounts which should be displayed on the slot machine or the progressive meter on the floor of the casino.

19:45-[1.40B]1.40D (No change in text.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Notice of Administrative Corrections

Quarantines and Embargoes on Animals

Equine Infectious Anemia

Quarantining and Branding of Infected Equine Infectious Anemia Horses

Avian Influenza

Poultry Importation

N.J.A.C. 2:5-2.2 and 3.1

Take notice that the Office of Administrative Law has discovered errors in the text of N.J.A.C. 2:5-2.2(g) and 3.1(b). In N.J.A.C. 2:5-2.2(g), the words "by being" should appear between the words "identified" and "freeze" (see 5 N.J.R. 254(a) and 327(a), R.1973 d.233). The words "area of county" in N.J.A.C. 2:5-3.1(b) should be "area or county" (see R.1971 d.209). This notice of administrative corrections is published pursuant to N.J.A.C. 1:30-2.7.

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

2:5-2.2 Quarantining and branding of infected equine infectious anemia horses

(a)-(f) (No change.)

(g) As EIA is an infectious disease of equines for which there is no known cure, official positive animals shall be permanently identified by being freeze branded with an identification number on the left side of the neck in a humane manner by an authorized agent. The identification number shall be preceded by the coding number 22A.

(h) (No change.)

2:5-3.1 Poultry importation

(a) (No change.)

(b) No hatching eggs, chicks or poults shall be allowed into New Jersey from a designated area [of] or county with confirmed cases of Avian Influenza unless inspected by or under a prior permit of the Department of Agriculture.

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

BANKING

(b)

PINELANDS DEVELOPMENT CREDIT BANK

Procedural Rules

Sale, Transfer, Exchange, Conveyance or

Retirement of Pinelands Development Credits

Owned by the Board

Adopted Amendment: N.J.A.C. 3:42-2.2

Adopted New Rules: N.J.A.C. 3:42-7

Proposed: December 4, 1989 at 21 N.J.R. 3691(a).

Adopted: January 12, 1990 by the Pinelands Development Credit Bank Board, Mary Little Parell, Chairman.

Filed: January 16, 1990 as R.1990 d.119, without change.

Authority: N.J.S.A. 13:18A-30 et seq.

Effective Date: February 20, 1990.

Expiration Date: April 4, 1993.

Summary of Public Comments and Agency Responses:

In association with publication of the proposed amendment and rules in the December 4, 1989 edition of the New Jersey Register, the Bank held a public hearing on December 14, 1989 at Cranberry Hall, Medford,

New Jersey. Notice of the hearing was placed in four newspapers: "The Trenton Times", "The Newark Star Ledger", "The Burlington County Times" and the "Courier Post". In addition, notices were mailed to more than 50 persons or organizations interested in the sale or purchase of Pinelands Development Credits. Oral testimony was offered by three interested parties and written comments were submitted by three organizations, including one organization which also gave oral testimony. Transcripts of the hearing and written comments are on file in the office of the Commissioner of Banking, CN 040, Trenton, New Jersey 08625.

N.J.A.C. 3:42-7.1

COMMENT: Because of a concern that the Bank's sale could undermine the private market, one commenter recommended that the Board establish well defined criteria for determining when sufficient interest exists for the Pinelands Development Credit Bank to hold a sale (N.J.A.C. 3:42-7.1(b)1.).

RESPONSE: Although the Board agrees that due care must be exercised so that Pinelands Development Credit Bank sales do not undercut or impair private transactions, such an assessment does not lend itself to precise criteria.

The conditions (developers' interest, Pinelands Development Credit owners' interest, stage of private negotiations, asking and offering prices, etc.) are so varied and time dependent that the Board must be able to evaluate the situation on the basis of case-by-case circumstances. Nevertheless, the Board must conclude that "sufficient interest in the purchase of its Pinelands Development Credits" will exist only if potential Pinelands Development Credit buyers who have contacted the Bank do not have reasonable prospects of purchasing the Pinelands Development Credits on the private market, price, time and other factors considered.

This determination will be based on the Board's contact with both potential buyers and potential sellers and may involve informal surveys if necessary to more accurately gauge activity.

COMMENT: One commenter recommended that procedures be developed for evaluating whether the Bank's sale of Pinelands Development Credits may "substantially impair the private sale of Pinelands Development Credits" (N.J.A.C. 3:42-7.1(b)2). As was the case in the prior comment, concern was expressed that the Bank needs to make sure that its sales do not undermine the private market.

RESPONSE: This standard flows directly from the Pinelands Development Credit Bank Act (N.J.S.A. 13:18A-30 et seq.) and represents a cornerstone of the Bank's resale program.

Although "substantial impairment" is by its very nature inexact and does not lend itself to precise criteria, the Board must evaluate many of the same items here as it will in assessing interest in the purchase of Pinelands Development Credits.

In addition, the Board has the ability to establish terms of the sale which can mitigate possible impairment of the private market. For example, the number of Pinelands Development Credits made available for sale as well as the minimum acceptable bid will, if set carefully, limit or eliminate adverse impacts on private transactions.

COMMENT: One commenter expressed concern that open bidding may not stimulate competition based upon the experience of Burlington County's Pinelands Development Credit Exchange. It was also suggested that the basis for determining the method of sale be developed in advance.

RESPONSE: At this time the Board believes it is important for the rules not to foreclose the opportunity to sell credits at open bid auctions, even though closed bidding may appear to be the best method now. Open bidding may at some point prove to be more advantageous.

It is probable that early sales will be conducted by the closed bid method. Once the Bank gains experience, it will consider developing criteria governing the circumstances in which each of the bidding methods may be appropriate.

N.J.A.C. 3:42-7.3

COMMENT: Two commenters recommended that bidders be required to demonstrate when they submit their bids that the Pinelands Development Credits they hope to purchase from the Bank will be used (or redeemed). The commenters expressed concern that Pinelands Development Credits should not be sold to parties who are not ready to proceed with Pinelands Development Credit development projects or who have not demonstrated an ability to develop the proposed projects.

RESPONSE: N.J.A.C. 3:42-7.3(d) specifies that no bid may be conditioned upon a bidder obtaining financing or any development approval.

Eliminating this requirement or requiring that a bidder pre-qualify for sales would, in the Board's opinion, needlessly constrain competition and depress bid amounts or result in bid awards which could be negated at a later date. Moreover, some potential buyers might hesitate to plan Pinelands Development Credit projects until they are certain of Pinelands Development Credit availability; thus, a pre-qualification requirement might have the unintentional effect of discouraging Pinelands Development Credit use.

Finally, the Board notes that the issuance of a Pinelands Certificate of Filing, as one commenter suggested, is no guarantee that the project will proceed in a timely manner. The Pinelands Commission reports that Certificates of Filing have been issued for projects which, in some cases, are never proposed for municipal subdivision or site plan approval. Preliminary subdivision or site plan approval (a municipal approval issued for larger residential projects) is a better measure of a project's viability; however, many Pinelands Development Credit projects don't require preliminary approval. Such a pre-condition would not only discriminate against those projects which don't require preliminary approvals, but would also result in Pinelands Development Credits being purchased rather late in the permitting process, a prospect which might also discourage developers from using them.

COMMENT: One commenter suggested that the Board eliminate the \$2,500 minimum bid in favor of a panel of experts from the development community setting the minimum bid.

RESPONSE: Private and public transactions have occurred at \$2,500 or greater. Anything less would, in the Board's opinion, substantially impair private sales which the act prohibits.

N.J.A.C. 3:42-7.3(b) allows the Board to increase the minimum bid if it determines that a higher amount is necessary to avoid impairment of the private market.

The Executive Director possibly could consult with a panel of experts before recommending that the Board approve a higher minimum bid if it is felt that the sales information is not sufficient to readily determine if the lower amount will impair private sales.

N.J.A.C. 3:42-7.6

COMMENT: One commenter recommended that, if the total number of Pinelands Development Credits available is less than the sum represented in the highest bids, the bidders be offered the Pinelands Development Credits on a reduced, yet pro-rated basis.

RESPONSE: N.J.A.C. 7:34-7.6(d) specifies that no awards will be made if equal bids are made for more Pinelands Development Credits than are available for sale. In such a case, arrangements for a new sale (and bid) will be immediately made.

At this point, the Board believes that offering bidders less than the full number of Pinelands Development Credits they bid for is not advisable. Rather, arranging a new sale and bid gives those bidders an opportunity to re-examine their plans and submit new bids (at a higher price and/or for fewer Pinelands Development Credits) after fully considering their business situation.

The recommendation is not without merit, however, and the Board may reconsider this policy based on actual experience.

COMMENT: One commenter suggested that instead of tying all sales to the single highest bid, awards should be made on the basis of the descending order of bids. This would not penalize bidders because of one bidder who is in a position to offer a higher per unit bid because of peculiar or unusual circumstances.

RESPONSE: Awards in descending order might serve as an invitation for bidders to submit lower bids than they might otherwise. All bidders have a choice to accept or not accept the higher offer, negotiate privately or wait for another sale.

If the Board finds that this procedure stifles participation in the Pinelands Development Credit program due to a limited number of unusually high bids, the rules will be re-examined.

COMMENT: One commenter suggested that when Pinelands Development Credits remain after a closed bid award, the remaining credits be offered at public auction (open bidding) at the earliest possible date.

RESPONSE: This suggestion is possible but the Board needs to consider whether this would impair the private market. For example, Pinelands Development Credits remaining after a closed bid may indicate less interest in purchases at that time. Putting these credits out for public auction immediately thereafter may not be prudent.

N.J.A.C. 3:42-7.8

COMMENT: One commenter recommended that the number of Pinelands Development Credits which are eligible for deferred closing

dates be limited. The recommendation was based upon an expressed concern that Pinelands Development Credits might be unnecessarily tied up during these deferral periods.

RESPONSE: The required deposit and the payments for deferring closing dates are non-refundable if the bidders fail to purchase the Pinelands Development Credits. Moreover, the deferral payments are in addition to the Pinelands Development Credit purchase price. Neither of these factors tend to entice bidders from deferring closing dates without good reason. In fact, two commenters expressed a concern, which is addressed later, that these payments discourage deferrals.

The Board's policies are thus relatively neutral on this issue—that is, deferrals are permitted but at a price which is roughly equivalent to the cost of borrowing funds to complete the purchase immediately.

In addition, the Board will establish a maximum deferral period when it authorizes a sale.

In total, these policies are sufficient to fulfill the Board's legislative mandate to assure the marketability of Pinelands Development Credits.

COMMENT: One commenter suggested that deferral agreements should be permitted only when the successful bidder demonstrates that permits to develop the Pinelands Development Credit project are actively being sought.

RESPONSE: As stated in responses to earlier comments, the Board is of the opinion that pre-qualification is not advisable nor do the deferral policies entice this practice on a speculative basis.

However, the Board is prepared to institute additional safeguards if defaults prove to be the rule rather than the exception.

COMMENT: One commenter suggested that the Pinelands Commission should accept deferral agreements in lieu of ownership at the time of final approval.

RESPONSE: This requirement comes directly from the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5.47(c)), and is not within the Bank's purview.

COMMENT: Two commenters recommended that deferral payments should contribute to the purchase price of Pinelands Development Credits. This recommendation was based upon concerns that: developers will be unfairly penalized because of additional carrying costs; these additional costs will cause the purchase price of Pinelands Development Credits to be discounted; and the costs of housing will be increased. A third commenter agreed that bidders should bear the carrying costs when closing dates are deferred.

RESPONSE: The Board's policy is to stay neutral on the issue of deferrals. By establishing payments which do not offset the purchase price, all bidders (those who wish to close immediately and those who wish to close later) are treated the same.

A bidder who wishes to defer closing may choose to discount his bid price accordingly (and risk the possibility that he won't submit a high enough bid), close on the purchase immediately to avoid the carrying costs, seek to purchase Pinelands Development Credits privately and avoid the carrying costs, or wait for a more opportune time to purchase Pinelands Development Credits.

N.J.A.C. 3:42-7.11

COMMENT: One commenter questioned the basis upon which the Board proposes to consider transferring Pinelands Development Credits at no cost.

RESPONSE: The Pinelands Development Credit Bank Act (N.J.S.A. 13:18A-42(a)) provides that the Board may convey Pinelands Development Credits "without remuneration for use in projects that satisfy a compelling public purpose".

COMMENT: One commenter felt that the criteria governing no cost conveyances of Pinelands Development Credits are too vague and should be more clearly defined. Specifically, concern was expressed about N.J.A.C. 3:42-7.11(a)1 regarding compelling public purpose and 3:42-7.11(a)3 concerning the type of organizations which could qualify for no cost transfers.

RESPONSE: Although the Board feels that the criteria set forth in N.J.A.C. 3:42-7.11 are sufficiently descriptive, some elaboration is worthwhile.

A compelling public purpose is a public health, safety, or welfare function which, because of unusual or unique circumstances, is particularly urgent. Examples could range from the development of affordable housing to the construction of a hospital. In both cases, Pinelands Development Credits might be needed for the projects; however, paragraph (a)2 requires that the Board find that such a project can not proceed unless Pinelands Development Credits are conveyed at no cost.

Paragraph (a)3 further specifies that the benefit be for the public good and not for private gain, and that a governmental agency or incorporated, not for profit organization be the recipient. Incorporated, not for profit organizations are readily identifiable and may include any number of organizations with differing objectives (for example, conservation, housing, health care, etc.).

Viewed in their entirety, the five criteria contained in N.J.A.C. 3:42-7.11(a) are very limiting. Consequently, the Board envisions that very few applications will be submitted and found to meet all of the required tests.

COMMENT: One commenter asked whether a no cost conveyance may be construed as a creation of a money interest by government for selected private transactions.

RESPONSE: It is not proper for an administrative agency to question the legality of its enabling legislation, as implied by this comment. The Bank does, however, construe its legislative authority to make no cost conveyances to be limited to situations that serve or support clear public purposes and not for the purpose of private profit.

Full text of the adoption follows:

3:42-2.2 Definitions

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

...
 "Prime interest rate" means the base rate on corporate loans at large United States money center commercial banks. This rate is published in the Wall Street Journal under money rates.
 ...

SUBCHAPTER 7. SALE, TRANSFER, EXCHANGE, CONVEYANCE OR RETIREMENT OF PINELANDS DEVELOPMENT CREDITS OWNED BY THE BOARD

PART 1—SALES OF PINELANDS DEVELOPMENT CREDITS

3:42-7.1 Board decision to hold sale

(a) The Board may from time to time authorize the Executive Director to sell all or a portion of those Pinelands Development Credits owned by the Bank.

(b) The Board shall authorize such a sale and determine how many Pinelands Development Credits will be made available for sale only upon a finding that:

1. There is sufficient interest in the purchase of its Pinelands Development Credits to warrant a sale; and
2. The timing of the sale and the number of Pinelands Development Credits to be sold will not substantially impair the private sale of Pinelands Development Credits.

(c) All sales authorized by the Board will be conducted by open bidding through a public auction or by closed bidding through the receipt of sealed, written bids.

(d) When authorizing these sales, the Board shall determine a minimum acceptable bid pursuant to N.J.A.C. 3:42-7.3(b) and shall also determine which method of sale is most advantageous for the purpose of stimulating competitive bidding.

(e) The Board may establish such conditions for the bidding and sale as are necessary and desirable to advance the Pinelands Development Credit program, provided that any such conditions do not otherwise conflict with the minimum requirements set forth in this subchapter.

3:42-7.2 Notifications of upcoming sales

(a) All sales of Bank-owned Pinelands Development Credits shall be held only after due notice has been given by the Executive Director at least 10 business days prior to the date of the sale.

(b) At a minimum, the Executive Director shall:

1. Have notices of the sale published in at least four newspapers; and
2. Transmit notices to every person who has submitted to the Bank a written request to be informed of upcoming sales.

(c) The notice shall contain, but not necessarily be limited to, the following information:

1. The method by which the sales shall be conducted;

2. The date, time and location for the auction or bid opening;
3. The number of Pinelands Development Credits available for sale;
4. The minimum acceptable bid and deposit;
5. The date, time and location when the sales must be completed;
6. A summary of the rules governing the sale and the terms and conditions of the sale; and
7. How an interested person can obtain a complete set of instructions for, and the terms and conditions of, the sale.

3:42-7.3 Requirements governing all bidding

(a) Bidders who are acting on behalf of another person shall supply to the Executive Director with their sealed written bid or prior to the commencement of an auction the following:

1. If the bidder is representing an individual, a notarized statement from the individual duly authorizing the bidder to act on his behalf; or
2. If the bidder is representing a corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity, a duly adopted resolution or other legal instrument authorizing the bidder to act on the entity's behalf.

(b) The minimum acceptable bid shall be \$2,500 for each one-quarter of one Pinelands Development Credit to be sold, provided, however, that the Board may establish a higher minimum acceptable bid if it determines that, based upon recent Pinelands Development Credit sales prices, a higher amount is necessary to avoid a substantial impairment of the private sale of Pinelands Development Credits.

(c) Pinelands Development Credits will be sold in one-quarter increments to the highest bidder or bidders, unless the Board expressly authorizes sales in larger increments.

(d) No bid or sale shall be conditioned upon a bidder obtaining financing or any municipal, county, State or Federal permit or development approval.

(e) All bids, whether they be submitted verbally or in writing, shall be deemed to be an acceptance of all terms and conditions of the sale as specified in the written instructions.

(f) Except as provided in N.J.A.C. 3:42-7.8, successful bidders shall be required to complete the purchase within 30 days of the date of award.

3:42-7.4 Additional requirements governing open bidding

(a) All bidders shall sign a register before the auction begins. After signing the register, no bidder shall be permitted to leave and re-enter the room except at intervals pre-determined by the Executive Director.

(b) Each time a bid is made, the bidder shall state his or her name and the amount of the bid clearly.

(c) All bids during the auction shall be in increments of \$100.00.

(d) A deposit equal to 10 percent of the highest bid shall be required at the completion of the auction.

1. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.

2. If the highest bidder does not have the required deposit, the Executive Director may cancel all bids for that Pinelands Development Credit or fraction thereof, or may award the bid to the second highest bidder.

(e) Successful bidders will be required to sign an agreement of sale following the auction, which specifies the conditions and terms of the sale.

3:42-7.5 Additional requirements governing sealed bids

(a) All sealed bids shall be submitted to the Executive Director in such form as he or she shall from time to time specify.

(b) Sealed bids shall specify the maximum number of Pinelands Development Credits the bidder wishes to purchase; however, awards will be made to the highest bidder for each one-quarter of a Pinelands Development Credit, or other increment if established by the Board pursuant to N.J.A.C. 3:42-7.3(c). Submission of a sealed bid shall be deemed to be a bid for each one-quarter of a Pinelands Development Credit or other increment and the Board reserves the right to

award a bid for less than the maximum number of Pinelands Development Credits specified by the bidder.

(c) Sealed bids will be publicly opened, read and tabulated on the date, time and the location specified in the notice of sale.

(d) Within five business days of the bid opening, the Executive Director will notify all successful and unsuccessful bidders.

(e) A deposit equal to 10 percent of the bid shall accompany all sealed bids.

1. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.

2. If a bid is received without the required deposit, the bid shall be deemed to be invalid and will not receive any further consideration.

3. The Executive Director shall return all deposits to all unsuccessful bidders within five business days of the bid opening date.

4. In cases where a bidder is awarded a portion of the Pinelands Development Credits it bid on, the Executive Director shall provide the bidder an opportunity to submit, in lieu of the original deposit, a deposit equal to 10 percent of the award within five business days of the bid opening date. If no such deposit is received, the Executive Director shall accept the original deposit and apply any excess amount toward the payment due at the time of closing.

3:42-7.6 Bid awards

(a) Awards shall be made for each one-quarter of a Pinelands Development Credit, or other increment established by the Board pursuant to N.J.A.C. 3:42-7.3(c), offered for sale.

(b) The total number of Pinelands Development Credits awarded for valid bids shall equal the total number of Pinelands Development Credits offered for sale, except as provided in (e)3 below.

(c) In the case of sealed bids, successful bidders shall be determined by tabulating the bids on the basis of the highest per unit bid.

(d) Once the highest per unit bid is established, the highest bidder will be awarded the total number of Pinelands Development Credits specified in his or her bid. If there is more than one highest bidder and the total number of Pinelands Development Credits specified in those bids exceed the number available, no award shall be made and the Executive Director shall immediately arrange for another open or closed bid.

(e) In the event any Pinelands Development Credits remain, the Executive Director will offer them to the other bidders at a per unit price equal to that of the highest bid.

1. The Executive Director will tender this offer in writing to each bidder within five days of the bid opening.

2. Each bidder may supplement his or her bid in writing and enclose a certified check, cashier check, money order, or a travelers check for the balance of the deposit no later than 10 days of the bid opening.

3. In the event that the maximum number of Pinelands Development Credits specified in those bids exceed that available for sale, the Executive Director shall award the available Pinelands Development Credits to the bidders in descending order of their original bid. If the original bids are equivalent and the number of Pinelands Development Credits specified in those bids exceed the number available, no award shall be made.

3:42-7.7 Completion of sales

(a) Except as otherwise provided in N.J.A.C. 3:42-7.8, all sales shall be completed no earlier than 21 days and no later than 30 days following the award.

(b) Failure of the bidder to pay the balance of the purchase price as scheduled shall be considered to be a breach of contract and the deposit shall be retained by the State as liquidated damages.

(c) Payment of the balance shall be in the form of a certified or cashier check only, made payable to the State of New Jersey.

(d) Upon receipt of payment, the Executive Director shall issue a duly executed Pinelands Development Credit Certificate to the purchaser.

3:42-7.8 Deferring the date for completion of sales

(a) When authorizing a sale, the Board may also authorize the Executive Director to defer the date on which sales to the highest bidder(s) are to be completed. Such authorization shall specify the maximum period of time for such a deferral and all notices of the sale shall include such a notation.

(b) If the Board authorizes deferrals, any successful bidder may, at his or her option, enter into an agreement with the Executive Director which extends the date for completing the sale.

(c) All such agreements shall require that a payment be made for each year, or portion thereof, that the sale completion date is deferred.

1. The thirty-first day following bid award shall be considered the first day when calculating deferral periods.

2. The payment shall be equal to the sum of the prime interest rate in effect on the date of the bid award plus two percentage points times the remaining balance of the purchase price of the Pinelands Development Credits for each year that the completion date is deferred. The payment shall be pro-rated for portions of a year.

3. Payment for the first year, or portion thereof as specified in the agreement, shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. This first payment shall be due no later than 30 days following the award.

4. Payments for each succeeding year, or portion thereof as specified in the agreement, shall be due no later than the anniversary date of the first payment.

(d) These payments shall be in addition to the purchase price for the Pinelands Development Credits and shall be non-refundable except as provided in (e) below.

(e) The successful bidder may at his or her option choose to complete the sale prior to the date specified in the agreement.

1. The bidder shall notify the Executive Director in writing of his or her intent to complete the sale and the sale shall be completed within 10 business days of the Executive Director's receipt of the notification.

2. The bidder shall be entitled to receive a pro-rated refund of any payment for that portion of the deferral period which he did not utilize.

3:42-7.9 and 3:42-7.10 (Reserved)

PART 2—CONVEYANCE OF BOARD OWNED PINELANDS DEVELOPMENT CREDITS AT NO COST

3:42-7.11 Board authorization to convey Pinelands Development Credits at no cost

(a) The Board may authorize the Executive Director to convey at no cost Pinelands Development Credits when it determines that:

1. The proposed development will serve a compelling public purpose;

2. The proposed development could not proceed without the conveyance of Pinelands Development Credits at no cost;

3. The benefit of the conveyance of Pinelands Development Credits at no cost will inure to the public and will be made to a governmental agency or incorporated, not for profit organization;

4. The conveyances of Pinelands Development Credits at no cost will not substantially impair the sale of Pinelands Development Credits in the private market; and

5. The Pinelands Development Credit being conveyed will be redeemed within one year of the Board's authorization.

(b) Such authorizations shall be made only upon an affirmative vote of two thirds of the Board's members.

3:42-7.12 Application for conveyance of Board-owned Pinelands Development Credits at no cost

(a) Application for conveyance of Board-owned Pinelands Development Credits at no cost shall be made to the Executive Director in such form and number as he or she shall from time to time specify.

(b) The Executive Director may waive or modify any of the application requirements set forth in (c) below if he or she determines that any required information is not relevant or necessary for the purposes of conveying Pinelands Development Credits at no cost.

(c) The following information shall be included in applications for conveyance of Board-owned Pinelands Development Credits at no cost:

1. The applicant's name and mailing address;
2. The municipality in which the Pinelands Development Credits are to be redeemed;
3. The number of Pinelands Development Credits needed;
4. A duly adopted resolution granting preliminary subdivision or site plan approval pursuant to the Municipal Land Use Law (N.J.S.A. 40:55-1 et seq.);
5. Written affirmation of the subdivision or site plan approval from the Pinelands Commission;
6. The municipal tax block and lot number for which the Pinelands Development Credits will be redeemed;
7. A written description of the property along with any relevant plans; and
8. A written statement addressing the project's consistency with the standards set forth in N.J.A.C. 3:42-7.11.

3:42-7.13 Notification to applicant

Upon the Board's decision on an application for conveyance of Board-owned Pinelands Development Credits, the Executive Director shall notify the applicant, in writing, setting forth the basis for the Board's decision.

3:42-7.14 Completion of Board-authorized conveyances

The Executive Director is authorized to complete any and all administrative procedures to consummate the conveyance after approval by the Board provided that no conveyance shall be made until such time as the applicant is required to redeem the Pinelands Development Credits.

3:42-7.15 Voiding conveyances

(a) No Pinelands Development Credits conveyed pursuant to this part shall be:

1. Conveyed, sold or transferred to a person other than that who received the Board's approval;
2. Redeemed for use in a project other than that which received the Board's approval; and/or
3. Redeemed after one year following the Board's authorization.

(b) The Executive Director shall void any such conveyance of Pinelands Development Credits which is in violation of (a) above.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction

Exemptions from Taxation

Multiple Dwellings

Relocation Assistance

N.J.A.C. 5:22-2.5

Take notice that an error has been discovered in the text of N.J.A.C. 5:22-2.5. The statutory citation in that rule, as a source for the text quoted therein, is in error. Instead of "N.J.S.A. 20:4.1," the citation should be "N.J.S.A. 20:4-2." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]).

