NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 12
June 15, 1987 Indexed 19 N.J.R. 1007-1120
(Includes adopted rules filed through May 22, 1987)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 20, 1987.
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED MAY 18, 1987.

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **July 15, 1987.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

July 20 issue:	
Proposals	**June 22**
Adoptions	**June 26**
August 3 issue:	
Proposals	**July 6**
Adoptions	**July 13**
August 17 issue:	
Proposals	**July 20**
Adoptions	**July 27**
September 8 issue:	
Proposals	**August 10**
Adoptions	**August 17**

NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Monday (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $75 ($150 by First Class Mail); back issues when available, $8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee
Review of Non-Agricultural Development Projects in Agricultural Development Areas by Public Bodies and Public Utilities

Proposed New Rules: N.J.A.C. 2:76-7

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Authority: N.J.S.A. 4:1C-19, 4:1C-25.
Proposal Number: PRN 1987-213.

Submit comments by July 15, 1987 to:
Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed rule outlines the process by which non-agricultural projects are reviewed for their impact on agricultural activities. These non-agricultural development projects are publicly funded or involve the use of eminent domain of public bodies or public utilities and which occur in Agricultural Development Areas (ADAs) as identified through the Agriculture Retention and Development Act (N.J.S.A. 4:1C-11 et seq.).

The proposed rules will clarify the procedure by which a public body or public utility is required to notify county agriculture development boards (CADBs) and the State Agriculture Development Committee (SADC) pursuant to the Agriculture Retention and Development Act (N.J.S.A. 4:1C-19). The proposal contains definitions which clearly distinguish between several important aspects of the initiation of the action or project and the notification procedure. The rules also specify information about the project which would be requred for its review by CADBs and the SADC.

The review procedure by which the CADB or the SADC conducts the impact assessment of the project is contained in policy form so that such review may remain flexible at this time.

The purpose of the project review is to determine the impact of non-agricultural development projects which are publicly funded or involve the use of eminent domain in areas that have been identified as having a priority use as agriculture and identified as ADAs through the Agriculture Retention and Development Act.

Should a CADB or the SADC find that the proposed action or project would cause unreasonably adverse effects on the ADA, or upon State agricultural preservation and development policies, the CADB or the SADC may direct that no action be taken for 60 days, during which time a public hearing shall be held by the CADB or the SADC in the ADA and a written report containing the recommendation of the CADB or the SADC concerning the proposed action or project shall be made public.

The Agriculture Retention and Development Act provides for the long-term encouragement of the agricultural business climate and the preservation of agricultural lands. ADAs are an integral part of this program which encourages commercial farming and agricultural retention.

ADAs are areas where agriculture is the preferred but not necessarily the exclusive use of the area. They are areas identified by criteria adopted by CADBs and certified by the SADC pursuant to N.J.S.A. 4:1C-18 and N.J.A.C. 2:76-2. ADAs are required to encompass productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the currently municipal zoning ordinance or in which agriculture is permitted as non-conforming use. They must be reasonably free of suburban and conflicting commercial development, and comprise not greater than 90 percent of the agricultural land mass of the county. Each CADB may select additional criteria to identify ADAs in their county.

These rules are necessary to clarify provisions in the enabling legislation, N.J.S.A. 4:1C-11 et seq., the Agriculture Retention and Development Act. Although the review of nonagricultural development projects in ADAs has been required through the legislation since its enactment in 1983, most public bodies and public utilities are unaware of or unclear about their obligations to notify CADBs and the SADC about non-agricultural development projects with which they are involved.

Social Impact

In some instances, publicly funded nonagricultural development projects are detrimental to the preservation of agricultural land and the agricultural economic climate of a rural area. With the State legislature's recognition of the importance of farmland in the State of New Jersey and its identification as a preferred land use within areas identified as an ADA, measures should be taken to ensure its protection. Assessment of these impacts can determine whether the use of public funds or the use of eminent domain may conflict with the public goals of farmland preservation.

The social impact of the proposed rule will consist of public bodies and public utilities being required to notify CADBs and the SADC of any development project as defined in the following proposed rules and providing information on the project's impact on agricultural activities.

The proposed rules will affect public bodies and public utilities which intend, within an ADA, to exercise the power of eminent domain for the acquisition of land or advance a grant, loan, interest subsidy or other funds within an ADA for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures.

All public bodies in New Jersey, meaning any State, regional, county or municipal agency or governing body, including but not limited to special districts and authorities, will be affected. The rule will also affect every public utility enumerated in N.J.S.A. 48:2-13 and every natural gas pipeline utility as defined in 48:10-2 et seq. vested with the power of eminent domain and subject to regulation under State or Federal law.

The proposed rules should be well received in that they clearly identify which projects are subject to N.J.S.A. 4:1C-19 and the specific information required for the review of those projects. Additionally, they provide a basis by which a public body or public utility can request assistance from CADBs to ascertain whether the proposed project is located within an ADA, which may be identified by criteria only.

The social effect of the proposed rule will be to identify publicly funded development projects in agricultural areas so their impact on agricultural activities in the ADA can be assessed. Should an adverse impact be determined, the project may be halted for 60 days during which a public hearing may be held on the proposed project's impact on agricultural activities and the findings made public.

Economic Impact

Public bodies and public utilities will be required to submit information about the proposed project to the CADB in the county where the project is located.

If an adverse impact is found to occur as a result of reviewing the nonagricultural development project, it is possible that a CADB will recommend that the project not be constructed or funded by the public body or public utility. Depending on the severity of the impact, the project may be modified to avoid an adverse impact or not funded.

The economic effect on the public is considered to be minimal. Most public bodies and public utilities are already involved in an extensive notification and review process. Inclusion of CADBs and the SADC on such notification lists should dovetail with existing procedures.

The proposed rules will increase the amount of program administration required by CADBs and the SADC. CADBs will be required, when asked by a public body or public utility, to determine whether a nonagricultural development project is located in an ADA. The CADB may also be required to review the impact of the nonagricultural development project.

The social savings will be the continued use of farming activities and the preservation of farmland protected from the detrimental adverse effects of the nonagricultural development projects.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping or other requirements on small businesses. The proposed rule primarily

affects public bodies and public utilities which advance a loan, grant, interest subsidy or other funds for nonagricultural projects or use the power of eminent domain for the acquisition of land.

Full text of the proposed new rules follows:

SUBCHAPTER 7. REVIEW OF NON-AGRICULTURAL DEVELOPMENT PROJECTS IN AGRICULTURAL DEVELOPMENT AREAS

2:76-7.1 Applicability

This subchapter applies to any public body or public utility which intends, within an agricultural development area, to exercise the power of eminent domain for the acquisition of land, or advance a grant, loan, interest subsidy or other funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures.

2:76-7.2 Definitions

"Advance a grant, loan, interest subsidy or other funds" means the provision of funds in the form of a grant, loan or interest subsidy or other financial assistance for the construction of a project as defined in this subchapter.

"Agricultural development area" means the agricultural land area identified by the board and certified by the Committee pursuant to N.J.S.A. 4:1C-18 and N.J.A.C. 2:76-1.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agriculture retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Initiation of an action" means the earliest of the following events: the filing of a complaint by a public body or public utility with the New Jersey Superior Court for permission to exercise the power of eminent domain; the issuance of a draft environmental impact statement or environmental assessment; the initiation of a level of action analysis by the New Jersey Department of Transportation; the approval of a project as a "categorical exclusion" by the Federal Highway Administration; the application for or notification of a project before a municipal governing body or body thereof; or, in the case of the advancement of funds, the time at which a public utility or public body decides to make a final commitment to advance a grant, loan, interest subsidy or other funds toward a project.

"Notice of intent" means the written notification by a public body or public utility to the Committee and the board and the supporting documents and information pursuant to N.J.A.C. 2:76-7.3(c) and (d).

"Project" means the use or purpose for which any public body or public utility intends to acquire land within an agricultural development area through the exercise of the power of eminent domain, or the construction, within an agricultural development area, of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures, for which construction any public body or public utility intends to advance a grant, loan, interest subsidy or other funds.

"Proposed action" means the intention of any public body or public utility to exercise the power of eminent domain for the acquisition of land or advance a grant, loan, interest subsidy or other funds for a project as defined in this subchapter.

"Public body" means any State, regional, county or municipal agency or governing body, including but not limited to special districts and authorities.

"Public utility" means and includes every public utility enumerated in N.J.S.A. 48:2-13, and every natural gas pipeline utility as defined at N.J.S.A. 48:10-2 et seq. vested with the power of eminent domain and subject to regulation under State or Federal law.

"Secretary" means the Secretary of Agriculture.

2:76-7.3 Responsibilities of the public body and/or public utility

(a) A notice of intent shall be filed with the board and the Committee by any public body or public utility which intends, within an agricultural development area, to:

1. Exercise the power of eminent domain for the acquisition of land; or

2. Advance a grant, loan, interest subsidy or other funds for the construction of a project as defined in this subchapter.

(b) The following are exempt from the requirements of (a) above:

1. Extension of roadside public utility distribution lines; and

2. Minor improvements and/or repairs to existing transportation and water or sewer infrastructure systems that do not increase existing capacity or extend service into previously unserviced areas.

(c) The notice of intent shall include:

1. A statement of the reasons for the proposed action;

2. An evaluation of alternatives which would not include action in the agricultural development area;

3. Information about the project and its impact as outlined in N.J.A.C. 2:76-7.4.

(d) The notice of intent shall be filed with the board and the Committee at least 30 days prior to the initiation of an action described in (a) above. The time at which the action is initiated shall be as defined in N.J.A.C. 2:76-7.2.

2:76-7.4 Information about the project

(a) The information outlined in (d) below regarding the proposed action and project shall be required in the notice of intent submitted to the board and the Committee by the public body or public utility. If the board determines that further information is required to complete its evaluation, such information shall be submitted by the public body or public utility within 10 working days of the request.

(b) If a draft or final environmental impact statement has been prepared in connection with the proposed action or project and includes all of the information required in (d) below, then that statement, along with the information required in N.J.A.C. 2:76-7.3(c) and together with a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the initiation of the proposed action.

(c) If a draft or final environmental impact statement prepared in connection with the proposed action or project does not contain all of the information required in (d) below, including the information required in N.J.A.C. 2:76-7.3(c), then that statement, together with all additional information necessary and a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the undertaking of the proposed action.

(d) The following information must be submitted for each project:

1. The name of the public body or public utility involved, its address, telephone number and the name of a contact person.

2. The location and land use of the project as follows:

i. The location of the project, including:

(1) The municipality(ies), block and lot number(s);

(2) A key map adequately locating the site or proposed route of the project;

(3) The current use of the site; and

(4) The land use of area adjacent to the site, including:

(A) Current buffers between the project and farmland; and

(B) The proposed use of buffers between the project and farmland.

ii. A description of the project, including:

(1) The type of project (utility, residential, commercial, industrial, etc.);

(2) The purpose of the project;

(3) The total area of the project;

(4) The phases of the project;

(5) The infrastructure required, including roads and utilities (water, electric, gas, etc.); and

(6) The alternatives considered, if any.

3. A discussion of farm activities impacts on the project through consideration of the following issues from the public body or public utility's perspective and identification of feasible solutions to these potential problems:

i. Potential complaints concerning noise from use of farm machinery, irrigation pumps or other equipment;

ii. Potential complaints concerning odors associated with livestock, poultry, crops or manure spreading;

iii. Potential complaints concerning use of herbicides, pesticides and fertilizers; and

iv. Potential dust problems.

4. A discussion of the projects impact on water resources, including:

i. The following aspects of water diversion:

(1) Surface runoff affecting water bodies, including irrigation ponds;

(2) Groundwater aquifers affected; and

(3) Rechanneling of streams or water courses;
ii. The potential effect on surface and groundwater quality; and
iii. The site's function as a water recharge area.

PERSONNEL

MERIT SYSTEM BOARD

The following proposals are authorized by the Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

A **public hearing** concerning the proposals will be held on:
July 1, 1987 at 9:30 A.M.
Merit System Board Meeting Room
Front and Montgomery Streets
Trenton, NJ

Please contact Ms. Dolores Carvill at 609-292-6568 if you plan to attend and to be included on the list of speakers.

Submit written comments by July 15, 1987 to:
Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

(a)

General Rules and Department Organization
Proposed New Rules: N.J.A.C. 4A:1
Proposed Repeals: N.J.A.C. 4:1-1, 4:1-2, 4:1-3, 4:1-4

Authority: N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 47:1A-2, 52:14B-3(1), 52:14B-3(3), 52:14B-4(f), Executive Order No. 11 (1974).

This proposal is known as PRN 1987-228.

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (The Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy. In this proposal, N.J.A.C. 4:1-1, 4:1-2, 4:1-3 and 4:1-4 concerning definitions and the general organization of the Department are proposed for repeal, with new rules at N.J.A.C. 4A:1 proposed in their place.

Proposed subchapter 1 encompasses the rules of general application and purpose, definitions, and the rule making process. N.J.A.C. 4A:1-1.1 states the general purpose for the establishment of these rules. N.J.A.C. 4A:1-1.2 refers specifically to whom the rules shall apply and the manner of such application. This proposed rule provides for a discretionary relaxation of these rules in certain situations to effectuate the overall purposes of Title 11A. N.J.A.C. 4A:1-1.3 is a listing of the definitions to key words and terms used in the text of the rules. This proposed rule does not include terms which have sufficient dictionary definitions. N.J.A.C. 4A:1-1.4 provides a more simplified approach, in comparison to prior procedures, by which interested persons may petition to promulgate, amend, or repeal rules.

Proposed Subchapter 2 concerns the Department's recordkeeping requirements. N.J.A.C. 4A:1-2.1 provides that appointing authorities shall provide Department of Personnel representatives with free access to requested records and information. N.J.A.C. 4A:1-2.2 outlines specific items of information within personnel records that are designated public information. This rule clarifies that certain disciplinary records are considered public in nature.

Proposed Subchapter 3 provides a description of the Department's organizational structure and states the general course and method of its operations. N.J.A.C. 4A:1-3.1 is a description of the general structure of the Department of Personnel. N.J.A.C. 4A:1-3.2 describes the powers and duties of the Commissioner of Personnel. N.J.A.C. 4A:1-3.3 provides a description of the general rules of the Merit System Board.

Proposed Subchapter 4 concerns the Commissioner of Personnel's power, newly created under the reform law, to delegate and consolidate personnel functions and establish certain pilot programs. N.J.A.C. 4A:1-4.1 provides a description of the functions that the Commissioner of Personnel may delegate to an appointing authority and the manner in which delegation shall be carried out. N.J.A.C. 4A:1-4.2 provides the criteria by which the Commissioner may direct the consolidation of personnel and related functions in State service. N.J.A.C. 4A:1-4.3 provides the guidelines for the establishment of certain new pilot programs authorized by Title 11A.

Social Impact

As a part of the proposed new rules, many technical changes, deletions and substantive additions have been made in comparison with the current regulations dealing with basic rules and department organization. The principal change is the simplicity, clarity and reorganization of the rules in order to better effectuate the purposes of the new Title 11A. This proposal reflects a reduction in the total amount of regulations and provides for the rules to be readily, easily and correctly applied. This proposal offers the repeal of 22 existing regulations, replaced by 9 rules and the addition of 3 concise rules addressing the new areas of departmental activity involving delegation, consolidation, and the establishment of pilot programs. The overall reduction in the amount of rules will lessen the degree of burden that the existing regulations have placed upon the users of these rules. The proposal will have an overall positive social impact on all users of merit system rules, in that the new rules will be logically organized, understandable and reflective of current law.

Economic Impact

The clarity and simplicity of this proposal, in comparison to the organization of existing regulations, will reduce the amount of inquiries and controversies requiring agency action. The proposal also provides for the delegation and consolidation of certain functions in the appropriate situations. These procedures, which were not previously provided for under existing regulations, allow department activity to be conducted more efficiently. Therefore, the proposal will have a positive economic impact on State government, the various public employers, public employees, and the taxpayers in general.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-1, 4:1-2, 4:1-3 and 4:1-4.

Full text of the proposed new rules follows.

CHAPTER 1
GENERAL RULES AND DEPARTMENT ORGANIZATION

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:1-1.1	4A:1-1.1	4:1-3.5	4A:1-3.3
4:1-1.2	4A:1-1.2	4:1-3.6	4A:1-3.2
4:1-1.3	4A:1-2.1	4:1-3.7	4A:1-3.2
4:1-1.4	4A:1-1.2	4:1-3.8	REPEALED
4:1-1.5	4A:1-1.4	4:1-4.1	4A:1-3.3
4:1-1.6	REPEALED	4:1-4.2	REPEALED
4:1-2.1	4A:1-1.3	4:1-4.3	REPEALED
4:1-3.1	4A:1-3.1	4:1-4.4	4A:1-3.3
4:1-3.2	REPEALED	4:1-4.5	4A:1-3.3
4:1-3.3	4A:1-3.1	4:1-4.6	REPEALED
4:1-3.4	4A:1-3.3	4:1-4.7	REPEALED

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

4A:1-1.1 Purpose

The purpose of these rules is to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services.

4A:1-1.2 Scope, applicability and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with these rules.

(b) These rules shall apply only to the career service unless otherwise specified.

(c) These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. Whenever the Commissioner or Board find that strict adherence to these rules would result in injustice, unfairness or inconsistency with the overall objectives of the merit system, they may, in their discretion, relax these rules in order to effectuate the purpose of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the rules shall not be affected by such determination.

4A:1-1.3 Definitions

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

"Appointing authority" means a person or group of persons having power of appointment or removal.

"Appointment" means the offer and acceptance of employment.

"Base salary" means an employee's rate of pay exclusive of any additional payments or allowances.

"Board" means the Merit System Board.

"Career Service" means those positions and job titles subject to the tenure provisions of Title 11A, New Jersey Statutes.

"Certification" means a list of names presented to an appointing authority for regular appointment.

"Class code" means a designation assigned to job titles in State Service with ranking based upon an evaluation of job consent.

"Commissioner" means the Commissioner of Pesonnel.

"Days" means calendar days unless otherwise specified.

"Demotion" means, in local service, a reduction in title, and in State service, a reduction in class code.

"Disposition" means the written report of actions taken by an appointing authority regarding a certification.

"Eligible list" means a roster compiled or approved by the Department of Personnel of persons who are qualified for employment or reemployment.

"Fine" means a disciplinary penalty which requires the payment of money or the performance of service without pay or at reduced pay.

"Immediate family" means an employee's spouse, child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household.

"Layoff" means the separation of a permanent employee from employment for reasons of economy or efficiency or other related reasons and not for disciplinary reasons.

"Local service" means employment in any political subdivision operating under Title 11A, New Jersey statutes.

"Open competitive examination" means a test open to members of the public who meet the prescribed requirements for admission.

"Part time employee" means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

"Permanent employee" means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

"Position" means the assignment of specific duties and responsibilities.

"Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

"Promotional examination" means a test open to permanent employees who meet the prescribed requirements for admission.

"Provisional appointment" (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

"Regular appointment" (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

"Removal" means termination of a permanent employee from employment for disciplinary reasons.

"Senior executive service" means appointments in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

"State service" means employment for the State of New Jersey.

"Suspension" means temporary separation from employment for disciplinary reasons.

"Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

"Title series" means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

"Unclassified service" means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

"Working test period" means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-3.6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;

2. Information on specific educational or medical qualifications required for employment;

3. Final Notice of Disciplinary Action;

4. Final orders of the Commissioner or Board; and

5. Other records which are required by law to be made, maintained or kept on file.

(b) Personnel records, except as specified above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

SUBCHAPTER 3. ORGANIZATION

4A:1-3.1 General

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;

2. Merit System Board; and

3. Such subdivisions as the Commissioner may deem necessary.

4A:1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;

2. Serve as principal executive and request officer of the Department;

3. Maintain a management information system to implement Title 11A, New Jersey Statutes;

4. Establish necessary programs and policies for the State and local service;

5. Assist the Governor in personnel and labor relations;

6. Render final administrative decisions on appeals of classification, salary, layoff rights and State noncontractual grievances;

7. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;

8. Make required reports to the Governor and Legislature;

9. Approve appointments in the State and local service; and

10. Perform such other duties as prescribed by law and these rules.

4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;

2. Render final administrative decisions on appeals except for those matters listed in N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;

3. Adopt rules for implementing Title 11A, New Jersey Statutes;

4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity; and

(e) Perform such other duties as prescribed by law and these rules.

SUBCHAPTER 4. DELEGATION, CONSOLIDATION AND PILOT PROGRAMS

4A:1-4.1 Delegation to appointing authorities

(a) The Commissioner may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;

2. Announcing examinations and collecting applications;
3. Administering examinations prepared by the Department of Personnel;
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles;
6. Job analysis; and
7. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the Commissioner. It shall contain:
1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The Department of Personnel representative who will have primary responsibility for supervision of the delegation;
4. The duration of the delegation, which in no event shall exceed three years, but may be renewed; and
5. Provisions for appropriate notice advising of the delegation and stating the name, address and telephone number of the representative of the appointing authority and Department of Personnel employee to be contacted in case of complaints.

(c) Department of Personnel staff may be assigned to assist in performing the delegated functions.

(d) The Commissioner may cancel, modify or limit the delegation order at any time.

(e) The following functions may not be delegated:
1. The construction of an examination;
2. Appeal decisions of the Department, Commissioner or Board; and
3. A function of the Board.

(f) In local service, the delegation must be approved by the affected appointing authority when the delegation requires substantial costs.

4A:1-4.2 Consolidation

(a) The Commissioner, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:
1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the Commissioner may transfer necessary employees, positions, funding and equipment to the Department of Personnel from other State departments.

4A:1-4.3 Pilot programs

(a) The Commissioner may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and these rules.

(b) Pilot programs may include, but are not limited to, the following:
1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the Commissioner and include:
1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program;
5. A summary of appointing authority consultations with negotiations representatives; and
6. Such other information as required by the Commissioner.

(e) The Commissioner may accept, modify or reject the program and establish appropriate conditions.

(a)

Appeals, Discipline and Separations
Proposed New Rules: N.J.A.C. 4A:2
Proposed Repeals: N.J.A.C. 4:1-5, 4:1-13.6, 4:1-13.7, 4:1-16.7 through 4:1-16.12, 4:1-16.14, 4:1-23, 4:2-16.4, 4:2-16.5, 4:2-23, 4:3-16.3, 4:3-16.4

Authority: N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13, 11A:2-14, 11A:2-15, 11A:2-16, 11A:2-18, 11A:2-20, 11A:2-21, 11A:2-22, 11A:2-24, 11A:4-15(c), 11A:8-4, 52:14B-10(c).

This proposal is known as PRN 1987-227.

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (the Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy. In this proposal, N.J.A.C. 4:1-5, 4:1-13.6, 4:1-13.7, 4:1-16.7, 4:1-16.8, 4:1-16.9, 4:1-16.10, 4:1-16.11, 4:1-16.12, 4:1-16.14, 4:1-23.1, 4:1-23.2, 4:2-16.4, 4:2-16.5, 4:2-23, 4:3-16.3 and 4:3-16.4 concerning rules on appeals, discipline and separations are proposed for repeal and N.J.A.C. 4A:2 proposed in their place.

Subchapter 1 provides a set of rules generally applicable to all appeal situations arising under the new Title 11A, New Jersey Statutes. N.J.A.C. 4A:2-1.1 provides the general procedural aspects of filing appeals with the Commissioner of Personnel or the Merit System Board. N.J.A.C. 4A:2-1.2 concerns the manner in which a party to an appeal may petition the Commissioner for a stay or other relief pending the final decision of the matter. This proposal also outlines the factors that will be considered in review of such requests. N.J.A.C. 4A:2-1.3 explains that a party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. N.J.A.C. 4A:2-1.4 designates which party will bear the burden of proof in specific appeal actions before the Commissioner or the Board. N.J.A.C. 4A:2-1.5 generally provides the standard by which pecuniary remedies may be awarded as a result of an appeal before the Commissioner or the Board. N.J.A.C. 4A:2-1.6 reflects the longstanding administrative policy that the Department may reopen and rehear matters. However, this proposal provides a strict standard which must be satisfied to reopen an appeal. N.J.A.C. 4A:2-1.7 is an entirely new rule, providing a cross reference table for finding specific appeal procedures throughout the proposed and existing rules.

Subchapter 2 is a comprehensive set of rules concerning appeals of major disciplinary actions. N.J.A.C. 4A:2-2.1 explains that the proposed subchapter applies only to permanent employees in the career service or a person serving a working test period. N.J.A.C. 4A:2-2.2 describes the types of actions which constitute major discipline. N.J.A.C. 4A:2-2.3 presents the general causes for which an employee may be subject to discipline. N.J.A.C. 4A:2-2.4 concerns limitations on suspensions and fines. This proposal reflects statutory limits on the type of situations where a fine may be imposed and also provides for installment payment of such fines. N.J.A.C. 4A:2-2.5 provides procedural and substantive guidelines concerning an employee's opportunity for a departmental hearing prior to the imposition of major discipline, reflecting the new requirements found in N.J.S.A. 11A:2-13. N.J.A.C. 4A:2-2.6 sets forth the minimum requirements for the conduct of a major disciplinary hearing before the appointing authority. N.J.A.C. 4A:2-2.7 explains the procedures involved when an employee is initially suspended on the basis of a pending criminal complaint or indictment. N.J.A.C. 4A:2-2.8 concerns the 20-day time limit for major disciplinary appeals to the Merit System Board. N.J.A.C. 4A:2-2.9 concerns the general procedures of major disciplinary hearings before the Board. The proposal provides that the Board may refer major disciplinary matters to the Office of Administrative Law for a hearing and recommended decision in accordance with N.J.A.C. 1:1-1.1 et seq. N.J.A.C. 4A:2-2.10 concerns the Board's authority to award back pay, benefits, seniority or restitution of a fine where a disciplinary penalty has been reversed or modified, as provided by N.J.S.A. 11A:2-22. This proposal explains the conditions when the Board may award such remedies and the manner in which these remedies are to be calculated. N.J.A.C. 4A:2-2.11 is an entirely new rule, providing the standard and procedures by which the Commissioner or the Board may award interest following an award of back pay. The authority to award interest has been recognized in case law. See, *Board of Education, City of Newark v. Levitt,*

197 N.J. Super. 239 (App. Div. 1984); *Kramedjian v. Irvington,* Docket No. A-2989-80T3 (App. Div. November 15, 1983). N.J.A.C. 4A:2-2.12 provides the standard by which the Board may award reasonable counsel fees to an employee who was subject to major disciplinary action, and who has prevailed on all or substantially all of the primary issues.

Subchapter 3 encompasses a detailed set of rules pertaining to minor disciplinary and grievance appeals. N.J.A.C. 4A:2-3.1 defines the nature of minor disciplinary actions and grievances. The proposed rule also defines the applicability of this subchapter with respect to employees in State and local service. N.J.A.C. 4A:2-3.2 outlines the general procedures involved in an appeal of a minor disciplinary action at the departmental level, while 4A:2-3.3 outlines the procedures for grievance appeals. N.J.A.C. 4A:2-3.4 and 4A:2-3.5 provide specific procedures to be followed during the two-step grievance appeal process. N.J.A.C. 4A:2-3.6 provides guidelines for the conduct of minor disciplinary hearings and grievance meetings at the departmental level. Finally, N.J.A.C. 4A:2-3.7 provides appeal procedures and the standard by which the Commissioner or the Merit System Board may review departmental decisions concerning grievances or minor disciplinary actions.

Subchapter 4 concerns the termination of a career service employee at the end of the working test period. N.J.A.C. 4A:2-4.1 clarifies certain ambiguous provisions in the old rules regarding the notice requirements that an appointing authority must satisfy before terminating or returning an employee to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance. N.J.A.C. 4A:2-4.2 provides for a 20-day appeal period, while N.J.A.C. 4A:2-4.3 concerns the procedures for Board review of such matters.

Subchapter 5 encompasses a new area of Board review authorized by Title 11A and concerns the subject of employee protection against reprisals or political coercion. N.J.A.C. 4A:2-5.1 defines the scope of these protections, while N.J.A.C. 4A:2-5.2 provides the general appeal procedures for Board review of an alleged reprisal or political coercion action.

Subchapter 6 provides a guideline for determining the status and consequences of an employee's resignation. N.J.A.C. 4A:2-6.1 concerns the notice requirements necessary to insure that an employee's resignation be deemed in good standing, and also codified case law granting appeal rights where it is alleged that such a resignation was the result of duress or coercion. N.J.A.C. 4A:2-6.2 outlines the situations where an employee could be held to have resigned not in good standing. This proposal requires such an employee to be provided with notice of appeal rights and also provides that, for good cause, the Board or appointing authority may modify a resignation not in good standing to a resignation in good standing, or other appropriate penalty.

Social Impact

Many technical as well as substantive changes have been made in comparison with the current Title 4 rules dealing with appeals, discipline and separations. The principal change is the simplicity, clarity and reorganization of the rules to better effectuate the purposes of the new Title 11A. This proposal demonstrates a logical organization of the regulations and therefore provides for the rules to be readily, easily and correctly applied. A cross reference table has been added to help users of these rules locate the correct procedures for specific appeal situations.

With regard to substantive changes, the proposal provides for the opportunity for a departmental hearing prior to the imposition of any major disciplinary action except in emergency situations, as authorized by the New Title 11A. Further, this proposal implements changes made by Title 11A regarding limitations on fines and enhanced remedial powers of the Merit System Board. Finally, this proposal addresses a new area of security provided by Title 11A in the regulations concerning employee protection against reprisals and political coercion.

The proposal will have an overall positive social impact on all users of the merit system rules in that the new rules will be logically organized, understandable and reflective of current law.

Economic Impact

This proposal contains several rules that will have at least a partial economic effect upon appointing authorities and certain public employees. One feature is the proposed rule that places limits upon the use of fines as disciplinary actions and provides for a reasonable, income-sensitive method for the payment of such fines. The proposed rules also provide for the payment of back pay, benefits, seniority, restitution of a fine, interest and counsel fees under the appropriate circumstances. The award of such remedies is authorized only when the established standard for payment of such damages is proven by the claiming party. Such awards are to be calculated with certainty and reasonably mitigated where possible. Therefore, while the proposal will allow for the payment of equitable remedies, it will prevent unjust windfalls and screen out frivolous claims.

Further, the overall clarity, simplicity and logical organization of the above proposal, in comparison to the organization of existing regulations, will reduce the amount of inquiries and controversies requiring agency action. Therefore, the proposal will have a positive economic impact on State government, the various public employers, public employees and the taxpayers in general.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses.

Full text of the rules proposed for repeals may be found in the New Jersey Administrative Code N.J.A.C. 4:1-5, 4:1-13.6, 4:1-13.7, 4:1-16.7, 4:1-16.8, 4:1-16.9, 4:1-16.10, 4:1-16.11, 4:1-16.12, 4:1-16.14, 4:1-23.1, 4:1-23.2, 4:2-16.4, 4:2-16.5, 4:2-23, 4:3-16.3 and 4:3-16.4.

Full text of the proposed new rules follows.