5:22-2.5 Relocation assistance

The rehabilitation of any building pursuant to the Act shall be deemed to be part of a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" within the meaning of N.J.S.A. [20:4.1] **20:4-2.**

EDUCATION

(b)

STATE BOARD OF EDUCATION

Certification of Nursery Teachers

Adopted Amendments: N.J.A.C. 6:11-6.1 and 6.2

Proposed: October 16, 1989 at 21 N.J.R. 3209(a).

Adopted: January 3, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: January 26, 1990 as R.1990 d.134, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38, and 18A:26-10.

Effective Date: February 20, 1990.

Expiration Date: December 12, 1990.

Summary of Public Comments and Agency Responses:

Fifty-six individuals spoke at the October 25 and December 20, 1989 public testimony sessions and four commented by letter.

COMMENT: Twenty-six persons expressed support for the proposal and the remaining 34 all advocated the establishment of two separate specialized certificates covering the upper and lower grades respectively. Persons advocating this separation all cited the need for teachers in the lower grades to have a special understanding of the developmental processes of young children and special training in how to teach.

RESPONSE: The Department decided to adhere to its proposal for a generic (N-8) elementary certificate for the following reasons:

1. Children's grade levels do not equate with their developmental levels, and there is considerable variation in any single class. Given that variation, the Department seeks to provide all elementary teachers with a basic understanding of child development and teaching approaches at all levels.

2. There is much that can be learned about teaching at any level, and teachers must continue their education throughout their careers. However, the focus of State licensing is only on the essential knowledge that beginning teachers need to be permitted legally to apply for jobs. In addition, the quality of new teachers is affected by many factors, not just legally required training courses. A generic (N-8) license will provide elementary teachers with the basic training they need while also allowing districts to select those who are personally best suited for different grade levels. A fragmented approach to certifying elementary teachers would underprepare them to deal with the variation that exists and it would also create an artificial dichotomy that would inhibit local selection and appointment of teachers.

Full text of the adoption follows.

6:11-6.1 Authorizations—General

(a) Each teaching endorsement is required for the corresponding teaching assignment. Each endorsement is valid for all levels, except that the elementary endorsement is valid for grades nursery through eight.

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

6:11-6.2 Endorsements and authorizations

(a) Teaching endorsements and authorizations are listed below:
1.-5. (No change.)

6. Elementary education: This endorsement authorizes the holders to serve as elementary school teacher in grades nursery through eight in all public schools. Teachers with elementary endorsements are not permitted to devote more than one half time to teaching art, music, health, home economics, industrial arts, or physical education in the elementary grades. Teachers with elementary endorsements are authorized to teach the common branch subjects such as reading, writing, arithmetic, and spelling in the secondary school;

7.-16. (No change.)

18.-30. Recodified to 17.-29. (No change in text.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Administrative Correction

Surf Clams

Prohibited Fishing Areas

N.J.A.C. 7:25-12.9

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:25-12.9(a)2iii. As proposed and adopted (see 21 N.J.R. 3214(a) and 22 N.J.R. 183(a)), this subparagraph provides a direction of "[t]hence to the shore 090 degrees T to the abandoned lighthouse" as part of the boundary description for an area from which surf clams may not be taken. In actuality, that degree number directs the boundary away from, rather than towards, the shore. In keeping with the rest of the direction description ("to the shore . . . to the abandoned lighthouse"), this degree number should be 270. The Department has requested, and the Office of Administrative Law has agreed, that this correction be made by a notice of administrative correction, in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]).

7:25-12.9 Prohibited fishing areas

- (a) The areas in which surf clams may not be taken are as follows:
1. (No change.)
 2. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12323 (19th Ed., November 15/80), available for inspection at the Nacote Creek Shellfish Office:
 - i.-ii. (No change.)
 - iii. Thence to the shore [090] **270** degrees T to the abandoned lighthouse with a latitude 39 degrees 45.8 minutes N, longitude 74 degrees 6.4 minutes W; and
 3. (No change.)

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need

Megavoltage Radiation Oncology Services

Adopted Amendments: N.J.A.C. 8:33I-1.2 and 1.5

Adopted Repeal and New Rule: N.J.A.C. 8:33I-1.3

Proposed: November 20, 1989 at 21 N.J.R. 3640(a).

Adopted: January 25, 1990 by Leah Z. Ziskin, M.D., M.S.,

Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 26, 1990 as R.1990 d.132, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: February 20, 1990.

Expiration Date: September 15, 1991.

Summary of Public Comments and Agency Responses:

A total of two comment letters were received during the 30-day public comment period for this proposed adoption of amendments to the existing megavoltage rules. The comment letters were received from Bayonne Hospital and Pascack Valley Hospital and are summarized below together with the responses from the Department of Health:

COMMENT: Pascack Valley Hospital (PVH) commented that the waiver provision language that is being proposed is ill-defined and that a working definition of "access problems" should be considered. Some

reasonable guidance should be included in the rule to prevent "arbitrary" decisions in the future. PVH also expressed concern that underutilized facilities, particularly in their region of the State, have prevented new megavoltage programs in the past which has stymied development of quality services for cancer patients that would not necessarily jeopardize existing programs.

RESPONSE: The Department recognizes the fact that the proposed waiver provision does not specify the parameters of possible access problems. The particular circumstances regarding access to megavoltage services can be expected to vary throughout the State, depending on such factors as population density, distance to existing services, the availability of public transportation and the quality of the road network in the region. For this very reason, the Department has sought to provide as much flexibility as possible for local planning agencies and potential applicants in addressing the oncology service needs in their respective areas.

The fact that underutilized facilities have stymied the development of megavoltage resources, based on a previous policy that did not include provision for a waiver is precisely the reason for the inclusion of the waiver provision that has been proposed.

COMMENT: Bayonne Hospital (BH) is concerned that the waiver provision is limited to a single application within a given local planning region. BH cites new concepts in the delivery of radiation therapy that permit community-based follow-up therapy rather than total reliance on regional provision of these services. BH proposes the elimination of the "one additional provider" provision in the proposed waiver language at N.J.A.C. 8:33I-1.3(b).

RESPONSE: The Department has proposed the amendment to allow for a waiver provision in order to address the possibility that its existing policies regarding the distribution of megavoltage services have inadvertently resulted in the inability of a potential new megavoltage provider to meet an unmet need in a given area. The Department's existing policy of encouraging the development of multiple unit megavoltage programs that can offer a full range of energy levels, both photon and electron, rather than permitting a proliferation of new programs remains unchanged. The State has witnessed a considerable growth in multiple unit megavoltage programs in recent years that is sufficient (in terms of patient capacity), based on New Jersey specific cancer incidence rates, to meet the statewide need for megavoltage services. Furthermore, the proposed megavoltage rule does permit the addition of new programs in any area of the State where existing providers meet minimum utilization requirements. It has only waived new programs that are restricted by these amendments. In short, in areas where there is a need greater than one new megavoltage provider, there should be a growth in existing provider utilization that would permit the addition of programs without the need for such a waiver.

Full text of the adoption follows.

8:33I-1.2 Utilization of megavoltage units and programs

(a) Single unit megavoltage programs shall be subject to the following:

1. (No change.)
2. Failure to achieve an average minimum utilization as defined at (a)1 above, during any 36 consecutive months following November 5, 1984 may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or loss of licensure for the service.

i. (No change.)

ii. Megavoltage units with medium/high energy capability must have on-site simulation.

(b) (No change.)

8:33I-1.3 New megavoltage programs

(a) The Department of Health shall process certificate of need applications for new radiation oncology programs only from health service areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing Radiation Oncology Programs meet minimum levels of utilization as specified at N.J.A.C. 8:33I-1.2.

(b) No more than one new radiation oncology program may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing radiation oncology programs are operating at minimum levels of utilization as specified by N.J.A.C. 8:33I-1.2. Additional new facilities, beyond those approved prior to the effective date of this rule, will be considered only when both existing and approved facilities in a given

health service area are operating at minimum levels of utilization as specified at N.J.A.C. 8:33I-1.2.

(c) Competing applications for new radiation oncology programs in a health service area shall be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, the following factors shall also be considered in the review process:

1. Demonstration of institutional and provider competence in delivering the proposed service;

2. Capacity to perform the proposed service at the recommended minimum level within the stated period of time;

3. Commitment from the hospital's board to establish the proposed service program;

4. Examination of the capacity of existing facilities in the referral area;

5. Evidence that essential support services in the hospital (for example, radiology, counseling services) are capable of coping with an increase in medical oncology caseload;

6. Evidence that the project would be financially feasible;

7. Evidence that demographic statistics support service growth;

8. Evidence that the proposed service is compatible with overall health planning goals for the State and for the service area; and

9. Evidence that barriers to access to care do not exist, including access to primary care services, and that if no barriers exist, that access to care will remain constant or improve for individuals in the service area.

(d) Waivers from (a) and (b) above may be considered where an applicant and the local health planning agency have been able to document specific and quantifiable evidence that, in the absence of a waiver, serious problems of access to a needed service would result. Documentation should also be provided that indicates that existing area providers of this service will not be jeopardized (for example, experience a significant decline in volume) by the proposed new service and the proposed new provider will meet all requirements contained in this subchapter.

(e) All certificate of need applications for new radiation oncology programs shall document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to rescind Certificate of Need approval and move for licensing sanctions. The inability to achieve minimum utilization levels during the third year of operations or thereafter will result in the loss of the license for the service and/or reimbursement sanctions as specified at N.J.A.C. 8:33I-1.2(a)2 and 1.2(b)6.

8:33I-1.5 General criteria

(a) As part of the application for a megavoltage radiation therapy unit, each application shall meet the following minimum general criteria:

Recodify existing 2.-8. as 1.-7. (No change in text.)

8. Each applicant shall maintain and provide basic statistical data on the operation of the unit and report data to the New Jersey State Department of Health on a semi-annual basis and on a standardized form prepared by the Department. Copies of the full text of the required reporting forms may be obtained upon written request from the New Jersey State Department of Health, Center for Health Statistics, Room 404, CN 360, Trenton, New Jersey 08625.

9. (No change in text.)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION Long Term Care Licensing Standards Pharmacy Control Standards

Adopted Amendment: N.J.A.C. 8:39-29.4

Proposed: June 19, 1989 at 21 N.J.R. 1607(a).

Adopted: January 25, 1990 by Leah Z. Ziskin, M.D., M.S.,
Acting Commissioner, Department of Health (with approval
of the Health Care Administration Board).

Filed: January 26, 1990 as R.1990 d.131, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: February 20, 1990.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

8:39-29.4 Mandatory pharmacy control policies and procedures

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

(j) The facility shall implement written methods and procedures for obtaining prescribed prescription medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy. The telephone number of the pharmacy and procedures for obtaining drugs shall be posted at each nursing unit.

(b)

DIVISION OF HEALTH FACILITIES EVALUATION Long Term Care Licensing Standards Respite Care Standards

Adopted New Rules: N.J.A.C. 8:39-44

Proposed: September 18, 1989 at 21 N.J.R. 2924(a).

Adopted: January 25, 1990 by Leah Z. Ziskin, M.D., M.S.,
Acting Commissioner, Department of Health (with approval
of the Health Care Administration Board).

Filed: January 26, 1990 as R.1990 d.133, **without change**.

Effective Date: February 20, 1990.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

The Department received one letter in response to the proposed respite care standards, from the director of the Division of Medical Assistance and Health Services, Department of Human Services.

COMMENT: The letter of comment from the Division of Medical Assistance and Health Services expressed support, in general, for the proposed new rules, and stated that "In view of the utilization of nursing home respite care in recent years, the proposed rules address the need to assure patient safety and quality of care for these patients."

RESPONSE: The Department appreciates this comment.

COMMENT: The letter from the Division of Medical Assistance and Health Services also stated that staff of the Division feels that the rules should define what is meant by "short term patients." According to the commenter, this definition is important in view of State and Federal laws requiring preadmission screening. The comment included a recommendation to include a phrase such as "short term stay is a stay not to exceed seven days" into the rules. With this addition to the rules, Medicaid could take appropriate action against a facility if they found patients in the facility who had not been prescreened, although the patients had been in the facility for longer than seven days. Inclusion of the definition of a "short term patient" would assist the Division to "accurately carry out the preadmission screening mandates."

RESPONSE: The Department has considered this issue and has received recommendations from the Nursing Home Advisory Group on the need for a definition of length of stay for respite care. It was the consensus of this group, comprised of industry, Department, and professional group representatives, that a limitation on length of stay within the licensing rules is not necessary. "Short term stay" is intended to mean a stay of

approximately 14 days or less, with no individual remaining in respite care for more than 30 days at one time or during a calendar year. This definition is consistent with that utilized by the Department of Human Services' own Statewide Respite Care Program, established under P.L. 1987, c.119 and administered by the Health and Long Term Care Unit of the Department of Human Services.

Should Medicaid or any other payor choose to define respite care in this manner, it would be consistent with the Department's intent. If it appears that respite care services are not being utilized in a manner consistent with this definition, the Department may determine it necessary to promulgate a regulatory definition.

Full text of the adoption follows.

SUBCHAPTER 44. RESPITE CARE SERVICES

8:39-44.1 Scope and purpose

(a) Long-term care facilities are authorized by law to accept short-term patients whose regular caregivers are participating in a respite care program. A caregiver is defined as any individual, paid or unpaid, who provides regular in-home care for an elderly, disabled, or cognitively impaired person.

(b) When a caregiver desires respite from this responsibility, continuity of care for the elderly, disabled, or cognitively impaired person is available through temporary placement in a long-term care facility for a period of time specified in advance.

(c) The standards in this subchapter apply only to those long-term care facilities that operate a respite care program.

8:39-44.2 Mandatory policies and procedures

(a) The long-term care facility shall have written respite care policies and procedures that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility shall obtain the following information from the patient's attending physician prior to admission:

1. A summary of the patient's medical history and most recent physical examination;

2. Signed and dated medication and treatment orders for the patient's stay in the facility; and

3. Phone numbers of the attending physician and an alternate physician for consultation or emergency services.

(c) The facility shall choose whether to follow the patient care plan provided by the attending physician or to establish a plan in accordance with N.J.A.C. 8:39-11. The facility is exempt from compliance with N.J.A.C. 8:39-11, if it chooses to follow the care plan provided by the patient's attending physician.

(d) The facility shall obtain the following information from the patient's regular caregiver(s):

1. Nursing care needs, including personal hygiene and restorative and maintenance care;

2. Dietary routine and preferences; and

3. Social and activity routine and preferences.

(e) The facility shall choose whether to follow the dietary, social, and patient activity plan provided by the caregiver(s) or to establish a plan in accordance with N.J.A.C. 8:39-7, 17, and 39. The facility is exempt from compliance with N.J.A.C. 8:39-7, 17 and 39, if it chooses to follow the plan provided by the caregiver(s).

(f) The pharmacy and therapeutics committee shall establish policies and procedures for providing pharmacy services for the respite care program according to State of New Jersey, Board of Pharmacy, and other applicable rules and regulations. These policies and procedures shall include the following:

1. Options, if any, for provision of patient medications by sources other than the facility's usual provider(s);

2. Labeling and packaging of medications;

3. Self-administration of medications, if applicable; and

4. Control measures.

(g) The facility shall apply to respite care patients all the standards contained in N.J.A.C. 8:39 except those exemptions cited preceding and the following rules: N.J.A.C. 8:39-4.1(a)31, 4.1(b), 5.1(a)-(e), 11.3(a), 15.1(a), subchapter 29, 35.2(d)3 to 15, and 37.3.

8:39-44.3 Advisory staffing

A long-term care facility should assign specific staff members to an individual respite care patient to provide continuity of care during the patient's stay in the facility.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Adult Day Health Care Facilities

Standards for Licensure

Adopted Repeal and New Rules: N.J.A.C. 8:43F

Proposed: November 6, 1989, at 21 N.J.R. 3385(a).

Adopted: January 25, 1990, by Leah Z. Ziskin, M.D., M.S.,

Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 26, 1990, as R.1990 d.136, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: February 20, 1990.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

Eight letters of comment were received in response to the proposed standards for licensure of adult day health care facilities. Letters were received from the Environmental Health Service, Division of Occupational and Environmental Health, Department of Health; the Division of Consumer Affairs, Audiology and Speech-Language Pathology Advisory Committee, Department of Law and Public Safety; the Division of Medical Assistance and Health Services, Department of Human Services; St. Joseph's Hospital and Medical Center; Senior Care Centers of America, Inc.; St. Francis LifeCare, AM/PM Adult Medical Day Care; the Cumberland County Adult Medical Day Care Center; and New Jersey Adult Day Care Association. A summary of comments and responses follows:

N.J.A.C. 8:43F, generally

COMMENT: Saul M. Kilstein, Director of the Division of Medical Assistance and Health Services, Department of Human Services, was supportive of the proposed standards, indicating that "overall they appear clear and focus toward an enhanced delivery of this service area . . . the Division supports the revisions presented." Mr. Kilstein also stated that the proposed standards "do not appear to have a fiscal impact upon Medicaid," and that the Division recommends "that the Department of Health move forward with their adoption."

The comment letter from Senior Care Centers of America, Inc. also included remarks which were supportive of the standards in general. The commenter indicated that "it is satisfying to know that these adult health care facility standards for licensure are among the most rigorous in the nation." The commenter also stated that "these standards will insure the State of New Jersey's continued leadership role in the development of this important modality."

RESPONSE: The Department appreciates these comments.

N.J.A.C. 8:43F-1.19 Qualifications of speech-language pathologists

COMMENT: Richard Weisman, Executive Director of the Audiology and Speech-Language Pathology Advisory Committee, Division of Consumer Affairs, Department of Law and Public Safety, wrote to request that the rule be corrected to read as follows: "Each speech-language pathologist shall hold a current New Jersey license issued by the Audiology and Speech-Language Pathology Advisory Committee, Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety."

RESPONSE: The rule has been changed, as requested.

N.J.A.C. 8:43F-3.1 Services provided

N.J.A.C. 8:43F-3.1(b)

COMMENT: Senior Care Centers of America, Inc. suggested that pharmaceutical services should be grouped with the other ancillary services cited in subsection (c), since "the administration of medications is a function of the nursing component which is already appropriately included in this paragraph."

RESPONSE: The administration of medications is not necessarily a function of nursing services; patients may self-medicate. The standard requires that pharmaceutical services be provided directly in the facility, in accordance with N.J.A.C. 8:43F-10, Pharmaceutical Services. The responsibilities of nursing personnel related to pharmaceutical services are delineated in N.J.A.C. 8:43F-9.5(a). No change is made in the rule, as the intent is to assure that pharmaceutical services are provided directly in the facility to patients who require these services.

N.J.A.C. 8:43F-3.1(c)

COMMENT: The letter from Senior Care Centers of America, Inc. expressed concern with the word "provide" in these rules, and indicated that the services could be "arranged for," and not necessarily provided directly by the facility.

RESPONSE: The rules do not specify where these services are to be provided, nor whether they are to be provided directly by the facility or through contractual arrangements. The intent of the rules is to ensure that the facility provides these services to patients who need them. The facility has the flexibility to arrange for the provision of services in accordance with individual facility resources. Therefore, no change is made in the rules.

N.J.A.C. 8:43F-3.1(d)

COMMENT: Senior Care Centers of America, Inc. requested that the word "provide" be changed to "arranged for." The AM/PM Adult Medical Day Care Program wrote that "the increased cost of insurance, driver and vehicle has the potential of pricing day care out of the reach of the range intended for the service to reach."

RESPONSE: The wording of the rule has not been changed. The facility may provide transportation services directly or through contractual arrangements. The Department believes that the proposed rule will relieve the facilities of the financial burdens of providing transportation to and from services which are provided outside the facility, as is required by the current rules. The proposed rules, unlike the previous rules, require transportation services between the facility and the patient's home only. No additional costs should result from their adoption.

N.J.A.C. 8:43F-3.1(e)

COMMENT: The commenters from Senior Care Centers of America, Inc. and from AM/PM Adult Medical Day Care Program believe that the rule should read "services shall be provided at least five consecutive hours daily, plus transportation time, a minimum of five days per week." The New Jersey Adult Day Association commenter suggested that the rule be changed as follows: "Adult day health care services shall be provided at least five (5) hours daily, excluding transportation time, not to exceed two (2) hours. Services are to be provided a minimum of five (5) days per week excluding holidays." According to the commenter, this revision "clarifies minimum time in center, minimum days per week and maximum time for transportation."

RESPONSE: The rule is intended to allow for the provision of transportation services and for at least five consecutive hours of other services daily. To clarify this intent, the rule has been changed as follows: "Adult day health care services shall be provided for at least five consecutive hours daily, exclusive of transportation, a minimum of five days a week."

N.J.A.C. 8:43F-3.4 Personnel

N.J.A.C. 8:43F-3.4(c)

COMMENT: The commenters from Senior Care Centers of America, Inc. and from the New Jersey Adult Day Care Association wrote that, except for the registered nurse, it is impossible to obtain "temporary" professional staff. Senior Care recommended that the replacement of absent staff with staff having equivalent qualifications be required only in those instances where staff absences exceed one month. Otherwise, the staff/patient ratio could be maintained by "cross-training" of other staff to assume the functions of the absent professional staff person.

RESPONSE: The Department is concerned for patient outcome and continuity of care, and needs to ensure that patients receive the services which they require from staff who are qualified in accordance with these rules. However, since these concerns are addressed elsewhere, for example, in the requirements for staff qualifications and for staff/patient ratios, the sentence concerning substitute staff has been deleted from this rule.

SUBCHAPTER 5. ADMINISTRATION

N.J.A.C. 8:43F-5.1 Appointment of administrator

COMMENT: The commenter from Senior Care Centers of America, Inc. "strongly urge(d)" that "the administrator be allowed to hold a dual position." According to the letter, "many centers now combine social worker positions, and this should be allowed to continue. While someone needs to be in charge at all times, this person can be doing other duties. Small centers, especially, will have difficulty financially if a dual role is not allowed." AM/PM Adult Medical Day Care Program forwarded a comment which stated that "the responsibilities of an administrator . . . can be executed without being on the premises of a facility on a full-time basis; the management of the daily operations is the responsibility of the program manager; the appointment of a full-time administrator would also impact the operational cost of a medical day care program."

RESPONSE: The administrator is not prohibited from assuming other duties, if qualified in accordance with these rules, so long as the administrator is available on the premises of the facility during the hours when patient care services are being provided. Therefore, in order to clarify this intent, the rule has been rewritten as follows: "The governing authority shall appoint an administrator who is a full-time employee of the facility." The proposed rules do not require the appointment of a program director; the administrator's responsibilities include planning for and administering the managerial components of the facility. Since the current rules require the appointment of both an administrator and a program director the Department does not believe that additional operational costs will result from adoption of the new rules.

SUBCHAPTER 6. PATIENT CARE POLICIES

N.J.A.C. 8:43F-6.2 Admission and retention of patients

N.J.A.C. 8:43F-6.2(f)

COMMENT: The Senior Care Centers of America, Inc. commenter suggested that the rule should make allowances for wheelchair bound patients to be admitted to programs located on the second floor in facilities which meet the fire and safety code requirements of nursing homes and/or hospitals.

RESPONSE: The Department acknowledges the comment. However, the rule is not changed. Merely meeting the fire and safety code requirements does not ensure that patients can be safely evacuated, in the event that an evacuation becomes necessary. For safe evacuation, the Department believes that wheelchair bound patients should be located on the first floor of the facility.

N.J.A.C. 8:43F-6.5 Verbal and telephone orders

COMMENT: The commenter from Senior Care Centers of America, Inc. stated that "it is virtually impossible to have verbal telephone orders countersigned by the prescriber and incorporated into the patient's medical record within 48 hours."

RESPONSE: The Department disagrees. Verbal and telephone orders are limited to emergency situations only, and in these situations, it would not be conducive to patient safety to allow more than 48 hours to elapse before signed orders are included in the medical record.

SUBCHAPTER 8. MEDICAL SERVICES

N.J.A.C. 8:43F-8.2 Medical director's responsibilities

COMMENT: The commenter from Senior Care Centers of America, Inc. felt that these responsibilities "retain the unrealistic aspects of the old standards," since the medical director does not perform the items in N.J.A.C. 8:43F-8.2(a)5i, ii, and iii. According to this commenter, the patient "retains his or her own physician, who cares for him or her outside the day health center, communicating with the center staff via phone and mail."

RESPONSE: The Department agrees. N.J.A.C. 8:43F-8.2(a)4 is deleted and 8:43F-8.2(a)5 is recodified, reworded and shortened, in order to delineate the responsibilities of the medical director more realistically.

N.J.A.C. 8:43F-8.3 Responsibilities of physicians

COMMENT: The commenter from St. Joseph's Hospital and Medical Center felt that the rules "could be very problematic," and that it was "unrealistic to expect the private physician to come to patient care meetings to help develop a patient care plan." The commenter suggests that the plan should be developed by the day-care staff, then reviewed and approved by the attending physician, and changed if there are any objec-

tions by the physician. The commenter requested that the standard be revised.

RESPONSE: Although the rule does not specify that the physician must attend patient care meetings, the Department believes that it is necessary for the attending physician to contribute to the patient care plan. Therefore, the rule is reworded to allow flexibility in the way the physician may participate in the development of the plan. The rule now reads as follows: "The facility shall have a mechanism to ensure that the physician shall participate in developing, implementing, reviewing, and revising the patient plan of care."

SUBCHAPTER 9. NURSING SERVICES

N.J.A.C. 8:43F-9.2 Designation of a director of nursing services

COMMENT: The commenter from St. Joseph's Hospital and Medical Center objected to the requirement to have a registered professional nurse on duty at all times, indicating that "it is not necessary for a professional nurse to be on duty in the day care center provided that R.N. coverage is available in the facility, since most day care programs are run in conjunction with a nursing home . . ."

RESPONSE: The Department believes that, in order to provide a minimum level of quality care to patients, a nurse must be present at all times. If the adult day health care facility were located within, or in conjunction with, a nursing home or other health care facility the registered professional nurse would have other responsibilities which would prevent the nurse from being present at all times in the adult day health care facility. Therefore, no change is made in the rule.

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

COMMENT: The commenter from St. Joseph's Hospital and Medical Center wrote that "we do not wish to see any prohibition against patients bringing in their own medications. There has been no problem to date, we believe, on this issue and, for cost effectiveness, we feel that patients should be encouraged to bring their own medications in."

RESPONSE: There is no prohibition in the rules regarding patients bringing in their own medications. No change is made to the proposed rules.

N.J.A.C. 8:43F-10.1 Provision of pharmaceutical services

COMMENT: The commenter from Senior Care Centers of America, Inc. requested that the Department "clarify/define the term pharmaceutical services as used in this section. If administration of medications is intended, it should be stated that way. As this paragraph reads, it is unclear as to whether or not an adult day health center is expected to institute a pharmacy within the scope of its operations."

RESPONSE: The rule does not require the institution of an on-site pharmacy. The facility must ensure that patients are provided with any needed pharmaceutical services, including administration of medications, distribution of drugs, storage of drugs, and other pharmaceutical services as described in subchapter 10, directly in the facility.

N.J.A.C. 8:43F-10.5 Storage of drugs

N.J.A.C. 8:43F-10.5(f)

COMMENT: Three commenters expressed concern about the unit dose drug distribution system as proposed. The commenter from Senior Care Centers of America, Inc. believes that the unit dose drug distribution system will be costly and constitute a barrier to people entering day care. Questions raised by the commenter from Senior Care Centers include, for example, who will pay for this delivery system? Also, what about persons who only attend one or two days a week? The commenter from Senior Care Centers recommends "that duplicate orders arrive at the center sealed by the pharmacy, as a safety precaution." The letter of comment from AM/PM Adult Medical Day Care stated that "since all drugs prescribed for clients are filled by community pharmacies, the unit dose system would need to be implemented throughout the State in order to comply with this proposal." The commenter from Cumberland County Adult Medical Day Care Center believes that requiring a unit dose drug distribution system will increase the cost for medication to the pharmacy, and ultimately, to the patient. The letter from Cumberland also expressed concern that "those patients who have arthritis, especially of the hands, may find it extremely difficult to open the unit dose packaging."

RESPONSE: The Department acknowledges these comments, and the rule is changed to indicate that the requirements stated in N.J.A.C. 8:43F-10.5(f) through 5 are applicable only to those facilities who establish and institute a unit dose drug distribution system. The words "and

room number" have been deleted from the rule and from the definition of unit dose at N.J.A.C. 8:43F-1.3. In addition, the Department expects that patients who might have difficulty opening unit dose packages would receive assistance as needed from adult care staff, in accordance with these rules.

N.J.A.C. 8:43F-10.5(f)1

COMMENT: The commenter from Senior Care Centers of America, Inc. wrote that the 72-hour supply is "particularly unworkable, because persons typically bring a month's supply to the center." The letters from AM/PM Adult Medical Day Care Center and from Cumberland County Adult Medical Day Care Center also expressed objections to the 72-hour supply of drugs required by the rule. The letter from AM/PM indicated that the three day supply is "impractical and increases the risk of medications not being administered . . . no more than a five day supply should be kept on hand." The commenter from Cumberland County Adult Medical Day Care Center stated that "the 72 hour supply of medication doses will be problematic in that the confused or disoriented client will have to carry medication into day care more than one time weekly allowing for more opportunities to lose or forget medications, therefore causing possibilities of not receiving needed medications."

RESPONSE: The Department believes that in order to implement a safe and effective unit dose drug distribution system, a 24-hour supply of doses is necessary, in a hospital setting. Since adult day health care services are provided in an ambulatory care setting, the requirement has been changed to a 72-hour supply of doses in these rules. The intent is to allow more flexibility to the adult day health care facility, and still protect the patient's safety. Therefore, the rule is not changed.

SUBCHAPTER 13. SOCIAL WORK SERVICES

N.J.A.C. 8:43F-13.2(c)

COMMENT: The New Jersey Adult Day Care Association requested that this subsection be eliminated. The commenter stated that the qualifications of a social worker in adult day health care, as specified in N.J.A.C. 8:43F-1.18(a)1, 2, and 3, "provide a level of expertise that would not require a master's level consultant." Adult day health care programs have had problems in the past with the standard requiring a master's level consultant. Consultants with knowledge of adult day health care are difficult to find, and the requirement is, therefore, "inefficient, and waste of money." The current standards were revised on June 6, 1983 for these reasons.

RESPONSE: The Department agrees, and the subsection is deleted. In addition, the qualifications of social workers, as stated in N.J.A.C. 8:43F-1.18, are amended.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

COMMENT: The Department's Emergency Response Coordination Program staff recommends that these plans should be reviewed by the Department of Health and the Local (municipal or county) Emergency Planning Committees (LEPC).

RESPONSE: The Department agrees, and the rule is changed to require review of emergency plans by county and municipal emergency management officials.

N.J.A.C. 8:43F-16.1(c)

COMMENT: The Emergency Response Coordination Program staff requested that the standard be reworded as "Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, . . . procedures for evacuating patients, procedures for re-entry and recovery, . . ."

RESPONSE: The Department concurs with the comment, and the rules are reworded.

N.J.A.C. 8:43F-16.1(d)

COMMENT: The Emergency Response Coordination Program commenter requested revision of the second sentence to read "Personnel shall be trained in emergency procedures and protocol as well as in the location . . ." The commenter also suggested that "it may be beneficial to include a provision for reviewing some basic emergency procedures with clients periodically."

RESPONSE: The Department agrees and the rule is rewritten in accordance with the concerns of the commenter.

N.J.A.C. 8:43F-16.2(a)

COMMENT: Staff of the Emergency Response Coordination Program requested that the Department delete the word "simulation," since the drill itself is a simulation. Also, according to the commenter, it should be stated in the rule that facility staff must participate in at least one drill annually. Further, if the clients are going to participate in the drill, this should be stated specifically. An outside agency should audit or evaluate both the content and execution of the drills at least annually. The facility should obtain letters of agreement from other facilities or agencies from which the facility has determined it may need assistance.

RESPONSE: The Department acknowledges the comment and the rule is rewritten to address these concerns.

As an agency-initiated change, the room number requirement in the definitions of "unit dose drug distribution system" at N.J.A.C. 8:43F-1.3 and 10.5(f) has been deleted due to the lack of room numbers in adult day care health facilities.

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

CHAPTER 43F

MANUAL OF STANDARDS FOR LICENSURE OF ADULT DAY HEALTH CARE FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43F-1.1 Scope

The rules in this chapter pertain to all facilities which provide adult day health care services. These rules constitute the basis for the licensure of adult day health care facilities by the New Jersey State Department of Health.

8:43F-1.2 Purpose

Adult day health care facilities provide specialized, integrated care to patients in order to assist patients in reaching the functional levels of which they are capable as well as to protect their health and safety. The purpose of this chapter is to establish minimum rules to which an adult day health care facility must adhere in order to be licensed to operate in New Jersey.

8:43F-1.3 Definitions

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

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Adult day health care facility" means a facility or a distinct part of a facility which is licensed by the New Jersey State Department of Health to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical supervision to meet the needs of functionally impaired adult patients who are not related to the members of the governing authority by marriage, blood, or adoption. Adult day health care facilities provide services to patients for a period of time which does not exceed 12 hours during any calendar day.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed, and dated notation made by a health care professional who renders a service to the patient. Clinical notes are written into the patient's medical record the day service is rendered.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Daily census" means the number of patient equivalents who, during any one calendar day, receive services in the facility. The number of patient equivalents is calculated by dividing the sum of all the hours of services received by patients in the facility on a given day by the number five. For example, two patients each receiving 2.5 hours of service constitute one patient equivalent.

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

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The word "medication" is used interchangeably with the word "drug" in this chapter.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Family" means persons related by blood, marriage, or commitment.

"Full-time" means relating to a time period of not less than 35 hours, established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons, representing different professions, disciplines, and services, who work together to provide an integrated program of care to the patient.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Patient plan of care" means a written plan of patient care which contains documentation of joint planning by the multidisciplinary team. The plan is based upon the patient assessments of all services participating in the patient's care and includes care and treatment

to be provided. Each service that the patient receives develops its own portion of the patient plan of care.

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about care provided and the patient's response to it.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Signature" means at least the first initial and full surname and title (for example, RN, LPN, DDS, MD, DO) of a person, legibly written with the person's own hand.

"Staff education plan" means a written plan which describes a coordinated program for staff education for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which the employee has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Transportation services" means the conveying of patients between the facility and the patient's home.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name *[and room number]* and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

8:43F-1.4 Qualifications of the administrator of the adult day health care facility

(a) The administrator of an adult day health care facility shall:

1. Be a licensed nursing home administrator licensed by the New Jersey State Department of Health; or

2. Be a registered professional nurse with at least one year of full-time, or full-time equivalent, administrative or supervisory experience in a licensed health care facility; or

3. Have a baccalaureate degree from a college or university approved by a state department of education and at least one year of full-time, or full-time equivalent, administrative or supervisory experience in a licensed health care facility.

8:43F-1.5 Qualifications of dentists

Each dentist at an adult day health care facility shall be so licensed by the New Jersey State Board of Dentistry.

8:43F-1.6 Qualifications of dietitians

Each dietitian at an adult day health care facility shall be registered or eligible for registration by the Commission on Dietetic Registration (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995).

8:43F-1.7 Qualifications of the director of nursing services

The director of nursing services at an adult day health care facility shall be a registered professional nurse who has at least one year of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a licensed health care facility.

8:43F-1.8 Qualifications of food service supervisors

(a) The food service supervisor at an adult day health care facility shall:

1. Be a dietitian; or

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995); or

3. Be a graduate of a course approved by the State of New Jersey providing 90 or more hours of classroom instruction in food service supervision and have at least one year of full-time, or full-time equivalent, experience as a food service supervisor in a licensed health care facility, with consultation from a dietitian; or

4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in (a)2 or 3 above.

8:43F-1.9 Qualifications of licensed practical nurses

Each licensed practical nurse at an adult day health care facility shall be so licensed by the New Jersey State Board of Nursing.

8:43F-1.10 Qualifications of the medical director

The medical director of an adult day health care facility shall be a physician.

8:43F-1.11 Qualifications of medical record practitioners

(a) Each medical record practitioner at an adult day health care facility shall:

1. Be certified or eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611); or

2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611).

8:43F-1.12 Qualifications of occupational therapists

Each occupational therapist at an adult day health care facility shall be certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association (American Occupational Therapy Association, 6000 Executive Boulevard, Rockville, Maryland 20852).

8:43F-1.13 Qualifications of patient activities director

(a) The patient activities director at an adult day health care facility shall:

1. Be certified or eligible for certification as an activity director certified (ADC) by the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, 520 Stewart, Park Ridge, Illinois 60068); or

2. Be certified or eligible for certification as a certified therapeutic recreation specialist (CTRS) by the National Council for Therapeutic Recreation (National Council for Therapeutic Recreation, P.O. Box 16126, Alexandria, Virginia 22302); or

3. Be certified or eligible for certification by the New Jersey State Board of Recreation Examiners (New Jersey State Board of Recreation Examiners, 101 South Broad Street, CN 814, Trenton, New Jersey 08625) as a recreation administrator or recreation supervisor; or

4. Have a baccalaureate degree from a college or university approved by a state department of education with a major in recreation, creative arts therapy, music therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy; or

5. Have a high school diploma and at least two years of full-time, or full-time equivalent, experience in patient activities in a licensed health care facility and have successfully completed an activities education program approved by the New Jersey State Department of Health.

8:43F-1.14 Qualifications of pharmacists

Each pharmacist at an adult day health care facility shall be so registered by the New Jersey State Board of Pharmacy.

8:43F-1.15 Qualifications of physical therapists

Each physical therapist at an adult day health care facility shall be so licensed by the New Jersey State Board of Physical Therapy Examiners.

8:43F-1.16 Qualifications of physicians

Each physician at an adult day health care facility shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43F-1.17 Qualifications of registered professional nurses

Each registered professional nurse at an adult day health care facility shall be so licensed by the New Jersey State Board of Nursing.

8:43F-1.18 Qualifications of social workers

(a) Each social worker at an adult day health care facility shall have:

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education (Council on Social Work Education, 1744 R Street, NW, Washington, DC 20036); or

[2. A baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education (Council on Social Work Education, 1744 R Street, NW, Washington, DC 20036) and at least one year of full-time, or full-time equivalent, social work experience in a licensed health care facility; or]

*[3.]**2.* A baccalaureate *or master's* degree from a college or university approved by a state department of education with a major in social work, psychology, sociology, or counseling and at least one year of full-time, or full-time equivalent, social work experience in a licensed health care facility.

8:43F-1.19 Qualifications of speech-language pathologists

Each speech-language pathologist at an adult day care health facility shall *[be so licensed by the]* ***hold a current New Jersey license issued by the Audiology and Speech-Language Pathology Advisory Committee,*** Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43F-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner, pursuant to the requirements of N.J.A.C. 8:33.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq.

8:43F-2.2 Application for licensure

(a) Following receipt of a Certificate of Need as an adult day health care facility, any person, organization, or corporation desiring to operate an adult day health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director

Licensing*[,] *and* Certification *[and Standards]*
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367

Trenton, N.J. 08625

(b) The Department shall charge a nonrefundable fee of \$500.00 for the filing of an application for licensure as an adult day health care facility and \$500.00 for the annual renewal of the license. If adult day health care services are offered by a licensed hospital facility as a separate service within the hospital, the hospital facility shall be charged \$150.00 for the filing of an application for licensure of the service and \$150.00 for the annual renewal.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing*[,] *and* Certification *[and Standards]* Program.

8:43F-2.3 Newly constructed or expanded facilities

(a) The application for license for a newly constructed or expanded facility shall, pursuant to N.J.A.C. 8:43F-23, include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367

Trenton, N.J. 08625

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

(c) Any adult day health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43F-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43F-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq. and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate that the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43F-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq. and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:43F-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing*[,]* ***and*** Certification *[and Standards]* Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43F-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq. and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserved the right to request additional information before processing a request for waiver.

8:43F-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever the Commissioner determines imminent danger to any person's health or safety.

(c) The provisions of this section shall apply to facilities with a temporary license and facilities with a full license.

8:43F-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing

which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the Commissioner has ordered the immediate removal of all patients from a facility pursuant to N.J.A.C. 8:43F-2.8, the applicant may request an expedited hearing.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:43F-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients who do not require 24-hour inpatient health care, in accordance with the rules in this chapter.

(b) The facility shall provide, at a minimum, dietary, nursing, patient activities, pharmaceutical, and social work services, directly in the facility.

(c) The facility shall provide dental, laboratory, medical, nutritional counseling, occupational therapy, physical therapy, speech-language pathology, and radiological services.

(d) The facility shall provide transportation services ***either directly or through contractual arrangements, to all patients who require transportation between the facility and the patient's home***. *["Transportation services" means the conveying of patients between the facility and the patient's home.]* No patient's total daily transportation time shall exceed two hours.

(e) Adult day health care services shall be provided for at least ***[seven]* *five*** consecutive hours daily, ***exclusive of transportation time***, a minimum of five days a week.

(f) The facility shall provide at least one full-time, or full-time equivalent, staff member for every nine patient equivalents, calculated on the basis of the daily census. Additional staff members shall be provided when assessment of the acuity of patient need indicates that additional staff members are required, in accordance with the facility's patient care policies and procedures for determining staffing levels.

1. The facility shall maintain a daily record of patient attendance for each day on which services are provided.

(g) If a health care facility licensed by the Department provides adult day health care services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(h) Except in an emergency, facilities shall not provide services for more than 12 hours during any calendar day of the year without prior written approval by the Department.

(i) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

8:43F-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing*[,]* ***and*** Certification *[and Standards]* Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:43F-3.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing*[,]* ***and*** Certification *[and Standards]* Program of the Department.

8:43F-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies, and in accordance with their job descriptions.

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(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing schedules. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. *[Staffing schedules shall be implemented to ensure continuity of care.]*

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, emergency plans and procedures and the infection prevention and control services.

8:43F-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility;

3. A description of mechanisms for referral of patients to other health care providers, in order to provide a continuum of care for the patient;

4. A description of the quality assurance program for patient care and staff performance;

5. Specification of the hours and days on which services are provided;

6. Policies and procedures for the maintenance of personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and for other persons providing direct patient care services.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:43F-3.6 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and shall require that services be provided in accordance with the rules in this chapter.

8:43F-3.7 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7726 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of the administrator's replacement. If a new administrator cannot be designated within 72 hours, the Department shall be so notified in writing and the facility shall make arrangements for administrative supervision. A new administrator shall be appointed within 30 days;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

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5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department.

8:43F-3.8 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility to patients and the public:

1. All waivers granted by the Department;

2. The list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights; and

4. The names and addresses of the members of the governing authority.

8:43F-3.9 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department within 30 days of the proceeding or action, request, settlement, judgement or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgement or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgement or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgement, or award; and

vi. Other information relating to the settlement, judgement, or arbitration award as may be required by the Board.

8:43F-3.10 Maintenance of records

(a) The following records shall be maintained by the facility:

1. A chronological listing of patients admitted and discharged, including the destination of patients who are discharged; and

2. Statistical data as required by the Department.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:43F-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and

financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;
2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;
3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;
4. Appointment, reappointment, assignment of privileges, and curtailment of privileges of health care professionals, and written confirmation of such actions;
5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;
6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;
7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, conducting such meetings, and documenting them through minutes;
8. Delineation of the duties of the officers of any committees, or their equivalent, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;
9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and
10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:43F-5.1 Appointment of administrator

The governing authority shall appoint *[a full-time]* ***an*** administrator ***who is a full-time employee of the facility***. The administrator, or an alternate who shall be designated in writing to act in the absence of the administrator, shall be available on the premises of the facility during the hours when patient care services are being provided.

8:43F-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;
2. Planning for, and the administration of, the managerial, operational, fiscal, and reporting components of the facility;
3. Participating in the quality assurance program for patient care and staff performance;
4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;
5. Ensuring the provision of staff orientation and staff education; and
6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:43F-6.1 Policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures for the following:

1. Patient rights;
2. The determination of staffing levels on the basis of the daily census and on the basis of an assessment of the acuity of patient need;
3. The referral of patients to other health care providers, in order to provide a continuum of care for the patient;

4. Emergency care of patients, including notification of the patient's family; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

5. Obtaining written informed consent;

6. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

7. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;

8. Discharge, transfer, and readmission of patients, including criteria for each;

9. The care and control of pets if the facility permits pets in the facility or on its premises; and

10. Exclusion of patients from the facility, and authorization to return to the facility, for patients with communicable disease.

8:43F-6.2 Admission and retention of patients

(a) Prior to admission of the patient, a member of the multidisciplinary team or a representative of a community health agency shall visit the patient's home and perform an assessment of the patient's home environment. The assessment shall be documented in the patient's medical record and shall include assessment of at least the following:

1. Living arrangements;
2. The patient's relationship with the patient's family;
3. Amenities and facilities available, such as heat, toilet and bathing facilities, and provisions for preparing and storing food;
4. Existence of environmental barriers, such as stairs, not negotiable by the patient; and
5. Access to transportation, shopping, religious, social, or other resources to meet the needs of the patient.

(b) The administrator or a designee shall conduct an interview with the patient and the patient's family prior to or at the time of the patient's admission. The interview shall include at least orientation of the patient to the facility's policies and services, hours and days on which services are provided, fee schedule, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record.

(c) A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained.

(d) A patient suffering exclusively from substance abuse or misuse shall not be admitted to or retained in the facility.

(e) A patient under 16 years of age shall not be admitted.

(f) Patients who require wheelchairs shall be restricted to the first floor of the facility. A facility which has been granted any physical plant waiver by the Department shall not admit a patient requiring a wheelchair.

(g) Patients who require supervision or assistance with ambulation shall be restricted to the first floor in all facilities which are not of fire-resistive construction.

(h) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or the applicant's family shall be given the reason for such denial in writing, signed by the administrator, within 15 days of receipt of the written application.

8:43F-6.3 Involuntary discharge

(a) Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge the patient from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record.

(b) The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing, and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal.

8:43F-6.4 Financial arrangements

(a) The facility shall:

1. Inform patients of the fees for services and supplies (where a fee is charged);
2. Maintain a written record of all financial arrangements with the patient and/or the patient's family, with copies furnished to the patient;
3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:
 - i. Upon written approval and authority of the patient and/or the patient's family, who shall be given a copy of the written approval;
 - ii. Upon written orders of the patient's physician, stipulating specific services and supplies not included in the admission agreement;
 - iii. Upon 15 days' prior written notice to the patient and/or the patient's family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or
 - iv. In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;
4. Describe for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and
5. Describe sliding fee scales and any special payment plans established by the facility.

8:43F-6.5 Verbal and telephone orders

Verbal and telephone orders shall be written into the patient's medical record by the person accepting them and countersigned by the prescriber within 48 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures.

8:43F-6.6 Interpretation services

The facility shall provide interpretation services, if the patient population is non-English-speaking and for patients who are blind or deaf.

8:43F-6.7 Notification of family

The patient's family shall be notified in the event that the patient sustains an injury, or an accident or incident occurs, immediately after the occurrence. Immediately following such notification, the notification shall be documented in the patient's medical record.

8:43F-6.8 Use of restraints

The facility shall not use any physical or chemical restraint.

8:43F-6.9 Patient follow-up

The facility shall establish and implement policies and procedures for follow-up of patients, in the event that a patient does not appear for services on scheduled days, and for documentation of the follow-up in the patient's medical record.

8:43F-6.10 Provision of beds, lounges or recliners

The facility shall provide at least one bed, lounge, recliner, or equivalent for every 10 adult day health care patient equivalents, calculated on the basis of daily census.

8:43F-6.11 Assistance with activities of daily living

Assistance with activities of daily living shall be provided to patients who require such assistance.

8:43F-6.12 Security and accountability during transportation

The facility shall develop and implement plans for security and accountability for the patient and the patient's personal possessions while transportation services are being provided.

8:43F-6.13 Calibration of instruments

All instruments of measurement shall be calibrated in accordance with manufacturers' instructions.

SUBCHAPTER 7. PATIENT PLAN OF CARE

8:43F-7.1 Patient assessment

(a) Each patient shall have a written patient plan of care. The patient plan of care shall be developed on the basis of assessments of each service participating in the patient's care and shall be entered in the patient's medical record. The patient plan of care shall be initiated prior to or upon the patient's admission, and shall be developed as follows:

1. Health care practitioners in each of the services participating in the patient's care shall develop the portion of the patient plan of care which pertains to that service. Each portion of the patient plan of care shall include care to be provided based upon the patient assessment.
2. The patient plan of care shall include, but not be limited to, the following:
 - i. Diagnosis and prognosis;
 - ii. Orders for treatment or services, medications, activities of daily living, and diet;
 - iii. Goals of the care to be provided;
 - iv. Scheduled days of attendance;
 - v. The time intervals at which the patient plan of care will be reviewed;
 - vi. Anticipated time frame(s) for the accomplishment of the goals; and
 - vii. The measures to be used to assess the effects of treatment or services.
3. The patient plan of care shall be kept current and available to all personnel providing patient care.

(b) The patient and, if indicated, family members shall participate in the development of the patient plan of care, including the plans for discharge.

1. If the patient's participation in the development of the patient plan of care is medically contraindicated, as documented by a physician in the patient's medical record, a designated member of the multidisciplinary team shall review the patient plan of care with the patient prior to implementation, and the family shall be informed of the patient plan of care. These activities shall be documented in the patient's medical record.

8:43F-7.2 Implementation of patient plan of care

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the patient plan of care.

(b) Health care practitioners providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient's medical record.

(c) Health care practitioners providing services to the patient shall participate as members of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care. Review and revision of the patient plan of care shall be documented in the patient's medical record.

SUBCHAPTER 8. MEDICAL SERVICES

8:43F-8.1 Designation of medical director

(a) The governing authority shall designate a physician to serve as medical director.

(b) The medical director shall not be counted in the staff:patient equivalent ratio.

8:43F-8.2 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. The medical director shall be responsible for, but not be limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;
2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient; ***and***

[4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and]

***[5.]**4.* Developing, implementing, and reviewing written medical policies in cooperation with the *physicians responsible for providing care to the patients.* *[medical staff, including, but not limited to, the following:**

- i. Medical staff bylaws or their equivalent;
- ii. A plan for medical staff meetings and their documentation through minutes; and
- iii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges.]*

(b) The medical director shall ensure that, for each patient, a physician and an alternate physician have been designated who can be contacted when necessary, including in the event of a medical emergency.

8:43F-8.3 Responsibilities of physicians

(a) The physician responsible for providing care to the patient shall provide the following information, which shall be included in the patient's medical record:

1. A signed, dated admission and medical history and a report of physical examination, including results of a chest X-ray, if performed. The history and physical examination shall be performed within 30 days prior to or upon admission;
2. Certification that the patient requires the type and intensity of care provided by the facility and is free of communicable disease;
3. Specification of the degree of patient mobility and specification of any assistive devices which the patient requires;
4. The medical portion of the patient plan of care;
5. Progress notes; and
6. All initial and subsequent orders for services to be provided to the patient, including frequency and modality of treatment.

(b) The ***facility shall have a mechanism to ensure that the*** physician shall participate ***[as part of the multidisciplinary team]*** in developing, implementing, reviewing, and revising the patient plan of care.

SUBCHAPTER 9. NURSING SERVICES

8:43F-9.1 Provision of nursing services

The facility shall provide nursing services to patients, directly in the facility.

8:43F-9.2 Designation of director of nursing services

A registered professional nurse shall be designated in writing as the director of nursing services and shall be on duty at all times when services are being provided. A registered professional nurse shall be designated in writing to act in the director's absence. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staff levels on the basis of an assessment of the acuity of patient need.

8:43F-9.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to patients. The director of nursing services shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, a nursing philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;
2. Participating in planning and budgeting for the nursing service;
3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Ensuring that nursing services are provided to the patient as specified in the nursing care plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of an assessment of the acuity of patient need; and

6. Participating in staff education activities and providing consultation to facility personnel.

8:43F-9.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;
2. Care toward prevention of infection, accident, and injury;
3. Assessing the nursing care needs of the patient, preparing the nursing care plan based upon the assessment, providing nursing care services as specified in the nursing care plan, reassessing the patient, and revising the nursing care plan. Each of these activities shall be documented in the patient's medical record. A registered professional nurse shall assess the nursing needs of each patient, develop nursing diagnoses, and design the patient's plan of nursing care;
4. Teaching, supervising, and counseling the patient, family, and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;
5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and
6. Writing clinical notes and progress notes.