CHAPTER 2
APPEALS, DISCIPLINE AND SEPARATIONS

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:1-5.1	4A:2-1.1		4A:2-2.4
	4A:2-2.5		4A:2-2.9
	4A:2-2.6	4:1-16.8	4A:2-2.1
	4A:2-2.8		4A:2-2.2
4:1-5.2	4A:2-1.1	4:1-16.9	4A:2-2.3
4:1-5.3	4A:2-1.1	4:1-16.10	4A:2-2.9
	4A:2-2.9	4:1-16.11	REPEALED
4:1-5.4	4A:2-2.9	4:1-16.12	4A:2-6.1
4:1-5.5	4A:2-1.5	4:1-16.14	4A:2-6.2
	4A:2-2.10	4:1-23.1	4A:2-3.1
4:1-5.6	4A:2-1.5	4:1-23.2	4A:2-3.1
	4A:2-2.12	4:2-16.4	REPEALED
4:1-5.7	4A:2-2.7	4:2-16.5	4A:2-6.2
4:1-5.8	REPEALED	4:2-23.1	4A:2-3.1
4:1-5.9	4A:2-1.3		4A:2-3.2
4:1-5.10	4A:2-1.4		4A:2-3.3
4:1-5.11	4A:2-1.2	4:2-23.2	4A:2-3.3
4:1-5.12	4A:2-1.6	4:2-23.3	4A:2-3.4
4:1-5.13	REPEALED	4:2-23.4	4A:2-3.5
4:1-5.14	REPEALED	4:2-23.5	4A:2-3.2
4:1-13.6	4A:2-4.1	4:2-23.6	4A:2-3.6
4:1-13.7	4A:2-4.1	4:2-23.7	4A:2-3.6
	4A:2-4.2	4:2-23.8	4A:2-3.7
	4A:2-4.3	4:3-16.3	REPEALED
4:1-16.7	4A:2-2.2	4:3-16.4	4A:2-6.2

SUBCHAPTER 1. APPEALS

4A:2-1.1 Filing of appeals

(a) All appeals to the Commissioner or Board shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law or these rules, or where the Commissioner or Board finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

(e) A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

4A:2-1.2 Interim relief

(a) Upon the filing of an appeal, a party to the appeal may petition the Commissioner for a stay or other relief pending final decision of the matter.

(b) A request for interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) The following factors will be considered in reviewing such requests:
1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted; and
4. The public interest.
(d) The filing of a petition for interim relief will not stay the processing of the case.
(e) Each party must serve copies of all materials submitted on all other parties.
(f) See N.J.A.C. 1:1-12.6 for Office of Administrative Law interim relief rules.

4A:2-1.3 Adjournments
(a) Any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:
1. Unavoidable appearance by an attorney for a party in any state or federal court; or
2. Illness of a party evidenced by an affidavit and a doctor's certificate.
(b) Where an adjournment is found not to be for good and sufficient reason, the Commissioner or Board may impose a fine or penalty.
(c) See N.J.A.C. 1:1-9.6 for Office of Administrative Law adjournment rules.

4A:2-1.4 Burden of proof
(a) In appeals concerning major disciplinary actions, N.J.A.C. 4A:2-2.1 et seq., the burden of proof shall be on the appointing authority.
(b) In all other Commissioner and Board appeals, the burden of proof shall be on the appellant.

4A:2-1.5 Remedies
(a) Seniority credit may be awarded in any successful appeal.
(b) Back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See N.J.A.C. 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Commissioner or Board or where the Board finds sufficient cause based on the particular case.

4A:2-1.6 Reconsideration of decisions
(a) Upon the receipt of a decision, a party to the appeal may petition the Commissioner or Board for reconsideration.
(b) A petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:
1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.
(c) Each party must serve copies of all materials submitted on all other parties.

4A:2-1.7 Specific appeals
(a) For specific appeal procedures see:
1. Awards in State service (N.J.A.C. 4:4-3.6);
2. Classification (N.J.A.C. 4:1-6.5A);
3. Discipline, major (N.J.A.C. 4A:2-2.1 et seq.);
4. Discipline, minor (N.J.A.C. 4A:2-3.1 et seq.);
5. Discrimination in State service (N.J.A.C. 4A:7-3.2 through 4A:7-3.4);
6. Employment list removal for medical unfitness (N.J.A.C. 4:1-8.27);
7. Employment list removal for psychological unfitness (N.J.A.C. 4:1-8.26);
8. Examinations (N.J.A.C. 4:1-8.21);
9. Grievances (N.J.A.C. 4A:2-3.1 et seq.);
10. Layoffs in local service (N.J.A.C. 4:3-16.2);
11. Layoffs in State service (N.J.A.C. 4:2-16.2);
12. Overtime in State service (N.J.A.C. 4:6-8.1 et seq.);
13. Performance Assessment Review in State service (N.J.A.C. 4:2-20.2);
14. Reprisals (N.J.A.C. 4A:2-5.1 et seq.);
15. Regignations (N.J.A.C. 4A:2-6.1 et seq.);
16. Salary in state service (N.J.A.C. 4:2-7.1);
17. Sick leave injury in State service (N.J.A.C. 4:2-17.4); and
18. Supplemental compensation on retirement in State service (N.J.A.C. 4:2-26.12).
(b) Any appeal not listed above must be filed in accordance with N.J.A.C. 4A:2-1.1.

SUBCHAPTER 2. MAJOR DISCIPLINE

4A:2-2.1 Employees covered
(a) This subchapter applies only to permanent employees in the career service or a person serving a working test period.
(b) Appointing authorities may establish major discipline procedures for other employees.

4A:2-2.2 Types of discipline
(a) Major discipline shall include:
1. Removal;
2. Disciplinary demotion;
3. Suspension or fine for more than five working days at any one time;
4. Suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more;
5. The last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year.

4A:2-2.3 General causes
(a) An employee may be subject to discipline for:
1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty; and
8. Other sufficient cause.

4A:2-2.4 Limitations on suspensions and fines
(a) No suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment. See N.J.A.C. 4A:2-2.7.
(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head.
(c) An appointing authority may only impose a fine as follows:
1. As a form of restitution;
2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or
3. Where an employee has agreed to a fine as a disciplinary option.
(d) An employee may pay a fine of more than five days salary in a lump sum or through installments. Unless otherwise agreed to by the employee, an installment may not be more than five percent of the gross salary per pay for a fine under $500.00; 10 percent of gross salary per pay period for a fine between $500.00 and $1,000.00; or 15 percent of gross salary per pay period for a fine over $1,000.00.

4A:2-2.5 Opportunity for hearing before the appointing authority
(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and afforded the opportunity for a hearing prior to imposition of major discipline, except:
1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.
2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.
(b) Where an immediate suspension is without pay under (a)1 and (a)2 above, the employee must first be apprised either orally or in writing, of the nature of the charges and general evidence in support of the charges and provided with an opportunity at that time to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.
(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action waived by the employee or a later date as agreed to by the parties.

4A:2-2.6 Hearings before the appointing authority

(a) The hearing shall be held before the appointing authority or its designated representative.

(b) The employee may be represented by an attorney or authorized union representative.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify, but an employee who does testify will be subject to cross-examination.

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority, the appointing authority may then issue a Final Notice of Disciplinary Action under 3. below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) The appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall than proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, the departmental hearing shall be limited to the issue of the applicability of N.J.S.A. 2C:51-2. If N.J.S.A. 2C:51-2 is found not applicable, related disciplinary charges, if any, may be addressed at the hearing.

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice.

(b) If the appointing authority fails to provide the employee wih a Final Notice of Disciplinary Action, an appeal may be made directly to the Board within a reasonable time.

4A:2-2.9 Board hearings

(a) Requests for a Board hearing will be reviewed by the Board. However, the Commissioner may grant hearings during August when the Board does not meet.

(b) Major discipline hearings will be heard by the Board or referred to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures.

(c) The Board may adopt, reject or modify the recommended report and decision of an administrative law judge. Copies of all Board decisions shall be served personally or by regular mail upon the parties.

(d) The Board may reverse or modify the action of the appointing authority, except that removal shall not be substituted for a lesser penalty.

4A:2-2.10 Back pay, benefits and seniority

(a) Where a disciplinary penalty has been reversed or modified, the Board may award back pay, benefits, seniority or restitution of a fine. Back pay shall include unpaid salary, including regular wages, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay, overlap shift time and holiday bonus.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

3. The award of back pay shall be reduced by the amount of money which was actually earned or could have been earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

4. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(b) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

(c) When the Board awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

(d) If settlement on an amount cannot be reached, either party may request, in writing, Board review of the outstanding issue. In a Board review:

1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and

2. The employee shall submit an affidavit setting forth all income received during the separation.

4A:2-2.11 Interest

(a) When the Commissioner or Board makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commissioner or Board; or

2. Where the Board finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with N.J.A.C. 4A:2-2.10(a)2. and 3.

4A:2-2.12 Counsel fees

(a) The Merit System Board may, in its discretion, award partial or full reasonable counsel fees where an employee has prevailed on all or substantially all of the primary issues.

(b) When the Board awards counsel fees, the actual amount shall be settled by the parties whenever possible.

(c) In determining the amount of counsel fees, the following factors should be considered:

1. The time and labor required; and

2. The customary hourly rate.

(d) The attorney shall submit an affidavit and any other documentation to the appointing authority.

(e) If settlement on an amount cannot be reached, either party may request, in writing, Board review.

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.1 General

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.

(b) A grievance is an employee complaint regarding any term or condition which is beyond the employee's control and is remedial by management.

(c) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(d) In State service, this subchapter shall only apply to:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(e) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the Commissioner or Board.

(f) These rules shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

4A:2-3.2 Minor discipline appeal to appointing authority

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Discipline Action form, unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and 4A:2-3.7 for appeal to the Board.

4A:2-3.3 Grievance appeal to appointing authority

(a) Where departmental grievance procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) An employee not covered by a negotiated agreement or covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures in this subchapter.

(c) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(d) A department may consolidate two or more grievances on the same issue and process them as a group grievance. All grievants shall be promptly notified of this action.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) The burden of proof shall be on the employee.

4A:2-3.4 Grievance procedure: Step One

(a) A grievance shall be presented in writing on the Department of Pesonnel grievance form to the office or individual designated by the department to process the matter. It must be filed within 20 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;

2. State the requested remedy; and

3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

4A:2-3.5 Grievance procedure: Step Two

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or

2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 days of receipt of the grievance.

(d) A written decision shall be rendered within 21 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a denial of the grievance appeal.

4A:2-3.6 Conduct and scheduling of hearings and grievance meetings

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two, unless the grievance is satisfactorily resolved at Step One. In addition, a department, at its option, may also schedule a grievance meeting at either Step One or Step Two of the grievance process.

(b) A department may advance a grievance to Step Two of the grievance process. Timely notice of this action shall be supplied to the grievant.

(c) The following shall apply during a hearing at the department level:

1. An employee may be represented by legal counsel, an authorized union representative or appear on his or her own behalf. An employee may also be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

2. Permission for a reasonable number of relevant witnesses shall be granted upon the request of the employee or his or her representative or agent;

3. The employee or his or her representative or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

4. The spokesperson for either party shall have the right to present evidence and examine witnesses.

(d) Any grievance meeting shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's representative. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

(e) Departmental management shall schedule minor discipline and grievance hearings or grievance meetings during the employee's regular work hours as far as possible.

(f) The employee or employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

4A:2-3.7 Appeals from appointing authority decisions

(a) Minor discipline may be appealed to the Board under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Commissioner shall review the appeal upon a written record or such other proceeding as the Commissioner directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the commissioner's decision will be a final administrative decision.

2. Where such issues or evidence under 1 above are presented, the Board will render a final administrative decision upon a written record or such other proceeding as the Board directs.

(b) Grievances may be appealed to the Commissioner within 20 days of the conclusion of Step Two procedures under these rules or the conclusion of departmental procedures under a negotiated agreement.

1. The Commissioner shall review the appeal on a written record or such other proceeding as the commissioner directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Department of Personnel grievances form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the Department of Personnel must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) The employee shall have the burden of proof in Commissioner or Board reviews.

SUBCHAPTER 4. TERMINATION AT END OF WORKING TEST PERIOD

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the Board within 20 days of receipt of the notice.

(c) The notice shall be served not more than ten working days prior to the last day of the working test period.

4A:2-4.2 Time for appeal

(a) An appeal shall be made in writing to the Board no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service or return to a former permanent title.

(b) If the appointing authority fails to provide the notice as specified in N.J.A.C. 4A:2-4.1, an appeal must be filed within a reasonable time.

4A:2-4.3 Board hearing

(a) An appeal to the Board shall be processed in accordance with N.J.A.C. 4A:2-2.9 et seq.

(b) The employee has the burden of proof to establish that the action was in bad faith.

(c) If bad faith is found by the Board, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. See N.J.A.C. 4A:2-1.5.

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.1 General

(a) An appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

(b) An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to employees in the unclassified service who do not serve in policy-making or confidential positions.

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Board within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The Commissioner shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the Board shall provide appropriate protections and remedies to the employee.

SUBCHAPTER 6. RESIGNATIONS

4A:2-6.1 Resignation in good standing

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days' written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Board under N.J.A.C. 4A:2-1.1.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval or his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing.

(c) Any employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Board under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

(a)

Veterans and Disabled Veterans Preference
Proposed New Rules: N.J.A.C. 4A:5
Proposed Repeal: N.J.A.C. 4:1-10.3

Authority: N.J.S.A. 11A:4-1(e), 11A:4-8, 11A:4-9, 11A:5-1, 11A:5-2, 11A:5-3, 11A:5-4, 11A:5-5, 11A:5-6, 11A:5-7, 11A:5-8, 11A:5-15.

This proposal is known as PRN 1987-225.

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (the Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy.

Subchapter 1 contains in readily understandable form an entirely new set of rules, presenting the eligibility and procedural requirements for obtaining veterans and disabled veterans preference. N.J.A.C. 4A:5-1.1 describes the eligibility requirements for entitlement to veterans preference while N.J.A.C. 4A:5-1.2 concerns eligibility for disabled veterans preference. In accordance with the new Title 11A, the proposed rules provide for sex-neutral treatment of spouses and parents of veterans where applicable. This is a departure from prior rules which referred to only widows and mothers of those who died while in service. N.J.A.C. 4A:5-1.3 provides those entitled to a preference with simple instructions on how they may properly assert their entitlement to a preference for purposes of merit system examinations and appointments.

Subchapter 2 explains the effect of veterans or disabled veterans preference upon the results of open competitive and promotional examinations and upon appointments in the non-competitive division. N.J.A.C. 4A:5-2.1 provides the order in which names shall appear on an eligible list comprised of individuals who have passed an open competitive examination. This proposal incorporates and applies the procedure for assembling lists without breaking ties, as mandated by N.J.S.A. 11A:4-8, and also presents an example that easily illustrates the mandated ranking and appointing of those entitled to veterans and disabled veterans preference. N.J.A.C. 4A:5-2.2 concerns the effect of veterans or disabled veterans preference upon the results of promotional examination situations, and is also illustrated with examples. The proposal reflects the statutory requirement that the appointing authority must show cause when failing to appoint a veteran or disabled veteran from a promotional certification headed by an individual with such status and provides that the same procedure must be followed in such situations as in removals from an eligible list. Finally, N.J.A.C. 4A:5-2.3 provides that preference shall be given to qualified disabled veterans and veterans in non-competitive appointments.

Social Impact

This proposal offers, for the first time, a concise series of rules which explain the nature and application of veterans and disabled veterans preference in plain language. The proposal includes simple instructions to guide qualified applicants in establishing entitlement to a preference and also provides easily understandable examples which illustrate the practical application and effect of the preferences in the merit system. Along with the changes in clarity and organization, the new proposal defines the scope of veterans and disabled veterans preference, in accordance with the new Title 11A, to include "surviving spouses" of deceased qualified veterans and "parents" of those who died while in military service during the given periods of war or conflict. The proposal will have an overall positive social impact upon users of the merit system rules, in that the new rules will be logically organized, understandable and reflective of current law.

Economic Impact

The clarity and simplicity of the proposal, in comparison to the vagueness or absence of existing rules in this area, will reduce the amount of inquiries and controversies requiring agency action. The sex-neutral application to spouses and parents may slightly increase the number of individuals in the public sector who are entitled to a preference. However, only a marginal economic impact is anticipated since, absent the introduction of new legislation expanding eligibility for preference, the total number of individuals qualifying for such preference generally will decrease over time.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-10.3.

Full text of the proposed new rules follows.

CHAPTER 5
VETERANS AND DISABLED
VETERANS PREFERENCE

OLD CITATION	NEW CITATION
4:1-10.3	4A:5-1.3
	4A:5-2.3

SUBCHAPTER 1. ELIGIBILITY

4A:5-1.1 Veterans preference

(a) A person is entitled to veterans preference (abbreviated as "V") if he or she:

1. Served at least 90 days in the active United States military or naval service and had been discharged under conditions other than dishonorable, during:

i. World War I, between April 6, 1917 and November 11, 1918;

ii. World War II, between September 16, 1940 and September 2, 1945;

iii. Korean Conflict, between June 23, 1950 and July 27, 1953; or

iv. Vietnam Conflict, between December 31, 1960 and August 1, 1974;

The 90 day period must have begun on or before one of the ending dates above, and shall not include any period of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of a civilian course, nor any time spent as a cadet or midshipman at one of the service academies. During the period of the Vietnam conflict, the following are excluded: any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code; or any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve or Coast Guard Reserve.

2. Received a service-incurred injury or disability during a period in (a)1 above, regardless of the length of service;

3. Served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, provided he or she voluntarily enlisted in such service, was a United States citizen at the time of enlistment, did not renounce or lose United States citizenship, and was honorably discharged; or

4. Is the surviving spouse of a person entitled to veterans preference and has not remarried.

4A:5-1.2 Disabled veterans preference

(a) A person is entitled to disabled veterans preference (abbreviated as "DV") if he or she:

1. Receives or is entitled to receive, under United States Veterans Administration guidelines, compensation for service connected disability of 10 percent or more arising out of military or naval service during any of the periods in N.J.A.C. 4A:5-1.1(a);

2. Is the spouse of a person entitled to disabled veterans preference who:

i. Is not employed by any jurisdiction operating under Title 11A, New Jersey Statutes; and

ii. Waives any right to preference for the duration of the spouse's employment;

3. Is the surviving spouse of a person entitled to disabled veterans preference and has not remarried; or

4. Is a parent or surviving spouse of a person who would have been entitled to veterans preference under N.J.A.C. 4A:5-1.1 but who died while in service. The use of the preference by one such survivor shall suspend the right of any other so long as the first individual who uses the preference is employed by any jurisdiction operating under Title 11A, New Jersey Statutes.

4A:5-1.3 Filing for veterans or disabled veterans preference

(a) To establish veterans or disabled veterans preference, an individual must submit a completed "Veterans Preference Claim Form" (DPF-189) along with a copy of Veterans Separation Papers (Form DD214) to the New Jersey Department of Personnel, CN 310, Trenton, New Jersey 08625.

(b) When an individual does not possess Veterans Separation Papers and the Veterans Administration or National Personnel Records Center copy has been destroyed, the applicant must submit a letter from the appropriate agency attesting to the destruction of such records and a notarized statement by the applicant attesting to the dates of active service, branch of service, rank and type of discharge.

(c) Veterans or disabled veterans preference is effective for all examinations in which the closing date for applications falls on or after the filing of the required documents.

(d) For initial employment in the noncompetitive division, documentation to establish veterans or disabled veterans preference shall be furnished by the applicant to the appointing authority prior to hiring or within a reasonable time thereafter as permitted by the appointing authority. However, veterans and disabled veterans preference shall not be applied for promotion to a competitive title until the required documents have been filed with the Department of Personnel.

SUBCHAPTER 2. USE OF PREFERENCE

4A:5-2.1 Open competitive examinations

(a) A list of eligibles who have passed an open competitive examination shall appear in the following order:

1. Eligibles entitled to disabled veterans preference in the order of their scores;

2. Eligibles entitled to veterans preference in the order of their scores;

3. Non-veteran eligibles (abbreviated as "NV") in the order of their scores.

(b) Whenever more than one eligible has the same score and same veterans status, the tie shall not be broken and they shall have the same rank.

(c) Whenever a disabled veteran or veteran is certified from an open competitive list and a regular appointment is to be made, the appointing authority shall first appoint disabled veterans and then veterans in the order of ranking. For example:

TEST SCORES		RANKED LIST OF ELIGIBLES		
Name and Status	**Score**	**Name and Status**	**Score**	**Rank**
John Green (NV)	90	Robert Brown (DV)	80	1
Charles Black (V)	85	Charles Black (V)	85	2
Mary White (V)	85	Mary White (V)	85	2
Robert Brown (DV)	80	John Green (NV)	90	3
Jane Silver (NV)	80	Jane Silver (NV)	80	4
Tom Gold (NV)	75	Tom Gold (NV)	75	5

Robert Brown must receive the first appointment. The next vacancy must be filled by appointing either Charles Black or Mary White. Assuming Mary White is appointed, the next vacancy must be filled by appointing Charles Black. The next vacancy must be filled by choosing among John Green, Jane Silver and Tom Gold, in accordance with the "rule of three." See N.J.S.A. 11A:4-8.

(d) Appointing authorities are not required to give preference to disabled veteran or veterans when making a provisional appointment from an incomplete list. See N.J.A.C. 4:1-14.2.

4A:5-2.2 Promotional examinations

(a) No distinction shall be made between disabled veterans and veterans in promotional examinations. Both are referred to as veterans in this rule.

(b) A list of eligibles who have passed a promotional examination shall appear in the order of their scores regardless of veteran or nonveteran status. However, when scores are tied, the names of veterans shall be listed first within each rank.

(c) Whenever the name of a veteran appears in the highest rank on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See N.J.A.C. 4:1-12.11 for removal procedures.

(d) If the names of one or more veterans appear on a promotional certification headed by a veteran, any veteran may be appointed in accordance with the "rule of three." See N.J.S.A. 11A:4-8.

(e) Whenever a nonveteran heads a promotional certification, any eligible may be appointed in accordance with the "rule of three." See N.J.S.A. 11A:4-8.

(f) As an example, assume that the following represents the ranked order and status of names which appear on promotional certifications:

1. Veteran 2. Non-Veteran 3. Non-Veteran
Veteran must be offered the appointment.

1. Veteran 2. Non-Veteran 3. Veteran
Either (1) or (3) must be offered the appointment.

1. Non-Veteran 2. Veteran 3. Non-Veteran
Either (1), (2) or (3) may be offered the appointment.

1. Veteran (Tied) 1. Non-Veteran (Tied) 2. Non-Veteran
Veteran must be offered the appointment.

4A:5-2.3 Veterans and disabled veterans preference in the noncompetitive division

In making appointments in the noncompetitive division, preference shall be given among qualified applicants to disabled veterans, then veterans.

(a)

Equal Employment Opportunity and Affirmative Action

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

Proposed Repeals: N.J.A.C. 4:1-21.2, 4:1-21.6, 4:2-21.1 through 4:2-21.6, 4:3-21.1, 4:3-21.2

Authority: N.J.S.A. 10:5-12, 11A:1-2(d), 11A:2-6(b), 11A:7-1 through 11A:7-9, 11A:7-11, 11A:7-12, 11A:7-13.

This proposal is known as PRN 1987-224.

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (the Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy. In this proposal, N.J.A.C. 4:1-21.2, 4:1-21.6, 4:2-21, 4:3-21.1 and 4:3-21.2 concerning equal employment opportunity and affirmative action are being repealed and replaced at N.J.A.C. 4A:7.

Subchapter 1 is a basic overview of the goals of the equal employment opportunity and affirmative action program and its desired effect upon employment practices in the public sector. N.J.A.C. 4A:7-1.1 states the general policy of equal employment opportunity, explaining that such policy shall be applied to all facets of the employment process without limitation. This proposal also includes a specific racial/ethnic categorization to be used by the Department of Personnel to aid in the identification of protected class members. N.J.A.C. 4A:7-1.2 concerns the prohibition of discriminatory inquiries in preemployment applications where such information is not related to a job requirement, not required by law nor needed strictly for statistical purposes. N.J.A.C. 4A:7-1.3 defines sexual harassment in the public work place and includes guideline and complaint procedures to be followed for both remedial use and the prevention of such undesired occurrences.

Subchapter 2 concerns the responsibilities and functions of the Division of Equal Employment Opportunity and Affirmative Action. N.J.A.C. 4A:7-2.1 defines the responsibilities conferred upon the Division in the development of an equal employment opportunity and affirmative action program to benefit all State employees, including the correction of discriminatory practices and the elimination of artificial barriers to equal employment opportunity. N.J.A.C. 4A:7-2.2 defines the responsibilities of the Department of Personnel, through the Division of Equal Employment Opportunity and Affirmative Action, with regard to affirmative action and equal employment goals. Such responsibilities include the review of discrimination complaints under Title VII of the Civil Rights Act of 1964, the submission of semi-annual progress reports on State agency affirmative action programs to the Governor, and assistance to local appointing authorities in the development of affirmative action and equal employment policies. N.J.A.C. 4A:7-2.3 defines the nature and structure of the Equal Employment Opportunity Advisory Commission.

Subchapter 3 concerns directions for compliance with the proposed chapter and also provides an overview of the discrimination appeal procedures. N.J.A.C. 4A:7-3.1 provides that each State agency appoint one affirmative action officer who shall be directly responsible for the implementation of each Department's affirmative action and equal employment program. This proposed rule also requires the submission of an affirmative action plan and quarterly progress reports to the Division Director for the purpose of setting and attaining specific preventive or remedial affirmative action goals. N.J.A.C. 4A:7-3.2 describes the nature of discrimination appeals in State service. This proposed rule provides that appellants have the burden of proof in discrimination appeals and that such complaints may be simultaneously filed with the New Jersey Division of Civil Rights and the United States Equal Employment Opportunity Commission. This proposed rule also provides a mechanism for those appeals which raise issues of alleged discrimination as well as other appealable issues under Title 11A. N.J.A.C. 4A:7-3.3 concerns the procedure for the initiation of a discrimination complaint under this chapter. This rule presents a new feature in this area, in that a discrimination complaint shall first be presented to a department affirmative action officer for investigation, instead of the initial filing with the Director of the Division of Equal Employment Opportunity and Affirmative Action under existing regulations. This proposed rule further provides that upon a full investigation of the matter, the department head shall issue a written decision within 45 days of the filing of the complaint, unless a longer period of time is agreed to by the parties. N.J.A.C. 4A:7-3.4 concerns discrimination appeal proceedings before the Division of Equal Employment Opportunity and Affirmative Action and also before the Merit System Board. This proposed rule provides that an individual may appeal a final decision of the department head to the Division of EEO/AA within 20 days of receipt of the decision. It is provided that the Division of EEO/AA shall review the written record and render a decision within 45 days of receiving such appeal. The proposed rule also indicates that an individual may appeal the final decision of the Division of EEO/AA to the Merit System Board within 20 days of receipt of the decision. Finally, this proposed rule advises that the Commissioner of Personnel shall review the appeal and request any additional information or investigation that may be needed, and that the Merit System Board shall decide the appeal on the written record or through such other proceeding that it deems appropriate.

Social Impact

Many technical changes and some substantive changes have been made in comparison with the current Title 4 rules dealing with equal employment opportunity and affirmative action. The principal change is the simplicity, clarity and reorganization of the rules to better effectuate the purposes of the new Title 11A. This proposal demonstrates a logical organization of the regulations and therefore allows for the rules to be readily, easily and correctly applied.

With regard to substantive changes, the proposal modifies the appeal procedures for initiating a discrimination complaint by eliminating the requirement initial filing with the Division of Equal Employment Opportunity and Affirmative Action for distribution to the designated department affirmative action officer.

Although this proposal evidences structural changes in comparison with existing regulations, that the policy to provide equal employment opportunities consistent with both State and Federal laws has remained in full force.

This proposal will have an overall positive social impact on all users of the merit system rules in that new rules will be logically organized, understandable and reflective of current law.

Economic Impact

It is estimated that the overall economic impact of the proposed new rules will be minimal since most of the changes are restatements of policy and practice that are presently in effect under the new Title 11A and the existing regulations.

However, the above proposal does offer the opportunity for economic savings in that a substantive change in the appeal process eliminates the redundant procedure of initiating a complaint with the Division of Equal Employment Opportunity and Affirmative Action instead of with the complainant's departmental affirmative action officer. Moreover, the clarity and simplicity of the proposal, in comparison to the organization of existing regulations, will reduce the amount of inquiries and controversies requiring agency action.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-21.2, 4:1-21.6, 4:2-21, 4:3-21.1 and 4:3-21.2.

Full text of the proposed new rules follows.

CHAPTER 7
EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:1-21.2	4A:7-1.1	4:2-21.4	4A:7-2.1
4:1-21.6	4A:7-1.2		4A:7-2.2
4:2-21.1	4A:7-1.1		4A:7-3.1
	4A:7-2.1	4:2-21.5	4A:7-1.3
	4A:7-2.2	4:2-21.6	4A:7-3.2
	4A:7-2.3		4A:7-3.3
	4A:7-3.1		4A:7-3.4
4:2-21.2	4A:7-1.1	4:3-21.1	4A:7-1.1
	4A:7-2.2		4A:7-2.2
4:2-21.3	4A:7-1.1	4:3-21.2	4A:7-1.1

SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY

4A:7-1.1 General policy

(a) There shall be equal employment opportunity for all persons in, or applicants for the career, unclassified and senior executive services, regardless of race, creed, color, national origin, sex, age, marital status, religion or handicap, except where a particular qualification is specifically permitted and is essential to successful job performance. See N.J.A.C. 4:1-12.7, 4:2-6.3 and 4:3-6.4 on bona fide occupational qualifications.

(b) Equal employment opportunity includes, but is not limited to, recruitment, selection, hiring, training, promotion, transfer, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures and programs for recruitment, employment, training, promotion, and retention of minorities, women and handicapped persons.

(c) Handicapped persons shall include any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. See 29 U.S.C. 706. See also N.J.A.C. 4:1-8.16 and 8.17 for accommodation and waiver of examinations for handicapped persons.

(d) The following race/ethnic categories shall be used by the Department of Personnel:

1. W: "White, not of Hispanic origin" means persons having origins in any of the original peoples of Europe, North Africa or the Middle East;

2. B: "Black, not of Hispanic origin" means persons having origins in any of the Black racial groups of Africa;

3. H: "Hispanic" means persons of Mexican, Puerto Rico, Cuban, Central or South America or other Spanish culture or origin, regardless of race;

4. I: "American Indian or Alaskan Native" means persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition; and

5. A: "Asian or Pacific Islander" means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or Pacific Islands. This area includes, for example, China, Japan, Korea, the Phillipine Islands and Samoa.

4A:7-1.2 Discriminatory inquiries

(a) A preemployment application shall not require an applicant to provide information covering subject matters which may be discriminatory, except where related to a job requirement or required by law. See Division on Civil Rights rules at N.J.A.C. 13:7-1.1.

(b) Preemployment and employment information which is required by the State or Federal government for statistical purposes may be obtained by an appointing authority or the Department of Personnel.

4A:7-1.3 Prohibition of sexual harassment in State government

(a) Deliberate or repeated unwelcome sexual advances, requests for sexual favors, comments, gestures and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(b) The sexual harassment of any State employee by any other State employee or person doing business with the State shall constitute prohibited discrimination under this chapter.

(c) It shall be the responsibility of each appointing authority to:

1. Ensure that the working environment is free from acts of sexual harassment by its supervisors, employees and non-employees;

2. Take immediate and corrective action when sexual harassment has occurred; and

3. Make all employees aware of the policy against sexual harassment and of the procedure for filing complaints when sexual harassment has occurred.