8:43F-9.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:
 - i. Registered professional nurses;
 - ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;
 - iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and
 - iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;
2. Drugs are not prepped. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;
3. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;
4. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;
5. All drugs are kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with USP (United States Pharmacopoeia) requirements;

6. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

7. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on the person of one of those persons listed in (a)li through iv above; and

iii. A declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and rules, regulations and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses listed in (a)li through iv above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

8:43F-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts and amendments thereto.

8:43F-10.2 Designation of a pharmacist

(a) A pharmacist shall be designated who shall be responsible for the direction, provision, and quality of pharmaceutical services. The pharmacist shall be responsible for, but not limited to, the following:

1. Together with the pharmacy committee, developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;

2. Participating in planning and budgeting for the pharmaceutical service;

3. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care.

8:43F-10.3 Pharmacy committee

(a) A pharmacy committee shall be established and shall include at least the medical director, the pharmacist, the director of nursing services, and the administrator.

(b) The pharmacy committee shall be responsible for, but not limited to, the development of policies and procedures. These policies and procedures shall govern evaluation, selection, obtaining, dispens-

ing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients.

8:43F-10.4 Policies for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

1. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

2. Policies and procedures, approved by the pharmacy committee and in accordance with these rules, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

ii. Determination of the frequency of checking contents, including expiration dates;

iii. Approval of the assignment of responsibility for checking contents; and

iv. A requirement that emergency kits be secure, but not be kept under lock and key;

3. Policies and procedures to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

4. Policies and procedures for drug administration, including, but not limited to, establishment of times for administration of prescribed drugs, in accordance with the following procedure:

i. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);

ii. Verifying it with the prescriber's orders;

iii. Giving the individual dose to the patient;

iv. Seeing that the patient takes the medication, if oral; and

v. Recording the required information, including the method of administration;

5. If facility policy permits, policies and procedures regarding the self-administration of drugs, including, but not limited to, the following:

i. A requirement that self-administration be performed as follows:

(1) Removing a dose from a previously dispensed, properly labeled container (including a unit dose container);

(2) Verifying it with the directions on the label; and

(3) Taking orally, injecting, inserting, or otherwise administering the medication;

ii. A requirement that self-administration be permitted only upon a written order of the prescriber;

iii. Storage of drugs;

iv. Labeling of drugs;

v. Methods for documentation in the patient's medical record of self-administered drugs;

vi. Training and education of patients in self-administration and the safe use of drugs; and

vii. Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

6. Policies and procedures for documenting adverse drug reactions, medication errors, and drug defects. Allergies shall be documented in the patient's medical record and on its outside front cover;

7. Policies and procedures for ensuring the immediate delivery of stat. doses. Stat. (statim) means immediately;

8. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the pharmacy committee of the facility. A list shall be maintained of floor stock drugs and the amounts of such drugs stored throughout the facility;

9. Policies and procedures for discontinuing drug orders, including, but not limited to, policies and procedures for the following:

i. The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered; and

ii. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

10. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

11. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

12. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

i. Provision for a verifiable record system for controlled drugs;

ii. Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and

iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation, including the signature of a second person who shall witness the disposition; and

13. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage to be provided in each nursing area. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in each nursing area. Current Federal and State drug law information shall be available to the pharmaceutical service.

8:43F-10.5 Storage of drugs

(a) All drugs shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use. (The word "medication" is used interchangeably with the word "drug" in this subchapter. "Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39.)

(b) All drugs shall be stored in accordance with manufacturers' instructions. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing area. The refrigerator shall have a thermometer to indicate temperature in conformance with USP (United States Pharmacopoeia) requirements.

(c) All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs.

(d) Drugs for external use shall be kept separate from drugs for internal use.

(e) At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored and shall maintain a record of such inspections.

(f) *[A unit dose drug distribution system shall be established and implemented within three years of the effective date of this chapter.]*
***If the facility uses a unit dose drug distribution system** ("Unit dose drug distribution system" means a system in which drugs are de-

livered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name *[and room number]* and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.)*, **the system must be implemented in accordance with the following:***

1. At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time.

2. Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications.

3. If the facility repackages medications in single unit packages, the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and the manufacturer's or distributor's name.

4. Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility.

SUBCHAPTER 11. DIETARY SERVICES

8:43F-11.1 Provision of meals

The adult day health care facility shall provide a minimum of one meal per day to patients, directly in the facility. The meal shall supply at least one-third (1/3) of the daily caloric and protein requirements recommended by the Nutrition Board of the National Academy of Sciences, National Research Council, and shall contain three or more menu items, one of which is or includes a high quality protein food such as meat, fish, eggs, or cheese.

8:43F-11.2 Designation of dietitian

(a) The facility shall designate a dietitian to be responsible for the direction, provision, and quality of the dietary service. The dietitian shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for patients;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Providing nutritional counseling.

8:43F-11.3 Responsibilities of dietitians

(a) In accordance with written job descriptions, dietitians shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary portion of the patient plan of care on the basis of the assessment, providing dietary services to the patient as specified in the dietary portion of the patient plan of care, reassessing the patient, and revising the dietary portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

8:43F-11.4 Food service supervisor

The facility shall designate a food service supervisor who, if not a dietitian, functions with scheduled consultation from a dietitian.

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When meals are prepared in the facility, the food service supervisor shall be present in the facility.

8:43F-11.5 Requirements for dietary services

(a) The dietary service shall comply with the provisions of N.J.A.C. 8:24.

(b) A current diet manual shall be available to the dietary service personnel and to the nursing service personnel.

(c) Meals shall be planned, prepared and served in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and shall be served in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

6. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

7. Between-meal nourishments shall be provided and beverages shall be available at all times for each patient, unless medically contraindicated as documented by a physician in the patient's medical record;

8. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

9. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed;

10. *[Self-help]* ***Self-help*** feeding devices shall be provided;

11. All meals shall be attractive when served to patients;

12. All patients shall eat in a dining area with sufficient space to accommodate all patients simultaneously at each meal; and

13. A record shall be maintained for each patient, identifying the patient by name, diet order, and other information, such as meal patterns when on a calculated diet, and allergies. Such record shall be available in the dining area.

SUBCHAPTER 12. PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH-LANGUAGE PATHOLOGY SERVICES

8:43F-12.1 Provision of physical therapy, occupational therapy, and speech-language pathology services

The facility shall provide physical therapy, occupational therapy, and speech-language pathology services.

8:43F-12.2 Designation of physical therapist, occupational therapist, and speech-language pathologist

(a) The facility shall designate a physical therapist, occupational therapist, and speech-language pathologist who shall be responsible for the direction, provision, and quality of the physical therapy, occupational therapy, and speech-language pathology service, respectively. The physical therapist, occupational therapist, and speech-language pathologist shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the physical therapy, occupational therapy, and speech-language pathology service, respectively;

2. Participating in planning and budgeting for the physical therapy, occupational therapy, and speech-language pathology service, respectively;

3. Ensuring that services are provided as specified in the physical therapy, occupational therapy, and speech-language pathology por-

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tions of the patient plan of care, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for physical therapy, occupational therapy, and speech-language pathology personnel, respectively, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43F-12.3 Responsibilities of physical therapy, occupational therapy, and speech-language pathology personnel

(a) In accordance with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq., for physical therapy personnel, and in accordance with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq., for speech-language pathology personnel, and in accordance with written job descriptions, each physical therapist, occupational therapist or speech-language pathologist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, or speech-language pathology needs, respectively, of the patient, preparing the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care on the basis of the assessment, providing services as specified in the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care, reassessing the patient, and revising the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 13. SOCIAL WORK SERVICES

8:43F-13.1 Provision of social work services

The facility shall provide social work services to patients, directly in the facility.

8:43F-13.2 Designation of social worker

(a) The facility shall designate a social worker who shall be responsible for the direction, provision, and quality of the social work service. The social worker shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the social work service;

2. Participating in planning and budgeting for the social work service;

3. Ensuring that services are provided as specified in the social work portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for social work service personnel and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

(b) A social worker shall provide social work services in the facility for at least 30 minutes per week per patient equivalent, calculated on the basis of the daily census.

[(c) A social worker with a master's degree in social work shall provide at least four hours of social work consultation per month to the social workers of the facility who do not have a master's degree in social work.]

8:43F-13.3 Responsibilities of social workers

(a) In accordance with written job descriptions, each social worker shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the social care needs of the patient, preparing the social work portion of the patient plan of care on the basis of the assessment, providing services, including counseling, as specified in the social work portion of the patient plan of care, reassessing the patient, and revising the social work portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

(b) The social care assessment shall be initiated prior to or upon admission, after an initial interview with the patient and/or the patient's family. The social care assessment shall include a social history, including family background, and assessment of the patient's education, employment, interests, activities, organizational memberships, psychosocial functioning, and relationships with family and friends.

SUBCHAPTER 14. PATIENT ACTIVITIES SERVICES

8:43F-14.1 Provision of patient activities services

(a) The facility shall provide a planned, diversified program of patient activities to patients, directly in the facility.

(b) Patient activities staff shall arrange a diversity of programs to maintain patients' sense of usefulness and self-respect. Included shall be activities in each of the following categories:

1. Social, such as parties, club meetings, picnics, and other special events;

2. Physical, such as exercise, sports, dancing, and swimming;

3. Creative, such as crafts, poetry, drama, music therapy, art therapy, and gardening;

4. Educational and cultural, such as discussion groups, guest speaker programs, and concerts;

5. Spiritual, such as religious services;

6. Awareness, including, for example, cognitive and sensory individual and group stimulation for patients; and

7. Community-integrating, such as visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs.

(c) The facility shall provide patient activities services for at least 10 hours per week for every 15 patient equivalents, calculated on the basis of the daily census.

(d) Patient activities programs shall take place in individual and group settings.

(e) Patients shall participate in patient activities programs regardless of the patients' financial status.

8:43F-14.2 Designation of patient activities director

(a) The facility shall designate a patient activities director who shall be responsible for the direction, provision, and quality of the patient activities service. The patient activities director shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the patient activities service;

2. Participating in planning and budgeting for the patient activities service;

3. Ensuring that services are provided as specified in the patient activities portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for patient activities personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Posting a current monthly patient activities schedule where it can be read by patients, staff, and visitors, and maintaining a record of such schedules for one year.

8:43F-14.3 Responsibilities of patient activities personnel

(a) In accordance with written job descriptions, each patient activities staff member shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the patient activities needs of the patient, preparing the patient activities portion of the patient plan of care on the basis of the assessment, providing patient activities services as specified in the patient activities portion of the patient plan of care, reassessing the patient, and revising the patient activities portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 15. DENTAL SERVICES, LABORATORY SERVICES, AND RADIOLOGICAL SERVICES

8:43F-15.1 Provision of dental services

(a) Dental services shall be provided to patients, including, but not limited to, examination, oral prophylaxis, and emergency dental care to relieve pain and infection.

(b) If dental services are provided in the facility, the dentist shall document in the patient's medical record all dental services provided, at the time services are provided.

8:43F-15.2 Provision of laboratory and radiological services

(a) Facilities providing laboratory services shall be licensed or approved by the Department.

(b) Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:43F-16.1 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergency, equipment breakdown, fire, or other disaster. ***Copies of the emergency plans shall be sent to municipal and county emergency management officials for their review.***

(b) The facility shall maintain in the nursing area emergency equipment and an emergency medication kit approved by the pharmacy committee.

(c) Procedures for emergencies shall specify persons to be notified, ***process of notification and verification of notification,*** locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, ***procedures for reentry and recovery,*** frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) The emergency plans*, **including a written evacuation diagram specific to the unit that includes evacuation procedure, location of fire exits, alarm boxes, and fire extinguishers,*** and all emergency procedures shall be conspicuously posted throughout the facility. ***All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and patient evacuation as part of their initial orientation and at least annually thereafter.*** ***[Personnel shall be trained in the location and use of emergency equipment in the facility.]***

(e) In the event that the facility is unable to provide services to patients as scheduled due to the occurrence of an emergency, the facility shall immediately notify these patients of the change in schedule.

8:43F-16.2 Drills and tests

(a) ***[Simulated drills]* *Drills*** of emergency plans shall be conducted at least four times a year and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills shall include at least one drill for emergencies due to fire. The facility shall conduct at least one drill

per year for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

All staff shall participate in at least one drill annually, and selected patients may participate in drills.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (NFPA) requirements.

SUBCHAPTER 17. PATIENT RIGHTS

8:43F-17.1 Policies and procedures regarding patient rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall receive in-service education concerning the implementation of policies and procedures regarding patient rights.

(c) The facility shall comply with all applicable State and Federal statutes and rules concerning patient rights, including N.J.S.A. 52:27G-7.1 et seq. The State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall be notified of any suspected case of patient abuse or exploitation pursuant to N.J.S.A. 52:27G-7.1 et seq., if the patient is 60 years of age or older.

8:43F-17.2 Rights of each patient

(a) Patient rights, policies, and procedures shall ensure that, at a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by the patient's written acknowledgement prior to or upon admission, and receives an explanation, in terms that the patient can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for the patient's care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of care in accordance with the patient plan of care, is informed of the patient plan of care, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of the patient's care, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for the patient's welfare or that of other patients, upon the written order of the patient's physician, as documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, including transfer or discharge for nonpayment for services (except as prohibited by sources of third-party payment), the patient and the patient's family shall be given at least 30 days advance written notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of the patient's medical record, in accordance with the facility's policies and procedures;

7. Is free from mental and physical abuse, free from exploitation, and free from the use of chemical and physical restraints. Drugs and other medications shall not be used for punishment or for convenience of facility personnel;

8. Is assured confidential treatment of the patient's records and disclosures, and shall have the opportunity to approve or refuse their release to any individual, except in the case of the patient's transfer to another health care facility or as required by law or third-party payment contract;

9. Is treated with courtesy, consideration, respect, and recognition of the patient's dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during toileting, bathing, and other activities of personal hygiene;

10. Is not required to perform work for the facility unless the work is part of the patient plan of care and is performed voluntarily by the patient. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of the patient's choice and may join with other patients or individuals within or outside the facility to work for improvements in patient care;

12. Is allowed to conduct private telephone conversations;

13. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

14. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may not be restricted or prohibited, unless the patient consents and the restriction or prohibition is documented by the patient's physician in the patient's medical record;

15. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

16. Is encouraged and assisted to exercise rights as a patient and as a citizen, may voice grievances on behalf of the patient or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all patients and/or their families with the name, address, and telephone number of the following offices where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770
and

State of New Jersey
Office of the Ombudsman for the
Institutionalized Elderly
CN 808
Trenton, New Jersey 08625
Telephone: (800) 624-4262

(c) The administrator shall also provide all patients and/or their families with the name, addresses, and telephone numbers of the following offices where information concerning Medicare coverage may be obtained:

Legal Assistance for Medicare Patients
c/o Community Health Law Project
530 Cooper Street
Camden, New Jersey 08102
Telephone: (609) 964-0030

or
7 Glenwood Avenue
East Orange, New Jersey 07017
Telephone: (201) 672-6073

(d) The telephone numbers listed in (a) through (c) above shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 18. DISCHARGE PLANNING SERVICES

8:43F-18.1 Discharge plan

(a) The facility shall provide discharge planning services to patients.

(b) Each patient shall have a written discharge plan, which may be part of the patient plan of care.

(c) The discharge plan shall include at least an evaluation of the patient's needs, goals for discharge, and instructions given to the patient and/or the patient's family for care following discharge.

(d) The patient and, if indicated, family members shall participate in developing the plans for discharge.

8:43F-18.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for discharge planning services;
2. The time period for initiating, reviewing, and revising each patient's discharge plan;
3. Use of the multidisciplinary team in discharge planning; and
4. Criteria for patient discharge.

SUBCHAPTER 19. MEDICAL RECORDS

8:43F-19.1 Maintenance of medical records

(a) A current, complete medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A record system shall be maintained in which the patient's complete medical record is filed as one unit in one location within the facility.

8:43F-19.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:43F-19.3 Contents of medical records

(a) The complete patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race, religion (optional), sex, referral source, payment plan, marital status, and the name, address, and telephone number of the person(s) to be notified in an emergency, and travel directions to the patient's home;
2. The patient's signed acknowledgement that the patient has been informed of, and given a copy of, patient rights;
3. An assessment of the patient's home environment, based upon a visit to the patient's home;
4. A summary of the admission interview;
5. Documentation of the medical history and physical examination, signed and dated by the physician;
6. Patient assessments developed by each service providing care to the patient;
7. A patient plan of care;
8. Clinical notes, which shall be entered on the day service is rendered;
9. Progress notes;
10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;
11. A record of self-administered medications, if the patient self-administers medications;
12. Documentation of allergies in the medical record and on its outside front cover;
13. Documentation of dental, laboratory, and radiological services provided;
14. A record of referrals to other health care providers;
15. Documentation of consultations;
16. Any signed, written informed consent forms;
17. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;
18. All orders for treatment, medication, and diets, signed by a physician. Physician orders for speech-language pathology, physical therapy, and occupational therapy services shall include specific modalities and the frequency of treatment;

19. The discharge plan; and

20. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:43F-19.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.

(b) All entries in the patient medical record shall be legible and signed and dated by the person entering them.

8:43F-19.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information.
2. The specific period of time within which the medical record shall be completed following patient discharge, and disciplinary action for non-compliance;
3. The transfer of patient information when the patient is transferred to another health care facility; and
4. The release and/or provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:
 - i. Establishment of a fee schedule for obtaining copies of the patient's medical record;
 - ii. Policies and procedures regarding patient access to the patient's medical record;
 - iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated, as documented by a physician in the patient's medical record, for the patient to have access to or obtain copies of the record; and
 - iv. Procedures to ensure that the patient's medical record is provided within 30 calendar days of the written request.

8:43F-19.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operation, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 20. INFECTION PREVENTION AND CONTROL SERVICES

8:43F-20.1 Administrator's responsibilities

(a) The administrator shall ensure the development and implementation of an infection prevention and control program.

(b) The administrator shall designate a person who shall be responsible for the direction, provision, and quality of infection prevention and control services. The designated person shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, an organizational plan, and a quality assurance program for the infection prevention and control service.

8:43F-20.2 Infection control policies and procedures

(a) The facility shall establish an infection control committee which shall include the medical director and representatives from at least administration and the nursing service.

(b) The infection control committee shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:

1. A definition of nosocomial infection;
2. A system for identifying and monitoring nosocomial infections;
3. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities

and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;

4. Infection control and isolation, in accordance with the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)", OSHA Instruction CPL 2-2.44A, August 15, 1988;

5. Aseptic technique, employee health, and staff training;

6. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

7. Surveillance techniques to minimize sources and transmission of infection;

8. The prevention of decubitus ulcers;

9. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces; and

ii. Selection, storage, use, and disposition of single use and other patient care items; and

10. Collection, handling, storage, decontamination, disinfection, sterilization, and disposal of regulated medical waste and all other solid or liquid waste.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
or
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(c) Each service in the facility shall develop written policies and procedures for the infection control program for that service.

8:43F-20.3 Infection prevention measures

(a) The facility shall follow all Category I recommendations in the current editions of the following Centers for Disease Control publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1. Guideline for Prevention of Catheter-Associated Urinary Tract Infections;

2. Guideline for Prevention of Intravascular Infections;

3. Guideline for Prevention of Surgical Wound Infections;

4. Guideline for Prevention of Nosocomial Pneumonia; and

5. Guideline for Handwashing and Hospital Environmental Control.

8:43F-20.4 Use and sterilization of patient care items

(a) Single use patient care items shall not be reused. Other patient care items which are reused shall be reprocessed and reused in accordance with manufacturers' recommendations.

(b) Sterilized materials shall be marked with an expiration date and shall not be used subsequent to the expiration date.

(c) Sterilized materials shall be packaged and labeled so as to maintain sterility and so as to permit identification of expiration dates.

(d) Expiration dates shall be assigned to sterilized materials in accordance with the following:

1. Double-wrapped muslin/paper wrappers shall be marked with an expiration date not to exceed one month following sterilization;

2. Heat-sealed paper/plastic wrappers shall be marked with an expiration date not to exceed one year following sterilization; and

3. Self-sealed packaging shall be marked with an expiration date not to exceed the manufacturer's recommendation.

8:43F-20.5 Care and use of sterilizers

(a) Sterilizers shall be kept clean.

(b) Sterilizer drains shall be flushed at least weekly, unless otherwise specified by the manufacturer, and a record of such action shall be maintained.

(c) At the completion of each sterilization load, the time, temperature, and pressure readings shall be checked and recorded.

(d) A record of each sterilization load, including the date, the load number, the contents of the load, and the expiration dates of the contents, shall be maintained for at least one year.

8:43F-20.6 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(b) The facility shall comply with the provisions of 42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

SUBCHAPTER 21. HOUSEKEEPING, SANITATION, AND SAFETY

8:43F-21.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:43F-21.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of equipment.

8:43F-21.3 Patient care environment

(a) The following housekeeping, sanitation, and safety conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborage;

2. Nonskid wax shall be used on all waxed floors;

3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

4. All patient areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater located in an open basement;

14. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers;

15. Unobstructed aisles shall be provided in storage areas;

16. A program shall be maintained to keep rodents, insects, vermin, and birds out of the facility;

17. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

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18. All solid or liquid waste which is not regulated medical waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

19. Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be unobstructed and connected to the sanitary sewage disposal system;

20. Plastic bags shall be used for solid waste removal. Plastic bags used for solid waste removal shall be designated by the manufacturer as "medium" or "heavy" weight or their equivalent;

21. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

22. Wastebaskets and ashtrays shall be made of noncombustible materials;

23. Latex foam pillows shall be prohibited;

24. The temperature of the hot water used for bathing and hand-washing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius);

25. Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection; and

26. The temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) when patients are in the facility.

8:43F-21.4 Laundry services

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage and transportation of laundry;

2. Collection of soiled laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean laundry and for transporting soiled laundry;

3. Storage of soiled laundry in a ventilated area separate from any other supplies. Soiled laundry shall not be stored, sorted, rinsed, or laundered in patient areas, bathrooms, areas of food preparation and/or storage, or areas in which clean laundry and/or equipment are stored; and

4. Protection of clean laundry from contamination during processing, transporting, and storage.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:43F-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient care services.

8:43F-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff qualifications and credentials;

2. At least annual review of staff orientation and staff education;

3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services;

4. Evaluation by patients and their families of care and services provided by the facility;

5. Review of medication errors and adverse drug reactions by the pharmacy committee;

6. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and

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7. Establishment of objective criteria for evaluation of the patient care provided by each service.

8:43F-22.3 Measures for corrections and improvements

The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall implement measures to ensure that corrections or improvements are made.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Notice of Administrative Correction

Hospital Licensing Standards

Respiratory Care

Respiratory Care Staff Time and Availability; Mandatory

N.J.A.C. 8:43G-31.5

Take notice that the Department of Health has discovered an error in the adopted text of N.J.A.C. 8:43G-31.5(b) published in the February 5, 1990 New Jersey Register at 22 N.J.R. 441(b), at 483. The phrase "or on call" should appear after the word "hospital," in accordance with the text of this subsection as changed upon adoption set forth in response to comments on the proposed text (see N.J.A.C. 8:43G-31.5(b) Comments/Response, 22 N.J.R. 441(b), at 461). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (addition indicated in boldface **thus**).

8:43G-31.5 Respiratory care staff time and availability; mandatory

(a) (No change.)

(b) There shall be at least one registered respiratory therapist or certified respiratory therapy technician in the hospital **or on call**, at all times, in addition to the one who is primarily assigned to patients in the critical care unit.

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(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Bureau of Guardianship Services

General Provisions; Eligibility Requirements;

Continuation of Eligibility; Role and Responsibility of BGS; Limitations of Authority of BGS

Adopted New Rules: N.J.A.C. 10:45

Proposed: March 6, 1989 at 21 N.J.R. 607(a).

Adopted: January 8, 1990 by William Waldman, Acting
Commissioner, Department of Human Services.

Filed: January 9, 1990 as R.1990 d.76 **with substantive changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

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

Effective Date: February 20, 1990.

Expiration Date: February 20, 1995.

Summary of Public Comment and Agency Responses:

Comments were received from the Association for Retarded Citizens of Hunterdon County, (ARCH), the Association for Retarded Citizens of New Jersey, the Gloucester County Association for Retarded Citizens, Planned Lifetime Assistance Network of New Jersey, the Community Health Law Project of East Orange, Community Living for the Autistic, the Development Disabilities Association of New Jersey, Inc., and the Department of the Public Advocate, Division of Advocacy for the De-

velopmentally Disabled. The comments and responses follow, grouped by commenter.

Association for Retarded Citizens of Hunterdon County

1. COMMENT: The ARCH expressed concern that clients are not always visited within an 18 month period. "[Practices] should follow the guidelines. Is there a procedure to monitor this process?"

RESPONSE: As a result of concerns by this commenter, as well as others regarding the minimum frequency of visits by the assigned guardianship worker, the Division has reviewed staffing and caseloads and has changed N.J.A.C. 10:45-4.2(a)1 to require at least an annual visit. Further, the Division has looked into the suggestion that the standard previously in place as required by N.J.A.C. 10:45, to wit, a time frame for contact not exceeding 18 months, was not being adhered to. There are existing mechanisms within the Bureau of Guardianship Services for monitoring compliance, and the available record indicates that visits have indeed taken place annually in most cases, but certainly no less frequently than 18 months.

2. COMMENT: "Special care to ascertain the feelings of clients" should be taken concerning major decisions.

RESPONSE: N.J.A.C. 10:45-4.2(h) requires that the client be encouraged to participate in decision making to the extent of his or her capabilities. Special care is taken to ascertain the feelings of the client, whenever possible, before a decision is made which will affect the client.

Association for Retarded Citizens, New Jersey

3. COMMENT: N.J.A.C. 10:45-4.2(a)1 "deals with how often a client must be visited by his guardianship worker. They recommended at least annually, but permit once every eighteen months. We feel this interval is much too long. Appropriate time for such a visit should be once every six months with a follow-up phone call every two months."

RESPONSE: See the response to Comment 1 above, with respect to the amendment of N.J.A.C. 10:45-4.2(a)1 to require annual visitation, which the Department feels is sufficient. The Division, of course, agrees with the suggestion that other types of contacts, such as telephone communications, should supplement personal visits. This is indeed practiced by the guardianship staff on a regular basis. On the other hand, setting a standard in this regard is not deemed feasible, because many individuals receiving guardianship services are non-verbal and cannot use the telephone.