(d) Employee complaints of sexual harassment in the State career, unclassified and senior executive services shall be processed in accordance with N.J.A.C. 4A:7-3.2 through 4A:7-3.4. In local service, an appointing authority may establish procedures for processing complaints of sexual harassment.

SUBCHAPTER 2. DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

4A:7-2.1 Division responsibilities

(a) The Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, unclassified and senior executive services. Such program shall:

1. Ensure that each State agency's affirmative action and equal employment opportunity goals for minorities, women and handicapped persons are in accordance with the Standard for Determining Underrepresentation of Women and Minorities in New Jersey State Government, and are related to their population in the New Jersey labor market as determined by the relevant federal census;

2. Ensure that each agency complies with all laws and rules relating to equal employment opportunity;

3. Seek correction of discriminatory policies, practices and procedures;

4. Recommend appropriate sanctions for non-compliance to the Commissioner;

5. Review State personnel policies, practices and procedures, and where appropriate, eliminate artificial barriers to equal employment opportunity;

6. Act as liaison with federal, state and local enforcement agencies;

7. Perform such other duties as prescribed by law and these rules.

4A:7-2.2 Department of Personnel responsibilities

(a) The Department of Personnel, through the Division of EEO/AA, shall:

1. Ensure that minorities, women and handicapped persons are among the pool of applicants for all vacant positions in the career, unclassified and senior executive services;

2. Review its rules, selection devices and testing procedures to eliminate those which are discriminatory;

3. Analyze job specifications to eliminate artificial barriers to employment;

4. Review all certification dispositions for compliance with this chapter;

5. Review all discrimination complaints under Title VII of the Civil Rights Act of 1964, evaluate trends and recommend appropriate policy changes;

6. Transmit to the Governor, at least semi-annually, progress reports on affirmative action in all State agencies;

7. Upon request, advise and assist local appointing authorities in developing affirmative action and equal employment policies; and

8. Perform such other duties as prescribed by law and these rules.

4A:7-2.3 Equal Employment Opportunity Advisory Commission

(a) An Equal Employment Opportunity Advisory Commission shall be established and shall consist of 11 members appointed by the Governor, at least six of whom shall be minorities, women and handicapped persons, and shall meet at least quarterly.

(b) The Commission shall advise the Division of EEO/AA and make recommendations on improving the State affirmative action plan.

SUBCHAPTER 3. COMPLIANCE AND APPEALS

4A:7-3.1 Responsibilities of State agencies

(a) Each State agency shall:

1. Ensure equality of opportunity for all of its employees and applicants seeking employment.

2. Appoint at least one person as the affirmative action officer with the responsibility for affirmative action and equal employment opportunity, who shall serve on a full-time basis, unless otherwise requested by the agency head and approved by the Commissioner and Director of the division of EEO/AA.

3. Submit an affirmative action plan to the Director, which shall include, but not be limited to, a policy statement, organization of the agency, a description of how the plan is communicated to its employees, an analysis of the workforce and job categories, goals and timetables and specific remedial action to meet its goals.

4. Submit to the Director quarterly affirmative action reports and an annual update of its affirmative action plan which shall include an evaluation of the goals set for the prior year, the goals for the upcoming year and the number, subject matter, time for processing and disposition of all discrimination complaints filed with the agency.

5. Make a good faith effort to meet the affirmative action goals and timetables set forth in its affirmative action plan and updates. Any agency which fails either to achieve or make a good faith effort to achieve its goals may be subject to sanctions and penalties.

6. Ensure that minorities, women and handicapped persons are considered for employment opportunities where the need for aggressive efforts have been identified.

7. Explore and, where appropriate, implement innovative personnel policies to enhance equal employment opportunity and affirmative action.

4A:7-3.2 Discrimination appeals

(a) Employees in the State career, unclassified and senior executive services who claim unlawful discrimination may appeal such action using the procedures in this section. In local service, an appointing authority may establish procedures for processing discrimination complaints.

(b) Appeals involving disciplinary actions, removal, demotions and layoffs, removal at the end of or during the working test period, classification review, examinations and unsatisfactory performance shall utilize those specific procedures. See N.J.A.C. 4A:2-1.7.

(c) The Commissioner may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in N.J.A.C. 4A:7-3.3 and 3.4 or such combination of procedures as the Commissioner deems appropriate.

(d) A discrimination complaint may also be simultaneously filed with the New Jersey Division on Civil Rights and filed with the United States Equal Employment Opportunity Commission. Any complaint which is simultaneously filed will be referred to the proper agency for processing.

(e) The appellant shall have the burden of proof in all discrimination appeals.

4A:7-3.3 Departmental review

(a) A discrimination complaint shall be presented to the affirmative action officer of the appointing authority, with a copy to the Director of the Division of EEO/AA, within 20 days of either the discriminatory action or the date on which the individual should reasonably have known of its occurrence. It shall be in writing and specify the basis for the complaint.

(b) The affirmative action officer shall investigate the complaint and prepare a report to the department head. The department head shall render a written decision within 45 days of the receipt of the complaint by the affirmative action officer, unless a longer period is agreed to by the parties.

1. The decision shall advise of the right of appeal to the Division of EEO/AA.

2. The individual and the Division of EEO/AA shall be furnished with a copy of the final decision by the department head.

4A:7-3.4 Department of Personnel proceedings

(a) An individual may appeal a final decision of the department head to the Division of EEO/AA within 20 days of receipt of the decision.

1. If no decision is received within the timeframe specified in N.J.A.C. 4A:7-3.3(b), the individual may request, in writing, that the Division of EEO/AA assume jurisdiction of the complaint. The Division of EEO/AA shall notify the appointing authority of its action.

2. The appeal shall be in writing and include all materials presented at the department level and the written decision of the department head.

3. The Division of EEO/AA shall review the written record and render a final decision within 45 days after receipt of the appeal. The final decision shall advise of the right to appeal to the Merit System Board.

(b) A party may appeal the decision of the Division of EEO/AA to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and contain all information which was presented to the Division of EEO/AA, plus a copy of the Division's final decision.

2. The Commissioner shall review the appeal and request any additional information or conduct any necessary investigation.

3. The Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(a)

Political Subdivisions

Proposed New Rules: N.J.A.C. 4A:9-1

Authority: N.J.S.A. 11A:2-6(d), 11A:3-1(a), 11A:6-3, 11A:6-5, 11A:9-1, 11A:9-2, 11A:9-3, 11A:9-4, 11A:9-5, 11A:9-6, 11A:9-7, 11A:9-8, 11A:9-9, 11A:9-10.

This proposal is known as PRN 1987-226.

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (The Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy.

N.J.A.C. 4A:9-1, subchapter 1 concerns the procedures applicable to political subdivisions immediately after such entities become subject to Title 11A, New Jersey Statutes, through adoption by referendum, consolidation of governmental functions, or by legislation. It is important to note that all the rules contained in the proposed Title apply to political subdivisions operating under Title 11A unless specifically stated otherwise. Thus, this subchapter has a limited focus and is not proposed as a replacement for chapter 3 of the existing regulations.

N.J.A.C. 4A:9-1.1 concerns specific procedures applicable to jurisdications adopting Title 11A by referendum. In accordance with Title 11A, it states that the Commissioner of Personnel shall provide for a classification plan for positions in subject jurisdictions and that seniority rights of employees determined to be in the career service shall be based upon their continuous service with that political subdivision. It also reflects the statutory provision that employees who hold positions in the career service, and have held such positions for at least one year prior to the adoption of Title 11A, have permanent employment status under Title 11A as of the date of adoption. Lastly, this rule features a fair and equitable method for calculating the commencement date for the accrual of vacation and sick leave entitlements under Title 11A.

N.J.A.C. 4A:9-1.2 addresses procedures applicable to jurisdictions subject to Title 11A by consolidation or legislation. In accordance with Title 11A, this proposed rule provides that as a result of the consolidation of the function of two or more political subdivisions, all of the political subdivisions involved shall be deemed to have adopted Title 11A with regard to the combined functions if any one of the political subdivisions were operating under Title 11A at the time of the consolidation. Further, it is clarified that employees who hold positions determined to be within the career service with at least one year's prior service have permanent status as of the effective date of such consolidation or legislation. Lastly, this proposed rule provides that vacation and sick leave entitlements under Title 11A for permanent employees shall be based on seniority and begin to accrue on the effective date of consolidation or legislation.

Social Impact

This proposal offers, for the first time, a concise set of rules explaining procedures pertinent to political subdivisions immediately following coverage of Title 11A. Drafted in plain language, this proposal clarifies issues and carefully addresses questions and problems that have arisen in the past on the issues of entitlement to vacation/sick leave and the status of persons employed by a political subdivision that has recently adopted Title 11A by referendum or has become subject to this Title by way of consolidation or legislation. This proposal will have an overall positive social impact upon users of the merit system rules, in that the new rules will be understandable, reflective of current law and will clarify issues that remained unsettled in the past.

Economic Impact

The clarity and simplicity of this proposal, in comparison to the absence of existing rules in this area, will reduce the amount of inquiries and controversies requiring agency action. In an effort to avoid disruption of the local budget process, this proposal allows for the commencement

of vacation/sick leave entitlements within 60 days after adoption of Title 11A by referendum. As an illustration of the economic benefit of this feature, a political subdivision adopting Title 11A on a November general election may economically commence the newly adopted entitlement procedures concurrently with the beginning of new budgetary procedures in January of the following calendar year.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses.

Full text of the proposed new rules follows.

CHAPTER 9
POLITICAL SUBDIVISIONS

SUBCHAPTER 1. PROCEDURES FOLLOWING TITLE 11A COVERAGE

4A:9-1.1 Jurisdictions adopting Title 11A, New Jersey Statutes by referendum

(a) Upon the adoption by referendum of Title 11A, New Jersey Statutes, by a political subdivision, the Commissioner shall provide for the classification of all positions in the jurisdiction. See N.J.S.A. 11A:9-2 through 11A:9-7 for referendum procedures.

(b) Any employee who holds a position allocated to the career service and who has been continuously employed by the political subdivision for a period of at least one year prior to the adoption of Title 11A, New Jersey Statutes, including any such employee on an approved leave of absence, shall be considered a permanent employee under Title 11A, New Jesrsey Statutes and these rules as of the date of adoption.

(c) Seniority calculations for employees determined to be permanent under (b) above shall be based upon the length of their continuous service with that political subdivision.

(d) Vacation and sick leave entitlements under Title 11A, New Jersey Statutes, for employees determined to be permanent under (d) above shall be based upon seniority and begin to accrue on a date set by the appointing authority. However, the date shall in no event be more than 60 days following the adoption of Title 11A, New Jersey Statutes.

4A:9-1.2 Jurisdictions subject to Title 11A, New Jersey Statutes, by consolidation or legislation

(a) This rule applies to political subdivisions which are subject to Title 11A, New Jersey Statutes through consolidation of governmental functions or by legislation.

(b) When functions of two or more political subdivisions are consolidated, and any one of the political subdivisions shall be operating under Title 11A, New Jersey Statutes, at the time of such consolidation, the other political subdivision or subdivisions shall be deemed to have adopted Title 11A, New Jersey Statutes with regard to the combined functions.

(c) The Commissioner shall provide for classification of all positions in the jurisdictions following such consolidation or enactment of legislation.

(d) Any employee who holds a position allocated to the career service and who has been continuously employed by that jurisdiction for a period of at least one year prior to the effective date of such consolidation or legislation, including any such employee on an approved leave of absence, shall be considered a permanent employee under Title 11A, New Jersey Statutes and these rules as of that date, except as may be provided in such legislation.

(e) Seniority calculations for employes determined to be permanent under (d) above shall be based upon the length of their continuous service with the political subdivision.

(f) Vacation and sick leave entitlements under Title 11A, New Jersey Statutes, for employees determined to be permanent under (d) above shall be based upon seniority and shall begin to accrue on the effective date of consolidation or legislation.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Uniform Fire Code: Fire Safety Code
Proposed Amendments: N.J.A.C. 5:18-4.7 and 4.9.

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-198.
Proposal Number: PRN 1987-214.

Submit comments by July 15, 1987 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal amends subchapter 4 of the Uniform Fire Code adopted June 16, 1986, which is substantially revised by adopted amendments published elsewhere in this edition of the New Jersey Register.

These proposed amendments would require the installation of suppression systems in buildings of Use Group I-1, regardless of whether residents have access to rooms above the second story, and require the supervision of automatic alarm systems in day nurseries serving children below two and one-half years of age. The amendments would also require the owners of buildings of Use Group R-1 (hotels and motels) to provide portable visual alarm-type smoke detectors for deaf or hearing impaired guests.

Social Impact

The proposed amendments are intended to result in increased fire protection for people using buildings which antedate the State Uniform Construction Code. As noted in the Summary above, one of the proposed amendments pertains to fire safety in boarding homes and other similar facilities, one provides for the supervision of automatic alarm systems in day nurseries, and one amendment provides for the safety of deaf or hearing impaired guests in hotels or motels.

Economic Impact

The proposed amendment to N.J.A.C. 5:18-4.7(b) will have some economic impact on existing boarding homes and other facilities of Use Group I-1 without suppression systems which exceed the limits set in the code. The proposed amendment to N.J.A.C. 5:18-4.9 will have some economic impact on day care centers as it will require the supervision of automatic fire alarm systems in day nurseries constructed prior to 1977. Economic impact will vary depending upon the individual building. Many existing day care centers are already equipped with such an alarm system.

The proposed amendment to N.J.A.C. 5:18-4.9, requiring the provision of portable visual alarm-type smoke detectors, will require the purchase of such units by the operators of small hotels and motels and other similar establishments, but the economic impact imposed is considered negligible.

Regulatory Flexibility Statement

These proposed amendments require the compliance of certain boarding homes, day care centers, hotels, motels and similar establishments, many of which qualify as small businesses under the Regulatory Flexibility Act, P.L. 1986, c.169. Special exemption from coverage of the rules cannot be granted because consistent application is necessary to increase the fire protection of the public.

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

5:18-4.7 Fire suppression systems

(a) (No change.)

(b) All buildings of Use Group I-1 or portions thereof when separated in accordance with (k) below greater than two stories in height above grade or having an occupant load greater than 20 excluding staff [and in which residents have access to rooms above the second story] shall be equipped throughout with an automatic fire suppression system in accordance with the New Jersey Uniform Construction Code.

(c)-(k) (No change.)

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;

i. Alarm systems in buildings of Use Group I must be supervised.

[(1) Exception to i above: Automatic fire alarm systems in day nurseries are not required to be supervised.]

2. In all buildings of Use Group R-1 and R-2 as follows:

i.-v. (No change.)

vi. All buildings of Use Group R-1, regardless of the number of units, shall have available at least one portable visual alarm type smoke detector for the deaf or hearing impaired for each 50 units or less. The owner may require a refundable deposit for such portable smoke detector not to exceed the value of the smoke detector. Notification of the availability of such devices shall be provided to each occupant.

3.-4. (No change.)

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

(a)

Uniform Construction Code Subcodes

Proposed Amendments: N.J.A.C. 5:23-3.2, 3.4, 3.8A, 3.14, 3.15, 3.16, 3.17, 3.20 and 3.21

Proposed Repeal: 5:23-4.16

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-123 and 124.

Proposal Number: PRN 1987-210.

Submit comments by July 15, 1987 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 5:23-3.2, 3.4, 3.8A, 3.14, 3.15, 3.16, 3.17, 3.20, 3.21 and 4.16 to bring them into conformity with the latest editions of the respective adopted model subcodes. The model subcodes are the BOCA National Building Code/1987, the National Standard Plumbing Code/1987, the National Electrical Code/1987, the BOCA National Mechanical Code/1987 and the CABO One and Two Family Dwelling Code/1986.

Social Impact

N.J.S.A. 52:27D-123b provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." The changes in these administrative rules are necessary to avoid confusion in the use of the revised subcode texts.

Economic Impact

The proposed amendments will have no apparent economic impact.

Regulatory Flexibility Statement

There is no identifiable special impact on small business as a result of the proposed amendment.

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

5:23-3.2 Matters covered; exceptions

(a) (No change.)

(b) Rules concerning exceptions are **as follows**:

1. Health care facilities shall be in accordance with this code and the standards imposed by the United States Department of Health[,] and Human Services ([HHS] **DHHS**) and the State Department of Health, and the department, specifically the [HHS "Minimum Requirements of] **DHHS "Guidelines for** Construction and Equipment [for] **of** Hospitals and Medical Facilities" [(HHS Publication No. (HRA) 74-14500)] **(DHHS Publication No. (HRS-M-HF) 84-1)**. In order to avoid conflict, [sections 502 (except as it pertains to area limitations), 1702.7 and 1716.0] **section 501.3**, article 7 except [sections 712.0, 716.0 and 717.0, and Article 8 except sections 818.6 through 818.7.6] **section 713.0** of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The [HHS HRA 74-14500] **DHHS HRS-M-HF 84-1** shall serve as the Uniform Code of the State in all matters regulated by the sections herein specified.

2. (No change.)

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 513.0, 601.0, through **604.0, 606.0,** 607.0, 609.0 through [613.0, 617.0 through 621.0] **622.0, and 626.0**; articles 8, **9 and 10**; [sections 1316.0 and 1317.0; articles 14, 15, 16, and 17; and sections 1818.0, 1820.0, 2107.0, 2108.0, 2111.0, 2112.0, 2116.0 and 2117.0] **sections 2002.0 and 2301.0, articles 24 and 25; and sections 2607.0, 2608.0, 2611.0, 2612.0, 2616.0, 2617.0, 3018.0 and 3020.0**; shall be enforced jointly by the building subcode official and fire protection subcode official.

2. Plan review functions of sections **605.0 and** 608.0 and [614.0] **623.0** through [616.0] **625.0** [and 622.0] shall be enforced exclusively by the building subcode official.

3. Construction inspection functions of sections 513.0 and 601.0 through [622.0] **626.0**; articles 8 **and 9**; [section 1316.0 and 1317.0; articles 14 and 15] **section 2002.0 and article 24** shall be enforced exclusively by the building subcode official.

4. Construction inspection functions of articles [16] **10** and [17] **25**; and sections [1818.0, 1820.0, 2108.3, 2111.4 and 2117.3] **2608.3, 2611.4, 2617.3, 3018.0 and 3020.0** shall be enforced exclusively by the fire protection subcode official.

5.-6. (No change.)

(b)-(f) (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: Paragraph (a)3 in this section is proposed to be amended here as it was filed for adoption, the first clause reading as set forth above. That paragraph language appearing in the New Jersey Administrative Code, "612.0, 614.0 through", was erroneously retained in the Code following the January 5, 1987, amendments to this section.

5:23-3.8A Products violating the Code

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

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section **904.2** [1404.2] of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84[:];

ii. Carpeting used as an interior floor finish material not in conformance with section **904.3** [1404.3] of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648;

2.-4. (No change.)

5:23-3.14 Building subcode

(a) Rules concerning **the building** subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA [Basic/] National Building Code/[1984] **1987,"** including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. (No change.)

ii. "The BOCA [Basic/] National Building Code/[1984] **1987,"** including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

2. [The 1986 Accumulative Supplement to the BOCA Basic/National Building Code/1984 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.]

Any references to the mechanical code, plumbing code, or NFiPA 70 (including reference to Article 27) listed in Appendix A shall be considered a reference to the appropriate adopted mechanical, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following articles or sections of the building subcode are modified as follows:

1. Article 1 of the building subcode, entitled "Administration and Enforcement" [and encompassing sections 100.1-124.8] is deleted in its entirety.

2. The following amendments are made to article 2 of the building subcode, entitled "Definitions," section 201.0—general definitions.

i. (No change.)

ii. [The definitions of the term "approved agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the regulations" after the word "official" on line 3;]

The definition of the term "approved agency" is amended to add the phrase "by the code official or other authority having jurisdiction in accordance with the regulations" at the end;

iii.-iv. (No change.)

v. The definition of the term "building" is deleted and substitute in lieu thereof, the definition of [the term] "building" found in N.J.A.C. 5:2[1]3-1.4;

[vi. The definition of the term "building official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise;

vii. The definition of the term "child day care center" is amended to add the phrase "and DCA Interpretation No. 5" after the term "Section 302.5" on line 4;

viii. The definition of the term "controlled construction" is deleted. See subchapter 2 of this chapter;

ix. The definition of the term "child day care center" is amended to add the phrase "and DCA Interpretation No. 5A" after the term "Section 304.0" on line 4.]

vi. The term and the definition of "certificate of use and occupancy" is deleted;

vii. The term and the definition of "change of use" is deleted;

viii. The definition of the term "code official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:232-1.4 unless indicated otherwise;

[x.-xii.]**ix.-xi.** (No change.)

xii. [The definition of the term "fire limits" is amended to delete the words "this code" and in lieu thereof, substitute "the regulations;"]

The term "and the definition of "inspection, special" is deleted;

[xiv.]**xiii.** The term "mobile unit" is deleted and in lieu thereof, substitute the term "[mobile] **manufactured** home." Further, the definition is deleted, and substituted in lieu thereof, the definition found in N.J.A.C. 5:23-1.4 [for manufactured home];

[xv.] **xiv.** (No change in text.)

xv. The term and the definition of "positive heat supply" is deleted.

xvi. The term and the definition of "posted use and occupancy" is deleted.

[xvi.-xviii.] **xvii.-xix.** (No change in text.)

3. The following amendments are made to article 3 of the building subcode entitled "Use Group Classification."

i. [Section 309.5 is amended to delete the phrase "One and Two Family Dwelling Code listed in Appendix A," on lines 3, 4 and 5 and substitute in lieu thereof "One and Two Family Dwelling Subcode."]

Section 309.5 is amended to delete the phrase "not more than three stories in height" on line 2 and delete the phrase "One and Two Family Dwelling Code listed in Appendix A" on lines 3, 4 and 5 and substitute in lieu thereof "one and two family dwelling subcode";

[4. The following amendments are made to Article 4 of the buildng subcode entitled "Types of Construction Classification";

i. Section 401.4.3 is amended to delete the phrase "and plumbing codes listed in Appendix A" and substitute in lieu thereof, the phrase "code listed in Appendix A and the plumbing subcode";

ii. Section 401.4.4 is amended to delete the phrase "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, the phrase "the electrical subcode."]

[5.]**4.** The following amendments are made to Article 5 of the building subcode entitled "General Building Limitations."

[i. Section 505.1 is amended to delete the phrase "Sections 103.0 and 505.2" and substitute in lieu thereof, "N.J.A.C. 5:23-2."

ii. Section 505.2 is amended to delete the phrase "this code" on line 5 and substitute in lieu thereof, "the regulations";]

i. Section 505.0 is deleted in its entirety;

[iii.] **ii.** Section 510.1 is amended to delete the phrase "[building] **code** official" on line 1 and substitute in lieu thereof, "construction official[.]";

[iv.-v.] **iii.-iv.** (No change in text.)

[vi.] **v.** Section[s] 512.0 [comprised of sections 512.1 through 512.4.1] is deleted in its entirety.

[vii.] **vi.** Section 513.1 is amended to delete the phrase "subject to the approval of the board of appeals" on line 5. **Further, section 513.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";**

[6.]**5.** The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements."

[i. Section 607.2 is amended to delete the term "NFiPA 70" and substitute in lieu thereof, "the Electrical Subcode".

ii. Section 609.2.5 is amended to delete the phrase "plumbing code listed in Appendix A" and substitute in lieu thereof, "the Plumbing Subcode".

iii. Section 612.1 is amended to delete the phrase "the approved rules" on line 2;

iv. Section 612.4 is amended to delete the phrase "Section 107.4 of this code" and substitute in lieu thereof, "N.J.A.C. 5:23-2".

v. Section 613.0 is amended to delete the word "units" and in lieu thereof, substitute the words "dwelling parks".

vi. Sections 613.1 and 613.2 are deleted in their entirety.

vii. Sections 613.3 and 613.3.1 are amended to delete the words "unit" and "units" wherever they appear and substitute in lieu thereof, the words "home" and "homes".

viii. Section 614.5 is amended to add the phrase "to comply with the requirements of the Electrical Subcode" after the word "grounded" on line 1.

ix. Sections 616.6 and 616.6.2 are amended to add the phrase "in accordance with the plumbing subcode" after the words "equipment" and "property" respectively.

x. Section 616.6.1 is deleted.

xi. Section 616.9 is amended to delete the words "governing body" on line 11 and substitute in lieu thereof, "construction official".

xii. Sections 618.9.1 and 620.1.4 are amended to delete the phrase "Section 2007.0" and substitute in lieu thereof, "the Electrical Subcode".]

i. Section 600.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

ii. Section 600.2 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

iii. Section 621.0 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

iv. Sections 621.1 and 621.2 are deleted in their entirety;

v. Sections 621.3 and 621.3.1 are amended to delete the words "mobile units," "unit" and "units" and substitute in lieu thereof "manufactured homes," "home" and "homes";

vi. Section 623.5 is amended to add the phrase "to comply with the requirements of the electrical subcode" after the word "grounded";

vii. Section 625.3 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

viii. Section 625.6 is amended to add the phrase "in accordance with the plumbing subcode" at the end;

ix. Section 625.6.1 is deleted;

x. Section 625.6.2 is amended to add the phrase "in accordance with the plumbing subcode" at the end;

xi. Section 625.9 is amended to delete the phrase "governing body" and substitute in lieu thereof "construction official";

xii. Section 626.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

xiii. Section 626.5 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official";

xiv. Section 626.6 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official."

[7.]**6.** The following changes are made to Article 7 of the building subcode entitled "Interior Environmental Requirements."

[i. Section 702.1 is deleted.

ii. Section 702.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-2.3" after the words "Sections 703.0 and 708.0" on line 5.

iii. Section 710.7 is amended to delete the phrase "code listed in Appendix A" and in lieu thereof, substitute "subcode".

iv. Section 711.1 is amended to delete the phrase "of the minimum dimensions herein prescribed", and to delete sections 711.1.1 and 711.2.

v. Section 713.3.1.1 is amended to delete the phrase "in accordance with the approved rules".

vi. Section 713.3.3 is amended to delete the phrase "and the approved rules".]

i. Section 702.0 is deleted in its entirety;

ii. Section 711.1 is amended to delete the phrase "of the minimum dimensions herein prescribed";

iii. Section 711.1.1 and 711.1.2 are deleted in their entirety.

[8]**7.** The following amendments are made to Article 8 of the building subcode entitled "Means of Egress."

i-ii. (No change.)

iii. Section 804.0 [comprising sections 804.1 through 804.2.1] is deleted in its entirety[.];

[iv. Section 806.7.2 is amended to delete the words "section 122.0" and substitute "N.J.A.C. 5:23-3.5(c)".

v. Section 812.5.4 is amended to delete "15 pound" (73.23N) and in lieu thereof substitute "eight pounds (39.55N)".

vi. Section 815.3 is amended to delete lines 3 through 7 and substitute in lieu thereof, "Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations."

vii. Section 815.4 is amended to delete the third sentence and substitute in lieu thereof, "Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations."

viii. Section 815.5 is amended to delete the third sentence and substitute in lieu thereof, "Ramp guards and handrails for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations".

ix. Section 818.7.7 is amended to delete the words "Sections 2007.0 and 618.9.1" and substitute in lieu thereof, "the Electrical Subcode and Section 618.9.1."

x. Section 821.1 and 822.1 are amended to delete the phrase "the approved rules" and substitute in lieu thereof, "this subcode".

xi. Sections 823.4 and 824.4 are amended to delete the words "Section 2006.0" and substitute in lieu thereof, "this subcode".

xii. Section 825.6 is amended to delete the term "Section 512.0" and substitute in lieu thereof, the "Barrier-Free Design Regulations".]

iv. Sections 812.4, 812.4.1.2 and 812.4.2 are amended to delete the phrase "15-pounds (73N)" and substitute in lieu thereof "8-pounds (39N)";

v. Section 815.3 is amended to delete the phrase "the physically handicapped ... otherwise" and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode";

vi. Sections 815.4 and 815.5 are amended to delete the third sentence and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode";

vii. Section 825.6 is amended to delete the phrase "Section 512.0" and substitute in lieu thereof "the Barrier-Free Subcode."

[9.]**8.** The following amendments are made to Article 9 of the building subcode, entitled ["Structural Loads and Stresses"] **"Fireresistive Construction."**

[i. Section 901.3 is amended to delete the phrase "the approved rules" on lines 2 and 3 and substitute in lieu thereof, "this code."

ii. Section 902.1 is amended to delete the phrase "and the approved rules" on line 8.

iii. Section 905.4 is amended to delete the words "sections 103.3" and substitute in lieu thereof, "N.J.A.C. 5:23-2.3".

iv. Section 919.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "this code."]

i. Section 902.2 is amended to delete the phrase "or its designation shall be fixed by the approved rules";

ii. Sections 904.4.3 and 922.7.2 are amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official."

[10]**9.** The following amendments are made to Article [11] **10** of the building subcode, entitled, ["Materials and Tests"] **"Fire Protection Systems".**

[i. Section 1101.1 is amended to delete the words "Section 110.0" and substitute in lieu thereof, "the regulations."

ii. Section 1102.6 is amended to delete the words "Section 2002.0" on line 6, the phrase "and plumbing codes listed in Appendix A" on lines 8 and 9 and the phrase "the approved rules" on line 10 and substitute in lieu thereof, "the electrical subcode", "code listed in Appendix A and the plumbing subcode" and "the regulations" respectively.]

i. Section 1000.3 is amended to add the phrase "and fire protection subcode official" following the words "fire department" on lines 5 and 8;

ii. Section 1000.6 is amended to delete the words "administrative authority" on line 3 and substitute in lieu thereof, "fire protection subcode official";

iii. Section 1001.1 is amended to delete the word "department" on line 2 and in lieu thereof, substitute "fire protection and building subcode officials"; and to delete the word "Since" on line 3; and substitute in lieu thereof, "If";

iv. Section 1001.2 is amended to delete the word "department " on line 1 and substitute in lieu thereof, "fire protection and building subcode officials";

v. Section 1002.22 is amended delete the "code" on line 4 and substitute in lieu thereof, "fire protection subcode"; and to delete the words "and the fire prevention code official" on line 5;

vi. Section 1003.1 is amended to delete the words "administrative authority" and substitute in lieu thereof "fire protection subcode official";

vii. Section 1003.3 is amended to delete the words "code official" and substitute in lieu thereof, "fire protection subcode official";

viii. Sections 1014.1 and 1014.3 are amended to delete the term "department" on line 6 and line 2 and substitute in lieu thereof "fire protection subcode official";

ix. Section 1016.1 is amended to delete the phrase "administrative authority of this jurisdiction" and substitute in lieu thereof "fire protection subcode official";

x. Section 1017.3 is amended to delete the words "new and existing" in the first line;

xi. Section 1017.7.3 is amended to delete the term "code official" on line 2 and substitute in lieu thereof, "fire protection subcode official";

xii. Section 1017.7.4 is amended to delete the word "department" and substitute in lieu thereof "Fire Protection Subcode Official;

xiii. Section 1019.1.3 is deleted in its entirety;

xiv. Section 1019.2.3 is amended to delete the phrase "code official" and substitute in lieu thereof "Fire Protection Subcode Official";

xv. Section 1019.5.4 is amended to delete the phrase "fire department" on lines 6 and 7 and substitute in lieu thereof "fire protection subcode official."

[11. The following amendments are made to Article 13 of the building subcode, entitled "Building Enclosures, Walls and Wall Thickness":

i. Section 1307.4 is amended to delete the phrase "article 20 and NFiPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode".

ii. Section 1312.4.1 is amended to delete the phrase "at or below the area to be protected ... in Appendix A" and substitute in lieu thereof, "in accordance with the plumbing subcode."

iii. Section 1315.4 is deleted.

12. The following amendments are made to Article 14 of the building subcode, entitled "Fire-resistive Construction Requirements":

i. Section 1402.2 is amended to delete the phrase "or its designation shall be fixed by the approved rules".

ii. Section 1405.8.1 is amended to delete the phrase "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode".

iii. Section 1427.2 is amended to delete the reference to "section 103.0" and substitute in lieu thereof, "N.J.A.C. 5:23-2.3".

13. The following amendments are made to Article 16 of the building subcode entitled "Mechanical Equipment and Systems":

i. Section 1603.0 and comprising section 1603.1 is deleted in its entirety.

ii. Section 1604.0 and comprising section 1604.1 is deleted in its entirety.

14. The following amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems":

i. Section 1700.3 is amended to add the phrase "and fire protection subcode official" after the words "fire department" on lines 5 and 8.

ii. Section 1700.6 is amended to delete the words "administrative authority" on line 3 and in lieu thereof, substitute "fire protection subcode official".

iii. Section 1701.1 is amended to delete the word "department" on line 2 and in lieu thereof, substitute "fire protection subcode official"; and to delete the word "since" on line 3; and in lieu thereof, substitute the word "If".

iv. Section 1701.2 is amended to delete the word "department" on line 1 and in lieu thereof, substitute "fire protection subcode official".

v. Section 1702.19 is amended to delete the word "building" on line 3 and in lieu thereof, substitute "fire protection subcode"; and to delete the words "fire department and" on line 3.

vi. Section 1703.1 is amended to delete the words "administrative authority" and in lieu thereof, substitute "fire protection subcode official" on line 1.

vii. Section 1703.3 is amended to delete the words "administrative authority" and in lieu thereof, substitute "fire protection subcode official" on line 2.

viii. Sections 1713.1 and 1713.3 are amended to delete the term "department" and substitute in lieu thereof, "fire protection subcode official".

ix. Section 1715.1 is amended to delete the phrase "administrative authority of this jurisdiction" and in lieu thereof, substitute "fire protection subcode official".

x. Section 1716.7 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official".

xi. Section 1716.8 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".

xii. Section 1717.3.2 is amended to delete the words "and existing" in the first line.

xiii. Section 1717.6 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".

xiv. Section 1717.7.3 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official".

15. The following amendments are made to Article 18 of the building subcode, entitled "Precautions During Building Operations":

i. Section 1803.2 is amended to delete the reference to "sections 121.0 and 123.0" and substitute in lieu thereof "N.J.A.C. 5:23-2.29".

ii. Section 1805.2 is amended to delete the words "and of soil and vent stacks and the location of window openings shall conform to the provisions of section 2205.4" and substitute in lieu thereof, the following language:

(1) "When a new building is erected higher than an existing building, windows or other wall openings shall not be located nearer than 10 feet to an existing soil or vent stack on the lower building unless the owner of the new bulding makes the necessary provision to extend such soil or vent stacks to a height of not less than two feet above the topmost opening at his own expense and with the approval of the adjoining owner".

(2) "When the existing adjoining building is of greater height than the new building, the owner of the structure of greater height may, with the consent of the owner of the new structure, extend all new soil, waste or vent stacks which are located within 20 feet of the common lot line to a level above the higher existing roof".

iii. Section 1807.1.1 is amended to delete the reference to "section 121.0" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.29".

iv. Sections 1807.2.1 and 1807.2.2 are amended to insert the depth of "eight feet".

v. Section 1808.2 is amended to delete the words "the approved rules" and in lieu thereof, substitute "N.J.A.C. 5:23-2.14";

vi. Section 1817.1 is amended to delete reference to "section 2001.2.5" and substitute in its place the term "the electrical subcode".

vii. Section 1821.1 is amended to delete the phrase "code listed in Appendix A" and substitute in lieu thereof, the word "subcode".

viii. Section 1822.1 is amended to delete the word "involved" on line 9 and substitute in lieu thereof, the word "endangered".

(1) After the new word "endangered" add a new sentence "In the case of an imminent hazard, an earlier time may be designated in the notice to repair".

16. The following amendments are made to Article 19 of the building subcode entitled "Signs":

i. Section 1901.2 is amended to delete the phrase "in accordance with Section 1906.0" and delete the term "building official" and substitute in lieu thereof, "construction official".

ii. Section 1903.1 is amended to delete the reference to "section 124.0" and substitute in lieu thereof, the phrase "N.J.A.C. 5:23-2.29".

iii. Section 1906.0 entitled "Bonds and liability insurance" and comprising sections 1906.1-1906.3 of the building subcode are deleted in their entirety.

iv. Section 1907.3 is amended to delete the term "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, the term "the electrical subcode";

v. Section 1914.1 is amended to delete the term "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, the term "the electrical subcode".

17. The following amendments are made to Article 20 of the building subcode entitled "Electrical Wiring, Equipment and Systems":

i. Article 20 comprising sections 2000.1 through 2007.3 of the building subcode is deleted in its entirety.

18. The following amendments are made to Article 21 of the building subcode entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":

i. Section 2100.1 is amended to delete the phrase "Except as may be otherwise provided by statute" in the first line.

ii. Section 2100.2 is amended to delete the phrase "and except where more restrictive provisions govern" on lines 1 and 2.

iii. Section 2100.3 is amended to delete the word "exceptions" and substitute in lieu thereof, "variations".

iv. Sections 2101.1, 2101.2, 2101.3, 2103.1, 2103.2, 2103.3, 2104.4, 2104.5 and 2104.6 are amended to delete the term "building official" and substitute in lieu thereof, "construction official";

v. Section 2104.4 is amended to delete the phrase "or not in accordance with the provisions of this code" on lines 2 and 3.

vi. Sections 2107 through 2107.4.9 are deleted in their entirety.

19. The following amendments are made to article 22 of the building subcode entitled "Plumbing systems".

i. Article 21 comprised of sections 2200.1 through 2206.3.1 is deleted in its entirety.

20. The following amendments are made to Article 24 of the building subcode entitled "Energy Conservation":

i. Article 24 comprising sections 2400.1 through 2406.2 is deleted in its entirety.

21. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards":

i. Delete the entire subheading "ASHRAE" and all titles under this subheading.

ii. Under the subheading "BOCA," delete the following titles:

(1) Basic/National Plumbing Code.]

10. The following amendments are made to Article 13 of the building subcode entitled "Materials and Tests":

i. Section 1301.1 is amended to delete the words "Section 110.0" and substitute in lieu thereof, "the regulations";

ii. Section 1302.1 is amended to delete the phrase "and the approved rules" on line 7 and 8;

iii. Section 1303.6 is amended to delete the phrase "the approved rules" on line 10 and substitute in lieu thereof, "the regulations";

iv. Section 1304.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "the regulations";

11. The following amendments are made to Article 21 of the building subcode, entitled "Exterior Walls":

i. Section 2102.7 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

ii. Section 2102.8 is deleted in its entirety;

iii. Section 2102.9 is deleted in its entirety.

12. The following amendments are made to Article 23 of the building subcode entitled "Roofs and Roof Coverings":

i. Section 2301.2 is deleted in its entirety.

13. The following amendments are made to Article 25 of the building subcode entitled "Mechanical Equipment and Systems":

i. Section 2503.0 is deleted in its entirety;

ii. Section 2504.0 is deleted in its entirety.

14. The following amendments are made to Article 26 of the building subcode entitled "Elevators, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":

i. Section 2600.1 is amended to delete the phrase "Except as may be otherwise provided by statute" in the first line;

ii. Section 2600.2 is amended to delete the phrase "and except where more restrictive provisions govern" on lines 1 and 2;

iii. Section 2600.3 is amended to delete the word "exceptions" and substitute in lieu thereof, "variations";

iv. Sections 2601.1, 2601.2, 2601.3, 2603.1, 2603.2, 2603.3, 2604.4, 2604.5 and 2604.6 are amended to delete the term "code official" and substitute in lieu thereof, "construction official";

v. Section 2604.4 is amended to delete the phrase "or not in accordance with the provisions of this code" on lines 2 and 3;

vi. Section 2605.0 is deleted in its entirety;

vii. Section 2607.4 is amended to delete the phrase "ANSI A117.1 listed in Appendix A" and substitute in lieu thereof "the Barrier-Free subcode";

viii. Section 2616.2.2 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official".

15. The following amendments are made to Article 27 of the building subcode entitled "Electrical Wiring, Equipment and Systems":

i. Article 27 is deleted in its entirety.

16. The following amendments are made to Article 28 of the building subcode entitled "Plumbing Systems":

i. Article 28 is deleted in its entirety.

17. The following amendments are made to Article 29 of the building subcode entitled "Signs":

i. Section 2901.1 is amended to delete the term "code official" and substitute in lieu thereof, "construction official";

ii. Section 2901.2 is amended to delete the phrase "code official and the required bond . . . Section 2906.0" and substitute in lieu thereof "construction official";

iii. Section 2901.3 is amended to delete the phrase "code official" and substitute in lieu thereof, "construction official";

iv. Section 2903.1 is amended to delete the reference to "section 121.0" and substitute in lieu thereof, "N.J.A.C. 5:23-2.32";

v. Section 2906.0 is deleted in its entirety.

18. The following amendments are made to Article 30 of the building subcode, entitled "Precautions During Building Operations".

i. Section 3003.2 is amended to delete the reference to "sections 121.0 and 123.0" and substitute in lieu thereof "N.J.A.C. 5:23-2.32";

ii. Section 3005.2 is amended to delete the words "and the construction and extension of soil and vent stacks and the location of window openings shall conform to the provisions of section 2805.4" and substitute in lieu thereof, the following language:

(1) "When a new building is erected higher than an existing building, windows or other wall openings shall not be located nearer than 10 feet to an existing soil or vent stack on the lower building unless the owner of the new building marked the necessary provision to extend such soil or vent stacks to a height of not less than two feet above the topmost opening at his own expense and with the approval of the adjoining owner."

(2) "When the existing adjoining building is of greater height than the new building, the owner of the structure of greater height may, with consent of the owner of the new structure, extend all new soil, waste or vent stacks which are located within 20 feet of the common lot line to a level above the higher existing roof";

iii. Section 3022.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official".

19. The following amendments are made to Article 31 of the building subcode entitled "Energy Conservation":

i. Article 31 is deleted in its entirety.

20. The following amendments are made to Article 32 of the building subcode entitled "Repair, Alteration, Addition and Change of Use of Existing Building":

i. Article 32 is deleted in its entirety.

21. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards":

i. Delete the entire subheading "ASHRAE" and all titles under this subheading;

ii. Under the subheading "BOCA." delete the following titles:

(1) National Existing Structure Code;

(2) National Mechanical Code;

(3) National Plumbing Code;

(4) Basic/National Private Sewage Disposal Code.

iii. Under the subheading "CABO," delete the following titles:

(1) One and Two-Family Dwelling Code;

(2) Model Energy Code.

iv. Under the subheading "NFiPA", delete the title "National Electrical Code."

[(c) The following articles or sections of the 1986 Accumulative Supplement to the building subcode are modified as follows:

1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":

i. Sections 103.3, 103.4, 111.6.1, 111.7, 124.0 are deleted.

2. The following amendments are made to Article 5 of the building subcode entitled "General Building Limitations".

i. Section 504.1 is amended to delete the term "building official" from Exception 1 and substitute in lieu thereof, "building subcode official."

ii. Section 505.2 is amended to delete the words "Section 103.3" and substitute in lieu thereof "N.J.A.C. 5:23-2.4."

iii. Section 512.1.4 is deleted.

3. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements."

i. Section 609.2.5 is amended to delete the phrase "plumbing code listed in Appendix A" and substitute in lieu thereof "Plumbing Subcode."

ii. Section 617.4 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "mechanical subcode."

4. The following amendments are made to Article 8 of the building subcode entitled "Means of Egress."

i. Section 812.5.4 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "8 pounds (39.55N)."

ii. Section 812.5.6 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "8 pounds (39.55N)."

iii. Section 812.5.7. is amended to delete the term "building official" from Exceptions 1 and 2 and substitute in lieu thereof, "fire protection subcode official."

iv. Section 817.1.1 is amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

5. The following amendments are made to Article 13 of the building subcode entitled "Building Enclosures, Walls and Wall Thickness."

i. Section 1313.6 is amended to delete the phrase "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode."

ii. Section 1313.8 is amended to delete the reference to sections 103.0, 119.0 and 120.4 and substitute in lieu thereof, "N.J.A.C. 5:23-2."

iii. Sections 1313.10.2, 1313.10.3 and 1315.2.3 are amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

iv. Section 1316.2 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "Mechanical Subcode."

6. The following amendments are made to Article 14 of the building subcode, entitled "Fire Resistive Construction Requirements";

i. Section 1405.8.1 exception is amended to delete the words "NFiPA 70 listed in Appendix A" and substitute in lieu thereof "the Electrical Subcode:"

ii. Section 1417.2 is amended to delete the phrase "mechanical code listed in Appendix A" from Exception 7 and substitute in lieu thereof, "mechanical subcode."

7. The following amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems:"

i. Section 1702.22 is amended to delete the words "fire official" and substitute in lieu thereof "fire subcode official."

ii. Section 1717.7.3 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official."

8. The following amendment is made to Article 21 of the building subcode entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance."

i. Section 2102.4.1 is amended to delete the term, "building official" on line 6 and in lieu thereof, substitute "construction official."

9. The following amendment is made to Article 22 of the building subcode entitled "Plumbing Systems:"

i. Section 2207.1 is deleted.

10. Article 25 of the 1985 Supplement to the building subcode is not adopted.

11. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards:"

i. Delete the entire subheading "ASHRAE" and all titles under this subheading.

ii. Under the subheading "BOCA" delete the following titles:

(1) Basic/National Plumbing Code:

(2) Basic/National Existing Structures Code.

(3) Basic/National Private Sewage Disposal Code.

iii. Under the subheading "CABO" delete the following titles:

(1) One and Two Family Dwelling Code:

(2) Model Energy Code.

iv. Under the subheading "NFiPA" delete the title "National Electrical Code."]

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code/[1983] **1987",** including all subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.

i. (No change.)

2. "The National Standard Plumbing Code/[1983] **1987,"** including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."

[3. The National Standard Plumbing Code/1984-85 supplement is adopted by reference with modifications as cited in (c) below as part of the plumbing subcode for New Jersey.]

(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:

1.-7. (No change.)

8. Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:

i.-ii. (No change.)

iii. Section 7.25 is amended to delete the words "local Administrative Authority" on line 2 and in lieu thereof substitute the words "Barrier Free [Design Regulations] **Subcode."**

iv. (No change.)

v. Figure 7.4.5 on page 7-3 is amended to insert the words "21 inches" in the space for clearance on the first fixture. Also delete the word "Code" and substitute in lieu thereof "Subcode" in the block at bottom.

9.-12. (No change.)

13. Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:

i. Section 13.1.5 is amended to delete the words on lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl

spaces or floors below grade" and in lieu thereof, substitute the words "in accordance with Section [1312.4.1] **1224.4.1** of the building subcode [/1984].

ii. (No change.)

14.-19. (No change.)

[The following chapters of sections of the 1984-85 supplement to the plumbing subcode are modified as follows:

1. Chapter 7, entitled "Plumbing Fixtures" is amended as follows:

i. Figure 7.4.5 on page 21 is amended to insert the words "Twenty-one inches" in the space for clearance on the first fixture. Also delete the word "code" and substitute in lieu thereof "subcode" in the block at bottom.]

5:23-3.16 Electrical subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the Commissioner hereby adopts the Model Code of the National Fire Protection Association known as "The National Electrical Code/**1987** [1984], including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. (No change.)

2. The National Electrical Code[;]/**1987** [1984], including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

(b) The following chapters or articles of the electrical subcode are amended as follows:

1. (No change.)

2. Chapter 1 of the electrical subcode Article 100, entitled "Definitions" is amended as follows:

i. The definition of the term "approved" is amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof, the [term] **phrase** "electrical subcode official["]. Approval shall be in accordance with N.J.A.C. 5:23-3.7 and 3.8**"**.

ii.-iv. (No change.)

3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:

i. Section 300-4**(a)(1)** is amended to delete all wording from "so that the edge . . ." on line 3 through " . . . cover the area of the wiring," on line 8 in lieu thereof substitute," as required by the building subcode."

4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:

i. In Article 550, entitled "Mobile Homes and Mobile Home Parks," delete from the title the words "Mobile Homes and".

(1) Section 550-1 [(a)] is amended to delete the phrase "within or on mobile homes" **on** [from] line [s] 2 [and 3].

(2) Section A, entitled "Mobile Homes," comprising sections [500-3] **500-5** through 550-[13]**15** is deleted in its entirety with the exception of section [500-3] **550-5**(a) which shall be retained.

ii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks," delete from the title the words "Recreational Vehicles and" [, delete Subtitle "A. Recreational Vehicles", and also delete Sections 551-1 through 551-25(b) in their entirety].

(1) Section 551-1(a) is amended to delete the phrase "within or on recreational vehicles" on line 2.

(2) Section A, entitled "Recreational Vehicles," comprising sections 551-3 through 551-27(b) is deleted in its entirety.

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, as amended, the commissioner hereby adopts the following portions of the building, electrical and mechanical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA [Basic/] National Building Code [1984] **1987** of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

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

[(4) Sections 1316.0 and 1317.0 of Article 13—Building Enclosures, Walls and Wall Thickness;]

[(5)](**4**) Article [14]**9**—Fire Resistive Construction [Requirements];

[(6) Article 15—Masonry Fireplaces;]

(5) Article 10—Fire Protection Systems;

(6) Section 2002.0 of Article 20—Plastic;

[(7) Article 16—Mechanical Equipment and Systems;]

(7) Section 2301.0 of Article 23—Roofs and Roof Coverings;

[(8) Article 17—Fire Protection Systems;]

(8) Article 24—Masonry Fireplaces;

[(9) Sections 1818.0 and 1820.0 of Article 18—Precautions During Building Operations;]

(9) Article 25 Mechanical Equipment and Systems;

(10) Sections [2108.0, 2111.0, 2112.0, 2116.0 and 2117.0] **2608.0, 2611.0, 2612.0, 2616.0 and 2617.0** of Article [21]**26**—Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance;

(11) Sections 3018.0 and 3020.0 of Article 30—Precautions During Building Operations.

ii. National Electrical Code/[1984] **1987** of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

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

iii. BOCA [Basic/] National Mechanical Code/[1984] **1987** of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20):

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

2. (No change.)

(b) (No change.)

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc. known as the "BOCA [Basic/] National Mechanical Code/[1984] **1987**," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical Subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. (No change.)

ii. The "BOCA [Basic/] National Mechanical Code/[1984] **1987**," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

[2. The 1986 Accumulative supplement to the BOCA Basic/National Mechanical code/1984 is adopted by reference with modifications cited in (c) below as part of the Mechanical subcode for New Jersey.]

2. Any references to the building code, plumbing code, or NFiPA 70 listed in Appendix A shall be considered a reference to the appropriate adopted building, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following articles, sections or pages of the BOCA [Basic/] National Mechanical Code/[1984]**1987** are amended as follows:

1. (No change.)

2. Article 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i.-iv. (No change.)

v. The definition of the term "code official" is deleted in its entirety, and substitute in lieu thereof, the following language: "For the purpose of the mechanical subcode, the term "code official" shall mean the appropriate subcode designated in N.J.A.C. 5:23-4."

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

[viii. The term and definition of "mechanical official" is deleted in its entirety.]

ix. (No change.)

[3. Article 3 of the mechanical subcode, entitled "Air Distribution System," is amended as follows:

i. Section M-301.1 under "Exception," is amended to delete "building code listed in Appendix A" on line 4, and in lieu thereof, substitute "building subcode." Also delete "NFiPA 70 listed in Appendix A" on line 12, and in lieu thereof, substitute "the electrical subcode."

ii. Section M-305.1 is amended to delete the words "building code listed in Appendix A" on line 4, and in lieu thereof, substitute the term "building subcode."

iii. Section M-307.5.1 is amended to delete the words "building code, listed in Appendix A" on line 1, and in lieu thereof, substitute the term "building subcode."

iv. Section M-309.2.1 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

v. Section M-309.3 is amended to delete the words "building code, listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

vi. Section M-311.2 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."]

[4.]**3.** Article 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. (No change.)

[ii. Section M-406.2 is amended to delete the words "building code, listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."

iii. Section M-407.1 is amended to delete the words "NFiPA 70 listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."]

[5.]**4.** Article 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

[i. Section M-505.4 is amended to delete the words "building code, listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

ii. Section M-505.7.2 is amended to delete the words "building code, listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

iii. Section M-507.1 is amended to delete the words "building code, listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."]

[iv.]**i.** Section M-508.[1]**0**, ["Inspection and cleaning,"] **"Test and Cleaning Schedule"** is deleted.

[6. Article 6 of the mechanical subcode, entitled "Boilers and Water Heaters," is amended as follows:

i. Section M-601.1 is amended to delete the words "plumbing code, listed in Appendix A" on line 2, and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-602.2 is amended to delete the words "plumbing code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "plumbing subcode."

iii. Section M-603.5 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

iv. Section M-606.2 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

v. Section M-607.3 is amended to delete the words "plumbing code listed in Appendix A" on line 6 and in lieu thereof, substitute the term "plumbing subcode."

7. Article 7 of the mechanical subcode, entitled "Hydronic Piping," is amended as follows:

i. Section M-700.1 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-701.1 is amended to delete the words "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

iii. Section M-705.2 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and substitute in lieu thereof, the words "plumbing subcode."

iv. Section M-705.3 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and substitute in lieu thereof, the words "plumbing subcode."

v. Section M-705.4 is amended to delete the words "building code listed in Appendix A" on line 4 and in lieu thereof, substitute the words "building subcode."

vi. Section M-706.21 is amended to delete the words "building code listed in Appendix A" on line 2 and in lieu thereof, substitute the words "building subcode."

8. Article 8 of the mechanical subcode, entitled "Gas Piping Systems," is amended as follows:

i. Section M-801.1 is amended to delete the words "Section M-108.0" on line 5 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

9. Article 9 of the mechanical subcode, entitled "Fuel Oil Piping," is amended as follows:

i. Section M-900.2 is amended to delete the phrase "prevention codes listed in Appendix A" on line 2, and substitute in lieu thereof, "protection subcode."

ii. Section M-901.1 is amended to delete the phrase "Section M-108.0" online 2 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

10. Article 12 of the mechanical subcode, entitled "Chimneys and Vents," is amended as follows:

i. Section M-1202.0 is deleted in its entirety.

ii. Section M-1203.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, "building subcode."

iii. Section M-1203.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof the words "building subcode."

iv. Section M-1206.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

v. Section M-1210.3.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

vi. Section M-12.11.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

11. Article 13 of the mechanical subcode, entitled "Mechanical Refrigeration," is amended as follows:

i. Section M-1302 is amended to delete the phrase "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

12. Article 14 of the mechanical subcode, entitled "Solid Fuel Burning Appliances," is amended as follows:

i. Section M-1403.3 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, "building subcode."

ii. Section M-1404.2 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "Building subcode."]

[13.]**5.** Article 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. (No change.)

[ii. Section M-1500.5 is deleted in its entirety.

iii. Section M-1500.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof the term "building subcode."

iv. Section M-1502.1.6 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

v. Section M-1502.1.7 is amended to delete the phrase "mechanical official" on line 3 and substitute in lieu thereof, the term "administrative authority."

vi. Section M-1502.2.5.2 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

vii. Section M-1502.7.6.1 is amended to delete the phrase "mechanical official" on line 3 and in lieu thereof, substitute the term "administrative authority."

viii. Section M-1502.8 is amended to delete the phrase "mechanical official" on line 9 and in lieu thereof, substitute the term "administrative authority."

14. Article 16 of the mechanical subcode, entitled "Ventilation Air," is amended as follows:

i. Section M-1601.4 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1602.1 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1605.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, the term "building subcode."]

[15.]**6.** Article 17 of the mechanical subcode, entitled "Air Quality" [and comprising Section M-1700.0 through M-1704.0,] is deleted in its entirety.

[16. Article 18 of the mechanical subcode, entitled "Solar Heating and cooling Systems," is amended as follows:

i. Section M-1801.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1801.3.1 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1801.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and on line 2 of the exception and substitute in lieu thereof, the term "building subcode."

iv. Section M-1801.3.3 is amended to delete the phrase "building code listed in Appendix A" on line 2 of the exception and substitute in lieu thereof, the term "building subcode,"]

[17.]**7.** Article 19 of the mechanical subcode, entitled "Energy Conservation" [and comprising sections M-1900.0 through M-1903.5] is deleted in its entirety.

[18.]**8.** Article [20] **21** of the mechanical subcode entitled "Boilers and Pressure Vessels, Maintenance and Inspection" [and comprising sections 2000.0 through M-2002.1] is deleted in its entirety.

[19.]**9.** The following amendments are made to Appendix A of the mechanical subcode, entitled "Referenced Standards":

i. (No change.)

ii. Under the subheading "BOCA," delete the following titles:

(*1*) [Basic/National Plumbing Code.] **National Building Code**

(2) National Plumbing Code

iii. (No change.)

[(c) The following articles or sections of the 1986 Accumulative supplement to the Mechanical Subcode are modified as follows:

1. The following amendments are made to Article 1 of the mechanical subcode, entitled "Administration and Enforcement."

i. Sections M-122.1, M-122.2, M-122.2.1, M-122.2.2, M-122.2.3, M-122.2.4, M-122.2.5, M-122.2.6, M-122.3, M-122.4, M-122.4.1, M-122.5, M-122.6, M-122.6.1, M-122.6.2, and M-122.7 are deleted.

ii. Sections M-301.2, M-301.4, and line 3 and exception number 8 of M-311.2 are amended to delete the phrase "building code listed in Appendix A" and substitute in lieu thereof "Building Subcode."

iii. Section M-1602.2 is amended to delete the phrase "building code listed in Appendix A" and substitute in lieu thereof "Building Subcode."

2. The following amendments are made to Appendix A of the mechanical subcode entitled "Referenced Standards:"

i. Under the subheading "ASHRAE" delete the following titles:

(1) Thermal Environment Conditions for Human Occupancy.

(2) Energy Conservation in New Building Design.

(3) Handbook, Fundamentals Volume.

ii. Delete the entire subheading "ASME" and all titles under this subheading.

iii. Under the subheading "BOCA" delete the following titles:

(1) Basic/National Plumbing Code.

iv. Under the subheading "NFiPA", delete the title "National Electrical Code."]

5:23-3.21 One and two family dwelling subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/[1983] **1986**", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. (No change.)

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 to [R-113] **R-114** are deleted and substitute in lieu thereof, "UCC regulations."

ii. Section [R-114] **R-115** is amended to change the definitions as follows:

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

(4) [The definition of the term "Story (first)" is amended to add after the word grade "except that a basement shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than 6 feet for more than 50 percent of the total perimeter of more than 12 feet at any point."] **The definition of the term "Grade" is deleted and in lieu thereof substitute, "A reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line, or when the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.**

(5) The definition of the term "Story (first)" is amended to add after the word grade "except that a basement shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than 6 feet for more than 50 percent of the total perimeter or more than 12 feet at any point."

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. (No change.)

[ii. Sec. R-202.4, increases the minimum lives load for stairs in Table R-202.4 from 40 to 100 psf.

iii. Sec. R-203, in the first and 4th lines, change "three (3) feet" to "six (6) feet."

iv. Sec. 204.2, change in the 6th line "one-tenth (1/10 to)" to "eight (8) percent."

v. Sec. R-2102.2—Opening Protection—Delete and substitute in lieu thereof the following:

"Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than one and three quarter inches in thickness or equivalent of three quarters hour fire resistance rating or better. A raised sill shall also be provided between garage and adjacent interior spaces with a minimum height of four inches."

vi. Sec. R-213, under the second Exception in the second line, delete the phrase "eight and one-half (8-1/2) inches" and substitute in lieu thereof "eight (8) inches."

vii. Sec. R-214.2, in the second paragraph, second line, change "four (4) inches" to "six (6) inches."

viii. Sec. 215.1, in the 4th line change "four (4) or more risers" to "three (3) or more risers."

ix. Sec. R-216.1, delete the first sentence and in lieu thereof add "A minimum of one smoke detector per floor including basement and in the immediate vicinity of bedrooms shall be provided and they shall be all interconnected. In split levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level provided the lower level is less than one full story below the upper level. If there's an intervening door between adjacent levels, a smoke detector shall be installed on both levels."

x. Sec. R-216.2 is amended to delete the words "or in buildings which undergo . . . section" at the end.

xi. Add new Sec. R-221 "Height and Area Limitations" per Table R-221 below:

Table No. R-221

Type of Construction

	Noncombustible					*Noncombustible/ Combustible*			*Combustible*	
Use Group	*Type 1*		*Type 2*			*Type 3*		*Type 4*	*Type 5*	
R-3	*1A*	*1B*	*2A*	*2B*	*2C*	*3A*	*3B*	*4*	5A	5B
Residential	*3 St.	*3 St.	*3 St.	*3 St.	*3 St.	*3 St.	*3 St.	*3 St.	3 St.	2 St.
One and Two	No limit*	No limit*	40'	40'	40'	40'	40'	40'	40'	40'
Family			22,800*	15,000*	9,600*	13,200*	9,600*	14,400*	10,200	4,800

xii. Sec. 217.2.4, after the words "foam filled doors" and the phrase "except for fire doors."]

ii. Sec. R-203.1, in the first and third lines, delete "3 feet" and substitute in lieu thereof, "5 feet";

iii. Sec. R-210.1—Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1-3/4 inches in thickness or approved equivalent. A raised sill shall also be provided between garage and adjacent interior spaces with a minimum height of 4 inches";

iv. Sec. R-210.2—Separation Required—Delete and substitute in lieu thereof the following: "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than 1 hour fireresistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of 1/2-inch gypsum board or equivalent applied to the garage side";

v. Sec. R-213, under the second exception in the second line, delete "8½ inches" and substitute in lieu thereof, "8 inches";

vi. Sec. R-214.2, in the fifth line, delete "4 inches" and substitute in lieu thereof, "6 inches";

vii. Sec. R-215.1, in the third line delete "four or more risers" and substitute in lieu thereof, "three or more risers";

viii. Sec. R-216.1 is amended to delete the second paragraph;

ix. Sec. R-216.2 is amended to delete the words "or in building which undergo . . . section" at the end;

x. Sec. R-217.2.4, after the words "foam filled doors" add the phrase "except for fire doors";

xi. Add new Sec. R-221 "Height and Area Limitations"

"The provisions of this subcode are limited to Use Group R-4 (detached one and two-family dwellings), 5B construction, with no more than 2 stories or 35 feet in height and 4,800 square feet in area per floor."

3. Chapter 3 is amended as follows:

i. (No change.)

[ii. Table R-304.4, change Nominal Thickness for Masonry of Solid Units from six inches to eight inches.

iii. Fig. R-303, change 1/2″ bolts @ 6″ o.c. to 1/2″ bolts @ 8″ o.c.]