4. COMMENT: "The rule speaks of the use of 'highly aversive techniques.' This is a difficult and dangerous subject, but we agree such techniques cannot be ruled out in extreme cases."

"However, we feel the rules as written do not contain quite enough safeguards. In other areas, they call for the services of a representative of the Division of Advocacy for the Developmentally Disabled. We feel this procedure would be suitable and desirable in this instance. Also, institutional human rights committees might be involved."

"One further point. As good as most services are for people with mental retardation, they often, in our experience, fail to cope with a very important element, the wishes of retarded people themselves. With the use of such a controversial procedure as aversive techniques, we feel the subject should have the opportunity to express his/her preferences and have them taken into account by the professionals planning his/her future. In such a way, the most humane approach to this difficult area would be taken."

RESPONSE: In order to make the desired intent of this provision clear, N.J.A.C. 10:45-4.2(c) and 10:45-5.3(c)1iii have been amended. The rule's application is now limited to behavior modification programs utilizing Level III aversive techniques as delineated under N.J.A.C. 10:41-4.3. N.J.A.C. 10:41-4, Human Rights Committees, also requires review of all use of Level III techniques by the appropriate Human Rights Committee.

Gloucester County Association for Retarded Citizens

5. COMMENT: "BGS staff should visit their clients more frequently than annually if they are expected to be knowledgeable of a client's status and be expected to make sound decisions concerning medication, IHP's programming . . . Granted, the Guardian can receive pertinent information from the client's staff and family, but more frequent direct contact can only assist them in making prudent, well informed decisions."

RESPONSE: N.J.A.C. 10:45-4.2 has been amended to require annual visits, at a minimum. More frequent visits shall occur as appropriate.

6. COMMENT: N.J.A.C. 10:45-4.2(c) "implies that the guardian is not a regular voting member of the IDT and has the ability through the administrative code to overrule an IDT decision. The guardian should be permitted to have one vote as all other voting members of the team."

"This section could be difficult to interpret its intent and raises questions regarding the IDT process. The concern becomes the client's right to treatment versus a BGS worker's opinion to withhold consent."

"Again, the above implies that the guardian is not part of the IDT, and carries more voting weight than other members of the team. The guardian should have one vote and not be able to overrule the other voting members."

RESPONSE: It should be clarified that the role of the BGS worker, as well as any private guardian, for that matter, is essentially different from that of a voting member of the Interdisciplinary Team. The worker from the Bureau of Guardianship Services has the same authority as any guardian appointed by the court. This authority includes the granting or withholding of informed consent. Although the guardian of a client, public or private, has a right to be present at the interdisciplinary team meeting, the guardian is not bound by internal procedures for team members.

If there is a disagreement with the decision of the interdisciplinary team and the matter of dispute cannot be resolved, the team's decision may be appealed by the guardian, in accordance with N.J.A.C. 10:48.

Planned Lifetime Assistance Network of New Jersey

7. COMMENT: "Under N.J.A.C. 10:45-4.2(a), 'Functions and Duties of BGS Staff, the proposed rules state that 'BGS staff shall be knowledgeable and informed about client status, program and progress by means of one or more of the following: . . .' We feel that a face-to-face visit between the BGS worker and client should not be one of the options listed thereafter, but must be required. An appropriate time frame would include a direct contact visit between the BGS worker and client no less frequently than every six months (or more frequently if required), with follow-up telephone calls to the individual's living arrangement every two months."

RESPONSE: See the response to Comment 3, above, regarding this same issue. After further review by the Division, N.J.A.C. 10:45-4.2(a) has been changed by the deletion of the phrase "one or more". N.J.A.C. 10:45-4.2(a)1 has been changed to require at least annual visits.

8. COMMENT: "In Subchapter 4, 10:45-4.2(c), the proposed rules deal with consent given or withheld for 'behavior modification involving the use of highly aversive techniques.' We believe that safeguards such as the inclusion of an administrative review by a representative not associated with the Division of Developmental Disabilities would be appropriate."

RESPONSE: See the response to Comment 4 regarding this same issue. N.J.A.C. 10:41-4 requires that the Human Rights Committee review all behavior modification programs involving highly aversive techniques, and also requires that one third of the membership of the committee not be affiliated with the Division.

9. COMMENT: "In Subchapter 5, 10:45-5.2(a), Procedures requiring court approval, there is no mention made of the issue of refusing life-sustaining treatment. The policy of BGS regarding the issue should be addressed here or elsewhere in the proposal. It is simply too important an issue to be left unstated."

RESPONSE: It is the policy of the Division of Developmental Disabilities, including the Bureau of Guardianship Services, not to initiate withholding or discontinuation of life support systems for any client. Therefore, there is no need to address the issue of refusal of life sustaining treatment in this rule.

Community Health Law Project

10. COMMENT: "Proposed new rule N.J.A.C. 10:45-4.2(c) allows Bureau of Guardianship Service staff to give or withhold consent for . . . the use of highly aversive techniques. In some states 'highly aversive techniques' include the use of cattle prods to shock clients when they display undesirable behavior. Slapping and screaming, the use of horns, cymbals, flashing lights, etc., are common. This rule would seem to be in violation of N.J.S.A. 30:6D-5(1) which prohibits corporal punishment. To subject developmentally disabled persons to painful physical stimuli is to inflict corporal punishment, even when it is called by another more attractive term such as 'highly aversive techniques.' Common decency should preclude the use of these techniques when they are imposed by the power of the State on helpless persons."

RESPONSE: See the response to Comment 4 regarding this issue. For purposes of clarification, N.J.A.C. 10:45-4.2(c) has been amended to stipulate that BGS would have the authority, as any other guardian, to render or withhold consent only for the use of Level III behavior modification techniques as defined in N.J.A.C. 10:41-4.3. N.J.S.A. 30:6D-5a(1) prohibits the use of corporal punishment. N.J.A.C. 10:41-4.3 also

provides that the use of contingent electric shock is a Level IV technique, which would require petitioning the court for appointment of a guardian ad litem.

N.J.A.C. 10:45-5.3(c)1 has been changed to include the above changes.

Community Living for the Autistic

11. COMMENT: "Since it is the responsibility of the Department of Human Services to provide guardianship services, the question is raised as to the placement of the Bureau of Guardianship within the Division of Developmental Disabilities. It also raises the issue of a conflict of interest since guardians may have to advocate against the Division of Developmental Disabilities to provide necessary services while simultaneously being employed by the same Division. It seems an individual would be able to be a more effective guardian and advocate for those they serve if the Bureau of Guardianship was located within the Department of Human Services rather than the Division of Developmental Disabilities."

RESPONSE: Although the rationale behind this suggestion bears consideration, N.J.S.A. 30:4-165.4 assigns responsibility to provide guardianship services for the developmentally disabled to the Division of Developmental Disabilities. Legislative action would be required to reassign the function to another area of state government. It is arguable whether the conflict of interest issue would really be resolved by placing BGS within the Department of Human Services.

Developmental Disabilities Association of New Jersey, Inc.

12. COMMENT: The Association expressed a concern as to the functions and duties of BGS staff. "Within [N.J.A.C. 10:45-4.2], the following statement appears:

(C) BGS staff may give or withhold consent for proposed medical or dental procedures and behavior modification involving the use of highly aversive techniques. Such consent shall be premised upon:

1. Adequate information regarding the procedures, the risks involved, anticipated benefits, the possible alternatives, and any experimental or irreversible aspects of the proposed procedure (a second opinion may be requested)."

"This Agency seriously questions the ability of a non-medically trained BGS worker to issue the final determination of whether or not an individual being served shall receive medical treatment by a licensed physician. We fully support the idea of receiving a second or third opinion on medical issues, but if the second or third opinions concur with the opinion of the first physician's plan of treatment, we believe a violation of an individual's rights exists should medical treatment be withheld. Unfortunately, we have had direct experience with situations whereby a BGS worker refused an individual being served medical treatment—directly contradicting the advice of two or more medical consultants."

"We are very much aware that the courts have consistently upheld the rights of an individual to medical treatment over the objections of parents and guardians, i.e., the various cases brought before the courts based upon religious beliefs, etc. This Agency has, in fact, contemplated initiating court cases against BGS due to a BGS worker's prohibition of medical treatment for our residents. Fortunately, we have been graced by the intervention of Regional Administrators which alleviated our need to pursue legal action. We are concerned, though, that such assistance may not always be available and we will be left no alternative but to address the courts or discharge the resident to the appropriate DDD Administrator. This Agency reserves the right to discharge any individual we serve should medical treatment (two or three physicians agreeing upon a treatment plan) be withheld."

"We do believe in maintaining open and operable lines of communication between our personnel and all guardianship workers. Our resident records are active, current, and facilitate us as well as BGS workers in determining the next best step to take in providing our individuals with the best possible treatment available. If we deem medical help necessary, it is our duty to secure such on behalf of the resident."

"Again, we believe the medical profession is qualified, as by State Law, to make medical treatment determinations that we are not equipped to make and that we must rely on their judgment rather than our own or that of non-medically trained BGS personnel."

RESPONSE: BGS believes, and presumably private guardians agree, that medical treatment to address specific needs should indeed be provided. However, certain types of treatment or procedures involve degrees of risk and consequently the informed, voluntary consent of the patient or the patient's guardian are solicited by medical personnel. This rule would vest in the Bureau of Guardianship worker the same authority as any individual appointed by the courts to act as guardian of the person.

Although the recommendations and consultation of medical professionals are invaluable in decision making, ultimately decision-making authority to either give or withhold informed consent must rest with the guardian. Threats of litigation or disenrollment should not intimidate any guardian, public or private, from objective decision making.

If the argument inherent in the comment were carried to its logical consequence, parents of minors and guardians of incompetent adults would need to have medical training before they could properly render informed consent on behalf of their children or wards; this is patently unacceptable.

Division of Advocacy for the Developmentally Disabled

13. COMMENT: "N.J.A.C. 10:45-1.1(c), which sets forth the legislative mandate to the Commissioner to make all reasonable and necessary provisions to insure the health, safety, welfare and earliest appropriate release of persons admitted to residential services for the developmentally disabled, is not relevant to guardianship services and, therefore, the Public Advocate recommends that it be deleted."

RESPONSE: The provisions under N.J.S.A. 30:4-25.7 which address the authority and responsibility of the Commissioner are so broad that it is hard to argue they lack relevance of guardianship services. Since retention of this section at worst, does not harm and indeed may clarify the broad responsibility of the Commissioner, it is felt that deletion would not improve the rules.

14. COMMENT: "The definition of 'guardian' should be changed to reflect the statutory obligation of DDD to obtain judicially authorized appointments of guardians for persons over whom BGS had assumed guardianship prior to the enactment of P.L. 1985, c.133. Thus, the phrase 'otherwise legally authorized' should be deleted. The following should be added: 'Pursuant to P.L. 1985, c.133, allegedly incompetent persons over whom DDD assumed guardianship prior to April 12, 1985, must have their guardianship status reviewed by a court of competent jurisdiction by April 12, 1990.'"

RESPONSE: One of the intentions for inclusion of the phrase "or otherwise legally authorized" was to make the definition applicable to a natural or adoptive parent. The need to pursue guardianship through a court of competent jurisdiction is addressed at N.J.A.C. 10:43-5.2. At this writing, a legislative amendment to extend the time frame is in process, so defining a deadline date would be inappropriate.

15. COMMENT: "The Public Advocate recommends that N.J.A.C. 10:45-2.1(a) be changed from 'receiving' functional or other service to 'eligible to receive.' This change is necessary to include individuals whose sole need may be guardianship services. The Public Advocate assumes that 'other services' include guardianship services."

RESPONSE: After the Division carefully considered this comment, N.J.A.C. 10:45-2.1(a) has been changed to read "receiving or has been formally determined by the Division to be eligible for functional or other services." The phrase "other services" has never been clearly defined.

16. COMMENT: "N.J.A.C. 10:45-2.1(a)2 and 3 should be changed for grammatical reasons. 'Have' should be changed to 'has' to create subject-verb agreement."

RESPONSE: The corrective comment is appreciated and N.J.A.C. 10:45-2.1(a)2 and 3 have been amended accordingly.

17. COMMENT: "The term 'abandoned' is too vague. Thus, the Public Advocate recommends that 'abandoned' in N.J.A.C. 10:45-2.2(a)1 (and throughout the proposed regulations) be changed to 'children whose parents(s) or guardians(s) are deemed unavailable pursuant to subsection (b)2 of this section.' This will then make it clear that DDD is making reference to persons whom they have [been unable] to locate through the procedure outlined in (b)2."

RESPONSE: The Division is grateful for this suggestion and N.J.A.C. 10:45-2.2(a)1 has been changed. The term "abandoned" throughout the chapter has been replaced with the suggested words.

18. COMMENT: "So as to ensure that BGS is the guardian of last resort and that relations and close family friends who might be ready, willing and able to serve as guardians are considered, the Public Advocate recommends that N.J.A.C. 10:45-2.2(b)1 be modified as follows: 'deceased and that there are no other relations or close family friends available to serve as guardian(s); or . . .'"

RESPONSE: Once again, this comment is deemed helpful and N.J.A.C. 10:45-2.2(b)1 has been changed to include the elaboration.

19. COMMENT: N.J.A.C. 10:45-2.2(b)2i "should be changed by adding after the word 'Notice' in the first phrase the following language: 'in the primary language of the guardian(s) if known.' This requirement is mandated by the Supreme Court. (In re Promulgation of Guardianship Services Regulations, 103 N.J. at 633, 635) it should be clearly and affirmatively set out in the rule so as to remove all doubt as to the agency's obligations."

RESPONSE: The Division agrees and N.J.A.C. 10:45-2.2 has been amended as requested.

20. COMMENT: The Public Advocate stated that there should be wording added to N.J.A.C. 10:45-2.2(b)3, after "initiation," the phrase 'termination or change' of guardianship services to reflect DDD's obligation to advise the Public Advocate of any action respecting the guardianship of an allegedly incompetent minor. While the Supreme Court did not specifically require notice except as to the initiation of guardianship services (In re Promulgation of Guardianship Services Regulations, 103 N.J. at 642) the Public Advocate believes that notice should be given at all junctures to ensure the protection of the child."

RESPONSE: Although the Supreme Court decision did not contain this directive, N.J.A.C. 10:45-2.2(b)3 has been changed. The Division concurs that such notification is necessary.

21. COMMENT: "The words 'with a,' regarding a power of attorney in N.J.A.C. 10:45-3.2(a)3, should be stricken and the quoted language changed to 'there is' in order for the sentence to make sense grammatically."

RESPONSE: The corrective comment is appreciated and N.J.A.C. 10:45-3.2(a)3 has been changed.

22. COMMENT: N.J.A.C. 10:45-3.2(a)3i "should have added to it a paragraph reflecting the limitation on duration of interim guardianships. As the Supreme Court noted: 'The Division should wait no more than one year before involving DYFS and the courts' after assumption of guardianship over minors to these regulations. A subsection 3(i)5 should be added which states: '5. Interim guardianship services shall be effective for no more than one year, at which time BGS must petition a court of competent jurisdiction for the appointment of BGS as guardian.'"

RESPONSE: The Division generally agrees with the comment, and thus N.J.A.C. 10:45-3.2(b) has been added to require referral to the courts for the appointment of a guardian within one year of the initiation of interim guardianship services by BGS. However, to allow BGS only one year to provide guardianship could result in no guardianship provided to the child for the period of time until the actual court adjudication. There could be unforeseen delays in effecting an actual disposition by the court.

23. COMMENT: "In defining the role of BGS as distinct from functional services units within DDD, the Public Advocate recommends that the language of N.J.A.C. 10:45-4.1(a) be changed from 'be considered' to 'function.' This change would reflect the requirement that BGS actually operate independently of the functional units of DDD rather than simply appear to be distinct. The Public Advocate, however, seriously questions whether BGS staff acting as guardians for incompetent DDD clients can actually function independently when they are ultimately under the control and authority of DDD, a situation which raises disturbing conflict of interest issues."

RESPONSE: This suggested language change appears to have merit, and N.J.A.C. 10:45-4.1(a) has been changed. The independent role of BGS, focusing on client rights issues and removed from other competing interests of the Division, has been duly respected over the years in actual practice by the administration. Hypothetically it should pose a problem, but experientially it has not.

24. COMMENT: "The Public Advocate urges that the words 'one or more,' used in relation to actions BGS staff must undertake in N.J.A.C. 10:45-4.2(a), be stricken. BGS staff should not be permitted to substitute one of the actions enumerated in (a)1 through (a)5 for their legal duty to undertake whatever efforts are necessary to be fully informed of their clients' status and to protect their clients' interests."

RESPONSE: See the response to Comment 7, regarding the same issue. N.J.A.C. 10:45-4.2(a) has been changed accordingly.

25. COMMENT: "The Public Advocate also urges that N.J.A.C. 10:45-4.2(a)1, regarding direct contact, be changed to state that 'All clients,' not just 'Most clients,' should be visited at least twice annually. Furthermore, the phrase 'but in any event each client shall be visited no less frequently than every 18 months' should be stricken. The Public Advocate believes that requiring BGS staff to visit each of their clients at least once annually only nominally comports with their legal obligations as guardians. Requiring any less frequent visitation raises serious

concerns about whether BGS staff are sufficiently in contact with their wards to fulfill their duties."

RESPONSE: Please see the response to Comment 3. N.J.A.C. 10:45-4.2(a)1 has been changed to require annual visits for all clients as a minimum standard. More frequent contacts and more intense involvement would occur in individual cases as the need indicates.

26. COMMENT: N.J.A.C. 10:45-4.2(c), "regarding consent by BGS to the use of highly aversive techniques for behavior modification, raises a number of serious concerns. The term 'highly aversive techniques' is never defined in the proposed regulation. If, however, this term includes such practices as cattle prods, electrical shocks, ammonia mist to the face, slapping the client or hitting him with a device, for example, then the Public Advocate is opposed to their use under any or all circumstances, regardless of what safeguards or due process guarantees might be added. The proposed regulation should prohibit the use of these and similar techniques."

"The Public Advocate urges the Division of Developmental Disabilities to define this term so that there will be a consistent and commonly-understood meaning. If the use of aversive techniques other than the sort referred to above is contemplated, then the Department of the Public Advocate urges that the proposed regulation be republished to specify and define other such techniques. Only at that point could the Public Advocate meaningfully address the question of whether such other aversive techniques are valid and, if so, what due process guarantees should apply."

RESPONSE: N.J.A.C. 10:45-4.2(c) has been changed to limit such consent to Level III behavior modification techniques, as defined under N.J.A.C. 10:41-4.3. N.J.S.A. 30:6D-5 clearly prohibits the use of corporal punishment. Level IV techniques, as defined by N.J.A.C. 10:41-4.3, including electric shock, require petitioning a court for appointment of a guardian ad litem for the purpose of deciding whether approval for such techniques would be warranted in a specified case. The Department feels that the safeguards provided by N.J.S.A. 30:6D-5a(4) are sufficient.

27. COMMENT: "N.J.A.C. 10:45-4.2(d), regarding access to client records, should be changed to permit legal counsel and the Public Advocate access without the consent of BGS. This suggested change is based upon the ruling of Judge Sarokin in *Bonnie S. v. Altman*, 683 F. Supp. 100 (D.N.J. 1988), wherein the court ruled that an incompetent person who had a BGS guardian had an independent right to consent to the release of her records to legal counsel, notwithstanding BGS's lack of consent. (*Bonnie S. v. Altman*, 683 F. Supp. at 103 (citing N.J.S.A. 30:4-24.3(2)). The language of subsection (d) should be changed to add 'unless the request is from the Public Advocate or the client's legal counsel and the client has provided consent.'"

RESPONSE: The Division of Developmental Disabilities has sought and obtained legal consultation on this issue and has been advised that the *Bonnie S. v. Altman* ruling is not to be interpreted as having the extremely broad ramifications which would result from the language the Public Advocate is suggesting. Indeed, in its opinion, the court placed reliance on N.J.S.A. 30:4-24.3 governing confidentiality of records. Consequently, N.J.A.C. 10:45-4.2(d) has been changed to clarify that BGS will conform with the provisions of the cited statute governing confidentiality.

28. COMMENT: The Public Advocate recommends that N.J.A.C. 10:45-4.2(e), "regarding approval for major program changes or transfers, be changed to reflect limited authority on the part of BGS staff in this critical area. Transfers from the community to an institution or developmental center should be subject to court review because of the statutory mandate that such transfers be in the best interest of the client and in order to protect the client's rights to due process. See N.J.S.A. 30:6D-21. The best interest standard and due process require, in the Public Advocate's view, scrutiny by an entity other than BGS. Thus, the following language should be added to Subsection (3): 'except if it involves a transfer to a developmental center or other institution, in which case prior judicial approval must be obtained.'"

RESPONSE: This comment has been given careful consideration. There is no requirement in N.J.S.A. 30:6D-21 for such court review of a consent by a guardian. On the other hand, transfers to a developmental center or other institution may be appealed, in accordance with N.J.A.C. 10:48. Indeed, BGS has, on occasion, disagreed with decisions of this type and either negotiated a resolution of the dispute or initiated the appeal process.

29. COMMENT: "The Public Advocate suggests that N.J.A.C. 10:45-4.2(g) be changed to eliminate the extraneous phrase 'for good and

valid reason, that is'. That language adds nothing to the meaning of subsection (g)."

RESPONSE: The suggestion has merit and therefore N.J.A.C. 10:45-4.2(g) has been amended.

30. COMMENT: N.J.A.C. 10:45-4.2(i) "should be changed to clarify the conditions under which contact with a client's family should not be elicited. The reference to 'social history' is too vague and may permit reliance on inaccurate preparation of such a document. Thus, subsection (i) should be changed by deleting 'unless contradicted by the client's social history.' More functional language should be inserted such as 'unless there is documented abuse or neglect of the client by the family or other similar circumstances.'"

RESPONSE: This comment prompted further scrutiny of this section by the Division. As a result of this review, N.J.A.C. 10:45-4.2(i) has been deleted because, in practice, there is potential for unintended harm to the client. It must be the responsibility of the guardian to decide what actions are in the best interest of the individual and to require contact with family members in virtually every instance may likely cause delay in such decision making and cause injury to the client. Moreover, a mechanism is now in place whereby family members can themselves be appointed guardians through a facilitated process.

31. COMMENT: N.J.A.C. 10:45-5.2(a)4 "should be changed to reflect the statute's (N.J.S.A. 30:6D-1 through 12) prohibition on experimentation as well as research of a medical, behavioral or pharmacological nature. Thus, subsection (a)4 should have the additional language or experimentation."

RESPONSE: Although "research" may already imply "experimentation", N.J.A.C. 10:45-5.2(a)4 has been changed, nevertheless, at the risk of redundancy.

32. COMMENT: "To reflect the concerns expressed above with regard to transfers to developmental centers or other institutions, the Public Advocate strongly urges that a new subsection (a)5 be added. See discussion under 10:45-4.2(e). The new subsection should read: 5. Admission or transfer to a developmental center or other institution operated by or under contract with the Department."

RESPONSE: Please see response to Comment 28. There is no requirement under N.J.S.A. 30:6D-5(a) for a guardian ad litem to be appointed for admission or transfer to an institution, nor should there be. It should be the prerogative of the guardian, private or public, to weigh and decide whether admission to an institutional setting is necessary to meet the client's needs and is the least restrictive appropriate alternative.

33. COMMENT: "In keeping with the Public Advocate's previous comments, the title of N.J.A.C. 10:45-5.3, and subsection (a), should be changed by deleting the term 'abandoned' and replacing it with a functional definition as noted above at subsection 10:45-2.2."

RESPONSE: In consonance with the Division's earlier acceptance of this suggestion, the title has been changed.

34. COMMENT: "To reflect the statutory authority for guardianship petitions the following language should be added in N.J.A.C. 10:45-5.3(b) after the word 'jurisdiction': 'pursuant to N.J.S.A. 30:4-165.1 et seq.'"

RESPONSE: The suggested addition is warranted and N.J.A.C. 10:45-5.3(b) has been amended.

35. COMMENT: N.J.A.C. 10:45-5.3(c)liii(2) "should be changed by deleting the reference to the use of psychotropic drugs as an acceptable behavior management technique. There is no question that the use of psychotropics for behavior control contravenes *Rennie v. Klein*, 720 F.2d 266 (3d Cir. 1983), as well as the Developmentally Disabled Rights Act, N.J.S.A. 30:6D-5a(1). Thus, the language 'for behavior management' should be deleted to make it clear that any use of such dangerous drugs is subject to administrative review. There also should be language added which makes it clear that psychotropic drugs may not be used, under any circumstances, for behavior management."

RESPONSE: The use of psychotropic medication, in certain cases, as treatment for behavior management, prescribed by a competent clinician, such as a psychiatrist, as part of a program plan to address severe maladaptive behavior, should be clearly distinguished from its use as a chemical restraint. In any event, the literature supports the use of psychotropic medication as one possible modality in dealing therapeutically with certain ongoing behavioral manifestations, as long as certain controls and/or checks and balances are in place (for example, review by the Human Rights Committee). Its inclusion in this section actually adds another element of control, that is, identifying the issue as an area of "critical decision-making" requiring administrative review of a BGS decision.

36. COMMENT: The Public Advocate recommends that N.J.A.C. 10:45-5.3(c)2 "be changed to reflect the need for notice to the Public Advocate of the imminence of decision-making in critical areas. Such a requirement would comport with the Supreme Court's ruling with regard to due process standards necessary in the administrative review process. (See *In re Promulgation of Guardianship Services Regulations*, 103 N.J. at 641-42, in which the Supreme Court said that "... the agency stated its intentions, repeated before us, to provide notice to the Public Advocate whenever it intended to initiate interim guardianship-of-the-person services. We believe such a practice, combined with notice of any proposed critical decision-making, will lessen the risks that may exist ..." (emphasis added). Thus, the following language should be added to the last sentence of subsection (c)2: 'at which time notice shall also be given to the Public Advocate.'"

RESPONSE: The recommendation is appreciated and N.J.A.C. 10:45-5.3(c)2 has been changed.