4. Chapter 4 is amended as follows:

[i. Sec. R-402.8, in the second paragraph, 3rd line, change "one thousand (1,000) sq. ft." to "five hundred (500) sq. ft."

ii. Sec. R-404.2, in the 4th line change "one third (1/3″) to "one half (1/2″) (the total thickness).

iii. Sec. 404.11, in the second line, change "three (3) inches" to "four (4) inches."]

i. Sec. R-402.8, in the second paragraph, third line, delete "1,000 square feet" and substitute in lieu thereof, "500 square feet";

ii. Sec. R-404.2, in second paragraph, fourth line, delete "one third" and substitute in lieu thereof, "one half";

iii. Sec. R-404.13 in the second line, change "3 inches" to "4 inches."

5. Chapter 9 is amended as follows:

[i. Sec. R-902.3, in the first line, change "two (2) feet" to "three (3) feet."

ii. Sec. R-902.5 add the following phrase after the word degrees "and embedded in medium duty refractory mortar complying with ASTMC105." Delete Exception.

iii. Sec. R-904.2, in the last line, change "ten (10) inches" to "twelve (12) inches."

iv. Sec. R-904.5, second line, change "three-eighth (3/8) inches . . . all imposed loads" to "four (4) inches solid masonry or equivalent."

v. Sec. R-904.7, second and fourth lines, change "two inches" to "four inches."

vi. Sec. R-905, add item #6: Factory Built Fireplaces shall be listed, labelled and tested according to UL 127.

vii. Sec. R-906.1—Factory Built Fireplaces Stoves shall be tested according to UL 737.]

i. Sec. R-902.6 is amended to add the following phrase after 1800°F., "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the "EXCEPTION";

ii. Sec. R-904.2, in the last line, change "10 inches" to "12 inches";

iii. Sec. R-904.5, in the second line, change "3/8 inches . . . all imposed loads" to "4 inches solid masonry or equivalent";

iv. Sec. R-904.7, in the second and fourth lines, change "2 inches" to "4 inches";

v. Sec. R-905.1 item #4, is amended to add after the word "opening" the following: "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches beyond the face of the fireplace opening and a minimum of 12 inches on each side of the fireplace opening." Also, Sec. R-905 is amended to add the following item #6: Factory Built Fireplaces shall be listed, labeled and tested according to UL 127;

vi. Sec. R-906.1—At the end of the section, add "Factory-built fireplace stoves shall be tested according to UL 737."

6. Part IV—Mechanical is amended as follows:

i. (No change.)

[ii. Sec. M-1106—Delete second paragraph and in lieu thereof insert "Fuel-fired and fuel-burning appliances shall be installed on a noncombustible floor. The non-combustible floor shall extend 12 inches beyond the sides of the appliance. On the burner side, the floor shall extend at least 36 inches."

iii. Sec. M-1112—At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482."

iv. Sec. M-1114—Delete second sentence and in lieu thereof insert "Appliances in private garages shall be installed with a minimum clearance of 6 feet above the floor."

v. Sec. M-1308.1—At the end of the paragraph, add "When appliances are located within 10 feet of a roof edge or open side with a drop greater than 24 inches, guards shall be provided. A guard rail shall be located a minimum of 36 inches and a maximum of 42 inches above the roof surface.

vi. Sec. M-1601.1—At the end of the Section, add item #7, "Duct material shall meet the requirements specified in the Mechanical subcode Sec. M-302.1, M-302.2 and M-303.1."

vii. Sec. M-1602—In the second paragraph, first line, change "three (3) feet" to "six (6) feet."

viii. Sec. M-1604—At the end of item #9, add the words "and a flame spread of 200 or less."

ix. Sec. 1905.2—Add a new paragraph "No piping shall be installed in supply air ducts, clothes chutes, chimneys, vents or dumbwaiters."

x. Sec. M-1909.3—Delete second paragraph.

xi. Sec. M-1916.1.—At the beginning of second line delete the word "sweat". Also add at the end of the paragraph "Only brazed joints shall be permitted."

xii. Sec. M-1917.1—Add after the first sentence "All pumps shall be listed and labeled by an approved agency."]

ii. Sec. M-1112—At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482";

iii. Sec. M-1905.2—Add the following new paragraph "No piping shall be installed in supply air ducts, clothes chutes, chimneys, vents or shafts";

iv. Sec. M-1909.3—Delete second paragraph;

v. Sec. M-1917.1—Add after the first sentence "All pumps shall be listed and labeled by an approved agency."

7.-8. (No change.)

5:23-4.16 [Fire limits] **(Reserved)**

[(a) Rules concerning establishment are:

1. General: Whenever the criteria established in (b), (c) or (d) below are present in a municipality, it shall by ordinance establish fire limits as per the building subcode. The purpose of such fire limits is the protection of closely built commercial districts against the hazards of fire spreading from building to building by supplementary restrictions on the construction permitted within such limits.

1. Whenever such criteria are not present, no fire limits may be established;

2. Report:

i. The construction official shall prepare a report every two years, for submission to the governing body of the municipality for its use as they may deem appropriate, in delineating the fire limits.

(1) This report shall be prepared with the advice of the building subcode official and the fire subcode official.

ii. The report shall indicate the recommendations of the construction official, the building subcode official, and the fire subcode official regarding those areas of the municipality which should be designated as within fire limits and the reasons therefore.

iii. For the preparation of this report, the following subsections of this section shall be considered minimum requirements for inclusion within fire limits.

(b) Rules concerning developed areas are:

1. General: The fire limits shall include all closely built districts of predominately business or commercial occupancy meeting both the following criteria.

2. Criteria:

i. A block or part block shall be considered closely built if at least 50 percent or more of the ground area is built-on area devoted to commercial occupancy; except that where the average height of buildings is 2½ stories or more, a block or part block shall be considered closely built if the ground area built upon is at least 40 percent.

ii. Any district consisting of two or more adjoining blocks or part blocks which meet the criteria of 2i above, comprising an area of 100,000 square feet or more, exclusive of intervening streets, shall be considered large enough to warrant fire limits protection.

(c) Rules concerning developing areas are:

1. The areas where a definite trend toward commercial development is manifested, or where land coverages greater than 50 percent of commercial occupancies are not otherwise prohibited, may be included in anticipation of future growth likely to develop these areas into closely built districts, providing they meet the following criteria.

2. Criteria:

i. A block or part block may be considered as of developing commercial occupancy if at least 50 percent of the ground area is permitted to be built upon, or if at least 25 percent of the ground area is built upon and 40 percent or more of the built-on area is to be devoted to commercial occupancy.

ii. A developing commercial area may be included if it consists of two or more adjoining blocks or part blocks, which meet the criteria of 2i above, comprising an area of 100,000 square feet or more exclusive of intervening streets.

(d) Nothing in these regulations shall be construed as preventing the delineation of fire limits for areas possessing an unusual fire hazard. Examples would include open spaces regularly used for the piling and storage of lumber as in lumber yards and woodworking plants, open areas used for the storage of hazardous chemicals, or open areas used for the storage of flammable materials. In each case, the report prepared by the construction official for submission to the governing body of the municipality shall indicate the reasons for designation of an area within the fire limits which does not otherwise meet the criteria of (b) and (c) above.

(e) Rules concerning existing fire limits are:

1. The governing body of a municipality may delay the implementation of this section until July 1, 1977, if it determines that the requirements of this section cannot reasonably be met by January 1, 1977.

2. Existing fire limits, if there be any in the municipality, may stay in effect until July 1, 1977, insofar as they can be conformed to the building subcode.]

OFFICE OF ADMINISTRATIVE LAW NOTE: The current text of the New Jersey Administrative Code erroneously contains two different subsections (c) at N.J.A.C. 5:23-4.16. The first (c) appearing is the original rule provision first codified, which was amended in 1976 to the text in the second (c), which is proposed for repeal above.

(a)

Uniform Construction Code
Conflict of Interest
Notice of Withdrawal of Proposal

Take notice that the Department of Community Affairs hereby withdraws the proposed amendments to N.J.A.C. 5:23-4.5, concerning licensee conflict of interest, published February 17, 1987 at 19 N.J.R. 332(a) as PRN 1987-61.

This action has been taken as a result of a survey of municipal construction officials conducted by the Department, in response to comments received, to determine the impact the proposed amendments would have. The Department is satisfied that the impact upon municipalities, particularly small municipalities, would be so widespread and severe as to outweigh any possible benefit of the proposed rule.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Thorough and Efficient System of Free Public Schools; Promotion and High School Graduation
Special Education
Research, Planning and Evaluation
Proposed Amendments: N.J.A.C. 6:8-7.1, 6:28-3.6 and 4.4, and 6:39-1.5

Authorized By: Saul Cooperman, Commissioner, Department of Education.

Authority: 29 U.S.C. 794, 20 U.S.C. 1400 et seq., N.J.S.A. 18A:1-1, 18A:4-15, 18A:4-24, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq. and 18A:46A-1 et seq.

Proposal Number: PRN 1987-207.

Submit comments by July 15, 1987 to:

Patricia Joseph, Rules Analyst
New Jersey Department of Education
CN 500
225 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will ensure that all handicapped pupils take and pass the High School Proficiency Test (H.S.P.T.) and demonstrate mastery of the curriculum proficiency requirements unless exempted through the individualized education program (IEP) planning process. The amendments set forth criteria for the exemptions. In order to exempt a pupil from the test, school districts are required to demonstrate that a pupil would be adversely affected or that a pupil's IEP goals and objectives do not include the H.S.P.T. skills. If a pupil, due to the degree of his/her handicapping condition, has not had the opportunity to learn the proficiency skills, he/she should not be held to the proficiencies.

These amendments will maintain high school graduation standards for handicapped pupils by establishing criteria for districts to determine which pupils should be exempted from the H.S.P.T. and demonstration of proficiencies.

Amendments are proposed to two sections of N.J.A.C. 6:28, Special Education, one section of N.J.A.C. 6:8, Thorough and Efficient System of Free Public Schools, and one section of N.J.A.C. 6:39, Research, Planning and Evaluation. The existing rules address high school graduation requirements for handicapped pupils in each of these codes.

The proposed amendment to N.J.A.C. 6:39-1.5 includes the requirement that handicapped pupils participate in the H.S.P.T. program unless they would be adversely affected by taking the test or unless their IEP does not include the range of proficiencies measured by the test.

The proposed amendment to N.J.A.C. 6:8-7.1 states that all handicapped pupils shall meet proficiency requirements unless their IEPs are inconsistent with this requirement.

The proposed amendments to N.J.A.C. 6:28-3.6 and 4.4, Special Education, set the criteria for exemptions and require districts to provide a rationale for the exemptions and to replace proficiencies with alternate proficiencies.

Social Impact

These proposed amendments assure that a pupil's IEP shall include goals and objectives commensurate with the pupil's needs and that a reasoned and well-informed decision to exempt a pupil from the H.S.P.T. and proficiencies be made by districts only where appropriate. The decision to exempt a pupil would be made annually as part of the IEP process. These proposed amendments would assure that non-handicapped pupils are not classified as "handicapped" in order to exempt them from graduation requirements.

The proposed amendment to N.J.A.C. 6:28-3.6 requires that the IEP establish alternative requirements for graduation for pupils exempted from the H.S.P.T. and proficiency requirements under these proposed amended rules.

Economic Impact

The Department of Education shall assist local districts in implementing these proposed rules through targeted training and the publication of a revised document of graduation requirements for special education pupils. As a result, these proposed amendments will result in a minimal additional cost to the State. The additional costs for technical assistance will be provided through Federal funding.

Regulatory Flexibility Statement

These proposed amendments will have no reporting, recording or compliance requirements for small businesses. All requirements of the proposal impact upon New Jersey public schools and pupils since decisions regarding the high school graduation requirements are made by local district child study team members.

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

6:8-7.1 Promotion, remediation and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1.-3. (No change.)

4. The exemption of handicapped pupils from the high school graduation requirements, pursuant to N.J.A.C. 6:28-3.6 and 4.4, 6:39-1.5, and (b)6 below.

Renumber existing 4.-9. as **5.-10.** (No change in text.)

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils pursuant to law and rule which shall include, but not be limited to, performing at or above the State minimum levels of pupil proficiency on the State mandated High School Proficiency Test in reading, writing[,] and mathematics skills.

1.-5. (No change.)

6. [Pupils classified pursuant to N.J.S.A. 18A:46-1 may be exempted from the State minimum levels of pupil proficiency requirement based on the recommendation of the child study team, as noted in the pupil's Individualized Education Program and with the approval of the chief school administrator.] **A handicapped pupil must meet all State and local high school graduation requirements in order to receive a State endorsed**

high school diploma unless exempted in his or her Individualized Education Program and with the written approval of the chief school administrator. An exemption from the High School Proficiency Test shall be granted if a pupil would be adversely affected by taking the test. An exemption from the proficiencies and High School Proficiency Test shall be granted if the pupil's Individualized Education Program does not include the proficiencies measured by the test.

i. A handicapped pupil who has not been exempted from the proficiencies or has performed below the State minimum levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test shall participate in the Special Review Assessment.

7. (No change.)

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

(e) Successful completion of the requirements set forth in (b), (c)[,] and (d) above and any local requirements shall be required as conditions for awarding a State endorsed diploma, except as provided for seniors entering military or naval service pursuant to N.J.S.A. 18A:36-17[.] **and handicapped pupils exempted from the requirements.** No district board of education may issue a high school diploma without State endorsement.

(f) (No change.)

6:28-3.6 Individualized education program

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

(e) The basic plan of the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-iii. (No change.)

iv. A description of exemptions from regular education program options [and/]or **State and local** graduation requirements **which includes a rationale for the exemptions;**

v. Reasons why the individualized education program goals and objectives do not include the proficiencies measured by the High School Proficiency Test and the requirement to demonstrate mastery of curriculum proficiencies for pupils exempted from these requirements;

vi. A statement of the alternate proficiencies as replacements for the high school proficiencies for pupils exempted from the High School Proficiency Test and curriculum proficiencies. The individualized education program shall identify which alternate proficiencies must be achieved by the educationally handicapped pupil to qualify for the State endorsed diploma issued by the school district;

Redesignate existing v.-ix. as **vii.-xi.** (No change in text.)

(f)-(m) (No change.)

6:28-4.4 Diplomas and graduation

(a) (No change.)

(b) An educationally handicapped pupil who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program. The individualized education program must specifically address these graduation requirements. **A handicapped pupil shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program is characterized by goals and objectives which do not include the range of High School Proficiency Test skills and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.** [Fulfillment of] T[t]he individualized education program **shall specify which** requirements would qualify the educationally handicapped pupil for a State endorsed diploma issued by the school district responsible for his or her education.

6:39-1.5 Exclusion of pupils

(a) Any pupil who has been classified as handicapped, pursuant to N.J.S.A. 18A:46-1 et seq., shall participate in the testing program unless specific exemption from participating in this program is provided within that pupil's Individualized Education Program (N.J.A.C. 6:28). **A handicapped pupil shall be exempted if:**

1. The pupil would be adversely affected by taking the test; or

2. The pupil's Individualized Education Program does not include the proficiencies measured by the High School Proficiency Test.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Resources and Development

Proposed Amendments: N.J.A.C. 7:7E-7.14 and 8.11

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 023-87-05.

Proposal Number: PRN 1987-221.

Public hearings concerning the proposal will be held on the following dates:

July 7, 1987 at 10:00 A.M.
City Hall, Council Chambers
6th and Market Streets
Camden, New Jersey 08081

July 8, 1987 at 2:00 P.M.
City Hall, Council Chambers
280 Grove Street
Jersey City, New Jersey 07302

July 9, 1987 at 7:30 P.M.
City Hall, Council Chambers
400 Park Ave.
Weehawken, New Jersey 07087

Submit comments by July 15, 1987 to:
Michael P. Marotta, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), which is known as "CAFRA", gives the Department authority to regulate major development in the bay and ocean shore segment of the coastal zone, to preserve environmentally sensitive sites and ensure a rational pattern of development. It also requires the Department to prepare a strategy for the management area. This strategy is embodied in N.J.A.C. 7:7E.

The Wetlands Act (N.J.S.A. 13:9A-1 et seq.) authorizes the Department to delineate and regulate development in all coastal wetlands of the State from the Raritan River Basin southward and along southern portions of the Delaware River.

The Waterfront Development Law (N.J.S.A. 12:5-1 et seq.) applies to all proposed development at or below the mean high water line on navigable waterways throughout the State. In certain areas of the State, it includes development between the mean high water line and the first inland cultural feature on property line. In no case will the boundary be less than 100 feet or more than 500 feet from the waterway.

The rules on Coastal Resource and Development Policies (N.J.A.C. 7:7E) serve as the substantive basis for decisions of the Division of Coastal Resources on Waterfront Development permits in the State's bay and ocean shore area and throughout the State.

N.J.A.C. 7:7E-7, which is entitled "Use Policies", describes the uses which are regulated in the coastal zone and sets forth standards governing each specific use.

At present, the rule at N.J.A.C. 7:7E-7.14 prohibits the construction of high rise structures greater than six stories or more than 60 feet from existing pre-constructed ground level which are within view of coastal waters, unless they are separated from the coastal waters by at least one public road or by an equivalent area that is at least 50 feet wide and both physically and visibly open to the public. The proposed change to this section would provide the Department with the flexibility to consider the construction of such high rise structures if the design of the overall development offers public benefits in excess of those already required by the rules on Coastal Resource and Development. The proposed change would also preserve the Department's current discretion to deny permits for buildings of less than 60 feet which are on piers if the coastal standards, especially those applicable to public access to the waterfront and scenic resources and design, would be violated.

N.J.A.C. 7:7E-8, which is entitled "Resource Policies", provides for a review of a proposed development in terms of its effects upon various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region.

The proposed change to N.J.A.C. 7:7E-8.11(b)7 would delete the requirement that public access along the Hudson River conform with a report entitled "Hudson River Walkway and Design Guidelines" prepared for the Department by Wallace, Roberts and Todd. This provision would be replaced by a requirement that development along the Hudson River include a public walkway at the water's edge. The report to which the existing provision refers may be obtained from the Division of Coastal Resources. Applicants are advised, however, to consult with the Division concerning the applicability of the guidelines to any specific site.

Social Impact

Residential development along the coast has, in many areas, taken the form of high rise, high density towers. While such development may conserve land, some high rise structures represent a visual intrusion, limit public access to the waterfront, cause adverse traffic impacts, and cast shadows on beaches and parks.

N.J.A.C. 7:7E-7.4 provides criteria for high rise development so that these adverse effects are minimized. Among the conditions imposed by the rule is the requirement that such structures be separated from coastal waters by at least one public road or an equivalent area that is open to the public. Because strict compliance with this present condition would be impossible, the construction of high rise buildings upon piers is prohibited. Pursuant to the proposed rule as amended, high rise structures on piers would be approvable if they provide significant benefits in the form of public access, waterfront views and preservation of the environment. Accordingly, it is anticipated that this proposed modification will have a positive social impact.

Public access will be further enhanced by the proposed modification to N.J.A.C. 7:7E-8.11(b)7 which requires such access to all projects along the Hudson River, including those on non-industrial piers.

The proposed modifications are also anticipated to have a positive impact upon development along the waterfront by removing the total prohibition against high rise construction on piers. As with all such development, high rise construction on piers would be subject to the standards imposed by N.J.A.C. 7:7E.

Economic Impact

It is anticipated that these proposed changes will generally have a positive economic impact because they will remove a total prohibition against a specific form of development. Also, development which preserves public access would tend to stimulate the revitalization of urban and other areas by providing an attractive nucleus around which other businesses may flourish.

Environmental Impact

Because all development will still be required to conform with all of the coastal environmental standards, no change in the environmental impact is anticipated.

Regulatory Flexibility Statement

The Department has determined, pursuant to the Regulatory Flexibility Act (P.L. 1986, c.169), that the proposed regulations will impose the requirement of compliance with the Department's Rules on Coastal Resources and Development (N.J.A.C. 7:7E) upon anyone who seeks to construct a high rise structure on a pier. No special consideration is given in the proposed amendments to any small business seeking to build such a structure, since to do so would adversely affect the coastal areas and waterways sought to be protected.

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

7:7E-7.14 High rise structures

(a) All high rise structures more than six stories or more than 60 feet from existing pre-construction ground level are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. High rise housing and structures on land are [acceptable subject to] **prohibited unless they meet** the following conditions:

1.-7. (No change.)

(b) The development of high rise structures on piers is generally discouraged, but the Division will review structures of any height proposed on piers on a case-by-case basis. Consideration will be given to the protection of waterfront views, the protection and enhancement of public access and an attractive setting for waterfront pedestrians, the effects of shading on the water, and other Coastal Policies.

[(b)](c) (No change in text.)

7:7E-8.11 Public access to the waterfront

(a) (No change.)

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.

1.-6. (No change.)

[7. Development along the Hudson River shall conform with the Hudson River Walkway and Design Guidelines, a report prepared by Wallace, Roberts and Todd for NJDEP, 1983 and which may be obtained from the Department's Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625.]

7. Development along the Hudson River shall include a public walkway at the water's edge for the full length of the project, including non-industrial piers.

8.-9. (No change.)

(c) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Management System Definition of Solid Waste

Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1 and 12.3.

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-6 et seq. and 13:1D-1 et seq.

Proposal Number: PRN 1987-222.

DEP Docket Number: 021-87-05.

Public hearings concerning this proposal will be held on:

June 30, 1987 at 2:00 P.M.
New Jersey State Museum Auditorium
205 West State Street
Trenton, New Jersey

July 1, 1987 at 7:30 P.M.
Hackensack Meadowlands Development Commission Auditorium
2 DeKorte Park Plaza
Lyndhurst, New Jersey

Submit comments by July 16, 1987 to:

Ann Zeloof, Esq.
New Jersey Department of Environmental Protection
Office of Regulatory Services
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

On January 4, 1985, the United States Environmental Protection Agency (USEPA) published a final rule in the Federal Register (50 FR 614) which amended the definition of solid waste and set forth new standards governing the recycling of hazardous waste. New Jersey received final authorization of its hazardous waste regulatory program from the USEPA on February 21, 1985 and, under the terms of that authorization, New Jersey must amend its rules to maintain equivalency with the USEPA's regulations. Consequently, the New Jersey Department of Environmental Protection (Department) has proposed a number of amendments to the existing hazardous waste rules in order to maintain equivalence with the recent Federal amendments. Some of the proposed amendments are more stringent than the Federal standards.

The Department proposes to amend the definition of "solid waste" at N.J.A.C. 7:26-1.6 by replacing it with a more clearly delineated definition. Presently, a material that is no longer useable for its original intended use is a waste if it is "sometimes discarded". This criterion, based on

an earlier Federal definition, is difficult to administer. Hazardous waste recycling is also addressed in the proposed amendment as a regulated hazardous waste activity. Certain recycling exemptions are proposed at N.J.A.C. 7:26-8.2.

The Department agrees with the USEPA that it is inappropriate to allow hazardous wastes to escape regulatory jurisdiction even if they are consistently and uniformly recycled. The Department further agrees with the Federal test that the value of a material, that is to say its inherent worth or lack of worth, is not a valid or relevant criterion in determining whether it is a waste. Although the Department has always regulated hazardous waste recycling operations, it is believed that some companies were not cognizant that their hazardous waste recycling activities were regulated or in some instances they have claimed the materials were not wastes because they were never "sometimes discarded". The proposed rule is designed to exchange the "sometimes discarded" criterion with a straight-forward method of determining whether or not a material is a solid waste in order to avoid such misconceptions in the future.

The proposed amendments at N.J.A.C. 7:26-1.4 modify the existing definitions of "treatment", "hazardous waste incinerator", "reclamation", and "recycling", and add new definitions for "industrial boiler" "industrial furnace" and "use or reuse". In addition, certain other terms have been defined in order to clarify whether or not a material is a regulated waste. (See definitions for spent material, by-product, co-product, commercial chemical product, precious metals and scrap metal.)

Finally, "controlled processing" is defined in order to serve as a standard by which the Department can evaluate operations which recycle materials which would otherwise be disposed of as nonhazardous solid waste. N.J.A.C. 7:26-1.1 would also be amended to more clearly express the Department's intent to exclude nonhazardous source separated recyclable materials from regulation as solid waste, if those materials are processed in such a manner as to minimize any potential adverse environmental impact.

The Department is proposing to exempt spent sulfuric acid being used to manufacture virgin sulfuric acid from the definition of solid waste at N.J.A.C. 7:26-1.6 provided that at least 75 percent of the spent sulfuric acid is recycled into virgin sulfuric acid within a one year period. This language corresponds to the Federal exemption at 40 CFR 261-4(a)7.

In accordance with the Federal regulations, the exemption at N.J.A.C. 7:26-8.13 for waste codes F007, F008, F009, F010, F011 and F012 generated from precious metals operations has been deleted in the proposal. Generators, transporters and reclaimers of these wastes will accordingly be regulated under the proposed amendments. Hazardous wastes containing precious metals may only be sent under manifest and via New Jersey registered hazardous waste transporter to a facility that is authorized by the Department to accept that type of waste. Facilities that only reclaim precious metals from hazardous wastes, or that have a dedicated unit for such activity, may receive a "permit-by-rule" provided they comply with notification, manifesting and certain operating requirements described in the proposed amendments at N.J.A.C. 7:26-9.1(c)13 and N.J.A.C. 7:26-12.1(c).

The proposed amendment at N.J.A.C. 7:26-8.2 adopts six Federal exemptions to the hazardous waste rules. The first exempts used lead-acid batteries that are returned intact to the manufacturer for regeneration. The Department agrees with the USEPA that this practice presents minimal environmental risk. See 40 CFR 261.4 and 261.6 for a discussion of the basis for this Federal exemption. In addition, generators, transporters and persons who store batteries prior to transporting them to a battery reclaimer are exempt from regulation provided that the storage does not exceed 90 days. Not included in this exemption, however, are those operations in which batteries are stored by battery reclaimers prior to their reclamation. Facilities that reclaim spent batteries to recover the component parts (lead, acid, plastics, etc.) are subject to full regulation under N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 (except for use of manifests in receiving spent batteries).

An exemption is proposed for industrial ethyl alcohol that is reclaimed. This activity is fully regulated under a comprehensive cradle-to-grave system by the Federal Bureau of Alcohol, Tobacco and Firearms. (See 27 CFR 19.156, 19.159, 19.166, and 19.271-19.281 (requirements for distillers) and 27 CFR 211.41-211.50, and 27 CFR 211.91-211.96 (requirements for users)). Tracking from the generator to the distiller is controlled pursuant to 27 CFR 211.217-211.219.

The third proposed exemption concerns the USEPA's amendment regarding its definition of hazardous waste, at 40 CFR 261.3. This provision, often referred to as the "derived-from rule", states that ". . . materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and, therefore, are not hazardous wastes unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal." The Department is proposing to adopt the Federal exemption for waste-derived products produced for the general public's use, that are applied to or placed on the land, provided the hazardous waste component has undergone a chemical change during production so as to become inseparable by physical means. This will allow the use of commerical fertilizers that are manufactured from hazardous wastes to be used by the public as products.

The fourth proposed exemption concerns the USEPA's temporary exemption for hazardous scrap metal when it is recycled. Although the Department has included this material under its definition of solid waste, the proposed amendment temporarily exempts it from regulation as a hazardous waste. This is consistent with the approach taken by the USEPA, as discussed at 50 FR 649. The USEPA determined that additional study of the types of scrap metal and management practices is necessary before deciding on an appropriate regulatory regimen.

The fifth proposed exemption conditionally exempts from regulation as a hazardous waste, materials which are reintroduced into the original production process from which they were generated, without first being treated or reclaimed. The Department views this "closed-loop recycling" as an on-going production process. Since this provision carries the condition that the material being recycled is not to be burned for energy recovery, used to produce a fuel or contained in a fuel, an exemption has been provided to allow petroleum refineries to insert their oil-bearing hazardous waste generated on-site back into the refining process from which it was generated.

The sixth exemption would exempt black liquor from the paper pulping process, provided such black liquor was reclaimed in a pulping liquor recovery furnace and at least 75 percent of the amount accumulated within a one year period is recycled.

The Department is also proposing to exempt, at least on an interim basis, recycled waste oil fuels processed at authorized New Jersey waste oil facilities pending the promulgation of the Department's hazardous waste fuel standards.

The proposed amendments at N.J.A.C. 7:26-1.6(b)3 and (b)4 and 7:26-8.15 clarify that the commercial chemical products, off-specification materials, container residues, and spill residues of the materials listed at N.J.A.C. 7:26-8.15 are hazardous wastes when they are burned for energy recovery or applied to the land in lieu of their original intended uses. This will conform N.J.A.C. 7:26-8.15 to the proposed definition of solid waste as discussed herein.

The proposed amendment at N.J.A.C. 7:26-9.1(c) and (f) sets forth exemptions to State requirements for hazardous waste facilities. The proposed exemptions are based upon Federal regulation.

Amendments to N.J.A.C. 7:26-10.7 and 11.5 would clarify that any device burning hazardous waste which did not qualify for an exemption under N.J.A.C. 7:26-9.1(a)9 or 7:26-9.1(a)10 must comply with the standards for incinerators.

Proposed amendments to N.J.A.C. 7:26-11.6 would subject certain thermal devices to the standards for incinerators if those devices meet the amended definition of incinerator.

The proposed amendments to N.J.A.C. 7:26-1.1(c), 7:26-2.1(b) and 7:26-12.1(f) are intended to clarify the scope and applicability of the proposal.

Social Impact

The proposed amendments clarify the definition of solid waste to specifically include hazardous materials which are recycled. By defining and clarifying the scope of regulation over hazardous waste recycling activities and by incorporating additional management requirements for these activities into the hazardous waste rules, the citizens of New Jersey will benefit from improved protection of the public health and the environment.

The Department's past experience with certain waste recyclers reveals a real and potential threat of mismanagement of hazardous wastes. These proposed rules further clarify which materials may be exempt from regulation. The proposed amendments will clarify the fact that the recyclers of non-exempt hazardous wastes will be governed by the full hazardous waste regulatory program.

On the other hand, the proposed amendments will clarify the Department's intent not to regulate certain nonhazardous recyclable materials. The proposed amendment will benefit the public in that nonhazardous material recycling, which reduces the waste stream and preserves scarce disposal capacity, will be fostered.

Economic Impact

The proposed amendments will alleviate the uncertainty concerning which materials are subject to regulation. Because the Department has always regulated hazardous waste recycling activities, there should be no significant economic impact on the regulated community resulting from the adoption of these amendments. However, for companies that have not been fully cognizant that their hazardous waste recycling activities were regulated or whose recycling activities were previously exempted under the "sometimes discarded" provision, there may be a necessity for additional expenditures. Many recycling facilities will be exempt from full operating and permitting requirements. In particular, industries such as precious metals recovery, hazardous scrap metal recovery, and battery reclamation may be subject to only minimal expenditures because of the proposed exemptions.

Environmental Impact

An environmental benefit will be derived from these amendments by clarifying the scope of the State's hazardous waste rules. Formerly, materials that were not "sometimes discarded" were exempt from regulation as hazardous wastes even though they may have exhibited hazardous characteristics. If improperly handled, these materials could cause environmental degradation. The proposed amendments will reduce the potential for mismanagement of recyclable hazardous waste materials.

Regulatory Flexibility Statement

The proposed amended rules regulate handlers of waste. According to the New Jersey Department of Labor, approximately 95 percent of all businesses in the State have fewer than 100 full time employees and so qualify as "small businesses" as defined by the New Jersey Regulatory Flexibility (P.L. 1986, c.169). Many different types of small businesses may potentially be generators of hazardous waste. Examples of businesses which may generate hazardous wastes include: printers, electronics firms, automotive repair and body shops, metal plating facilities, chemical manufacturers, dry cleaners, manufacturers of plastic or rubber products, and truck or air transportation terminals. The Department does provide an exemption for generators who produce less than 100 kilograms (220 pounds) of hazardous waste or 1 kilogram (2.2 pounds) of acutely hazardous waste per month. This "small quantity generator" exemption can be found at N.J.A.C. 7:26-8.3.

In order to comply with the proposed rule, non-exempt small businesses will be required to comply with the requirements set forth as in the Summary, above, and will be required to meet the recordkeeping and reporting requirements of the proposal. It is not expected that they will need to utilize additional professional services, such as those of accountants or consultants.

It would be imprudent to provide less stringent standards for small businesses in the matter of determining whether or not a material is a waste. It would not be environmentally sound to exempt some materials from regulation as a waste simply because they were generated by a small business. A hazardous waste is no less hazardous becuase it is generated by a firm with two employees rather than a firm with 200 employees.

In developing this proposal, the Department has balanced the need to protect the environment against the economic impact of the proposed rules on small businesses and has determined that to minimize the rules' impact on small businesses would endanger the environment, public health, and public safety, and, therefore, no exemption from coverage is provided.

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

7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection [and shall] **which govern the registration, operation, and closure** maintenance of **sanitary** landfills [operations] in the State of New Jersey, and other [methods of] solid and liquid waste **facilities** [disposal] as may be approved by the Department; registration, operation and maintenance of collection and haulage operations **and facilities** in the State of New Jersey [and other methods of collection and haulage of solid wastes as may be approved by the Department]; a fee schedule for engineering review, registration and inspection of solid waste [disposal] **facilities** and registration of collection, haulage, [and] disposal operations **and facilities** in the State of New Jersey. These rules shall not apply to the following:

1. The purchase, sale, collection, **storage,** transport or **controlled processing** [other handling] of **source** separated **or commingled source separated recyclable,** recycled or secondary **nonhazardous** materials [exclusively in connection with the processing, recycling or utilization of such materials] for reintroduction into [industry] **the economic mainstream** as raw materials for further processing **or as products for** [or] use, provided that such materials are free from putrescible matter and are not mixed with [other] solid or liquid waste as defined herein. Specifically not exempted are solid waste [resource] materials recovery facilities designed or operated for the purpose of separating mixed solid waste into useful secondary materials (including fuel and useable energy), **or thermal destruction facilities;**

2.-6. (No change.)

(b) (No change.)

(c) The **exemptions set out at (a) above** [regulations in this section] are not applicable to activities associated with hazardous waste. [See N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12 to find the hazardous waste rules.]

7:26-1.4 Definitions

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

. . .

"Boiler" means an enclosed device using controlled flame combustion to recover and export energy in the form of steam, heated fluids, or heated gases which:

1. Has a combustion chamber and primary energy recovery system of integral design (fluidized bed combustion units which are not of integral design will be reviewed by the Department on a case-by-case basis for classification as a boiler after considering the standards set out in 40 CFR 260.32 and 40 CFR Part 266);

2. Maintains at least a 60 percent thermal energy recovery efficiency during operation, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

3. Demonstrates to the Department's satisfaction that at least 75 percent of the recovered energy is used annually. Recovered heat which is used internally shall not be counted in the 75 percent.

. . .

"Burning" or "incinerating" means any method using combustion to decompose or otherwise change the physical, chemical, or biological composition of a material.

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. The term does not include a "co-product" as defined herein.

. . .

"Commercial chemical product" means a material listed in N.J.A.C. 7:26-8.15 which is manufactured or formulated for commercial or manufacturing use, including its off-specification species, container residues, and spill residues. It does not include materials such as process wastes that contain the substances listed in N.J.A.C. 7:26-8.15.

. . .

"Controlled processing" means the processing of nonhazardous material in a manner which minimizes the potential discharge of any constituents of the material into the environment.

"Co-product" means a material that is not a primary product, but is an incidentally produced product, of such quality that its composition is consistently equivalent to, or exceeds the standards for, a manufactured product of the same name. A co-product is used as a commodity in trade by the general public in the same form as it is produced, in lieu of an intentionally manufactured product.

. . .

"Designated facility" means a hazardous waste treatment, storage or disposal facility which has received a permit from NJDEP, EPA or a state authorized by EPA (or a facility with existing facility status), and which has been designated on the manifest by the generator pursuant to N.J.A.C. 7:26-7.4(a)4v.

. . .

"Discard or discarded" means disposal; burning or incinerating; use or reuse; and/or reclaim or reclamation, all as defined in this section.

. . .

"Hazardous waste incinerator" means [a device using combustion to decompose hazardous waste. A device burning hazardous waste is not a hazardous waste incinerator if:

1. The wastes to be burned in the device are to be beneficially used or reused as a fuel for the purpose of recovering usable energy, and are limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said wastes to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26-8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C. 7:26-7.

2. A "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" has been issued in accordance with the provisions of N.J.A.C. 7:27-8. Such permit description must include a listing of each specific waste, the composition of each waste, and the process from which each waste was generated.

3. The rated gross heat input of the device is greater than 20 million British Thermal Units (BTU) per hour.

4. The device has a minimum combustion efficiency of at least 99.9 percent, as determined by the following formula where carbon dioxide (CO_2) and carbon monoxide (CO) are measured in concentration by volume:

Combustion efficiency = $CO_2/(CO_2+CO)$ x 100%

5. The device is continuously monitored for 0_2 and either CO or total hydrocarbons and the levels are continuously recorded.

6. A full-time operator is present when the waste is burned. If the device is a boiler, the engineer-in-charge must possess a current, 1-C "blue-seal" third class engineers license.

7. The device is located in an area zoned for industrial use, and shall not be located in a residential building.]

any enclosed device burning hazardous waste using controlled flame combustion that neither meets the criteria for classification as an industrial boiler nor is defined as an industrial furnace. It also includes boilers and industrial furnaces which do not conform with the criteria for these devices under N.J.A.C. 7:26-9.1(c)9.

...

"Industrial boiler" means a boiler for use in a manufacturing process or manufacturing facility.

"Industrial furnace" means an enclosed device which is an integral component of a manufacturing process and which uses controlled flame combustion to recover materials or energy including, but not limited to lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting furnaces, melting furnaces, refining furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, and sulfuric acid plant sulfur recovery furnaces.

...

"Precious metals" means gold, silver, platinum, paladium, irridium, osmium, rhodium, ruthenium, or a mixture consisting exclusively of two or more of these eight metals.

...

"Reclaim" or "reclamation" means a procedure whereby a material is treated to recover a useable product, or where a material is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

"Recycling" means those processes constituting "use and reuse" and "reclamation" (as applicable to N.J.A.C. 7:26-7 through 12).

...

["Recycling" or "reclamation" means any lawful method, technique, or process used to collect, store, separate, process, modify, convert, treat, or otherwise prepare solid waste in a manner such that its component materials or substances will be beneficially used or reused, but shall not include:

1. Storage of hazardous waste for more than 90 days for any purpose including, but not limited to, treatment, reclamation or any other disposition; or

2. Collection, separation, storage, intermediate processing, modification, conversion or treatment of mixed nonhazardous solid waste; or

3. Any method, technique or process that allows for an unauthorized release, discharge or escape of the material being recycled or reclaimed, its by-products or end products into the air, water or land of the State (for example, the use of the recycled material for road oiling).]

...

"Scrap metal" means bits and pieces of metal parts (for example, bars, turnings, rods, sheets, wire) or metal pieces which may be combined together with bolts or soldering (for example, radiators, scrap automobiles, railroad box cars) which when worn or superfluous, can be recycled. Materials not covered by this term include residues generated from smelting and refining operations (that is, drosses, slags, and sludges), liquid wastes containing metals (that is, spent acids, spent caustics, or other liquid wastes with metals in solution), liquid metal wastes (for example, liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries.

...

"Spent material" means any material that has been used, and as a result of contamination, can no longer serve the purpose for which it was intended without being processed, reprocessed or reclaimed.

...

"Treat" or "[T]treatment" means any method, technique, or process, including neutralization **or other pH adjustment,** designed to change the physical, chemical, or biological character or composition of [any hazardous waste] **a material so as to:**

1. Neutralize or otherwise change the pH of such material; [waste]

2. [or so as to recover] **Recycle** energy or material resources from the **material** [waste];

3. [or so as to] **R**ender such **material** [waste] non-hazardous, or less hazardous;

4. Render the material safer to transport, store, or dispose of; or

5. Render the material more amenable for [recovery, amendable for] **recycling** or storage **or which reduces** [in] the volume of the material.

...

"Use or reuse" means the recycling procedure whereby a material is:

1. Employed as an ingredient in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

2. Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

...

7:26-1.6 Definition of solid waste

(a) A solid waste is any garbage, refuse, sludge, or any other waste material except it shall not include the **following:**

1. [s]Solid animal or vegetable wastes collected by swine producers, licensed by the State Department of Agriculture, who collect, prepare and feed such wastes to swine on their own farms[.]**; or**

2. Recyclable materials that are excluded from regulation pursuant to N.J.A.C. 7:26-1.1(a)1; or

3. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, **including, but not limited to spent material, sludge, by-product, discarded commercial chemical products, or scrap metal** resulting from industrial, commercial, mining or agricultural operations, [or] from community activities[;], **or any other material which has served or can no longer serve its original intended use,** which:

1. Is discarded or intended to be discarded; or

[1. Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded;

2. Has served its original intended use and sometimes is discarded; or

3. Is a manufacturing or mining by-product and sometimes is discarded.]

2. Is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of, being discarded;

3. Is burned for energy recovery;

4. Is applied to the land or placed on the land or contained in a product that is applied to or placed on the land in a manner constituting disposal; or

5. Is recycled.

[(c) A material is "discarded" if it is abandoned by being:

1. Disposed of; or

2. Burned or incinerated; or

3. Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of.

(d) A material is "disposed of" for purposes of this section, if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(e) A "manufacturing or mining by-product" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.]

[(f)](c) (No change in text.)

7:26-2.1 Scope and applicability

(a) (No change.)

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26-1, 7, 8, 9, 10, 11, 12 and 13. **However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to that Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.**

(c) (No change.)

7:26-7.5 Hazardous waste hauler responsibilities

(a) [The regulations in t]This section appl[y]**ies** to all hazardous waste hauling**, including the hauling of hazardous waste fuels,** except for the transportation of hazardous waste from one point to another on the site where the hazardous waste is generated, stored or disposed.

(b)-(i) (No change.)

7:26-8.1 Definition of hazardous waste

(a) (No change.)

(b) A solid waste which is not excluded from regulation under N.J.A.C. 7:26-8.2 becomes a hazardous waste when any of the following events occur:

1.-4. (No change.)

5. In the case of a waste listed in 40 CFR 261 Subpart D, when the waste first meets the listing description set forth therein[.]; **or**

6. In the case of a hazardous waste which has been subjected to recycling when the recycled material is accumulated or stored prior to burning or is burned for energy recovery, applied to or placed on the land in a manner that constitutes disposal, or is subjected to further processing prior to use or reuse.

(c) Unless and until it meets the criteria of N.J.A.C. 7:26-8.[2]**1**(d):

1.-2. (No change.)

(d) Any solid waste described in [N.J.A.C. 7:26-8.2(c)1 and 8.2(c)2] **(c)1 and (c)2** above is not a hazardous waste if it meets the following critiera:

1.-3. (No change.)

4. In the case of any solid waste, it is recycled from hazardous wastes and used beneficially, unless it is burned for energy recovery or applied to or placed on the land in a manner that constitutes disposal, or is subject to further processing prior to use or reuse.

7:26-8.2 Exclusions

(a) The following materials are not **regulated as** hazardous waste[s] for the purposes of this subchapter:

1.-13. (No change.)

14. Used batteries (or used battery cells) returned to a battery manufacturer or regeneration. Generators, transporters or storers of lead acid batteries destined for reclamation are exempt from regulation under N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 provided that storage prior to their transportation to a reclamation facility does not exceed 90 days and the generators, transporters or storers do not themselves reclaim the batteries. Owners and operators of battery reclamation facilities are regulated under N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 (except for manifest requirements at N.J.A.C. 7:26-7.3 and 7.4);

15. Reclaimed industrial ethyl alcohol regulated by the Federal Bureau of Alcohol, Tobacco and Firearms in the Federal Treasury Department;

16. Waste-derived products produced for the general public's use that are applied to or placed on the land and that contain hazardous waste, provided the hazardous waste portion has undergone a chemical reaction in the course of production so as to become inseparable by physical means;

17. Hazardous scrap metal when recycled;

18. Materials when they are reintroduced on-site to the original production process from which they are generated without first being processed, treated, reclaimed or changed in any way, provided that:

i. The material is returned to an on-site process as a substitute for raw material feedstock and the process uses raw materials as principal feedstocks; and

ii. The material is not a listed hazardous waste with numbers F020, F021, F022, F023, F026, F028; and

iii. The material is not applied to or placed on the land in a manner that constitutes disposal or used to produce products that are applied to or placed on the land, except as exempted in N.J.A.C. 7:26-8.2(a)14; and

iv. The material is not burned for energy recovery, used to produce a fuel, or contained in fuels, except for fuels produced from the refining of oil-bearing hazardous wastes when such wastes directly result from a crude oil refining process, are reinserted on-site, and are reprocessed. The resultant fuel oil must be indistinguishable from and must meet the specifications in terms of trace contaminants, of fuels produced solely from crude oil. Specifically prohibited is the mixing of any hazardous wastes (for example, API separator wastes generated at oil terminals) into fuel oil without being reprocessed; and

v. The material is stored no longer than 90 days.

19. Recycled waste oil burned for energy recovery that was processed to a degree acceptable to the Department in an authorized New Jersey waste oil facility;

20. Pulping liquors (that is, black liquors) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, provided at least 75 percent of the amount accumulated in one year is recycled.

(b) (No change.)

7:26-8.13 Hazardous waste from non-specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	F007	Spent **cyanide** plating bath solutions from electroplating operations [(except for precious metals electroplating spent cyanide plating bath solutions)]	(R,T)
	F008	Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process [(except for precious metals electroplating plating bath sludges)].	(R,T)
	F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process [(except for precious metals electroplating spent stripping and cleaning bath solutions)].	(R,T)
	F010	Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process [(except for precious metals heat treating quenching bath sludges).]	(R,T)
	F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations [(except for precious metal heat treating spent cyanide solutions from salt bath pot cleaning).]	(R,T)
	F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process [(except for precious metals heat treating quenching wastewater treatment sludges).]	(T)

. . .

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, **and** spill residues [and process waste or mixtures of process waste continaing substances] thereof

(a) The following [materials or items] **chemicals, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues** are hazardous wastes if and when they are discarded or intended to be discarded, **in lieu of their original intended use:**

[(a)-(g)] **1.-7.** (No change in text.)

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-7. (No change.)

8. Any person storing less than 1,001 gallons of waste oil unless the waste oil is a hazardous waste pursuant to 40 CFR 261; [and]

9. The owner or operator of [a] **an industrial boiler or industrial furnace** [device] burning a hazardous waste, provided the following conditions are met:

i.-vii. (No change.)

viii. The hazardous waste is stored no longer than 90 days and the requirements of N.J.A.C. 7:26-9.3 are met; and

ix. The device is not a cement kiln.

10. Persons who recycle [or reclaim] hazardous waste on the site where such wastes are generated (see definitions of "[R]recycling" [or "reclamation"] and "[O]on-site" at N.J.A.C. 7:26-1.4) **provided:**[.]

i. Where the [reclaimed or] recycled hazardous waste is used as a fuel:

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

(5) The generator must comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g)[.]; **and**

(6) The recycled hazardous waste is used as a fuel only in an industrial boiler or industrial furnace.

ii. The generator [must] **shall** comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g) where the recycled or reclaimed hazardous waste is not a fuel under (c) 10i[,] above[.]; **and**

iii. The owner or operator has obtained an EPA identification number and has notified the Department of the on-site recycling activities; and

iv. The storage of hazardous waste prior to recycling shall comply with N.J.A.C. 7:26-9.3.

11.-13. (No change.)

14. The owner or operator of a facility whose sole hazardous waste-related activity, other than generation, is reclamation of precious metals from hazardous wastes, provided the owner/operator of the facility has complied with the requirements of N.J.A.C. 7:26-12.1(e) prior to accepting hazardous waste for precious metal reclamation.

15. The owner or operator of a treatment unit at an authorized facility, provided that the unit is dedicated solely to the reclamation of precious metals (as defined in N.J.A.C. 7:26-1.4) from hazardous wastes, and provided the owner/operator of the facility has complied with the requirements of N.J.A.C. 7:26-12.1(e) prior to accepting waste for precious metal reclamation.

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

(f) The owner or operator of a facility which stores spent batteries before reclaiming them is not required to comply with N.J.A.C. 7:26-9.4(b).

7:26-10.7 Hazardous waste incinerators

(a) This section applies to owners and operators of facilities that incinerate hazardous waste, except as N.J.A.C. 7:26-1.4, 10.1 and 10.2 provide otherwise. **The following facility owners or operators are considered to incinerate hazardous waste:**

1. Owners or operators of hazardous waste incinerators as defined in N.J.A.C. 7:26-1.4; or

2. Owners or operators who burn hazardous wastes in boilers or in industrial furnaces, unless exempted under N.J.A.C. 7:26-9.1(a)9 or 9.1(a)10.

[1.]**3.** (No change in text.)

[2.]**4.** (No change in text.)

(b)-(m) (No change.)

7:26-11.5 Hazardous waste incinerators

(a) This section applies to owners and operators of facilities that incinerate hazardous waste, except as N.J.A.C. 7:26-1.4, 10.1 and 10.2 provide otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

1. Owners or operators of hazardous waste incinerators as defined in N.J.A.C. 7:26-1.4; or

2. Owners or operators who burn hazardous wastes in boilers or in industrial furnaces, unless exempted under N.J.A.C. 7:26-9.1(a)9 or 9.1 (a)10.

[(a)-(f)](**b**)-(**g**) (No change in text.)

7:26-11.6 Thermal treatment

(a) This section applies to owners and operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except for those exempted under N.J.A.C. 7:26-10.1(a) or N.J.A.C. 7:26-11.1(b). Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of N.J.A.C. 7:26-10.7 or N.J.A.C. 7:26-11.5, if the device is an incinerator.

[(a)-(f)](**b**)-(**g**) (No change in text.)

7:26-12.1 Scope and applicability

(a) (No change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1.-6. (No change.)

7. The owner or operator **of an industrial boiler or industrial furnace** [device] burning [a] hazardous waste provided the following conditions, **as well as those set forth at N.J.A.C. 7:26-9.1(c)9,** [(see N.J.A.C. 7:26-9.1(c)9)] are met:

i.-vii. (No change.)

viii. The hazardous waste is stored no longer than 90 days and the requirements of N.J.A.C. 7:26-9.3 are met; and

ix. The device is not a cement kiln.

8. (No change.)

9. Persons who recycle [or reclaim] hazardous waste on the site where such wastes are generated (see definitions of "[R]recycling" [or "reclamation"] and "[O]on-site" at N.J.A.C. 7:26-1.4) provided:

i. Where the [reclaimed or] recycled hazardous waste is used as a fuel:

(1)-(5) (No change.)

(6) The recycled hazardous waste is used as a fuel only in an industrial boiler or industrial furnaces.

ii. (No change.)

iii. The owner or operator has obtained an EPA identification number and has notified the Department of the on-site recycling activities.

iv. The owner or operator stores hazardous wastes no longer than 90 days before they are recycled and meets the requirements of N.J.A.C. 7:26-9.3.

10.-11. (No change.)

(c) (No change.)

(d) The owner or operator of an authorized facility shall be deemed to have a permit-by-rule for a treatment unit that is dedicated solely to the reclamation of precious metals from hazardous waste, provided that all the conditions of N.J.A.C. 7:26-12.1(e) are met.

(e) The owner or operator of a facility whose sole hazardous waste-related activity, other than generation, is reclamation of precious metals from hazardous wastes, shall be deemed to have a hazardous waste permit-by-rule provided all of the following conditions are met:

1. The owner or operator submits to the Department the facility name, mailing address, site address, telephone number, and a description of the types and volumes of wastes to be reclaimed;

2. The owner or operator receives an EPA identification number;

3. The owner or operator complies with the manifest requirements of N.J.A.C. 7:26-7.6;

4. The owner or operator submits a facility annual report in accordance with N.J.A.C. 7:26-7.68(f)2;

5. The owner or operator complies with the necessary precautions required by N.J.A.C. 7:26-9.4(e) and inspects the facility in accordance with N.J.A.C. 7:26-9.4(f);

6. The owner or operator complies with the closure requirements of N.J.A.C. 7:26-9.8(b);

7. For facilities that store hazardous waste, the hazardous waste is not stored for longer than 90 days;

8. For facilities that store in containers, the containers are placed in an area designed in accordance with N.J.A.C. 7:26-10.4 and the containers are managed in accordance with N.J.A.C. 7:26-9.4(d);

9. For facilities that store in tanks, the applicable requirements of N.J.A.C. 7:26-10.5 are met. Tanks must be emptied every 90 days in accordance with N.J.A.C. 7:26-9.3(b); and

10. Containers must be labeled with the date on which the facility received the material.

(f) Notwithstanding an owner's or operator's (of a facility or a treatment unit at an authorized facility) compliance with all permit-by-rule conditions set forth in (d) and (e) above, the Department may revoke a permit-by-rule and require that a permit pursuant to (a) above be obtained for the facility or treatment unit if the Department determines at any time that the facility or treatment operation poses a threat to the environment, or the owner or operator cannot be relied upon to operate the facility or treatment unit safely and in conformance with the applicable laws and regulations.

(g) No hazardous waste facility or operation is required to be included in a district solid waste management plan pursuant to the Solid Waste Management Act.

7:26-12.3 Existing facilities

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

(i) The amendments to N.J.A.C. 7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1 and 12.1, effective _____ , may bring under regulation certain facilities which were not previously regulated. These facilities, if they are to qualify as existing facilities, must have notified the USEPA by April 4, 1985, and have filed a Part A application with the USEPA or State of New Jersey by July 5, 1985. Those affected by these amendments, but not affected by the Federal rules published on January 4, 1985 (50 FR 614), shall, in order to qualify as existing facilities, notify the Department and file the Part A application by (90 days from the effective date of the amendments). The requirements for submitting the Part A application are found at N J.A.C. 7:26-12.2(d).

(a)

DIVISION OF ENVIRONMENTAL QUALITY
COMMISSION ON RADIATION PROTECTION

Licensing of Naturally Occurring and Accelerator Produced Radioactive Materials

Proposed Repeal: N.J.A.C. 7:28-4
Proposed New Rules: N.J.A.C. 7:28-4

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection; Commission on Radiation Protection, Max Weiss, Chairman.

Authority: N.J.S.A. 13:1B-3 et seq. and N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7 and 9.

DEP Docket Number: 022-87-05.

Proposal Number: PRN 1987-220.

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

July 22, 1987, 10:00 A.M.
New Jersey Department of Environmental Protection
Bureau of Environmental Laboratories
Large Conference Room
380 Scotch Road (2nd Building)
Trenton, New Jersey

Submit comments by July 31, 1987 to:

Donald J. Stout
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (hereinafter, the "Act") was enacted. This Act, as amended in 1971, 1977, and 1981, relates to the possession, handling, transportation and use of sources of radioactivity within the State of New Jersey. The Act established New Jersey's Radiological Health Program, which was transferred from the State Department of Health to the Bureau of Radiation Protection of the Department of Environmental Protection (hereinafter, the "Department"). The Act also created the New Jersey Commission on Radiation Protection (CORP) and vested in that body the authority to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation. Under the Act, the Department administers the rules promulgated by the CORP and also has the authority to charge fees for the services it performs.

In 1972, the CORP promulgated N.J.A.C. 7:28-4 which established the requirements for licensing person(s) for the production, transfer, receipt, acquisition, ownership, possession or use of radioactive substances obtained from naturally occurring materials or produced by an accelerator. Many of the requirements in the proposed new rules come from current Federal regulations adopted by the United States Nuclear Regulatory Commission (hereinafter, "NRC") at 10 CFR Parts 30, 31, 32, and, particularly, 35, which deals with human uses of by-product radioactive material, Federal regulatory guidelines issued by the NRC such as Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs", and "Suggested State Regulations for Control of Radiation", prepared by the Conference of Radiation Control Program Directors, Inc.

The proposed new rules provide as follows:

N.J.A.C. 7:28-4.1 establishes that a license is required for production, transfer, receipt, acquisition, ownership, possession and use of all naturally occurring and accelerator produced radioactive materials.

N.J.A.C. 7:28-4.2 provides for recognition of licenses from other jurisdictions for production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced materials.

N.J.A.C. 7:28-4.3 provides for exemptions from the requirement for a license for production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced materials.

N.J.A.C. 7:28-4.4 establishes two types of licenses general and specific State licenses, for production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced materials. General licenses are effective without the filing of an application or the issuance of licensing documents. Specific State licenses are issued to named persons upon application filed pursuant to the requirements of this subchapter.

N.J.A.C. 7:28-4.5 authorizes general licenses for the use, transfer, receipt, acquisition, ownership and possession of naturally occurring and/or accelerator produced radioactive materials under certain conditions.

N.J.A.C. 7:28-4.6 establishes the procedure for applying for a specific State license.

N.J.A.C. 7:28-4.7 establishes the general requirements for approval of an application for a specific State license. It establishes six groups of human use radioactive materials similar to the NRC human use groups and permits the use of any and all the materials in a particular group once the licensee has been approved for that group. This section also delineates the educational and experience requirements for the six users of each of the groups of human use radioactive materials. These standards will significantly reduce the number of amendments submitted to the Department by the licensees.

N.J.A.C. 7:28-4.8 establishes special requirements for approval of an application for a specific State license to distribute certain devices to persons specifically licensed. This will insure that these devices will be operated safely by trained licensed individuals, that the radioactive material in the device is not easily removed or accessible to unauthorized persons, and that the device is appropriately labeled.

N.J.A.C. 7:28-4.9 establishes terms and conditions for general and specific State licenses.

N.J.A.C. 7:28-4.10 provides for expiration of specific State licenses.

N.J.A.C. 7:28-4.11 provides that unless a complete application for renewal of a specific State license is filed with the Department 30 days prior to expiration of the license, said license shall expire until the Department acts on the application.

N.J.A.C. 7:28-4.12 provides for amendment of a specific State license.

N.J.A.C. 7:28-4.13 provides that all licensees shall keep records in accordance with N.J.A.C. 7:28-8.

N.J.A.C. 7:28-4.14 provides that the licensees shall allow the Department to inspect radioactive material and the facilities and premises where radioactive material is used or stored.

N.J.A.C. 7:28-4.15 provides that, at the request of the Department, each licensee shall perform or allow the Department to perform such tests as the Department deems necessary for the administration of this subchapter.

N.J.A.C. 7:28-4.16 pertains to modification, suspension, revocation and termination of general and specific State licenses. It requires the licensee to furnish the Department with close-out surveys and/or wipe tests and a disposition certificate attesting to the disposal of radioactive material prior to final termination of a specific State license.

N.J.A.C. 7:28-4.17 provides for an adjudicatory hearing in the event that the Department denies an application for or renewal of a specific State license or modification, suspension, revocation or termination of general and specific State licenses.

N.J.A.C. 7:28-4.18 establishes requirements concerning requests for stays of the effective date of the Department decision for which an adjudicatory hearing is requested.

N.J.A.C. 7:28-4.19 contains the license fee schedule. These fees reflect actual costs for maintaining a licensing program including license application, amendment evaluation and processing, inspection and follow-up inspection costs.

N.J.A.C. 7:28-4.20 pertains to the protection of confidential information.

N.J.A.C. 7:28-4.21 pertains to the access to information for which a confidentiality claim has been asserted.

N.J.A.C. 7:28-4.22 establishes the procedure for asserting a claim of confidentiality.

N.J.A.C. 7:28-4.23 provides the criteria for use in confidentiality determinations.

N.J.A.C. 7:28-4.24 allows disclosure of confidential information to other public agencies.

N.J.A.C. 7:28-4.25 allows disclosure of confidential information to any person with the written consent of the applicant.

N.J.A.C. 7:28-4.26 permits disclosure of confidential information if the Department determines that disclosure would alleviate an imminent and substantial danger to public health and the environment.

N.J.A.C. 7:28-4.27 establishes procedures for securing confidential information.

N.J.A.C. 7:28-4.28 provides penalties for wrongful access to or disclosure of confidential information.

Social Impact

The increasing use of naturally occurring and accelerator produced radioactive material in research, education, industry and in the medical profession requires that the regulatory agencies responsible for licensing the use of such materials ensure that they are used safely. This can be accomplished through an effective licensing program. The proposed licensing program will ensure that licenses are appropriately evaluated and issued. The licensees will be better informed of their rights and responsibilities. The rules, properly enforced, will provide better control over the naturally occurring and accelerator produced radioactive materials within the State resulting in a reduction in the possibility of unnecessary radiation exposure to the public.

Economic Impact

The proposed rules establish an annual license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive materials. The fees range from $170.00 to $420.00 depending upon the use for which the license is issued. The proposed fees will cover the cost of operating the licensing program including the actual costs for evaluating and processing license applications, amendments, the billing and collection of fees, and on-site inspections to ensure licensee compliance with the license and this subchapter.

Environmental Impact

The proposed rules would reduce the potential for the release of unnecessary radioactivity to the environment by ensuring that licenses for the production, transfer, receipt, acquisition, ownership, possession and use of naturally occurring and accelerator produced radioactive material are issued only to qualified persons. The proposed rules also require the licensees to document that the facility is not contaminated and that all sources of radioactivity have been properly disposed of prior to termination of the license to assure that no contaminated properties or radioactive sources will be abandoned.

Regulatory Flexibility Statement

These rules would apply to any individual, corporation, partnership, firm, association, public or private institution and any State or local agency including but not limited to manufacturers, dealers, hospitals, physicians and dentists involved in the production, transfer, receipt, acquisition, ownership, possession and use of all naturally occurring and accelerator produced radioactive materials except as specifically exempted by the regulation. It is estimated that the approximately 247 businesses impacted by this proposal, 75 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposal, the small businesses will have to satisfy the requirements set forth in N.J.A.C. 7:28-4. It is not anticipated that small businesses will need professional services or incur capital costs in order to comply with the proposal. The small businesses will incur minimal costs associated with processing the initial application and annual renewal of the license and annual license fee ranging from $170.00 to $420.00 depending upon the use for which the license is issued. In developing this rule, the CORP and the Department have balanced the need to protect the public from unnecessary radiation against the economic impact of the proposed rule and has determined that to minimize the impact of the rule on small businesses would endanger the environmental health and safety and therefore, no exemption from the regulation is provided.

Full text of the rules proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:28-4.

Full text of the proposed new rules follows:

SUBCHAPTER 4. LICENSING OF NATURALLY OCCURRING AND ACELERATOR PRODUCED RADIOACTIVE MATERIALS

7:28-4.1 License required for production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials

(a) This subchapter shall apply to persons who produce, transfer, receive, acquire, own, possess or use any naturally occurring or accelerator produced radioactive materials in this State.

(b) No person shall produce, transfer, receive, acquire, own, possess or use any radioactive substance obtained from naturally occurring materials or produced by an accelerator unless authorized by a specific State license issued by the Department, a general State license as provided in N.J.A.C. 7:28-4.5, or an exemption as provided in N.J.A.C. 7:28-4.3. Excepted from this provision are source materials and special nuclear materials.