37. COMMENT: N.J.A.C. 10:45-5.3(c)3 "should be changed to reflect the need for a limited time within which the Director must act to designate an Administrative Review Officer (ARO). Presently, there is no time limit for this to occur as there is for other actions under this subsection. The Public Advocate suggests a one (1) or two (2) day time frame which should be stated in subsection (c)3 as follows: '... by the Director, who shall designate such a person within two (2) working days.'"

"The time frame for the scheduling of administrative review by the ARO, as set forth in subsection (c)4, is too lengthy. The Public Advocate suggests that the period be five (5) working days rather than eight (8). Since this is supposed to be an expedited process, the Public Advocate recommends that a maximum of ten (10) working days be established for the entire process to run."

RESPONSE: The suggestions contained in this comment were carefully considered by the Division. After review, conclusion was reached that this rule is in compliance with the directives of the New Jersey Supreme Court and no changes are required.

38. COMMENT: "The Public Advocate recommends that an additional subsection be added between currently proposed subsections 4 and 5 to address the need for a mechanism by which the Public Advocate can initiate the administrative review process. Such a mechanism is necessary for situations in which clients believe that BGS has not taken steps to have its critical decision-making reviewed through the process described in subsections 10:45-5.3(c)2, 3 and 4. There should be a process whereby a client, through the Public Advocate, can request such an administrative review. The following language should be inserted in a newly designated 10:45-5.3(c)5: '5. Upon the request of the Public Advocate, the Division shall arrange and schedule an administrative review. Such review shall be held within three (3) working days of the request and a written decision shall be rendered by the ARO within two (2) working days of the date of the hearing.'"

RESPONSE: Although there is no essential disagreement that a mechanism for initiating administrative review should be in place, this already exists. Whenever the Public Advocate, as the representative of an individual with developmental disabilities, disagrees with a decision of Division staff the Public Advocate can initiate an administrative review, in accordance with N.J.A.C. 10:48.

39. COMMENT: N.J.A.C. 10:45-5.3(c)6 should "be changed as to the notice to be provided to the Public Advocate in situations of extreme medical emergency. The Public Advocate should receive notice prior to the action proposed to be taken, unless doing so would pose an immediate threat to the child's life, in order to provide more meaningful protection for the client. While no administrative review is required because of the emergent nature of the situation, the client and the Public Advocate should have the opportunity to bring any objections before a court, if such action is deemed necessary and appropriate, prior to any medical procedures being undertaken. Therefore, newly designated subsection (c)7 should be changed as follows: '7. The Public Advocate shall be informed immediately of the action BGS proposes to take pursuant to (c)6 above.'"

RESPONSE: In response to this recommendation, N.J.A.C. 10:45-5.3(c)6 has been changed to indicate that the DADD will be informed of the decision as soon as possible.

40. COMMENT: "Some general comments are necessary regarding the entire process and the substantive standard defining the types of decisions that can be safely made without the possibility of error or lasting and irreversible consequences to the child. See, *In re Promulgation of Guardianship Services Regulations*, 103 N.J. at 641 and 642, n.6. First, there should be an exacting evidentiary standard for determining the unavailability of the parent(s) or guardian(s) to participate in any critical

decision-making, and whether the proposed action is in the best interests of the child. The Supreme Court rules that there should be 'clear and convincing evidence' as to these two issues before the ARO allows BGS to make critical decisions. In re Promulgation of Guardianship Services Regulations, 103 N.J. at 641. The current proposal has no such standard. This evidentiary standard should be a part of subsection (c)4."

RESPONSE: In order to clarify the evidentiary standard to be employed, N.J.A.C. 10:45-5.3(c)4iv has been changed.

41. COMMENT: "The Public Advocate believes that the substantive standards which define under what circumstances the critical decision-making administrative review process is appropriate must be articulated to a greater extent. The Supreme Court indicated that the agency was able to articulate detailed standards for appropriate decision-making in this area. In re Promulgation of Guardianship Services Regulations, 103 N.J. at 642, n.6. It is not clear that the standards set out at proposed 10:45-5.3(c)1 are sufficiently detailed and properly articulated, or even legitimate, under the Court's formulation. For example, abortion is listed as one of the medical procedures which falls under the critical decision-making process. However, procreation is a fundamental right. In re Grady, 85 N.J. 235, 245 (1981). Thus, no decision on such a procedure can be made without the appointment of a guardian *ad litem* in a judicial proceeding. In re Grady, 85 N.J. at 264.

"The other medical procedures listed in 10:45-5.3(c)ii, including removal of a vital organ, transplant of a vital organ and amputation of a limb, also clearly impinge on fundamental liberty (and privacy) interests in autonomy and bodily integrity. This particular subsection of the regulation should be redrafted to articulate situations which are appropriate to substitute decision-making such as elective surgery. In re Promulgation of Guardianship Services Regulations, 103 N.J. at 640. DDD must articulate situations that fall between the extremes of abortion and 'the suturing of a lacerated hand'. *Id.* These proposed regulations fail to comply with the directive of the Supreme Court."

RESPONSE: After consideration of this comment, the Division feels the rule makes a good faith effort to identify critical decision-making areas. It would be impossible to identify every conceivable possibility in this rule. The list of critical decision-making areas that should be included could be subject to endless debate. The Supreme Court explicitly directed that the Division should be the arbiter in determining what types of decision-making areas should be subject to an administrative review.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *(thus)*).

CHAPTER 45 GUARDIANSHIP SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

10:45-1.1 Authority

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

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

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

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

10:45-1.2 Definitions

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

"Bureau of Guardianship Services (BGS)" means the unit within the Division of Developmental Disabilities which has the responsi-

bility and authority to provide guardian of the person services to individuals in need of such services.

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

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

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

"Division" means the Division of Developmental Disabilities.

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR GUARDIANSHIP SERVICES

10:45-2.1 Eligibility requirements for adults

(a) An individual 18 years or older is eligible for guardianship services if he or she is receiving *or has been formally determined by

the Division to be eligible for* functional or other services from the Division and has been:

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

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

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

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

10:45-2.2 Eligibility requirements for children

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

1. Is ***[orphaned or abandoned, with no legal guardian of the person having been appointed]* ***without parent or guardian after the requirements of (b)2 below have been satisfied*****; or

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

(b) In the instance of a child determined eligible for guardianship services ***[on the basis of being orphaned or abandoned]* ***where no parent or guardian is deemed available*****, staff of the functional service unit shall verify such status by:

1. Documentation that the child's legal guardian(s) is (are) deceased ***and that there are no other relations or close family friends available to serve as guardian***; or

2. Documentation that the following efforts to locate the child's guardian(s) have been unsuccessful:

i. Notice ***in the primary language of the guardian, if known,*** by regular mail and follow-up by certified mail, return receipt requested, to the guardian's last known address, with no response received within 45 days of forwarding the certified letter;

ii. Documented inquiry among any known relatives, friends and current or former employers of the guardian(s); and

iii. Documented inquiries, unless restricted by law, using the guardian's last known or suspected address, to the local post office, the Division of Motor Vehicles, and any social service and law enforcement agencies known to have had contact with the guardian(s) both in New Jersey and in other states. Failure to receive response to the inquiries within 45 days shall constitute a negative response.

[2.]* ***3. The Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled (DADD) shall be notified in writing by BGS within 10 days of initiation *** , termination or change*** of guardianship services for ***[an orphaned or abandoned child]* ***a child whose parents are deemed unavailable*****.**

SUBCHAPTER 3. CONTINUATION OF ELIGIBILITY FOR GUARDIANSHIP SERVICES

10:45-3.1 Continuation of eligibility for adults

(a) Eligibility for guardianship services continues for an adult individual as long as:

1. He or she remains a recipient of functional or other services from the Division; and

2. None of the following has occurred:

i. A court order reversing a previous adjudication of mental incompetency and appointment of BGS as guardian;

ii. In the instance of an individual receiving guardianship services on the basis of determination of mental deficiency prior to April 12, 1985, a change of this status resulting from a review and re-evaluation of the IHP pursuant to N.J.A.C. 10:43; or

iii. A revocation of a power of attorney by the guardian, or a lapse of the time specified therein.

10:45-3.2 Continuation of eligibility for children

(a) Eligibility for guardianship services continues for a child as long as he or she:

1. Remains a recipient of functional or other services from the Division;

2. Remains under the age of 18 years. Prior to reaching the age of majority, an assessment shall be made as to the continuing need for a guardian as an adult, in accordance with the provisions of N.J.S.A. 30:4-165.4 et seq. and N.J.A.C. 10:43; and

3. Remains without a guardian, or ***[with a]* ***there is*** power of attorney still in force designating BGS to act on the child's behalf.**

i. In the instance of a child previously ***[considered abandoned]* ***without a parent or guardian available*****, when a parent or appointed legal guardian who had been inaccessible again becomes available to exercise his or her role:

[1.]* ***1) If interim guardianship services are provided, guardianship services shall immediately and automatically cease with written notification to the parent or appointed guardian.**

[2.]* ***2) If BGS has been appointed by a court as guardian, a termination or change of guardianship is required by the court.**

[3.]* ***3) In the instance of the return of a parent or a guardian who is deemed by BGS to be unsuitable, BGS shall petition the court of competent jurisdiction for termination of the parent guardianship rights.**

[4.]* ***4) If a power of attorney lapses or is revoked, BGS shall discontinue services as of the applicable date.**

b) A referral to the courts for appointment of a guardian shall be made within one year of the initiation of BGS guardianship services.

SUBCHAPTER 4. ROLE AND RESPONSIBILITIES OF BUREAU OF GUARDIANSHIP SERVICES

10:45-4.1 Distinct role of BGS staff

(a) BGS staff shall ***[be considered distinct and independent]* ***function distinctly and independently***** from functional service units in terms of their interrelation with individuals receiving services from the Division.

(b) BGS staff shall focus exclusively on the following:

1. Protective services;
2. Safeguarding individual rights;
3. Substitute decision-making;
4. Advocacy on behalf of the individual; and
5. Maximizing the individual's self-determination.

10:45-4.2 Functions and duties of BGS staff

(a) In order to exercise their role and responsibilities, for all clients receiving guardianship services, BGS staff shall be knowledgeable and informed about client status, program and progress by means ***[of one or more]*** of the following:

1. Direct contact: ***[Most]*** clients should be visited at least annually, more often as necessary***[, but in any event each client shall be visited no less frequently than once every 18 months]***;

2. Interviews with staff, service providers, relatives and other involved parties;

3. Participation at case conferences, individual habilitation plan sessions and other meetings when feasible;

4. Review of records; or

5. Utilization of any other appropriate source of information.

(b) BGS staff shall be responsible to advocate for individual clients in areas including, but not limited to:

1. Placement in the least restrictive environment;
2. Programs and services appropriate to client needs;
3. The exercise of client rights; and
4. Self advocacy.

(c) BGS staff may give or withhold consent for proposed medical or dental procedures and behavior modification involving the use of ***[highly aversive techniques]* ***Level III techniques as defined in "Levels of aversiveness" at N.J.A.C. 10:41-4.3*****. Such consent shall be premised upon:

1. Adequate information regarding the procedure, the risks involved, anticipated benefits, the possible alternatives and any experimental or irreversible aspects of the proposed procedure. (A second opinion may be requested.); and

2. Freedom from coercion by other parties.

(d) BGS staff may give or withhold consent for access to client records, release of confidential information and/or photographing clients ***consistent with the requirements of N.J.S.A. 30:4-23.4 governing confidentiality of client records***.

(e) BGS staff may give or withhold approval for major changes of program or transfers.

(f) BGS staff may give or withhold approval of the IHP.

(g) Consent or approval as provided for in (c) through (f) above may be withheld ***[for good and valid reason, that is,]*** if there is basis for an informed judgement by BGS staff that what has been proposed would not be in the client's best interest or that the potential risks involved would outweigh any anticipated benefit.

(h) With respect to the decisions described in (b) through (e) above, BGS staff shall encourage the client to participate in decision-making to the extent of his or her capability. Special care should be taken to ascertain the feelings of the client whenever possible before making a decision.

[(i) With respect to the decisions described in (b) through (e) above, BGS staff shall contact client's family and solicit their input in the decision-making process, unless contraindicated by the client's social history.]

10:45-4.3 Duty to inform

Functional service unit staff shall inform BGS staff promptly and comprehensively regarding any significant life events, proposed program changes, or incidents involving individuals being served by BGS.

SUBCHAPTER 5. LIMITATIONS OF AUTHORITY BUREAU OF GUARDIANSHIP SERVICES

10:45-5.1 Guardianship of person

The responsibility and authority of BGS shall be restricted to guardianship of the person only, and not of property, pursuant to N.J.S.A. 30:4-165.12.

10:45-5.2 Procedures requiring court approval

(a) In accord with N.J.S.A. 30:6D-5(a), BGS staff shall not consent to the following procedures but may, with the approval of the Chief of the Bureau, refer the matter to a court of competent jurisdiction for appointment of a guardian ad litem:

1. Shock treatment;
2. Psychosurgery;
3. Sterilization; or

4. Medical, behavioral or pharmacological research ***as experimentation***.

10:45-5.3 Guardianship services for ***[orphaned or abandoned children]* *a child whose parent or guardian is deemed unavailable***

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

(b) No later than 10 months after the commencement of guardianship services, petition shall be made to a court of competent jurisdiction ***pursuant to N.J.S.A. 30:4-165.1 et seq.*** for the appointment of a guardian, unless the parent(s) or appointed guardian shall have reassumed their role under the provision of N.J.A.C. 10:45-3.2(a)3i^{*}.

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

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

i. A transfer which involves a change of the individual's place of residence;

ii. A medical procedure which entails major, irrevocable consequences including, but not limited to, amputation of a limb, abortion, removal or transplant of a vital organ; and

iii. A major change in the individual's IHP, including but not limited to^{*}:

(1) Implementation^{*} ***implementation*** of a behavior modification program involving the use of ***[highly aversive techniques]* *Level III techniques as defined in "Levels of aversiveness" at N.J.A.C. 10:41-4.3***.

[(2) Use of psychotropic drugs for behavior management.]

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

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

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

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

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

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

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

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

5. In any situation of extreme medical emergency, where any delay of decision-making on behalf of the child would pose a serious threat to the child's life or health, BGS shall render a decision without an administrative review. The existence of an extreme medical emergency must be certified in writing by a licensed physician. The physician's certification shall be maintained in the child's client record.

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

(a)**DIVISION OF YOUTH AND FAMILY SERVICES****Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care
Facilities and Boarding Homes****Adopted Amendment: N.J.A.C. 10:123-3.2**

Proposed: December 18, 1989 at 21 N.J.R. 3912(a).

Adopted: January 26, 1990 by William Waldman, Acting

Commissioner, Department of Human Services.

Filed: January 26, 1990 as R.1990 d.137, **without change**.

Authority: N.J.S.A. 44:7-87.

Effective Date: February 20, 1990.

Operative Date: March 1, 1990.

Expiration Date: July 29, 1990.

Summary of Public Comments and Agency Responses:

The Division received written comments from two individuals—one, a boarding home administrator, and one, a boarding home resident.

COMMENT: A boarding home operator felt that the increase in the PNA rate due residents was too high and put a strain on the rates paid to facilities. The administrator said that it is unfair for sheltered care and boarding homes to assume responsibility for residents and yet not receive commensurate rates.

RESPONSE: Many facility administrators, operators and owners share this concern about commensurate rates. The Division feels that a PNA increase of two dollars a month or seven cents a day will not significantly affect board and care rates for SSI residents.

COMMENT: A boarding home resident states that a two dollar increase in the PNA is unfair since the SSI check increased by 18 dollars. He says he cannot afford to buy a gift for anyone in his family or go to Atlantic City while boarding home operators get rich.

RESPONSE: The PNA two dollar increase is a proportionate increase. The PNA rate in New Jersey exceeds the Federal requirement by 19 dollars. The Division feels that the rule change should be adopted. Any further increase could only come through additional appropriations.

Full text of the adoption follows.

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least \$59.00 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

CORRECTIONS**(b)****THE COMMISSIONER****Close Custody Unit
Administrative Segregation****Adopted Amendments: N.J.A.C. 10A:5-3.1 and 3.2**

Proposed: November 6, 1989 at 21 N.J.R. 3409(a).

Adopted: January 16, 1990 by William H. Fauver, Commissioner,
Department of Corrections.Filed: January 17, 1990 as R.1990 d.120, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: February 20, 1990.

Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:5-3.1 Admission to Non-Vroom administrative segregation

(a) Whenever the Disciplinary Hearing Officer imposes a sanction at the Edna Mahan Correctional Facility for Women which includes administrative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer to the Institutional Classification Committee (I.C.C.) for confirmation at the Committee's next regularly scheduled meeting.

(b) In considering the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. (No change.)

2. The reason(s) given by the Disciplinary Hearing Officer for the sanction imposed;

3.-4. (No change.)

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

(f) Whenever the Disciplinary Hearing Officer/Adjustment Committee imposes a sanction at an adult correctional facility other than the Edna Mahan Correctional Facility for Women which includes administrative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the Institutional Classification Committee (I.C.C.) of the correctional facility for review at the Committee's next regularly scheduled meeting.

(g) When reviewing the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;

2. The reason(s) given by the Disciplinary Hearing Officer/Adjustment Committee for the sanction imposed;

3. The inmate's previous disciplinary record; and

4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(h) Upon review of the administrative segregation sanction, the Institutional Classification Committee (I.C.C.) shall submit the sanction to the Inter-Institutional Classification Committee (I.I.C.C.) along with a recommendation to confirm, modify or overrule the sanction and the reason(s) therefor.

(i) Confirmation shall be made where the Inter-Institutional Classification Committee (I.I.C.C.) determines that the administrative segregation sanction is appropriate and within acceptable limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(j) The Inter-Institutional Classification Committee (I.I.C.C.) shall provide written notice to the inmate of the Committee's decision confirming, modifying or overruling the administrative segregation sanction together with the reasons therefor.

(k) A copy of the Inter-Institutional Classification Committee's (I.I.C.C.) notice shall be filed in the inmate's classification folder.

(l) Not all adult correctional facilities within the Department of Corrections contain Administrative Segregation Units. If an inmate receives a sanction which includes administrative segregation, but is housed in a correctional facility which does not have an Administrative Segregation Unit, the sanction first must be reviewed by the Institutional Classification Committee (I.C.C.) of the correctional facility in which the inmate is housed. The administrative segregation sanction shall then be referred to the next regularly scheduled meeting of the Inter-Institutional Classification Committee (I.I.C.C.) for confirmation. If the sanction is confirmed, the I.I.C.C. shall approve the transfer of the inmate to a correctional facility within the Division of Adult Institutions which has an Administrative Segregation Unit.

**10A:5-3.2 Special Administrative Segregation Review Committee
(S.A.S.R.C.)**

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

(f) An inmate, who has been assigned to an Administrative Segregation Unit for a period of 365 days or less, shall have his or her case reviewed every 60 days by the S.A.S.R.C. in order to evaluate the inmate's behavior while in the Administrative Segregation Unit.

(g) An inmate, who has been assigned to an Administrative Segregation Unit for a period of more than 365 days, shall have his or her case reviewed by the S.A.S.R.C. every six months, or more

frequently if deemed necessary by the S.A.S.R.C., to evaluate the inmate's behavior while in the Administrative Segregation Unit.

Recodify existing (g) through (o) as (h) through (p). (No change in text.)

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Employee Visits with Incarcerated Relatives

Adopted Amendment: N.J.A.C. 10A:18-6.4

Proposed: November 6, 1989 at 21 N.J.R. 3410(a).

Adopted: January 23, 1990 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 24, 1990 as R.1990 d.124, without change.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: February 20, 1990.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:18-6.4 Employee visits with incarcerated relatives

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

(c) An employee of the Department of Corrections who wishes to visit a relative incarcerated in a correctional facility under the jurisdiction of the New Jersey Department of Corrections shall submit a written request for permission to visit the incarcerated relative to the Superintendent of the correctional facility at which the relative is housed.

(d) The Superintendent may schedule the visit during regular visiting hours or at special times, according to the orderly administration and staffing of the correctional facility.

INSURANCE

(b)

OFFICE OF THE COMMISSIONER

Public Notice

Insurance Producer Continuing Education

Delay of Operative Date

N.J.A.C. 11:17-3.4

Take notice that the Acting Commissioner of Insurance Jasper J. Jackson has determined that it is necessary to delay the operative date of N.J.A.C. 11:17-3.4, concerning insurance producer continuing education, from May 1, 1990 to May 1, 1991. This rule was promulgated in the April 3, 1989 New Jersey Register at 21 N.J.R. 899(b) as part of the rules concerning insurance producer "professional qualifications."

The delayed operative date is necessary because the Department has been unable to develop the necessary administrative systems to support or enforce the requirements of the rule. This is due to the current budget constraints facing the State generally.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Unsatisfied Claim and Judgment Fund Rules

Adopted Repeals: N.J.A.C. 13:18-2 and 13:18-10

Proposed: November 6, 1989 at 21 N.J.R. 3432(a).

Adopted: January 8, 1990, by Glenn R. Paulsen, Director, Division of Motor Vehicles.

Filed: January 19, 1990 as R.1990 d.121, without change.

Authority: N.J.S.A. 39:2-3.

Effective Date: February 20, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

(d)

DIVISION OF CONSUMER AFFAIRS

Office of Consumer Protection

Home Improvement Practices Contract

Requirements

Adopted Amendment: N.J.A.C. 13:45A-16.2

Proposed: November 6, 1989 at 21 N.J.R. 3433(b).

Adopted: January 18, 1990 by James J. Barry, Jr., Director, Division of Consumer Affairs.

Filed: January 25, 1990 as R.1990 d.125, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 56:8.4.

Effective Date: February 20, 1990.

Expiration Date: December 16, 1990.

The Division of Consumer Affairs afforded all interested persons the opportunity to comment by December 6, 1989, on the proposed amendment, N.J.A.C. 13:45A-16.2, relating to home improvement practices contract requirements. The official comment period ended on December 6, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 6, 1989 at 21 N.J.R. 3433(b). Announcements were also forwarded to the Star Ledger, Trenton Times and Jersey Journal, newspapers of general circulation, to Better Business Bureaus, to New Jersey chapters of the National Association of the Remodeling Industry, the New Jersey Remodelers Association, the National Electrical Contractors Association, the New Jersey State League of Master Plumbers, Inc., the New Jersey Association of Plumbing, Heating and Cooling Contractors, the New Jersey Builders Association, the New Jersey Public Interest Research Group and to other interested parties, including county consumer affairs officials.

A full record of this opportunity to be heard can be inspected by contacting James J. Barry, Jr., Director, Division of Consumer Affairs, 1100 Raymond Boulevard, Room 504, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Division of Consumer Affairs received four written comments during the official 30-day comment period.

One letter from the Bergen County Department of Public Safety suggested that the threshold for requiring a written contract should be \$100.00 in order to better protect the elderly. The New Jersey Public Interest Research Group opined that if an investment of \$75.00 or more is made in home improvement, a written contract is necessary to protect the consumer. The other two comments suggested that the threshold should be increased to \$1,000. These letters were from representatives of the New Jersey Builders Association and the New Jersey State League of Master Plumbers, respectively. The first of these letters suggested that a \$200.00 threshold is too low, considering today's labor and materials fees. The second letter asked that plumbers be exempted up to a \$1,000 threshold inasmuch as they are licensed and regulated by their own professional board.

The Division of Consumer Affairs has given careful consideration to the comments and recommendations and is reducing the proposed threshold of \$200.00 to \$100.00 for the requirement of a written home improvement contract in the belief that the lower amount will better maintain consumer protection. The Division found the argument made by the New Jersey Public Interest Research Group especially persuasive; that until accurate numbers of those affected by this change can be better determined, a lesser increase from the present threshold of \$25.00 would be reasonable and fair; should this increase prove to be inappropriate, the threshold could be raised again in the future. The Division rejects the very high thresholds suggested by the New Jersey Builders Association and the New Jersey State League of Master Plumbers on the grounds that such a threshold would eliminate a great number of home improvement jobs from the written contract requirement, to the obvious detriment of consumers.

Summary of Change Made Upon Adoption:

In response to comments, therefore, the following change was made upon adoption of this amendment: all home improvement contracts for a purchase price in excess of \$100.00, rather than the present \$25.00 or the proposed \$200.00, and all changes in the terms and conditions thereof, must be in writing.

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

13:45A-16.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56-8.1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, or performance of home improvements shall be unlawful thereunder:

1.-11. (No change.)

12. Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of ***[\$200.00]* *\$100.00***, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

i.-vi. (No change.)

13. (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING**

New Jersey Board of Nursing Rules

Readoption: N.J.A.C. 13:37

Proposed: December 18, 1989 at 21 N.J.R. 3854(b).

Adopted: January 18, 1990 by the New Jersey Board of Nursing, Marjorie Blomberg, President.

Filed: January 23, 1990 as R.1990 d.122, **without change**.

Authority: N.J.S.A. 45:11-24 and 45:1-3.2.

Effective Date: January 23, 1990.

Expiration Date: January 23, 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. 13:37.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Readoption with Amendments: N.J.A.C. 13:70

Proposed: December 18, 1989 at 21 N.J.R. 3856(b).

Adopted: January 24, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: January 25, 1990 as R.1990 d.127, **without change**.

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

Effective Date: January 25, 1990, Readoption; February 20, 1990, Amendments.

Expiration Date: January 25, 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. 13:70.

Full text of the amendments follows.

13:70-1.6 Discharge of groom or attendant; notice

When an owner or trainer discharges a groom or other attendant, or when a groom or other attendant voluntarily leaves the employ of an owner or trainer, the said owner or trainer shall immediately notify the track security of such discharge or resignation by such employee. Failure to so notify the track security shall subject the owner or trainer to disciplinary action.

13:70-1.10 Suspended person or horse

No person or horse ruled off by, or under suspension by, any recognized turf authority shall be admitted to the grounds of any association; except that the stewards may permit a jockey under suspension for routine riding offenses to gallop horses during training hours, and to lodge on the grounds of an association.

13:70-1.18 Police reports

The track security police and any other law enforcement agency acting in, or on or about the licensed premises of any race track, or any approved farms or stabling facilities, shall furnish two copies of their daily police report to the State Police Racetrack Unit, together with any additional pertinent information available to the said police agency, obtained either orally or in writing. The two copies shall be delivered to the New Jersey State Police detail assigned to the race track at the close of each racing day. One copy, with evaluation, comments and further action by the said State Police shall be delivered to the New Jersey Racing Commission.

13:70-1.23 Restrictions on transmittal of information

(a) All radios, receivers and transmitters on the licensed premises of any race track shall be operated, monitored or tape recorded under the supervision of the security director. A complete list of operating and maintenance personnel shall be submitted to the track security, the State Police and the New Jersey Racing Commission.

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

13:70-2.1 Definitions

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

“Added money” means the money which in a stake race an association adds to the purse, the nominating and starting fees.

“Age” of a horse means the time reckoned as beginning on the first of January in the year after the horse is foaled.

“Apprentice” means a jockey apprentice.

“Arrears” includes all money due for entrance forfeits, fees (including jockey fees), fines, subscriptions, purchase money in a claiming race and also any default in money incident to the rules.

“Disciplinary action” means revocation of a license, suspension, ruling off, fine or reprimand or any combination thereof.

“Drug” means:

- 1. Articles recognized in the official U.S. Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and
- 2. Articles intended for use in the diagnosis, cure mitigation, treatment, or prevention of disease in man or other animals; and
- 3. Articles (other than food) intended to affect the structure or any function of the body or other animals; and
- 4. Articles intended for use as a component of any article specified in paragraphs 1, 2, or 3 but does not include devices or their components, parts or accessories.

“Entry” means:

- 1. According to the requirement of the text, a horse made eligible to run in a race, or
- 2. Two or more horses which are entered or run in a race and are coupled because of common ties.

“Field” (or mutuel field) means the individual horses competing in a race exceed the numbering capacity of the tote; the highest numbered horse within the capacity of the tote and all horses of a higher number shall be grouped together for wagering purposes and called the “field” and a bet on one is a bet on all.

“Forfeit” means money due because of an error, fault, neglect of duty, breach of contract or a penalty.

“Foul or careless riding” means any and all acts of a jockey committed in the running of a race designed to gain unfair or unsportsmanlike advantage, to the end of improving his own chance or position in a race or of lessening the chance or position of another in the race.

“Race” means a contest for purse, stakes, premium or wager. It includes among others all races defined in the following paragraphs:

- 1.-7. (No change.)
- 8. “Overnight race” means any race other than a stake or added money race.
- 9.-14. (No change.)

13:70-3.7 Application forms; approval

Approval may only be given to such persons who make application therefor on the form prescribed by the New Jersey Racing Commission and only when such application is filed with the Executive Director of the Racing Commission properly completed and executed in all respects.

13:70-3.9 Review of application approval

Applications may be approved, after due consideration by the Executive Director of the Racing Commission to whom such power is delegated, but the New Jersey Racing Commission may, in its discretion, review any such findings made by the Executive Director to determine whether any applicant merits approval.

13:70-3.15 Fire inspection stable

(a) The Racing Commission shall appoint annually a qualified engineer to inspect the stable area at all tracks licensed by the Commission to insure that said stable areas are adequately guarded against the hazards of fire.

(b) The engineer so appointed shall be paid by the track associations in an amount established by the Commission and shall conduct two such inspections of each stable during the racing season and report thereon to the Commission.

(c) All recommendations of the engineer relating to fire conditions in the stable areas shall be acted upon immediately by the permit holder.

13:70-3.25 Communication system

An association shall install and maintain, in good service, a communication system between the stewards stand, pari-mutuel department, starting gate, clerk of scales, patrol judges and the State veterinarian.

13:70-3.28 Availability of purse money to winners

All portions of purse money shall be made available to the winners thereof 72 hours (Sundays excluded) following their winning.

13:70-3.35 Division of departments

(a) The departments shall be divided and designated as follows: 1.-2. (No change.)

3. Mutuel department (including manager of the mutuel department and all employees under his control including calculators, sheet writers, supervisors, money room, messengers and runners, outbook clerks, program clerks, porters, information and change clerks, approximate odds board calculator clerks and boardmen, miscellaneous assistants, cashiers and sellers);

i. All of the individuals mentioned in (a)3 above, when assigned to work, shall be prohibited from wagering. Violation of the above may subject the individual to a fine, suspension or both, or to revocation of his or her license;

4.-7. (No change.)

8. Department of Security (including detectives, policemen, watchmen and fire protection and miscellaneous employees under the control of the chief of Security of the race track);

9.-12. (No change.)

13:70-4.1 Persons required to have licenses

(a) The following persons are required to take out a license from the Racing Commission and the annual fee will be as follows:

- 1.-4. (No change.)
- 5. Certificate of Identification: \$5.00
- 6.-17. (No change.)

(b) All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the Commission. The applicant must pay for the cost of the fingerprint card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal or State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

13:70-4.2 Items requiring registration

(a) The following must be registered with the Racing Commission annually and the fee payable for such registration shall be as follows:

- 1. Stable name—\$50.00;
- 2. Corporate stable name—\$50.00;
- 3. Multiple ownership—\$50.00;

13:70-4.4 Fees

The fee shall accompany each application for license or registration. All licenses and/or registrations expire December 31 of the year issued.

13:70-4.6 Examination of applications

(a) A board of examiners composed of the State Steward and two associate stewards shall examine each of the following applications for and on behalf of the New Jersey Racing Commission:

- 1. Assistant Trainer;
- 2. Authorized Agent;
- 3. Corporate Stable Name;
- 4. Jockey;
- 5. Jockey Agent;
- 6. Jockey Apprentice;
- 7. Multiple Ownership;
- 8. Owner;
- 9. Plater;
- 10. Stable Employee;
- 11. Stable Name; and
- 12. Trainer

ADOPTIONS

13:70-4.7 Qualifications

The stewards shall, during the course of examination of the applications for a license, ascertain if the applicant is qualified as to ability, integrity, and financial responsibility, and shall report to the New Jersey Racing Commission their findings.

13:70-4.8 Burden of proving qualifications

(a) In considering each application for a license, the stewards may require the applicant, as well as the applicant's endorsers, to appear before them.

(b) The burden shall be upon the applicant to show that he, she or it is qualified in every respect to receive the license applied for.

(c) (No change.)

13:70-4.9 Refusal to issue or renew license

The Commission may refuse to issue or renew a license or may suspend or revoke a license issued pursuant to this section if it shall find that the applicant, or any person who is a partner, agent, or employee or associate of the applicant, has been convicted of a crime in any jurisdiction, or is associating or consorting with any person or persons who have been convicted of a crime or crimes in any jurisdiction or jurisdictions, or is consorting or associating with, or has consorted with bookmakers, touts or persons of similar pursuits, or is financially irresponsible, or has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, or has violated or attempted to violate any law with respect to racing in any jurisdiction or any rule, regulation or order of the Commission, or shall have violated any rule of racing which shall have been approved or adopted by the Commission, or has been guilty of or engaged in similar related or like practices.

13:70-4.11 False or misleading statements

Any person making any false, untrue or misleading statement on an application for license or registration or in a written or oral examination in connection with such an application may be disciplined as provided for in these rules and regulations.

13:70-4.13 Disqualification of spouses; exception

Disqualification of either husband or wife applies equally to both, unless the spouse of the disqualified person shows to the satisfaction of the Commission that ownership and racing of his or her horses is independent of and not under the control or influence of the disqualified spouse.

13:70-4.14 Temporary application

Where in the case of extenuating circumstances an owner may be unavailable to complete the license application, permission may be granted by the Racing Commission for the horses of said owner to start. The trainer or assistant trainer for the owner in question will be required to promptly complete a temporary application and pay all license fees.

13:70-4.18 Badges

(a) All licensed personnel who enter the stable area of any track under the jurisdiction of the New Jersey Racing Commission, in any capacity whatsoever, shall wear upon their outside apparel, in a prominent position, the authorized badges containing picture identification supplied by the Commission. This rule shall also apply to State, track, veterinarian personnel, as well as the vendors and suppliers authorized in the stable area, and the badges shall be readily available and produced by such personnel upon request of track security, county and city police, State police, TRPB operatives, Commission inspectors, and stewards at said request. Failure to comply with this rule will result in a \$5.00 fine for the first offense; \$10.00 fine for the second; \$25.00 for the third and ejection from the grounds upon the fourth offense.

(b) Any person losing his identification license will be subject to a fine of not less than \$2.00 or more than \$10.00. The amount of the fine to be determined by the New Jersey Racing Commission.

13:70-5.2 Disputes concerning colors

Any dispute between persons to the right of particular racing colors shall be decided by the stewards.

LAW AND PUBLIC SAFETY

13:70-6.10 Unreported racing starts

A horse during the past calendar year that has started in a race which is not reported in the daily racing form monthly chart books, or a maiden which at any time has started in such a race, shall not be entered at a New Jersey track until all pertinent data relating to such race is available to the racing secretary.

13:70-6.17 Person attempting establishment of horse's identity

Any person attempting to establish the identity of a horse or its ownership shall be held to account, the same as the owner, and shall be subject to the same penalty in case of fraud or attempted fraud.

13:70-8.9 Failure to finish second or lower

No horse shall be given a weight allowance for failure to finish second or any lower place in any race.

13:70-8.22 Weighing after race

After a race has been run, the jockey shall ride promptly to the proper designated area and there dismount and present himself to the clerk of scales to be weighed in.

13:70-8.23 Assistance after race

If a jockey is prevented from riding his mount to the proper designated area because of an accident or illness either to himself or his horse, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

13:70-8.24 Touching horse after race

Except by permission of the stewards, every jockey must, on returning to the proper designated area, unsaddle the horse he has ridden and no person shall touch said horse except by its bridle.

13:70-8.26 Jockey carries equipment to scales

Each jockey shall, in weighing in, carry over to the scales all pieces of equipment with which he weighed out.

13:70-9.17 Touting information; jockey

A jockey shall not give to anyone directly or indirectly any information or advice, or engaged in the practice commonly known as "touting", for the purpose of influencing any person in the making of a wager on any race.

13:70-10.6 Time period

After entering the track, not more than 12 minutes shall be consumed in the parade to the post, except in cases of unavoidable delay. After passing the stands once, the horses will be allowed to canter, warm up or go as they please to the post. When horses have reached the post, they shall be started without unnecessary delay.

13:70-11.10 Jockey's best effort

A jockey shall put forth every reasonable effort and exercise the greatest diligence in riding a race. If, in the opinion of the stewards, a jockey does not put forth every reasonable effort or use proper diligence in the riding of the race, such jockey shall be penalized by the stewards according to the gravity of the offense.

13:70-14.7 Disqualified persons or horses

If any person willfully enters or causes to be entered or to start for any race, a horse which he knows to be disqualified; or if any person fraudulently offers or receives any amount of money for declaring an entry out of a purse or stakes race; or if any person, without making it known to the officials, is a part owner or acts as trainer of any horse in which a jockey possesses any interest, or makes any bet with or on behalf of any jockey, unless on a horse he is riding; or offers or gives, except through his employers, or the owner or trainer of the horse ridden, a jockey any present, money or other reward in connection with his riding of any race; or if any person be guilty of any other corrupt or fraudulent practices on the turf, in this or any other country, then such person shall be ruled off the course.

13:70-14.16 Equine fatality report

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

(d) Failure to file the foregoing in a timely fashion or filing in an incomplete fashion may subject the trainer, custodian or veterinarian to disciplinary action.

1. Any falsification or misstatement submitted in connection with an equine fatality report may also subject the trainer, custodian and/or veterinarian to disciplinary action as provided in N.J.A.C. 13:71-31.3.

(e) An equine fatality report shall not be required in connection with any pony or mascot.

13:70-15.1 List of racing officials

(a) The racing officials shall include:

1. Three stewards, appointed by the Racing Commission and paid by the Association;

2.-12. (No change.)

13:70-15.2 Appointment

The stewards, a State Veterinarian and Associate State Veterinarians, and a supervisor of mutuels shall be appointed by the Racing Commission. One of the duly appointed State Veterinarians shall also be designated by the Racing Commission as the Chief State Veterinarian and shall so serve at the pleasure of the Racing Commission. All other racing officials listed in N.J.A.C. 13:70-15.1 shall be appointed by the association, subject to the approval of the Commission.

13:70-16.1 Qualifications

Before being appointed or approved by the Racing Commission to serve in the capacity of steward, an applicant shall have been employed as steward, racing secretary, assistant racing secretary, starter, placing judge, patrol judge, paddock judge or clerk of the scales at a recognized meet or meetings for a period of not less than 60 racing days per year, during at least three of the five preceding calendar years; provided, however, that if no applicant possesses the foregoing qualifications, whenever possible, the person or persons appointed or approved as steward should have had prior experience in some other branch of racing, such as owner, trainer, jockey, breeder or such other related experience as the Commission may deem sufficient.

13:70-16.10 Exclusion of ejection of certain persons

The stewards shall have the power to exclude from all premises and enclosures of the association any person who is disqualified for corrupt practices on the turf in any country; or so exclude any other improper or objectionable persons.

13:70-16.19 Filling vacancies; stewards

If there is only one steward present, at race time, said steward shall fill all vacancies occurring in the stewards stand and in his absence the Executive Director or his designee of the New Jersey Racing Commission shall assume this responsibility.

13:70-19.33 Preserving order

It is the duty of the track superintendent to preserve order, enforce decorum, and prevent petty games of chance on the grounds of the association at such time as a meeting is not in progress. When a meeting is in progress, those duties shall fall upon the association security force.

13:70-19.35 Duties of Chief State, State and Associate State Veterinarians

(a) The Chief State Veterinarian shall have the duty to supervise the activities of the various State Veterinarians and Associate State Veterinarians in the performance of their prescribed duties.

(b) (No change.)

13:70-19.41 Veterinary reports

Veterinary practitioners shall make daily reports to the State Veterinarian and to the stewards of all horses under treatment by them, on forms to be furnished by the association. Treatment of any horse with a drug for which the practitioner has not submitted a report pursuant to this rule shall be accompanied by a written report to the State Veterinarian of such administration or intended administration but in no event less than 72 hours before any such horse shall start. The pharmaceutical inserts accompanying such drug shall be made a part of said report which shall also be accompanied by a sample of the drug when so directed by the State Veterinarian. Failure to comply with the foregoing may subject the practitioner to disciplinary action by the stewards.

13:70-20.1 Trainer's license

Each trainer must obtain a license from the Racing Commission. Trainers not previously licensed in New Jersey may be required to submit to oral, written and barn tests for qualifications as may be prescribed by the stewards and/or the Racing Commission.

13:70-20.3 Trainer's actions pending application approval

The stewards may permit a trainer to conduct business pending action on his or her application.

13:70-20.6 Absence of trainer; substitutes

When a trainer is to be absent from his or her stable or the grounds where his or her horses are racing, for a period of more than two racing days, and horses are entered or are to be entered, he or she must provide a licensed trainer or his or her assistant trainer to assume the complete responsibility of the horses he or she is entering or running. Such licensed trainer shall sign in the presence of the stewards a form furnished by the Racing Commission accepting complete responsibility for said horses being entered and running.

13:70-20.9 Registering employees

A trainer shall register with backstretch security every person in his or her employ, and it shall be his or her duty to see to it that his or her employees obtain licenses from the Commission. Trainers employing or harboring unlicensed or disqualified personnel may be subject to disciplinary action.

SUBCHAPTER 22. AUTHORIZED GRANTS

13:70-22.5 License fees

The fee for each license shall be \$25.00. If an agent represents more than one owner, a separate written instrument shall be filed for each owner and the fee paid in each case.

13:70-23.9 Objectionable persons

The stewards shall have the power to exclude from all premises and enclosures of the association any person who is disqualified for corrupt practices on the turf in any country; or so exclude any other improper or objectionable persons.

13:70-27.1 Licenses

All persons, including the employees and agents thereof, who engage in the profession or business of selling, at retail or wholesale, or otherwise disposing thereof, of any kind of merchandise, equipment, drugs or medication for animals or humans, or pharmaceutical horse food or nutrient of any kind, providing that such substances, or the sale or disposition thereof is not otherwise prohibited by law, shall be licensed by and be subject to the jurisdiction of the Racing Commission. All applicants for vendor license shall be recommended by the director of security of the track where application for license is made.

13:70-29.10 Payoff prices

(a) (No change.)

(b) Before the mutuel department of any race track posts the payoff prices of any pool for any race, the mutuel manager shall require each of the (calculating sheets) computer print-out sheets of such race to be proven by the (calculator) computer and the winners verified. Such proof shall show pay, breaks, commission, and added together shall show they equal total pool.

(c) (No change.)

13:70-29.26 Errors in pay-off figures

(a) If an error is made in posting the pay-off figures on the public board, it shall be corrected promptly and only the correct amounts shall be used in the pay-off irrespective of the error on the public board.

(b) (No change.)

13:70-29.48 Daily double

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

(c) In the event of a dead heat for the straight pool in the first half of the daily double, in the event of a consolation pool, it shall not be deemed necessary to compute and post the actual pay-off prices on all the various combinations of the daily double before the running of the second half of the double. However, an effort should

be made to compute the double prices and to announce them to the public over a loudspeaker system prior to the running of the second half of the double.

(d)-(r) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Readoption with Amendments: N.J.A.C. 13:71

Proposed: December 18, 1989 at 21 N.J.R. 3861(a).

Adopted: January 24, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: January 25, 1990 as R.1990 d.126, **without change**.

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

Effective Date: January 25, 1990, Readoption; February 20, 1990, Amendments.

Expiration Date: January 25, 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. 13:71.

Full text of the amendments follows:

13:71-1.20 Authority to impose penalties; report; payment

(a) (No change.)

(b) No race official other than the steward, the Board of Judges, and the starter shall have the right to impose a fine or suspension, in the first instance (see N.J.A.C. 13:71-3, Appeal for exception). A race official imposing a fine or suspension shall report it promptly to the Executive Director of the racing Commission and the race secretary, in writing. All fines imposed shall be paid to the race secretary within 48 hours after the imposition thereof. Fines collected by the race secretary shall be paid promptly to the Racing Commission. An unpaid fine may not be rescinded except with the approval of the Racing Commission.

13:71-4.1 Definitions

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

...
 "Amateur driver" means a driver who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past 10 years.

...
 "Jersey Bred" means a horse dropped by a mare in the State of New Jersey, which circumstance is necessary to qualify for registration with the Standardbred Breeders Association of New Jersey. Such registration is a requirement for eligibility to be entered or to start in races exclusively for horses foaled in New Jersey.

...
 "Length of race and number of heats or dashes" means races or dashes shall be given at a stated distance in units not shorter than 1/16 of a mile. The length of a race and the number of heats shall be stated in the conditions. If no distance or number of heats or dashes are specified all races shall be a single mile dash. No two-year old shall be permitted to start in a dash or heat exceeding one mile in distance. Except where elimination heats or dashes are required, two-year olds may start only in races conditioned not to exceed two dashes or in a two in three race which shall terminate in three heats or dashes. In two-year old races any colt may default at the end of a second heat or dash and the remaining colt shall be declared the winner. Any colt withdrawing under this rule shall forfeit all right to the winners' share of the purse or to the award of the trophy. In the event all eligibles withdraw, the sponsor may retain the 10 per cent and the trophy.

...

"Paddock" means a man tight enclosure in which horses scheduled to compete in a race program are confined prior to racing under the supervision of paddock judge.

...
 "Post position" means race positions shall be determined publicly by lot in the presence of one or more Judges or their deputies, and at least one trainer licensed by the Racing Commission. Post positions shall be drawn at scratch time. Beginning from the inside rail, the horses shall take their positions at the post in keeping with the numerical order resulting from the public drawing.

"Protest" means a protest, except a protest involving fraud may be filed only by the owner (or his authorized agent), trainer or driver of a horse engaged in the race over which the protest is made or by a racing official of the meeting. A protest involving fraud may be made by any person. A protest, except a claim growing out of happenings in the running of the race, must be made in writing, signed by the complainant, and filed with the Judges at least 60 minutes before post time of the race in question. To merit consideration, any protest over the status of an alleged maiden must be made in writing, signed by the complainant, and filed with the Judges at least two hours before and programmed post time for the race in which the protested maiden is scheduled to run. A protest against a horse engaged in a race, and filed with the Judges not less than 60 minutes before post time, shall receive immediate consideration; and in default of proof within 30 minutes of post time that the horse is qualified to start, the horse may be disqualified from starting. To merit consideration, a protest against the programmed distance of a race must be made at least 30 minutes before post time for that race. To merit consideration, a protest against a horse based on a happening in a race must be made to the Judges before the placing of the horses for that race has been officially confirmed. If a driver wishes to protest a happening in a race, he must so notify the Judges immediately after the finish of said race. Before the consideration of a protest, the Judges may demand a deposit of \$25.00 to be made with the racing secretary. This deposit shall be applied to the costs and expenses, as provided by this rule. Any excess shall be refunded unless the protest is found to be frivolous, in which case the deposit may be assessed as a fine. A person or persons lodging a protest must pay all the costs and expenses incurred in determining the objection unless his objection is upheld in which case the cost shall be paid by the offender. Pending the determination of a protest, any money or prize won by a protested horse, or any other money affected by the outcome of the protest shall be paid to and held by the racing secretary until the protest is determined. The Judges are vested with power to determine the extent of disqualification in cases of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last. A protest may not be withdrawn without permission of the Judges. No person shall make frivolous protests. The Judges shall keep a record of all protests and complaints, and of any action taken thereon, and shall report both daily to the Racing Commission.

13:71-7.1 Persons required to have licenses; fingerprints and photographs

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

13:71-7.7 Applications

(a) All applications for owner, driver and trainer license and registration of stable name and multiple owner registration must be examined by the steward for and on behalf of the New Jersey Racing Commission. The steward shall ascertain if the applicant is qualified as to ability and integrity, and shall report his findings to the New Jersey Racing Commission.

1. In considering each application for a license, the steward may require the applicant, as well as the applicant's endorsers, to appear before him.

2. The burden shall be upon the applicant to show that he, she or it is qualified in every respect to receive the license applied for.

3. Ability, as well as integrity, must be clearly shown by the applicant in order to receive the steward's recommendation to the New Jersey Racing Commission for the granting of the license.

13:71-7.24 Loss of identification card

All persons who have in their possession an identification card issued by the New Jersey Racing Commission and lose same are subject to a fine of not less than \$2.00 or more than \$10.00, to be paid before a duplicate card can be issued.

13:71-7.25 Application for driver's license

(a) Every person desiring to drive a harness horse at a race meeting licensed by the Commission shall be required to obtain a license from the Commission. Such application shall be on forms provided by the Commission; applications may be filed at any Commission office. Such license shall be presented to the clerk of the course before driving.

(b) (No change.)

(c) Any applicant who has complied with the requirements of (a) and (b) above, may be eligible for a license in New Jersey in the following categories:

1. F (Fair) A License valid for fair meetings. Drivers holding a license valid for fairs only who have driven at fairs must demonstrate an ability to drive satisfactorily before they will be granted a (Q) license valid for qualifying races.

2.-5. (No change.)

(d) (No change.)

13:71-7.31 Qualification for owner's license

(a) Every applicant for a license as an owner in addition to any other requirements mentioned herein shall:

1. Be at least 18 years of age unless a parent or legal guardian expressly assumes responsibility for an applicant who is under 18 years of age;

2. Submit evidence of good moral character; and

3. Furnish a completed application form.

(b) Where a horse is owned jointly by two or more parties, all parties must comply with (a)1, 2 and 3 above.

(c) Where a horse is owned by a corporation, all officers, directors and person owning more than five percent of the capital stock must comply with (a)1, 2 and 3 above.

13:71-7.35 Badges

(a) All licensed personnel who enter the stable area of any track under the jurisdiction of the New Jersey Racing Commission in any capacity whatsoever shall wear upon their outside apparel in a prominent position the authorized badges containing picture identification supplied by the Commission. This rule shall also apply to State, track, veterinarian personnel, as well as the vendors and suppliers authorized in the stable area, and the badges shall be readily available and produced by such personnel upon request of track security, county and city police, State police, Commission inspectors and stewards at said request. Failure to comply with this rule will result in a \$5.00 fine for the first offense; \$10.00 fine for the second; \$25.00 for the third; and ejection from the grounds upon the fourth offense.

1. (No change.)

(b) (No change.)

13:71-8.24 Procedure of judges

(a) It shall be the procedure of the judges to:

1. Be in the stand 15 minutes before the first race and remain in the stand for 10 minutes after the last race and at all times when the horses are upon the track;

2.-6. (No change.)

7. Post the objection sign, or inquiry sign, on the odds board in the case of a complaint or possible rule violation, and immediately notify the announcer of the objection and of the horse or horses involved. As soon as the judges have made a decision, the objection sign shall be removed, the correct placing displayed and the "Official" sign flashed. In all instances the judges shall post the order of finish and the "Official" sign as soon as they have made their decision;

8.-9. (No change.)

13:71-8.33 Executive Director of the Commission

The Executive Director appointed by the Commission shall be a representative at large of the Commission. He shall have general supervision over all race officials, licensees and employees or ap-

pointees of the Commission. He shall supervise the licensing of all those persons required to be licensed by the Commission and supervise the security provisions of all associations. He shall generally supervise the conduct of racing, the pari-mutuel operations and the testing of horses. He shall have the authority to conduct inquiries and in connection therewith to issue subpoenas, to compel the attendance of witnesses and the production of all relevant and material reports, books, papers, documents, correspondence and other evidence as directed by the Commission. He shall have the power to administer oaths and examine witnesses and shall submit a report of all proceedings thereon. He shall at all times have access to all parts of the course, plant and grounds, including the pari-mutuel department. The compensation of the Executive Director shall be fixed and paid by the Commission. The Commission, in its discretion, may appoint such assistants to the Executive Director or stewards as it may deem necessary who shall have the same authority as the Executive Director in his absence but such assistants or stewards shall be junior in authority to the Executive Director at all times.

13:71-12.1 Registration

A racing, farm, corporate or stable name may be used by the owners or lessees of horses if currently registered with the United States Trotting Association. The names of all persons interested in the stable or operating thereunder shall be listed in such registry and shall not exceed 35 in number.

13:71-15.29 Elimination heats or two divisions

(a) In any stake event or futurity where the number of horses declared in to start exceeds 12 on a half mile track, 14 on a 5/8 mile track or 16 on a mile track, the race may at the option of the association be raced in elimination heats or divisions. The association exercising such option, however, must do so before positions are drawn. In the event a stake or futurity is split into division, the added money for each division shall be at least 20 percent of all nomination, sustaining and starting fees paid into such stake or futurity.