7:28-4.2 Recognition of licenses from other jurisdictions

(a) Any person who possesses a specific license or equivalent licensing document issued by a Federal agency or any other state may, pursuant to such document, transport, receive, possess, and/or use the radioactive materials specified in such license within this State for a period not in excess of 20 days in any period of 12 consecutive months without obtaining a specific license from the Department provided that:

1. The license does not limit the activity to specified installations or locations;

2. The licensee notifies the Department in writing at least two days prior to the time that such radioactive material is brought into this State. Such notification shall indicate the location, period, and type of proposed possession and use within this State, and shall be accompanied by a copy of the pertinent licensing document. If in a specific case the two-day period would impose an undue hardship on the user, he may, upon application to the Department, obtain permission to proceed sooner;

3. The licensee complies with all the terms and conditions of the license;

4. The licensee provides such other information as the Department may request; and

(b) The Department may withdraw, limit or qualify its acceptance of such licenses issued by another agency, or any produce distributed pursuant to such licensing documents, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

7:28-4.3 Exemption from requirement for a license for production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials

(a) Any person is exempt from the requirement for a license for the production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials as follows:

1. The person is a plant or laboratory owned by or operated on behalf of a Federal agency;

2. The person is a common or contract carrier and is transporting or storing radioactive materials covered by N.J.A.C. 7:28-4.7 in the regular course of carriage for another, or storage incident thereto;

3. To the extent that such person receives, possesses, uses, transfers, owns or acquires products or materials containing naturally occurring or accelerator produced radioactive substances in concentrations not in excess of those exempted in N.J.A.C. 7:28-4.3(b);

4. To the extent that such person receives, possesses, uses, transfers, owns or acquires luminous timepieces or parts thereof containing radium. However, any person who desires to apply radium to luminous timepieces or parts thereof is not exempt and must obtain a specific State license;

5. Naturally occurring radioactive materials of an equivalent specific radioactivity not exceeding that of natural potassium (10^{-9} curies per gram of potassium);

6. If the Department, upon request by an owner or on its own initiative with the approval of the Commission, grants a specific exemption from any requirements of this subchapter should it determine that such exemption is not likely to result in unnecessary radiation.

(b) The following concentrations of radioactive substances when obtained from naturally occurring materials or when produced by an accelerator are exempt from the requirement for a license for the production, transfer, receipt, acquisition, ownership or use of all naturally occurring and accelerator produced radioactive materials:

Element (Atomic Number)	Isotope	Gas Concentrations uCi/cc*	Liquid & Solid Concentrations uCi/cc**
Beryllium (4)	Be 7	—	2×10^{-2}
Cadmium (48)	Cd 109	—	2×10^{-3}
Carbon (6)	C 14	1×10^{-6}	8×10^{-3}
Chromium (24)	Cr 51	—	2×10^{-2}
Cobalt (27)	Co 57	—	5×10^{-3}
Hydrogen (1)	H 3	5×10^{-6}	3×10^{-2}
Iron (26)	Fe 55	—	8×10^{-3}
Manganese (25)	Mn 52	—	3×10^{-4}
Manganese (25)	Mn 54	—	1×10^{-3}
Tungsten (74)	W 181	—	4×10^{-3}
Vanadium (23)	V 48	—	3×10^{-4}
Zinc (30)	Zn 65	—	1×10^{-3}
Beta and/or gamma emitting radioactive material not listed above with half life less than 3 years	—	1×10^{-10}	1×10^{-6}

*Values are given only for those materials normally used as gases.
**uCi/gm for solid

1. Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in this section, the value given is that of the parent isotope and takes into account the radioactivity of the daughters.

2. For purposes of N.J.A.C. 7:8-4.3(a)4, where a combination of isotopes is involved, the limit for the combination shall be computed as follows:

i. Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in this section for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (unity).

Example:

$$\frac{\text{Prod. Conc. of Isotope A}}{\text{Exempt Conc. of Isotope A}} + \frac{\text{Prod. Conc. of Isotope B}}{\text{Exempt Conc. of Isotope B}} + \frac{\text{Prod. Conc. of Isotope C}}{\text{Exempt Conc. of Isotope C}} \leq 1$$

7:28-4.4 Types of licenses for production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials

(a) General State licenses described in N.J.A.C. 7:28-4.5 are effective without the filing of an application with the Department or the issuance of licensing documents to particular persons.

(b) Specific State licenses are issued to named persons upon application filed pursuant to the requirements of this subchapter.

7:28-4.5 General licenses for the transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced radioactive materials and certain devices and equipment

(a) Any person who uses, transfers, receives, acquires, owns or possesses the following devices and equipment incorporating naturally occurring and/or accelerator produced radioactive material, when manufactured, tested and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Department, or a specific license of a Federal agency or any other state, shall be deemed to have a general State license:

1. Devices designed for use as static eliminators and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device;

2. Spark gap tubes and electronic tubes which contain radioactive material consisting of not more than one microcurie of Radium per tube;

3. Devices designed for ionizing of air and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device.

(b) The devices described in (a) above shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific State license issued by the Department, a Federal agency, or any other state.

(c) The following quantities of radioactive substances, when obtained from naturally occurring materials or when produced by an accelerator, are generally licensed provided that no person shall at any one time possess or use more than a total of 10 such quantities:

Radioactive Material	Column A Not as a Sealed Source (microcuries)	Column B As a Sealed Source (microcuries)
Beryllium (Be-7)	50	50
Bismuth 207 (Bi-207)	1	10
Cadmium 109-Silver 109 (Cd 109+Ag 109)	10	10
Cerium 141 (Ce-141)	1	10
Chromium 51 (Cr-51)	50	50
Cobalt 57 (Co-57)	20	20
Germanium 68 (Ge-68)	1	10
Iron 55 (Fe-55)	50	50
Manganese 52 (Mn-52)	1	10
Polonium 210 (Po-210)	0.1	1
Radium and daughters	0.1	1
Sodium 22 (Na-22)	10	10
Vanadium 48 (V-48)	1	10
Zinc 65 (Zn-65)	10	10
Beta and/or gamma emitting radioactive material not listed above	1	10

(d) There are no generally licensed quantities for alpha-emitting materials other than those set forth in N.J.A.C. 7:28-4.5(c).

(e) Any person who owns, receives, acquires, possesses and uses radioactive material when contained in a device designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition or for producing light or an ionized atmosphere, when such devices are manufactured in accordance with the specifications contained in a specific license authorizing distribution under a general license issued to the supplier by the Department, a Federal agency, or any other state, is deemed to have a general State license, provided that:

1. The device is labeled in accordance with the provisions of the specific license which authorizes the distribution of the devices;

2. The device bears a label containing the following or a substantially similar statement:

"This device contains radioactive material and has been manufactured for distribution as a generally licensed device pursuant to

_____
(identify appropriate section of the rules)

_____
(name of licensing agency and state)

License No. _____ by _____ (name of supplier)

This device shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state. Removal of this label is prohibited."; and

3. The devices requiring special installation shall be installed on the premises of the general licensee by a person authorized to install the devices under a specific license issued to the installer by the Department, a Federal agency, or any other state.

(e) Persons who transfer, receive, acquire, own, possess or use items and quantities of radioactive materials set forth in N.J.A.C. 7:28-5(a) and (c) pursuant to a general State license shall not:

1. Effect an increase in the radioactivity of such scheduled items or quantities by adding other radioactive material thereto, by combining radioactive material from two or more such items or quantities, or by altering them in any other manner so as to increase the rate of radiation emission;

2. Administer or direct the adminstration of the scheduled items or quantities or any part thereof to a human being, either externally or internally, for any purpose, including, but not limited to, diagnostic, therapeutic and research purposes;

3. Add or direct the addition of the scheduled items or quantities or any part thereof to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being; or

4. Include the scheduled items or quantities or any part thereof in any device, instrument, apparatus, including component parts and accessories intended for use in diagnosis, treatment or prevention of disease in human beings or animals or otherwise intended to affect the structure or any function of the body of human beings or animals.

(f) Persons who receive, acquire, possess or use a device pursuant to a general license specified in N.J.A.C. 7:28-4.5(a):

1. Shall not transfer, abandon or dispose of the device except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state:

2. Shall assure that all labels affixed to the device at the time of receipt and bearing the statement, "Removal of this label is prohibited", are maintained thereon and shall comply with the instructions contained in such labels;

3. Shall have the device tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at intervals not to exceed six months except that devices containing only tritium need not be tested for any purpose and devices containing only krypton need not be tested for leakage;

4. Shall have the tests required by N.J.A.C. 7:28-4.5(f)3 and all other services involving the radioactive material, its shielding and containment, performed by the supplier or other person duly authorized by a specific license issued by the Department, a Federal agency, or any other state to manufacture, install or service such devices;

5. Shall maintain records of all tests performed on the devices as required under N.J.A.C. 7:28-4.5(f)3, including the dates and results of the tests and the names and addresses of the persons conducting the tests;

6. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding or containment of the radioactive material or the on-off mechanism or indicator, shall immediately suspend operation of the device until it has been either:

i. Repaired by a supplier, manufacturer, or other person holding a specific license issued by the Department, a Federal agency, or any other state to manufacture, install or service such devices; or

ii. Disposed of by transfer to a person holding a specific license issued by the Department, a Federal agency, or any other state to receive the radioactive material contained in the device; and

7. Shall be exempt from the requirements of this subchapter, except the provisions of N.J.A.C. 7:28-4.4(a), 4.8, 4.12, 8.2, 8.4, and 13.

7:28-4.6 Application for and renewal of specific State licenses for the transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced radioactive materials

(a) Upon approval of an initial or renewal application, a specific State license may be issued by the Department for a period of five years commencing on the date the license is issued.

(b) Application for specific State licenses and renewals shall be filed with the Department, on forms available from the Department.

(c) All applications shall contain the following signature and certification:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

2. The certification shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility or the individual for which or for whom the specific State license is requested.

(d) An application for a specific State license may include a request for a State license authorizing one or more activities.

(e) Subject to the provisions of N.J.A.C. 7:28-4.7 and 4.8, an application for a specific State license for any human use or uses of radioactive material specified in one or more of the Human Use activity Groups I to VI inclusive listed in N.J.A.C. 7:28-4.7(b) may be approved for all of the uses within the group or groups which include the use or uses specified in the application.

(f) Information included in the specific State license application will be incorporated in and made a part of the terms and conditions of such license by reference.

(g) All applicants for initial and renewal applications for specific State licenses shall complete the application in its entirety with no reference to previously filed documents. The Department may accept photocopies of previous relevant applications.

(h) No initial or renewal specific State licenses shall be issued unless the appropriate annual license fee required by N.J.A.C. 7:28-4.18 is paid.

(i) Except as provided in N.J.A.C. 7:28-4.20, applications and documents submitted to the Department will be made available for public inspection.

(j) Upon the request of the Department at any time after the filing of the original or renewal specific State license application, and before the expiration of the license, the applicant shall submit further information to enable the Department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(k) All applications for license or amendment shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(l) The Department may deny an application for a specific State license if the applicant:

1. Fails to comply with any provisions of the Act or any rules promulgated thereunder;

2. Falsifies or makes misleading statements in the application for license; or

3. Falsifies or makes misleading statements in any documents which were utilized to obtain a license.

7:28-4.7 General requirements for approval of an application for an initial specific State license or renewal of a specific State license for use of naturally occurring and accelerator produced materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific State license or renew a specific State license for non-human use of radioactive materials provided:

1. The applicant is qualified by reason of training and experience to use the radioactive material for the purpose requested in such manner as to protect health, minimize danger to life or property and prevent unnecessary radiation;

2. The applicant's proposed equipment, facilities and procedures are adequate to protect health, minimize danger to life or property and prevent unnecessary radiation; and

3. The applicant satisfies special requirements as may be applicable in N.J.A.C. 7:28-4.8.

(b) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific State license or renew a specific State license for human use of radioactive materials for one or more of the following Human Use Groups of activities:

1. Group I: Use of prepared radiopharmaceuticals for certain diagnostic studies involving measurements of uptake, dilution and excretion. This group does not include imaging or localization studies;

2. Group II: Use of prepared radiopharmaceuticals for diagnostic imaging and localization studies;

3. Group III: Use of generators and reagent kits for the preparation and use of radiopharmaceuticals for certain diagnostic studies;

4. Group IV: Use of prepared radiopharmaceuticals for certain therapeutic uses that do not normally require hospitalization for purposes of radiation safety;

5. Group V: Use of prepared radiopharmaceuticals for certain therapeutic uses that normally require hospitalization for purposes of radiation safety; and

6. Group VI: Use of sources and devices containing radionuclides for certain medical uses.

(c) To qualify for an initial specific State license or renewal of a specific State license for human use of radioactive materials for any purpose described in Groups I through VI, in (b) above the applicant must demonstrate qualification by reason of training and experience to use the radioactive material for the purpose requested and in such manner as to protect health, minimize danger to life or property, and prevent unnecessary radiation, by satisfying the training and experience requirements for the appropriate Human Use Group of activities as follows:

1. The training and experience must have been obtained within a five year period preceding the date of the application for an initial or renewal specific State license or must be supplemented by continuing education or experience. The original training and experience should have been received in a formal residency program in an accredited medical institution. Each applicant's training and experience are examined on a case-by-case basis. If an applicant wishes to use radiopharmaceuticals but does not have the training and experience described, the applicant may submit an application listing specific qualifications and these will be considered by the Department.

2. To qualify as adequately trained to use or directly supervise the use of radioactive material listed in Human Use Groups I, II, and/or III, an applicant shall have all the training and experience specified in (c)2i, ii and iii below;

i. Two hundred hours training in basic radioisotope handling techniques applicable to the use of unsealed sources. This training shall consist of lectures, laboratory sessions, discussion groups, or supervised experience in a nuclear medicine laboratory (that is, on-the-job training in a formalized training program) in the following areas and for the specific hours of class, laboratory or clinical experience:

(1) Radiation physics and instrumentation (100 hours);

(2) Radiation protection (30 hours);

(3) Mathematics pertaining to the use and measurement of radioactivity (20 hours);

(4) Radiation biology (20 hours); and

(5) Radiopharmaceutical chemistry (30 hours);

ii. Five hundred hours of experience with the types and quantities of radioactive material for which the application is being made. For authorization of Human Use Group III (generators and reagent kits), this experience shall include personal participation in five elution procedures, including testing of eluate, and in five procedures to prepare radiopharmaceuticals from Human Use Group III reagent kits; and

iii. Five hundred hours of supervised clinical training in an institutional nuclear medicine program. The clinical training shall cover all appropriate types of diagnostic procedures and shall include:

(1) Supervise examination of patients to determine the suitability for radioisotope diagnosis and recommendation on dosage to be prescribed;

(2) Collaboration in calibration of the dose and the actual administration of the dose to the patient, including calculation of the radiation dose, related measurement, and plotting data;

(3) Follow-up of patients when required; and

(4) Study and discussion with preceptor of case histories to establish most appropriate diagnostic procedures, limitation, contraindication, etc.

3. The requirements specified in (c)2i, ii and iii above may be satisfied concurrently in a three month training program if all three areas are integrated into the program.

4. Certification by the American Board of Nuclear Medicine, or the American Board of Radiology in Diagnostic Radiology with Special Competence in Nuclear Radiology, will be accepted as evidence that an applicant has had adequate training and experience to use Human Use Groups I, II, and III as specified in (c)2i, ii and iii above.

5. An applicant who wishes to be authorized for only one or two specific diagnostic procedures shall have training in basic radioisotope handling techniques and clinical procedures commensurate with the procedures and quantities of radioactive material being requested. Such requests will be examined on a case-by-case basis by the Department.

6. To qualify as adequately trained to use or directly supervise the use of by-product material listed in Groups IV and/or V, an applicant shall have:

i. Eighty hours training in basic radioisotope handling techniques applicable to the use of unsealed sources for therapy procedures, consisting of lectures, laboratory sessions, discussion groups or supervised experience in the following areas and for the following specific hours:

(1) Radiation physics and instrumentation (25 hours);

(2) Radiation protection (25 hours);

(3) Mathematics pertaining to the use and measurement of radioactivity (10 hours); and

(4) Radiation biology (20 hours);

7. To qualify as adequately trained to use or directly supervise the use of by-product material listed in Group VI an applicant shall have:

i. Two hundred hours training in basic radioisotope handling techniques applicable to the use of sealed sources for therapy procedures, consisting of lectures, laboratory sessions, discussion groups, or supervised experience in the following areas and for the following specified hours:

(1) Radiation physics and instrumentation (110 hours);

(2) Radiation protection (40 hours);

(3) Mathematics pertaining to the use and measurements of radioactivity (25 hours); and

(4) Radiation biology (25 hours);

ii. Five hundred hours experience with the types and quantities of radioactive material for which the application is made;

iii. Clinical training in Group VI procedures consisting of active practice in therapeutic radiology with a minimum of three years experience of which at least one year shall have been spent in a formal training program accredited by the Residency Review Committee of Radiology and the Liaison Committee on Graduate Medical Education; and

iv. Evidence of certification by the American Board of Radiology in Radiology or Therapeutic Radiology, certification as a British "Fellow of the Faculty of Radiology" (FFR) or "Fellow of the Royal College of Radiology" (FRCR), or Canadian certification from the Royal College of Physicians and Surgeons (RCPS) in therapeutic radiology may be submitted in lieu of the training required in (c)7i and iii above.

8. In addition to the training required by (c)7 above, an applicant for a license for Human Use Group VI activities shall demonstrate that its proposed equipment, facilities and procedures are adequate to protect health, minimize danger to life or property and prevent unnecessary radiation; and

9. An applicant for a license for Human Use Group VI activities shall satisfy special requirements as may be applicable in N.J.A.C. 7:28-4.8.

7:28-4.8 Special requirements for approval of an application for an initial specific State license or renewal of a specific State license for use of naturally occurring and accelerator produced materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of radioactive materials by an institution provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has appointed a medical isotopes committee to evaluate all proposals for research, diagnosis, and therapeutic use of radioactive material within that institution. Membership of the committee shall include one authorized user for each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer;

3. The applicant possesses adequate facilities for the clinical care of patients;

4. The physician(s) designated on the application as the individual user(s) has considerable pertinent training and experience in the use, handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients; and

5. If the application is for a specific State license to use unspecified quantities of multiple types of radioactive materials, the applicant's staff has had substantial pertinent experience in using a variety of radioactive materials for various human uses.

(b) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of radioactive materials by a physician or dentist provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patient whenever it is advisable; and

3. The applicant has had extensive training and supervised experience in the proposed use, the handling and administration of radioisotopes and, where applicable, the clinical management of radioactive patients.

The applicant shall furnish suitable evidence of such experience with his application. A statement from the institution where the applicant acquired the training and experience, indicating its amount and nature, may be submitted as evidence of such experience.

(c) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of a sealed source of radioactive materials provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant or, if the application is made by an institution, the individual user(s) has specialized training in therapeutic use of the radioactive device considered or has experience equivalent to such training; and

3. The individual user is a physician or dentist.

(d) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of multiple quantities or types of radioactive material in research and development provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant's staff has had substantial training and experience with a variety of radioisotopes for various research and development uses;

3. The applicant has established an isotope committee, composed of a radiological safety officer, a representative of management and one or more persons trained or experienced in the safe use of radioactive materials, which will review and approve or disapprove proposals for use of radioactive materials in the advance of purchase of such materials; and

4. The applicant has appointed a radiological safety officer who shall be responsible for rendering advice and assistance on radiological safety.

(e) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of multiple quantities or types of radioactive material in processing for distribution to other authorized persons provided:

1. The applicant satisfies the general requirements for approval of specific State license application in N.J.A.C. 7:28-4.7;

2. The applicant's staff has had training and experience in the processing and distribution of a variety of radioisotopes; and

3. The applicant has appointed a radiological safety officer who shall be responsible for rendering advice and assistance on radiological safety.

(f) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued to distribute certain devices to persons generally licensed under N.J.A.C. 7:28-4.5(a) and (d) provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits sufficient information relating to the design, manufacturer prototype testing, quality control procedures, labeling, proposed uses and potential hazards of the device to provide reasonable assurance that:

i. The radioactive material contained in the device cannot be easily removed from the device;

ii. No person possessing, using, transporting or exposed to the device will receive a radiation dose to a major portion of his body in excess of 0.5 rem in any one year under ordinary circumstances of use;

iii. The device can be safely operated by persons not having training in radiological protection; and

iv. The radioactive material within the device would not be accessible to unauthorized persons; and

3. In describing the label or lables and contents thereon to be affixed to the device, the applicant shall separately indicate those instructions and precautions which are necessary to assure safe operation of the device. Such instructions and precautions shall be contained on labels as described in N.J.A.C. 7:28-4.5(d).

(g) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of a sealed source or sources of radioactive materials in industrial and nonmedical radiography provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has an adequate program for training radiographers and radiographers' assistants and submits to the Department a schedule or description of such program which specifies the following:

i. Initial training;

ii. Periodic training;

iii. On-the-job training;

iv. Means to be used by the licensee to determine the radiographer's knowledge and understanding of and ability to comply with the requirements of this subchapter, the specific licensing requirements, and the operating and emergency instructions of the applicant; and

v. Means to be used by the licensee to determine the radiographer's assistant's knowledge and understanding of and ability to comply with the operating and emergency procedures of the applicant;

3. The applicant has established and submitted to the Department satisfactory written operating and emergency instructions as prescribed by N.J.A.C. 7:28-17;

4. The applicant will have an adequate internal inspection system, or other management control, providing assurance that the requirements of this chapter, the specific State license provisions, and the applicant's operating and emergency instructions are followed by radiographers and radiographers' assistants;

5. The applicant submits a description of its overall organizational structure pertaining to the radiography program, including specified delegation of authority and responsibility for operation of the program; and

6. The applicant who desires to conduct his own leak tests has established adequate procedures to be followed in leak testing sealed sources for possible leakage and contamination and submits to the Department a description of such procedures, including:

i. Instrumentation to be used;

ii. Method of performing test (for example, points on equipment from where wipe samples will be taken and method of obtaining the wipe sample); and

iii. Pertinent experience of the person who will perform the test.

(h) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license will be issued to transfer, possess, or control products or materials containing exempt concentrations of radioactive material specified in N.J.A.C. 7:28-4.3(b) which the transferor has introduced into the product or material provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits:

i. A description of the product or material into which the radioactive material will be introduced;

ii. The intended use of the radioactive material and the product into which it is introduced;

iii. The method of introduction;

iv. The initial concentration of the radioactive material in the product or material;

v. The control methods to assure that no more than the specified concentration is introduced into the product or material;

vi. The estimated time interval between introduction and transfer of the product or material; and

vii. The estimated concentration of the radioisotope in the product or material at the time of proposed transfer by the applicant;

3. The applicant provides:

i. Reasonable assurance that the concentrations of the radioactive material at the time of transfer will not exceed the concentrations for quantities generally licensed under N.J.A.C. 7:28-4.4(b);

ii. That reconcentration of the radioactive material in concentrations exceeding those exempted under N.J.A.C. 7:28-4.3(b) is not likely;

iii. That the product or material is not likely to be inhaled or ingested; and

iv. That use of the lower concentration(s) is not feasible; and

4. Within 30 days subsequent to the end of the reporting period, each licensee shall file an annual report with the Department describing the kinds and quantities of products transferred, the concentration of radioactive material contained and the quantity of radioactive material transferred during the reporting period which shall be the 12 month period ending June 30 of each calendar year.

(i) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued to distribute certain devices to persons specifically licensed under N.J.A.C. 7:28-4.7 provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling, proposed uses and potential hazards of the device to provide reasonable assurance that:

i. The radioactive material contained in the device cannot be easily removed;

ii. The device can be safely operated by persons having trained in radiological protection; and

iii. The radioactive material within the device would not be accessible to unauthorized persons; and

3. Each device distributed as authorized by such license is to bear a label containing the following or substantially similar statements:

i. "Caution Radioactive Materials";

ii. The isotope name;

iii. The isotope quantity and date; and

iv. The following statement:

"This device contains radioactive material and has been manufactured for distribution as a specifically licensed device pursuant to

_____

(identify appropriate section of the regulation)

_____

(name of licensing agency and state)

License No. _____ by _____ (name of supplier)

Disposal of this device shall conform to the requirements listed in N.J.A.C. 7:28-11 of the Radiation Protection Code. Removal of this label is prohibited."

7:28-4.9 Terms and conditions of general and specific State licenses

(a) Each State license issued pursuant to this subchapter shall be subject to all the provisions of the Act, now or hereafter in effect, and to this chapter and orders of the Department.

(b) No license to possess or utilize radioactive material pursuant to this subchapter shall be transferred or assigned.

(c) Each person licensed by the Department pursuant to this subchapter shall confine his/her possession and use of radioactive material to the locations and purposes authorized by such license, and shall not use or permit the use of radioactive materials contrary to the applicable requirements of this chapter. Persons licensed under the provisions of this subchapter may transfer radioactive material within the State only to the persons licensed to receive such material or as otherwise authorized by the Department in writing.

(d) The Department may incorporate in any State license at the time of issuance, or thereafter, all such additional requirements and conditions with respect to the licensee's receipt, possession, use or transfer of radioactive material as it deems appropriate or necessary in order to assure compliance with this chapter and the Act.

(e) Each licensee authorized under N.J.A.C. 7:28-4.7(f) to distribute certain devices to generally licensed persons shall:

1. Report to the Department all transfers of such devices to persons in New Jersey generally licensed under N.J.A.C. 7:28-4.5(a) and (c). Such report shall identify each general licensee by name and address, the type and number of device(s) transferred, and the quantity and kind of radioactive material contained in each device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to generally licensed persons; and

2. Furnish to each general licensee to whom such device is transferred a copy of N.J.A.C. 7:28-4.5(a) and (c), 8.2 and 8.4.

(f) Each licensee authorized under N.J.A.C. 7:28-4.8(i) to distribute certain devices to specifically licensed persons shall:

1. Report to the Department all transfers of such devices to persons in New Jersey specifically licensed under N.J.A.C. 7:28-4.7 and 4.8. Such report shall identify each specific licensee by name and address, the type and number of device(s) transferred, and the quantity and kind of radioactive material contained each device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to specifically licensed persons.

7:28-4.10 Expiration of specific State license

Except as provided in N.J.A.C. 7:28-4.11, each specific State license shall expire at 12:01 A.M. of the day, in the month and year stated in the license.

7:28-4.11 Status of specific State licenses pending renewal

In any case in which a licensee has filed a complete application in proper form for renewal of a specific State license not less than 30 days prior to expiration of the existing license, such license and all its existing conditions shall not expire until the Department has acted upon the application.

7:28-4.12 Amendment of a specific State license at request of licensee

(a) Applications for amendment of a specific State license shall be filed in accordance with N.J.A.C. 7:28-4.6 and shall specify the amendment desired and the grounds for such amendment.

(b) The Department will evaluate only amendment applications submitted by personnel authorized by the licensee.

(c) The applicant for an amended specific State license shall not engage in the activities for which an amendment has been requested until approval has been granted by the Department.

7:28-4.13 Records

All persons licensed pursuant to this subchapter shall keep records in accordance with N.J.A.C. 7:28-8.

7:28-4.14 Inspections

(a) All licensees shall allow the Department to inspect radioactive material and the facilities and premises where radioactive material is used or stored.

(b) No person shall prevent, prohibit, obstruct, hinder, delay or interfere with personnel of this Department in performing their duties.

(c) Upon request by the Department, licensees shall make available for inspection by the Department records kept pursuant to this chapter.

7:28-4.15 Tests

(a) At the request of the Department, each licensee shall perform, or allow the Department to perform if the Department so desires, such tests as the Department deems appropriate or necessary for the administration of this subchapter, including tests of the following:

1. Radioactive material;

2. Facilities where radioactive material is utilized or stored;

3. Radiation detection and monitoring instruments; and

4. Equipment and devices used in connection with the utilization or storage of radioactive material.

7:28-4.16 Modification, revocation, suspension, and termination of general and specific State licenses

(a) Each general State license shall be subject to modification, suspension or revocation by reason of amendments to the Act, adoption of rules by the Commission or the Department, orders issued by the Department pursuant to authority of the Act, or for violation or failure to observe any of the terms and provisions of the Act, license or any rule of the Commission or the Department, or order of the Department.

(b) Each specific State license shall be subject to modification, suspension or revocation by reason of:

1. Amendments to the Act;

2. Adoption of rules by the Commission;

3. Orders issued by the Department pursuant to the authority of the Act;

4. Conditions revealed by the application for a specific State license or statement of fact or any report, records or inspection or other means which would warrant the Department to refuse to grant a specific State license on an original application;

5. Violation of or failure to observe any of the terms and provisions of the Act or the license, or any rule of the Commission or Department or order of the Department;

6. Falsification or misleading statements in any license application;

7. Alteration of licensing document;

8. Falsification of required records; or

9. Failure to make timely payment of licensing fees.

(c) If a specific State license is not to be renewed or if a licensee requests a termination of its license, the licensee shall furnish to the Department, prior to the expiration date of the license, close-out surveys and/or wipe tests of the facility and a disposition certificate attestng to the disposal of radioactive material.

7:28-4.17 Requests for an adjudicatory hearing

(a) When the Department denies an initial application for or renewal of a specific State license, or determines to modify, revoke, suspend or terminate a general or specific State license, the Department shall send a notice of decision to the applicant or licensee by certified mail return receipt requested. The notice shall advise the applicant or licensee of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following information:

1. Where and whom hearing requests should be sent;

2. The deadline by which hearing requests must be submitted;
3. The information that is required to be in the hearing request under (c) below; and
4. The requirements for requesting a stay under N.J.A.C. 7:28-4.18.

(b) All requests for a contested case hearing must be received by the Department within 30 calendar days of the date upon which the notice of decision was received.

(c) All requests for a contested case hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision appealed from as well as the nature and scope of the interest of the requestor in such decision; nad
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues, associated with the alleged facts at issue, must also be included.

(d) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:28-4.18 Requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested

(a) The Department may grant a stay of the effective date of a decision to deny, modify, revoke or suspend any license. The applicant for such a stay must submit evidence that one of the following circumstances exist:

1. The granting of such stay is required as a constitutional or statutory right; or
2. The potential impact on public health, safety, welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from absent an express decision to stay such action by the Director. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document as well as to disclose reasons why such stay should be granted.

(c) Department decisions are effective, according to their terms, unless stayed by the Department in writing, upon receipt of written request pursuant to this section.

(d) Written requests for a stay of the effective date of the Department's decision must be made to the Department within 30 calendar days of the date upon which the notice of decision was received.

(e) Any stay that is granted by the Department shall be temporary and in no case shall it extend beyond the date of the Department's final decision of the contested case.

(f) Determinations made pursuant to this section shall be made in a writing mailed to the specific party making such request.

7:28-4.19 Specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive material

(a) The specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive materials is as follows:

Category	Annual License Fee
1. Radioactive materials license for one Human Use Group	$300.00
2. Radioactive materials license for two Human Use Groups	$340.00
3. Radioactive materials license for three or more Human Use Groups	$400.00
4. Commercial manufacture, processing and/or distribution of radioactive material or items containing radioactive material	$420.00
5. Radioactive materials license for non-human use of sealed source with possession limit of 300 mCi or less	$170.00
6. Radioactive materials license for non-human use possession limit of 500 mCi or less	$320.00
7. Radioactive materials license for non-human use possession limit of greater than 500 mCi	$420.00
8. Radioactive materials license for Non-Medical Industrial Radiography	$340.00

(b) All licensees whall pay the fees set forth in (a) above by check payable to "Treasurer, State of New Jersey" no later than 60 days after the payment invoice date. In the event that the fees are paid later than 60 days after the payment invoice date, a delinquency fee equal to one-half of the annual license fee will be imposed for each year that a license fee is delinquent and will appear on the next annual invoice. Failure to pay an annual license fee including any accrued delinquency fees for longer than 18 months shall constitute grounds for suspension or revocation of the license pursuant to N.J.A.C. 7:28-4.16.