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

13:71-18.1 Breathalyzer test

Officials, drivers, trainers and grooms shall, when directed by the presiding judge, submit to a breathalyzer test and if the results thereof show a reading of more than .05 percent of alcohol in the blood, such person shall not be permitted to continue his duties. The Judges may fine or suspend any participant who records a blood alcohol reading of .05 percent or more. Any participant who records a reading above the prescribed level on more than one occasion shall be subject to expulsion, or such penalty as the Judges may deem appropriate.

13:71-20.18 Fraudulent breaking

If a driver allows his horse to break for the purpose of fraudulently losing a heat or dash, he shall be liable to the penalties provided for in N.J.A.C. 13:71-2.3.

13:71-22.1 Radios, receivers and transmitters

(a) All radios, receivers and transmitters on the licensed premises of any race track shall be operated, monitored or tape recorded under the supervision of the security director. A complete list of operating and maintenance personnel shall be submitted to the track security, the State Police and the New Jersey Racing Commission. Instant dismissal and further appropriate action shall be taken for the transmittal of information either in vernacular or code, regarding performances of horses, races, race-results, mutuel odds, pay-off prices or any other pertinent information.

(b) Final approval shall rest with the New Jersey Racing Commission before the sets become operational.

13:71-24.5 License fees

The fee for each license shall be \$25.00. If an agent represents more than one owner, a separate written instrument shall be filed for each owner and the fee paid in each case.

13:71-27.45 Calculating the pay-off in dead heats

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

(d) Where two or more horses racing for one interest or field horses participate in dead heats, each horse of the entry or field is

ADOPTIONS

entitled to his proportionate share of the profits in the pool in which the dead heat occurs and the other pools affected. For example: where two horses of any entry or field "dead heat" for straight, the straight and place prices are calculated as straight pools and the entry is entitled to two-thirds of the profits of the show pool.

(e) (No change.)

13:71-27.53 Super-Six

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

(k) If, for any reason, any race or races of a Super-Six program is cancelled and declared "No Race," the Super-Six pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to (f)1 and 2 above. In the event the Judges cancel or declare as "No Race" three or more of the Super-Six races for any given date, all pari-mutuel tickets for that Super-Six pool shall be refunded and the Super-Six cancelled for that day.

(l)-(p) (No change.)

TRANSPORTATION

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF LOCAL HIGHWAY DESIGN
New Jersey Transportation Trust Fund Authority Act
Federal Aid Urban System Substitution Program;
County and Municipal Aid**

Adopted New Rules: N.J.A.C. 16:20A

Proposed: December 4, 1989 at 21 N.J.R. 3716(a).
Adopted: January 4, 1990, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: January 26, 1990 as R.1990 d.128, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47 and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:1B-1 et seq.

Effective Date: February 20, 1990.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

As N.J.A.C. 16:20A expired on December 17, 1989, these rules proposed for re-adoption are adopted herein as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:20A.

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF LOCAL HIGHWAY DESIGN
New Jersey Transportation Trust Fund Authority
Act: Municipal Fund**

Adopted New Rules: N.J.A.C. 16:20B

Proposed: December 4, 1989 at 21 N.J.R. 3716(b).
Adopted: January 4, 1990 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: January 26, 1990 as R.1990 d.130, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47 and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:1B-1 et seq.

TRANSPORTATION

Effective Date: February 20, 1990.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

As N.J.A.C. 16:20B expired on December 17, 1989, these rules proposed for re-adoption are adopted herein as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:20B.

16:20B-1.4 Procedures

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

(d) Separate from the State Aid formula appropriation, the Commissioner shall allocate \$5,000,000 to municipalities qualifying for urban aid under P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) in the same proportion that they receive aid under P.L. 1978, c.14. The proportion is determined by the Department of Community Affairs.

(e) (No change.)

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY
PROGRAMS**

**Speed Limits
Route N.J. 168 in Camden County**

Adopted Amendment: N.J.A.C. 16:28-1.12

Proposed: December 18, 1989 at 21 N.J.R. 3868(a).
Adopted: January 18, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 26, 1990 as R.1990 d.129, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: February 20, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.12 Route 168

(a) The rate of speed designated for the certain parts of State highway Route 168 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

ii. Zone 2: 40 miles per hour in Gloucester Township, Camden County, to 200 feet south of Lake Avenue; thence

(1) School zone: 25 miles per hour within the Gloucester Township Elementary School zone 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.

iii. through x. (No change.)

(a)

**DIVISION OF CONSTRUCTION AND MAINTENANCE
ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT
Outdoor Advertising Tax Act Rules
Readoption: N.J.A.C. 16:41A**

Proposed: December 18, 1989 at 21 N.J.R. 3868(b).
Adopted: January 18, 1990 by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.

Filed: January 23, 1990 as R.1990 d.123, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52, 54:40-64 and
54:51-1.

Effective Date: January 23, 1990.
Expiration Date: January 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Admin-
istrative Code at N.J.A.C. 16:41A. _____

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

HAZARDOUS WASTE FACILITIES SITING COMMISSION

1989 Hazardous Waste Facilities Plan Update

Take notice that pursuant to N.J.S.A. 13:1E-58(a), the New Jersey Hazardous Waste Facilities Siting Commission ("Commission") released the Hazardous Waste Facilities Plan Update on November 28, 1989.

The Commission's long-range planning requires the analysis of how many and what types of new hazardous waste facilities are needed in this State. The 1989 Plan Update revises the 1985 **Hazardous Waste Facilities Plan**, which provided the basis for future Commission decisions. Both documents include, but are not limited to: an inventory of all hazardous waste generated by source, composition, and quantity; projections of the amounts and types of waste to be generated in the future; an analysis and projection of waste minimization; an analysis of existing hazardous waste facilities in New Jersey; and a determination of the number and types of new commercial hazardous waste facilities needed in New Jersey.

To obtain a copy of the 1989 Plan Update, please write to the Commission at the following address:

New Jersey Hazardous Waste
Facilities Siting Commission
28 West State Street
Room 614, 6th Floor
Trenton, New Jersey 08608

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Blairstown Township, Warren County. The WMP identifies a proposed Lambert Road wastewater treatment facility. The Blair Academy Sewage Treatment Plan (STP) and the North Warren High School STP will be abandoned and incorporated into the sewer service area of the proposed Lambert Road wastewater treatment facility. The WMP also designates an on-site groundwater disposal area. The remainder of the Township will utilize individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

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 person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date 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.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that the Division of Parks and Forestry within the Department of Environmental Protection has requested an amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment would allow for a new wastewater treatment plant to serve the upgraded and expanded Day Use Facilities in Wawayanda State Park, Vernon Township.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, 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, Acting Chief, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date 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 until 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of the BP Performance Polymers, Inc. wastewater treatment facility in Mansfield Township, Warren County. The expansion is necessary to accommodate an additional 14,000 gallons per day of wastewater flow from a proposed plastic production plant. Flows from an ECRA clean-up project will also be treated at the facility.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

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 person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date 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.

HEALTH**(a)**

**DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL QUALITY
LABOR
DIVISION OF WORKPLACE STANDARDS, AND
OFFICE OF COMPTROLLER, FINANCE AND
ACCOUNTING
RIGHT TO KNOW ADVISORY COUNCIL
Notice of Public Hearing
Worker and Community Right to Know Act**

Take notice that pursuant to the "Worker and Community Right to Know Act", N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection and Department of Labor, in conjunction with the Governor's Right to Know Advisory Council, will hold a public hearing to receive information, advice, testimony, and recommendations from the public concerning the implementation of the Act, as follows:

Friday, March 16, 1990
10:00 A.M. to 5:00 P.M.
War Memorial Building
Second Floor Board Room
Barrack and Lafayette Streets
Trenton, New Jersey 08625

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act by the State, the effects of the Community Right to Know provision of the Superfund amendments, the problems employers and employees are having concerning compliance with the Right to Know law, and positive actions that have occurred as a result of the requirements of the law.

The Departments of Health and Environmental Protection would like to hear suggestions regarding substances which should be added or deleted to the Right to Know Hazardous Substance List. Any suggested revisions to the list should be based on and accompanied by documented scientific evidence.

Persons who wish to testify should call Eva McGovern at (609) 984-2202. The record will be kept open for 15 days beyond March 16, 1990 for the receipt of written comments, which should be sent to:

Richard Willinger
Right to Know Program
New Jersey Department of Health, CN 368
Trenton, New Jersey 08625-0368.

HUMAN SERVICES**(b)**

**OFFICE OF EDUCATION
Notice of Availability of State Funds
Title of Funding Source: State Facilities Education
Act (P.L. 1979, c.207).**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Education hereby announces the availability of the following State funds.

A. **Name of program:** Educational Related Services for Fiscal Year 1991.

B. **Purpose:** To provide the delivery of physical, occupational and speech/language therapy services in State-operated facilities located throughout New Jersey. These facilities provide special education programs to severely handicapped children, ages 3 to 21.

C. **Amount of money in the program:** Approximately \$3,000,000.

D. **Organizations which may apply for funding under the program:** Individuals, agencies, hospitals, clinics, and any other interested third-party providers.

E. **Qualifications needed by an applicant to be considered for funding:** Physical therapists must be licensed and school certified. Speech/language therapists must be licensed and school certified. Occupational therapists must be registered and school certified. All therapists must carry malpractice insurance.

F. **Procedure for eligible organizations to apply:** All interested applicants should write to the address listed below or call 609-588-3164 for a Request for Proposal (RFP) package.

G. **Address to which application must be submitted:**

Dr. Patricia Holliday, Director
Department of Human Services
Office of Education
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

H. **Deadline by which applications must be submitted:** March 23, 1990.

I. **Date by which applicant shall be notified of approval or disapproval:** April 13, 1990.

(c)

**DEVELOPMENTAL DISABILITIES
Notice of Available Grant Funds
Temporary Child Care—Crisis Nurseries
Title of Grant: Temporary Child Care—Crisis
Nurseries**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Division of Developmental Disabilities, hereby announces the availability of the following grant program funds.

A. **Name of program:** Family Assistance Program.

B. **Purpose:** To provide Statewide, non-medical respite services on a planned or emergency basis to children under the age of 18 who are handicapped as defined by the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)).

C. **Amount of money in the program:** \$170,000. In addition, any client fees, which must be charged on a sliding scale basis will also apply towards the operation of the program.

D. **Organizations which may apply for funding under this program:** Private, non-profit organization(s) that singly or in conjunction with affiliates, can assure service delivery on a statewide basis.

E. **Qualifications needed by an applicant to be considered for funding:** Must have an established successful history of developing and managing Family Assistance Programs and an ability to provide planned and emergency respite services on a 24 hour basis.

F. **Procedure for eligible organizations to apply:** All eligible organizations interested in applying should contact the Project Coordinator and request that an application be sent to them.

G. **Address to which applications must be submitted:**

Division of Developmental Disabilities
CN 700
Trenton, NJ 08625
Attn: Patricia Fettweis, Project Coordinator

H. **Deadline by which applications must be submitted:** March 7, 1990.

I. **Date by which applicant shall be notified of approval or disapproval:** April 1, 1990.

(d)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH
SERVICES**

**Notice of Receipt of Petition for Rulemaking
Long Term Care Facility Reimbursement
N.J.A.C. 10:63-3**

Petitioners: New Jersey Association of Health Care Facilities and the New Jersey Association of Non-Profit Homes for the Aging.

Take notice that on January 11, 1990, the Department of Human Services received a petition for rulemaking with regard to the Medicaid reimbursement system for long term care facilities. The purpose of the

petition for rulemaking is to increase payments to long term facilities to assure that efficiently and economically operated facilities recover their actual allowable costs of providing services to Medicaid recipients. The petitioners allege that the implementation of this rulemaking petition will require the promulgation of regulations which would:

1. Set payment rates for nursing services costs at a level to cover the actual costs of 80 percent of the facilities Statewide;
2. Set payment rates for non-nursing operating costs at a level to cover the actual costs of 50 percent of the facilities Statewide;
3. Modify the Capital Facilities Allowance to take into account the property-capital costs of facilities which commenced operations after the implementation of the current reimbursement system;
4. Utilize a different set of weights and indices than is currently used to calculate the inflation adjustment factor; and
5. Increase the wage equalization factor for facilities classified in the low salary region.

Petitioner's petition for rulemaking is on file at the offices of the Division of Medical Assistance and Health Services. Interested persons may obtain a copy by writing to Saul M. Kilstein, Director, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 17:30-3.6, the petition for rulemaking will be reviewed to determine what action should be taken in response to same. Thereafter, notice of such action shall be mailed to the petitioners and filed with the Office of Administrative Law for publication in the New Jersey Register.

LAW AND PUBLIC SAFETY

(a)

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Notice of Petition for Rulemaking and Action Thereon

N.J.A.C. 13:38

Petitioner: New Jersey Optometric Association
 Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4

Take notice that on October 18, 1989, petitioner filed the following petition with the New Jersey State Board of Optometrists:

Petitioner, the New Jersey Optometric Association, a not-for-profit New Jersey Corporation having its principal place of business at 88 Lakedale Drive, Trenton, New Jersey, by way of Petition for Rulemaking, says:

1. Petitioner is a not-for-profit New Jersey Corporation composed of New Jersey licensed optometrists.

2. Respondent is the administrative agency charged by law with the regulation of the practice of optometry and able to conduct investigations and ascertain facts relating to the practice for the purpose of determining the need for, and desirability of, rules and regulations to promote the safety, protection and welfare of the public and to effectuate the purposes of the Optometry Act, N.J.S.A. 45:12-4.

3. Pursuant to a resolution dated November 16, 1988, respondent reaffirmed that "... the delivery of post-operative care of ophthalmological patients is within the scope of practice of optometry and direct(ed) all optometrists under its law and regulations to continue to administer all eye and vision care to the citizens of the State of New Jersey".

4. On or about July 12, 1989, the New Jersey State Board of Medical Examiners issued a policy statement indicating 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."

5. "The practice of optometry by any legally qualified and registered optometrist" is expressly excluded from the prohibitory provisions of the statutes regulating the practice of medicine and surgery pursuant to N.J.S.A. 45:9-21(g) and is, therefore, outside the jurisdiction of the Board of Medical Examiners.

6. The actions of the New Jersey Board of Medical Examiners are **ultra vires** and in contravention of the New Jersey Statutes regulating the practices of Optometry and Medicine and Surgery, respectively.

7. The action by the New Jersey Board of Medical Examiners is prohibited by N.J.S.A. 45:12-27 which provides, in part:

... no [public] board, body, agency, official, or institution shall, in retaining and utilizing the professional services of ocular practitioners or in any other manner, discriminate between licensed practitioners of optometry and other ocular practitioners or interfere with any individual's right to free choice of ocular practitioner.

8. Petitioner commences this action to require the New Jersey State Board of Optometry to address and determine the delivery and management of post-operative surgical care by optometrists pursuant to N.J.S.A. 45:9-1 et seq.

9. Petitioner prays that the New Jersey State Board of Optometrists determine and declare:

Delivery and management of post-operative care of surgical patients is primary care and within the scope of practice of optometry. Decisions on the delivery of post-operative care shall be made by the patient's optometrist in consultation with the patient and the operating surgeon, in accordance with the best professional judgment of the two professionals.

Pursuant to the Petition for Rulemaking from the New Jersey Optometric Association, the State Board of Optometrists has voted to propose a rule regarding the delivery and management of post-operative care of ophthalmological patients which will appear in a forthcoming issue of the Register.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 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 DECEMBER 18, 1989

NEXT UPDATE: SUPPLEMENT JANUARY 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. 365 and 588	February 21, 1989	21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 589 and 658	March 6, 1989	21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
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		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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ADMINISTRATIVE LAW—TITLE 1

1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)	
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)	
1:1-14.11	Transcripts of OAL hearings	21 N.J.R. 3587(a)	22 N.J.R. 334(a)
1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)	22 N.J.R. 334(b)
1:6A	Special education hearings	21 N.J.R. 2693(a)	
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)	
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)	
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)	

Most recent update to Title 1: TRANSMITTAL 1989-6 (supplement December 18, 1989)

AGRICULTURE—TITLE 2

2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	
2:5-2.2, 3.1	Equine infectious anemia; avian influenza: administrative corrections		22 N.J.R. 628(a)
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)	
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)	22 N.J.R. 25(a)

Most recent update to Title 2: TRANSMITTAL 1989-8 (supplement October 16, 1989)

BANKING—TITLE 3

3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)	
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)	
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)	
3:3-1.1	Department organization	Exempt	22 N.J.R. 335(a)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)	
3:28	Bookkeeping and accounting by savings and loan associations	21 N.J.R. 3336(a)	22 N.J.R. 164(a)
3:42-2.2, 7	Pinelands Development Credit Bank: resale of bank-owned credits	21 N.J.R. 3691(a)	22 N.J.R. 628(b)

Most recent update to Title 3: TRANSMITTAL 1989-6 (supplement October 16, 1989)

CIVIL SERVICE—TITLE 4

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	22 N.J.R. 169(a)
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)	22 N.J.R. 166(a)
4:2-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	22 N.J.R. 169(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	22 N.J.R. 169(a)

Most recent update to Title 4: TRANSMITTAL 1989-2 (supplement November 20, 1989)

PERSONNEL—TITLE 4A

4A:2-1.7	Specific appeals: administrative correction		22 N.J.R. 165(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)	22 N.J.R. 166(a)
4A:3-38	Intermittent employees in State service: leave entitlements	21 N.J.R. 3337(a)	22 N.J.R. 166(b)
4A:4-1.11	Vacancy Review Board: State service	21 N.J.R. 3337(a)	22 N.J.R. 166(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.2, 1.3, 1.9, 2.4	Intermittent employees in State service: leaves and holiday pay	21 N.J.R. 3337(a)	R.1990 d.48	22 N.J.R. 166(b)
4A:8	Layoffs	21 N.J.R. 3340(a)	R.1990 d.49	22 N.J.R. 169(a)
Most recent update to Title 4A: TRANSMITTAL 1989-4 (supplement November 20, 1989)				
COMMUNITY AFFAIRS—TITLE 5				
5:1-1.1, 2.1, 6, 7.4	Standards of conduct	21 N.J.R. 3693(a)	R.1990 d.99	22 N.J.R. 335(b)
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)		
5:11-1.2, 6.2	Relocation assistance: definitions; relocation plans	21 N.J.R. 3694(a)	R.1990 d.113	22 N.J.R. 336(a)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)	R.1990 d.68	22 N.J.R. 336(b)
5:14-4.1	Neighborhood Preservation Balanced Housing Program: administration of affordability controls	21 N.J.R. 3695(a)	R.1990 d.100	22 N.J.R. 337(a)
5:18	Uniform Fire Code	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18A-4	Repeat (see 5:18C)	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:18B	High Level Alarms	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)	R.1990 d.60	22 N.J.R. 350(a)
5:22-2.5	Rehabilitation of multiple dwellings: administrative correction			22 N.J.R. 632(a)
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)	R.1990 d.57	22 N.J.R. 350(b)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)	R.1990 d.58	22 N.J.R. 351(a)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)	R.1990 d.61	22 N.J.R. 351(b)
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)	R.1990 d.115	22 N.J.R. 352(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)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
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)		
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)	R.1990 d.59	22 N.J.R. 354(a)
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:31	Local authorities	21 N.J.R. 3046(a)	R.1990 d.4	22 N.J.R. 26(a)
5:33	Urbanaid program	21 N.J.R. 3046(b)	R.1990 d.16	22 N.J.R. 26(b)
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)	R.1990 d.16	22 N.J.R. 26(b)
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)	R.1990 d.12	22 N.J.R. 26(c)
5:80	New Jersey Housing and Mortgage Finance Agency	22 N.J.R. 277(b)		
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)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(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)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-11 (supplement December 18, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

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6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)	R.1990 d.13	22 N.J.R. 28(a)
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)	R.1990 d.134	22 N.J.R. 632(b)
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:21-7.6	Pupil transportation: administrative correction			22 N.J.R. 366(b)
6:22-1.1, 1.3, 1.4, 1.7, 1.8	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)	R.1990 d.110	22 N.J.R. 366(a)
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)		
6:29	Health, safety and physical education	21 N.J.R. 3815(b)		
6:39-1.2	Levels of pupil proficiency: administrative correction			22 N.J.R. 366(b)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)		
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)		

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7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)	R.1990 d.22	22 N.J.R. 179(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(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)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(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)		
7:12-1.2, 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)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(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)		
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	Water supply allocation permits	21 N.J.R. 3594(a)		
7:19A	Emergency water supply allocation	22 N.J.R. 102(a)		
7:19B	Water emergency surcharge schedule	22 N.J.R. 106(a)		
7:20-1	Dam safety standards	22 N.J.R. 279(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)	R.1990 d.69	22 N.J.R. 368(a)
7:25-12	Surf clam management	21 N.J.R. 3214(a)	R.1990 d.46	22 N.J.R. 183(a)
7:25-12.9	Surf clamming: administrative correction			22 N.J.R. 633(a)
7:25A	Oyster resource management	22 N.J.R. 283(a)		

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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)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)	R.1990 d.65	22 N.J.R. 382(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-2A.8	Sanitary landfill requirements: administrative correction	_____	_____	22 N.J.R. 382(b)
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)	R.1990 d.50	22 N.J.R. 187(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)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:26-9, App. A	Requirements for hazardous waste facilities: administrative correction	_____	_____	22 N.J.R. 383(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: operative date of civil administrative penalties and adjudicatory hearing rules	_____	_____	22 N.J.R. 29(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:29	Noise control	22 N.J.R. 307(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)	R.1990 d.106	22 N.J.R. 383(b)
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

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8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19-2	Newborn biochemical screening	21 N.J.R. 3633(b)		
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:23	Veterinary public health	21 N.J.R. 3274(a)	R.1990 d.20	22 N.J.R. 204(a)
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-31)	21 N.J.R. 2447(a)	R.1990 d.39	22 N.J.R. 205(a)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)	R.1990 d.36	22 N.J.R. 205(b)
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)	R.1990 d.38	22 N.J.R. 206(a)
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)	R.1990 d.40	22 N.J.R. 211(a)
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)	R.1990 d.41	22 N.J.R. 212(a)
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)		
8:31B-5.3	Diagnosis Related Groups classification: correction to proposal and extension of comment period	22 N.J.R. 308(a)		
8:33A	Surgical facilities: certificate of need	21 N.J.R. 3888(a)		
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)	R.1990 d.132	22 N.J.R. 633(b)

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8:33P	Designation of trauma centers: certificate of need	21 N.J.R. 3889(a)		
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)	R.1990 d.131	22 N.J.R. 634(a)
8:39-44	Respite care services	21 N.J.R. 2924(a)	R.1990 d.133	22 N.J.R. 634(b)
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)	R.1990 d.136	22 N.J.R. 635(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)	R.1990 d.95	22 N.J.R. 441(b)
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(b)	R.1990 d.98	22 N.J.R. 484(a)
8:43G-6	Hospital licensure: anesthesia	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)	R.1990 d.97	22 N.J.R. 488(b)
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)	R.1990 d.96	22 N.J.R. 496(a)
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)	R.1990 d.94	22 N.J.R. 498(a)
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)	R.1990 d.78	22 N.J.R. 505(a)
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)	R.1990 d.93	22 N.J.R. 507(a)
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)	R.1990 d.92	22 N.J.R. 510(a)
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)	R.1990 d.91	22 N.J.R. 514(a)
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)	R.1990 d.90	22 N.J.R. 517(a)
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)	R.1990 d.88	22 N.J.R. 520(a)
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)	R.1990 d.89	22 N.J.R. 524(a)
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)	R.1990 d.87	22 N.J.R. 530(a)
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)	R.1990 d.86	22 N.J.R. 531(a)
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)	R.1990 d.85	22 N.J.R. 535(a)
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)	R.1990 d.84	22 N.J.R. 537(a)
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)	R.1990 d.83	22 N.J.R. 541(a)
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)	R.1990 d.82	22 N.J.R. 542(a)
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)	R.1990 d.81	22 N.J.R. 544(a)
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-31.5	Hospital respiratory care: administrative correction			22 N.J.R. 653(a)
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)	R.1990 d.80	22 N.J.R. 548(a)
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)	R.1990 d.79	22 N.J.R. 555(a)
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)		
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)	R.1990 d.19	22 N.J.R. 214(a)
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)		
8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)		
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)		
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a))	21 N.J.R. 1790(a)	R.1990 d.37	22 N.J.R. 214(b)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)	R.1990 d.43	22 N.J.R. 214(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)		
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		

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9:2-14	Student immunization requirements	21 N.J.R. 3605(a)		
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-3.2	Tuition Aid Grant 1990-91 Award Table	22 N.J.R. 309(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)	R.1990 d.14	22 N.J.R. 29(b)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)	R.1990 d.1	22 N.J.R. 29(c)
9:14	Independent College and University Assistance Act rules	22 N.J.R. 116(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HUMAN SERVICES—TITLE 10				
10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)	R.1990 d.25	22 N.J.R. 215(a)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)	R.1990 d.76	22 N.J.R. 653(b)
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:52	Manual for Hospital Services	21 N.J.R. 3911(a)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)		
10:63-1.2-1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only eligibility computation amounts	Emergency (expires 2-24-90)	R.1990 d.55	22 N.J.R. 251(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:81-14.18	REACH program: post-AFDC child care	22 N.J.R. 136(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-13-90)	R.1990 d.23	22 N.J.R. 64(a)
10:85	General Assistance Manual	21 N.J.R. 3221(b)	R.1990 d.33	22 N.J.R. 218(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	21 N.J.R. 3790(a)	R.1990 d.117	22 N.J.R. 355(a)
10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34-2.38, 3.1, 3.6-3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31	Food Stamp Program administration	22 N.J.R. 139(a)		
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)		
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:123-1	Financial eligibility for services through Social Services	22 N.J.R. 310(b)		
10:123-3.2	Block Grant program: extension of comment period Residential health care facilities and boarding homes: personal needs allowance for GPA and SSI recipients	21 N.J.R. 3912(a)	R.1990 d.137	22 N.J.R. 661(a)
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:126A	Family day care standards	22 N.J.R. 13(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)	Expired	

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10A:2-7	Inmate restitution for damaged or destroyed property	21 N.J.R. 3408(b)	R.1990 d.75	22 N.J.R. 355(b)
10A:2-10	Grants procedure	22 N.J.R. 14(a)		
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)	R.1990 d.34	22 N.J.R. 232(a)
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)	R.1990 d.120	22 N.J.R. 661(b)
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	22 N.J.R. 310(c)		

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10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
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