7:28-4.20 Confidentiality claims

(a) Any applicant required to submit any information pursuant to the Act or this chapter which in the applicant's opinion constitutes trade secrets, proprietary information or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) Any applicant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One shall contain all the information required by the Act or this chapter including any information which the applicant alleges to be entitled to confidential treatment. The second shall be identical to the first except that it shall contain no information which the applicant alleges to be entitled to confidential treatment. The second can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first submission containing the information which the applicant alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the applicant alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the applicant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential submission (which may or may not be enclosed in a separate envelope, at the option of the applicant), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received.

7:28-4.21 Access to information; non-disclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to Department employees whose activities necessitate such access and as provided at N.J.A.C. 7:28-4.24 and 4.26.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the owner or operator who supplied it to the Department.

7:28-4.22 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:28-4.23.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information; or

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the applicant who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An applicant who wishes to contest a determination by the Department shall, within 30 days of notification of the determination, submit evidence to support the applicant's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the applicant (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the applicant to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent of which disclosure of the information would result in substantial damage to the applicant, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the causal relationship between disclosure and the damage.

4. Failure of an applicant to furnish timely comments or exceptions waives the applicant's confidentiality claim.

5. The applicant may assert a confidentiality claim to any information submitted to the Department by an applicant as part of its comments pursuant to (c)4 above.

6. The Department may extend the time limit for submitting comments pursuant to (c)4 above for good cause shown by the applicant and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the applicant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the applicant of the written notice.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The applicant shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:28-4.23 Substantive criteria for use in confidentiality determinations

(a) When the applicant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The applicant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

2. The applicant has shown that reasonable measures have been taken to protect the confidentiality of the information and that the applicant intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the applicant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information; and

5. The applicant has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

7:28-4.24 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees only as provided in this section or N.J.A.C. 7:28-4.25.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency; and

5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided at N.J.A.C. 7:28-4.25, the Department shall notify in writing the applicant who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which disclosed; and

4. A description of the information disclosed.

7:28-4.25 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the applicant to such disclosure.

(b) The giving of consent by an applicant to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such a nature as to make the disclosed information accessible to the general public.

7:28:4.26 Disclosure based on imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the applicant such shorter comment period (N.J.A.C. 7:28-4.22(c)4, post-determination waiting period (N.J.A.C. 7:28-4.22(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it of itself be grounds for any determination that information is no longer entitled to confidential treatment.

7:28-4.27 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL".

(c) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:28-4.22 shall be stored by the Department only in locked cabinets.

(d) Any record made or maintained by Department employees which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:28-4.28 Wrongful access or disclosure; penalties

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

HEALTH

(a)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances Placement of Nabilone in Schedule II

Proposed Amendment: N.J.A.C. 8:65-10.2

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1987-212.

Submit comments by July 15, 1987 to:

Lucius A. Bowser, R.P., M.P.H., Chief
Office of Drug Control
CN 362
Trenton, NJ 08625-0362
(609) 984-1308

Summary

The Department of Health proposes to amend the Schedule of Controlled Dangerous Substances to add Nabilone to Schedule II to bring the State schedules into conformity with the Federal regulations. Nabilone was placed into Schedule II of the Controlled Substances Act as a final rule published in the Federal Register, cited as 52 FR 11042, dated April 7, 1987.

Nabilone is chemically and pharmacologically similar to the tetrahydrocannabinol Dronabinol, recently placed into Schedule II of the Act. The product Nabilone has received approval as safe and efficacious for its intended purpose by the U.S. Food and Drug Administration, and meets all the criteria for inclusion into Schedule II of the New Jersey Controlled Dangerous Substances Scheduling system.

Social Impact

This amendment to include Nabilone into Schedule II will have a slight social impact on those persons for whom Nabilone has been found to be safe and efficacious as a medical treatment. It will have a slight social impact on physicians in that it will allow for the prescribing of a newly approved drug substance.

Economic Impact

The scheduling of Nabilone into Schedule II of the Controlled Dangerous Substances Act will have an impact on the patients who require this newly approved drug substance. It will have a slight economic impact upon physicians and pharmacists who may prescribe and dispense the drug. It will not have any negative economic impact upon practitioners and pharmacists in regard to recordkeeping, ordering or storing the product.

Regulatory Flexibility Statement

Although the proposed amendment to include Nabilone into Schedule II of the Controlled Dangerous Substances Act would affect thousands of registrants classified as small business entities, the proposal adds no additional recordkeeping burdens on small business entities because the recordkeeping requirements are already in effect and being complied with by small business entities.

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

8:65-10.2 Controlled dangerous substances; Schedule II

(a) (No change.)

(b) The following is Schedule II listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code numbers.

1.-6. (No change.)

7. Hallucinogenic substances:

i.-ii. (No change.)

iii. Nabilone ..... 7379 (another name for Nabilone: (+)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo(b, d)pyran-9-one).

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Official Department Mailing List: Address Information

Proposed New Rule: N.J.A.C. 11:1-25

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:16A-13; 17:22-6.45; 17:23-1; 17:44A-34; 17:46A-7; 17:46B-55; 17:46C-9; 17:48-11; 17:48A-15; 17:48C-26; 17:48D-13; 17:48E-36; 17:50-8; 17B:21-1.

Proposal Number: PRN 1987-219.

Submit comments by July 15, 1987 to:

James D. Zarnowski, Director
Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In performing many of the regulatory functions that are required or authorized by the insurance laws, the Department frequently directs mailings of various types to insurers and other regulated entities, such as dental plan organizations, doing business in this State. Department mailings may be directed to all insurers or other regulated entities, or to selected segments of the industry, and may include, but are not limited to, administrative orders, bulletins, licensing matters, informational requests and the like.

Over the years, the Department has compiled various mailing lists of insurers and regulated entities for these purposes and has experienced occasional difficulties due to inaccurate or out-dated address information. The proposed new rule is designed to alleviate these difficulties by establishing an accurate mailing list to be used for certain Department mailings and by requiring notice of changes to address information on this list.

To accomplish this goal, proposed N.J.A.C. 11:1-25 provides that an insurer's or other regulated entity's mailing address, as supplied on any annual statement or report which must be filed pursuant to the respective insurance laws, shall be designated as the official mailing address for such insurer or entity for many of the Department's mailing purposes. The proposed rule further requires that if there is a change in the mailing address during the course of the year or, with respect to surplus lines insurers, any time after the initial submission of the annual statement as provided at N.J.S.A. 17:22-6.45, the insurer or entity must notify the Department of such change within 30 days from the date the change became effective. Failure to so notify the Department may result in the imposition of penalties authorized by law and/or administrative fines.

Social Impact

The proposed new rule benefits insurers and other regulated entities by ensuring that Department mailings are received at their current address, thus keeping them abreast of disseminated Department information. The proposed new rule benefits the Department by ensuring the accurate distribution of its mailings, thereby enhancing the performance of the Department's regulatory and enforcement activities.

Economic Impact

The proposed new rule will not have any significant economic impact on those entities subject to the rule since they are already statutorily required to file annual statements or reports containing, among other things, their current mailing addresses. The only addition to that statutory requirement is that they must also notify the Department if there is a change in their mailing address during the course of the year. Any additional expenses incurred by the Department in updating its records to reflect address changes will be absorbed by the general operating budget.

Regulatory Flexibility Statement

Of the entities to be regulated by this proposed rule, it is estimated that only a very small number are small businesses, as defined in the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169.

The proposal imposes only minimal compliance requirements on small businesses by requiring them to notify the Department of a change in their mailing addresses within 30 days from the date the change became effective. Since any small business is only required to notify the Department if there is a change in its mailing address, there are no initial capital costs or annual costs involved with complying with the rule. The only costs which may be incurred are those associated with notifying the Department of a change, and such costs would be minimal.

Full text of the proposal follows.

SUBCHAPTER 25. OFFICIAL DEPARTMENT MAILING LIST: ADDRESS INFORMATION

11:1-25.1 Purpose

The purpose of this subchapter is to ensure that the Department's official mailing address records remain accurate and updated at all times and thereby maximize the use of Department resources and the effectiveness of Department mailings.

11:1-25.2 Scope

This subchapter shall apply to any person, partnership, corporation or any other legal entity that is required to submit an annual financial statement or report to the Commissioner pursuant to any of the following: N.J.S.A. 17:16A-13; 17:22-6.45; 17:23-1; 17:44A-34; 17:46A-7; 17:46B-55; 17:46C-9; 17:48-11; 17:48A-15; 17:48C-26; 17:48D-13; 17:48E-36; 17:50-8; 17B:21-1.

11:1-25.3 Mailing address

(a) For the purpose of disseminating Department information, including but not limited to bulletins, certificates of authority, orders to show cause, administrative orders, and public notices, the Department shall use the mailing address as provided in the annual financial statement or report filed pursuant to the respective insurance laws requiring such, as set forth at N.J.A.C. 11:1-25.2.

1. In cases where no mailing address is designated, the home address as provided in the annual financial statement or report will be used as the official mailing address.

(b) If there is a change during the course of the year in the mailing address, or home address if such is appropriate, the insurer or other regulated entity shall notify the Department in writing of such change within 30 days from the date the new address becomes effective.

1. All address change notifications shall be sent to:

Supervisor of Insurance Reports
Division of Financial Examinations
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

11:1-25.4 Penalties

Failure to comply with the provisions of this subchapter shall constitute a violation of the insurance laws of this State and may result in the imposition of any penalties authorized by law.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Education Requirements for Salespersons and Brokers in Making Application for Licensure Examination

Proposed Amendment: N.J.A.C. 11:5-1.27

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

Authority: N.J.S.A. 45:15-6 and 45:15-10.1

Proposal Number: PRN 1987-211.

Submit comments by July 15, 1987 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
201 East State Street, CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 11:5-1.27 will effectuate a comprehensive revision in the syllabus utilized by approved real estate schools in conducting brokers pre-licensure courses. Pursuant to N.J.S.A. 45:15-10.1B, every applicant for licensure as a real estate broker must successfully complete a 90 hour course of education in real estate and related subjects at a school approved by the Commission, unless that requirement is waived pursuant to statute.

The syllabus for the brokers pre-licensure education course as set forth in N.J.A.C. 11:5-1.27(g) has remained unchanged for several years. However, in recent years there has been an enormous increase in the number of subjects which real estate professionals must be knowledgeable in to be able to adequately fulfill their professional and statutory obligations as real estate brokers. In recognition of this fact, the Commission has promulgated this proposal which would add to those topics which must be covered in a brokers pre-licensure course several of these additional areas of concern which have only recently developed. Among these are the added requirements pertaining to condominium construction and conversions, the "Mount Laurel" requirements concerning real estate development in New Jersey, considerations in franchised transactions, issues raised by the Environmental Clean-up Responsibility Act, the Coastal Area Facilities Review Act, and the recent discoveries of radon and ground water contamination in certain areas of New Jersey, along with issues raised by the problems of solid waste disposal and the discovery of toxic waste sites in New Jersey.

In addition to these newly evolved areas of concern, in reviewing the current syllabus for the brokers pre-licensure course it was noted that certain areas of knowledge, which the Commission has determined have a significant impact upon the ability of brokers to adequately fulfill their roles as real estate professionals, had been omitted from the current syllabus. Accordingly, this proposal would add to the syllabus such topics as business and management practices and commercial and industrial real estate.

Social Impact

The proposed amendment will have a favorable social impact upon the public and upon real estate licensees.

The people affected by this proposal will be all candidates for licensure as real estate brokers in New Jersey who do not qualify for a waiver of the educational prerequisites to licensure as such. Such people would include all individuals currently licensed as salespersons in New Jersey who have been engaged on a full time basis as real estate salespersons under the direction and supervision of their brokers for at least two years, and who have acquired sufficient experience during that time so as to fulfill the apprenticeship requirements for licensure as a broker as set forth at N.J.A.C. 11:5-1.3.

It is anticipated that the social effect of this proposal will be to require additional out-of-classroom study by broker license candidates in order that they might adequately familiarize themselves with the additional topics to be added to the brokers course syllabus. While it is possible that the Commission may receive some negative reaction to this aspect of the proposal, it is felt that the majority of broker license candidates will recognize the benefits which will accrue to them by the Commission's

action of updating and expanding the schedule of subjects with which they must be familiar in order to successfully operate as New Jersey real estate brokers.

By improving the education provided to candidates for licensure as New Jersey real estate brokers, the effect of the adoption of the amendment would be to produce brokers who are more knowledgeable in a wider area of real estate related concerns than is presently the case. By requiring broker license candidates to obtain a basic working knowledge of the additional topics included in the proposed amended syllabus, the Commission feels that the public will be better served by such individuals if and when they are licensed as real estate brokers. Furthermore, improving the education supplied to broker license candidates will also better prepare such individuals to render correct advice to members of the public with whom they deal. By so doing, it is anticipated that the number of instances wherein erroneous advise is provided, which could result in litigation against the licensee, will be reduced.

Economic Impact

The proposed amendments may economically affect the operators of approved real estate schools, in that, in order to provide adequate instruction on the topics included in the new syllabus, they may have to provide additional material to the students in their brokers courses. Should that occur, it is reasonable to assume that such costs would be passed along to the students in the form of increased fees for attendance at a brokers prelicensure course. Were this to occur, all broker licensure candidates who do not qualify for a waiver of the educational requirements would be economically affected by the adoption of this proposal. However, it is not anticipated that adoption of the proposal would substantially increase the costs of offering a brokers prelicensure course. Based upon this assumption, and upon the substantial competition amongst approved schools for broker course students, it is anticipated that the amount of the fees currently charged for attendance at such courses would not increase substantially.

It is anticipated that the adoption of this proposal would have a beneficial economic effect upon the public. This is so because there would be assurances that, particularly when dealing with relatively inexperienced brokers, the public would receive advice from individuals who had had imparted to them in their broker education course a basic knowledge of several substantial factors which can have a significant impact upon real estate transactions in New Jersey today. Therefore, when dealing with such brokers, the probability that the public will receive correct advice will be increased and the possibility of erroneous advice being provided, which could result in costly disputes and, ultimately, in litigation, will be reduced.

Regulatory Flexibility Statement

The proposed amendments will impact upon the approximately 84 real estate schools which are currently approved by the Real Estate Commission to conduct prelicensure education courses. In order to comply with the provisions of the proposed amendment, it will be necessary for such schools, should they wish to offer broker prelicensure courses, to secure qualified persons to teach revised courses which include the additional topics proposed to be added to the brokers course syllabus. An alternative available to the operators of such schools is the utilization of guest speakers as provided in N.J.A.C. 11:5-1.28(j) to provide instruction on particular specialized topics.

While the operators of such schools might incur some initial capital costs in order to retrain their current staff of instructors, once that retraining has been accomplished, those costs should not be reincurred in future years. Under the current rules, operators of real estate schools and the instructors they retain are required to periodically update their knowledge of the topics they are teaching, so as to provide instruction on those topics which includes any recent developments in a particular area. Therefore, once the initial cost of securing instructors who are adequately versed in the entire range of subjects in the revised syllabus has been incurred, the annual cost of remaining current on that syllabus should not be substantially greater than the costs presently incurred.

The intention of this rule is to improve the educational standards of applicants for licensure as New Jersey real estate brokers. There is no provision in the proposal which would limit or prevent the operators of approved real estate schools from passing along any increase in their costs of doing business incurred as a result of this rule to their students in the form of increased fees for attendance at such courses. However, as noted above, given the competitive nature of the real estate education field and the nature of this proposal, it is not anticipated that a substantial increase in fees will result from the adoption of this rule.

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

11:5-1.27 Educational requirements for salespersons and brokers in making application for licensure examination

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

[(g) The broker's course of 90 hours shall include:

1. Review of salesperson's course and additional terminology (12 hours);
2. Review of contracts and other property instruments (3 hours);
3. Advanced finance (8 hours);
4. Real estate investments (6 hours);
5. Zoning (4 hours);
6. Subdivisions and developments (8 hours);
7. Property taxes and tax appeals (3 hours);
8. Appraisals and evaluations (9 hours);
9. Urban redevelopment (4 hours);
10. Property management and landlord-tenant relations (5 hours);
11. Tax implications or real estate transactions (5 hours);
12. Closing settlement problems (3 hours);
13. License law, civil rights law, regulations anti-trust laws (20 hours).]

(g) The 90 hour broker's pre-licensure course prescribed by N.J.S.A. 45:15-10.1(b) shall be conducted in accordance with the following syllabus and directives:

1. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i. Review license laws and regulations including provisions of the Land Sales Full Disclosure Act and N.J.A.C. 11:5-1.25 (six hours);

ii. Listing contracts—sales and rentals (three hours);

iii. Sale contracts (three hours);

iv. Deeds and real property rights and interests including nature of ownership, legal description, chain of title, restrictions, consideration, various types, acknowledgments and recording, land and land elements, water rights (including riparian rights), estates and other interests, methods of ownership, dower and courtesy, wills and descent, adverse possession and fixtures (three hours);

v. Advanced financing techniques including qualification formulae, various types, typical prerequisites (insurance, flood insurance, if applicable, certificate of occupancy, etc.) and income tax ramifications (six hours);

vi. Liens, foreclosures and redemptions (one hour);

vii. Easements, restrictions, etc. (one hour);

viii. Condemnation (one hour);

ix. Zoning, including non-conforming uses, variances, subdivisions, planning, zoning issues raised by condominium construction or conversion and other types of real estate development (five hours);

x. Surveys (non-government type) and legal descriptions (one hour);

xi. Property taxes, assessment, re-valuations, assessment appeals and special appeals (three hours);

xii. Real estate valuation including techniques and distinctions between comparative market analyses and formal appraisals (three hours);

xiii. Settlement/closing procedures, RESPA forms (six hours);

xiv. Mathematics relative to real estate (six hours);

xv. Laws: Federal Fair Housing and New Jersey "Mount Laurel" requirements, the New Jersey Law Against Discrimination, RESPA, Truth in Lending, rent control and New Jersey Land Use Law (total three hours).

xvi. Business and management practices including:

(1) Company structure including single ownership, partnership, corporate, requirements to establish, employees vs. independent contractors;

(2) Office management including bookkeeping and accounting relative to real estate, escrow responsibilities, company dollars, ledgers, records and computers;

(3) Personnel management including recruiting, hiring, training, supervising, compensation and termination;

(4) Advertising and promotions;

(5) Community involvement by the company, broker and salespersons; and

(6) Insurance including errors, omissions, etc. (total six hours).

xvii. Principles of agency including ethics and legal liability, disclosure requirements and case studies (six hours);

xviii. Commercial and industrial real estate including small scale, large scale, leasing, financing, site analysis, advertising, remuneration, bulk sales, U.C.C., considerations in franchise transactions, E.C.R.A., BOCA Code, construction financing and other commercial construction concerns (three hours);

xix. Property management including responsibilities and information regarding repairs and maintenance, public relations, collection of rents, government regulations, business trends, personnel, recordkeeping, advertising, etc. (three hours);

xx. Residential real estate development requirements of New Jersey's Planned Real Estate Development Act, the Home Owner's Warranty program and other concerns regarding single-family and condo/townhouse development (two hours);

xxi. Leases and landlord/tenant law (four hours);

xxii. Real estate investments, syndications, REIT's, limited partnerships and S.E.C. licensing requirements (two hours); and

xxiii. Income tax considerations and ramifications of various real estate transactions (three hours).

2. Instruction shall also be provided on the following topics for the hours indicated in such a manner as to familiarize students with their basic elements, to impart to students an awareness of their scope and effect, to inform students of the sources which can be contacted in order to obtain additional general information and/or specific data concerning their applicability or impact upon particular locations, and to educate the students on their obligations and responsibilities as licensees to ascertain and disclose such information:

i. Radon contamination, which instruction shall also include testing techniques, remediation techniques and the New Jersey DEP confidentiality statute (one hour);

ii. Ground water contamination, which instruction shall also include testing and remediation techniques (one hour);

iii. Problems posed by a property's proximity to solid waste disposal and/or toxic waste sites (one hour);

iv. Ground water percolation and private sewage disposal systems, which instruction shall also include testing methods (one hour);

v. Problems posed by lands officially designed as Wetlands, Pinelands, or within any other special classifications (one hour); and

vi. New Jersey's Coastal Areas Facilities Review Act (one hour).

3. Instructors conducting brokers pre-licensure courses shall provide general information to their students concerning the procedures through which students can arrange to sit for the State license examination and through which licenses are issued by the Commission, and shall give at least two spot quizzes and a comprehensive final exam on the material covered in the course (four hours).

4. In addition to classroom instruction and assigned reading from a general textbook, students shall also be assigned additional outside reading on various topics which shall include, but not to be limited to, informational publications of the New Jersey Department of Environmental Protection on the various environmental topics covered, those sections of the New Jersey Law Against Discrimination which directly relate to the activities of real estate professionals, and other topics which are not adequately covered in the general textbook utilized in a given course.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF DENTISTRY

Professional Advertising

Proposed Amendment: N.J.A.C. 13:30-8.6

Authorized By: State Board of Dentistry,
Richard Van Sciver, D.D.S., President.
Authority: N.J.S.A. 45:6-1 et seq.
Proposal Number: PRN 1987-217.

Submit comments by July 15, 1987 to:
William Gutman
Executive Secretary
State Board of Dentistry
1100 Raymond Boulevard, Room 321
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board is proposing to amend N.J.A.C. 13:30-8.6 concerning professional advertising to clarify existing regulatory standards and expand the scope of permissible advertising practices. The use of testimonials attesting to the competence or quality of a dental service or treatment continues to be prohibited. However, other truthful testimonials will be permitted. The current rules prohibiting non-informational formats and the offering of gratuitous services will be repealed under this proposal. Advertising which makes reference to setting forth a fee will be permitted for routine as well as non-routine professional services. Offers of free services in advertising will be required to indicate the value of the service. Across-the-board discounts (for example, senior citizen discounts) will be permitted under this proposal so long as the advertisement includes a representative list of frequently offered services and a statement of fees against which discounts will be made.

Social Impact

The proposed amendment to N.J.A.C. 13:30-8.6 will provide licensees with a framework in which to more clearly and accurately advertise their services to the public. The proposal will benefit the consumer by improving the quality and expanding the availability of information in advertising about a practicing dentist's services to better enable the consumer to make an informed choice from among those offering dental services.

Economic Impact

The proposed amendment to N.J.A.C. 13:30-8.6 concerning professional advertising should have no economic impact other than that which might be associated with better informed decision-making in choosing dentists and dental services.

Regulatory Flexibility Statement

The proposed amendment imposes certain compliance requirements on licensees of the Board of Dentistry who may be deemed to be small businesses. The proposal is applicable to the approximately 9,000 licensed dentists in the State, regardless of the size of the dental practice.

The proposal does not involve reporting or recordkeeping requirements. It does not require submissions to the Board of any kind or the maintenance of records not previously required. The proposal prohibits the use of technical testimonials in licensee advertising, permits reference to a fee for all professional services, requires reference to the value of any offered free services, and requires a representative list of services and a statement of fees against which discounts will be made in across-the-board discount advertising. It is unlikely that any professional services will be needed to comply with the proposed rules.

It is not anticipated that there will be any substantial initial capital costs or annual costs associated with compliance with the rules. The only cost will be that incurred by a licensee who may need to change a current advertising format in order to be in compliance with the rules. Such costs will not vary with the size of the business but may be proportionate to the scope and nature of the advertising.

In view of the fact that the economic impact of the proposal is minimal, a design to further minimize any adverse economic impact on small businesses is not feasible.

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

13:30-8.6 Professional advertising

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

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1.-4. (No change.)

5. The use of any personal testimonial attesting to the **technical** quality or **technical** competence of a service or treatment offered by a licensee. **Other testimonials shall be permitted so long as they are not violative of any other section of these regulations.**

6.-9. (No change.)

[10. Any format which appears to be essentially non-informational in nature and used primarily to gain attention.]

[11. Any statement offering gratuitous services or the substantial equivalent thereof provided, however, nothing herein contained shall be deemed to prohibit the rendering by a Board licensee of professional services for which no fee is charged.]

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

(f) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described [routine] professional service.

1. (No change.)

(g) Offers of discounts or fee reductions **or free services** shall indicate the **advertiser's** fixed or stated range of fees against which said discount is to be made **and/or the value of the free service.**

1. The fixed or stated range of fees or value of free service shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representative list of services and the fixed or stated range of fees against which discounts are to be made for these services. The list for general dentistry shall include a sampling of the advertiser's most frequently performed services from the areas of preventive, diagnostic, restorative, endodontic, periodontic, prosthodontic (fixed and removable) dentistry, and oral surgery.

i. "Across-the-board discounts" shall mean the offer of a specified discount on an undefined class of services or the offer of a specified discount to a defined class of patients (for example, "15% discount during April on all dental services" or "15% discount to senior citizens on all dental services").

ii. Example of Representative List of Services:

	Regular Fee	Discount Fee
Prophylaxis	$	$
Examination		
Complete X-Rays		
One Surface Filling		
Root Canal		
Crown		
Gingivectomy		
Complete Denture		
Simple Extraction		

3. Licensees who limit their practice to one or more areas of dentistry, as permitted by N.J.A.C. 13:30-8.4, shall in similar manner, as in (g)2 above, include a representative list of the most frequently performed services in the advertiser's office.

(h)-(l) (No change.)

(a)

STATE BOARD OF MEDICAL EXAMINERS

Fee Schedule

Proposed Amendment: N.J.A.C. 13:35-6.13

Authorized By: New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President; Acupuncture Examining Board, Robert F. Lenahan, President.

Authority: N.J.S.A. 45:1-3.2, 45:9-2, 45:2C-3.

Proposal Number: PRN 1987-218.

Submit comments by July 15, 1987 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

This proposed amendment would amend the Board's fee schedule by increasing the biennial registration fee for physicians, chiropractors, podiatrists, bioanalytic laboratory directors, nurse midwives, athletic trainers, orthoptists and acupuncturists. These fee increases are calculated to provide the Board with adequate funding to discharge its statutory obligation to evaluate applicants for licensure and to regulate the practice of the various health care professions.

Over the last several years, there has been a dramatic increase in the volume and complexity of the matters that have been referred to the Board for review. Policy issues requiring considered analysis and research have arisen with increasing frequency. In recent years the Board has been required to focus considerable attention on increasing the scrutiny it gives to applicants for licensure, scheduling many applicants for personal interviews. In the last four years, it has seen an enormous increase in the number of complaints received by letter and the number of investigations undertaken by the Enforcement Bureau. While the Board has attempted to keep up with this increasing burden, its resources and staffing have remained constant over that same period.

In addition to the increased number of matters arising from these traditionally recognized sources, recent legislative enactments have placed new obligations upon the Board as well. Pursuant to N.J.S.A. 17:30D-17, effective July 7, 1983, the Board is required to receive notices from insurers, insurer associations and physicians not covered by malpractice insurance of medical malpractice claims, judgments and arbitration awards for $25,000 and over. Those notices have been accumulating since August 14, 1983, and it is estimated that there are approximately 1,500 to 2,000 notices which have not yet been thoroughly evaluated.

Similarly, pursuant to N.J.S.A. 26:2H-12.2, a hospital is required to give notice to the Board of any such claim to which it was a party, as well as any action which it may take with respect to the hospital privileges of its staff. Although, the Board has some computer capabilities, it presently lacks adequate data processing staff to process and assimilate this information. Moreover, the notices themselves provide information which is limited in scope and insufficient to determine the nature of the conduct presented. In order to appropriately assess the nature of the licensee conduct, it is necessary that both expert evaluation and thorough investigation be conducted prior to the initiation of any case. To date, the Board has lacked resources to evaluate, process and investigate these matters, and to prosecute those evidencing instances of serious and substantial deviation from accepted practice standards.

The sums provided by this fee increase will allow the board to devote appropriate attention to the policy issues which it is being asked to address. The funds generated will enable the Board to continue to scrutinize applicants for licensure to assure that each has obtained a thorough and satisfactory education. Additionally, the increase will allow for the expansion of the Board's investigative capacity within the Enforcement Bureau of the Division of Consumer Affairs and the allocation of sufficient monies to fund expert review and the creation of additional legal staff within the Division of Law.

This proposal also amends the examination fee of candidates for acupuncture licensure. The increased fee is calculated to recoup the cost of securing and administering the standardized examination. A non-refundable administrative processing fee would also be created, and a slight increase in the endorsement fee is also proposed.

Social Impact

The funding generated by this fee increase would be used to address the Board's present needs, as well as to enable it to increase and improve its enforcement activities. The development of new technologies and the rapidly changing trends in delivery of health care have required the Board to focus its attention on complex and varied policy issues. The Board hopes to utilize the additional funds to study and research those issues to determine where and when regulatory response may be appropriate. The Board also seeks to be in a position to continue its practice of giving individualized attention to applicants for licensure to assure the public that only those qualified will be authorized to practice in this State. With adequate resources, the Board hopes to expeditiously address misconduct and to identify physicians proven incompetent, so that appropriate corrective measures may be ordered. In so doing, it will be fulfilling its statutory obligation to protect the public health, safety and welfare.

Economic Impact

While obviously any increase imposes an economic burden on those who will have to pay higher fees, the fees as set forth in this schedule will remain in a range comparable to other large states. The biennial fee for a physician will be increased from $80 to $160. That fee has remained unchanged since 1983. The fees for a limited license will also be increased by a proportionate sum.

The revenues to be generated through this increase have been calculated to be the amount necessary to defray all proper expenses incurred by the Board in accomplishing the goals described herein. In accordance with N.J.S.A. 45:1-3.2, the sums raised are estimated to not exceed the amount required. The increase in the acupuncture examination, though substantial, is directly attributable to the increased cost of the examination incurred by the Board.

Regulatory Flexibility Statement

Since this amended rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses, the analysis mandated by P.L. 1986, c.169, the Regulatory Flexibility Act, is not required.

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

13:35-6.13 Fee schedule

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

1. Medicine and Surgery (M.D. or D.O. license)		
i. Examination— Both Components	$425.00	
ii. Re-examination		
Component I	$250.00	
Component II	$300.00	
iii. License (M.D. or D.O.)	[150.00]	**225.00**

iv. N.J.S.A. 45:9-21(n) —exemption	[150.00]	**225.00**
v. N.J.S.A. 45:9-21(b)— temporary license	50.00	
vi. Endorsement	[150.00]	**225.00**
vii. Biennial registration	[80.00]	**160.00**
2. Chiropractic (license)		
i. Examination	150.00	
ii. Re-examination	50.00	
iii. Endorsement	150.00	
iv. Biennial registration	[60.00]	**120.00**
3. Podiatry (license)		
i. Examination	150.00	
ii. Re-examination	100.00	
iii. Endorsement	150.00	
iv. Biennial [R]registration	[60.00]	**120.00**
4. Bio-analytical laboratory directorship, plenary license		
i. Examination (plenary license)	150.00	
ii. Re-examination	150.00	
iii. Exemption (plenary license)	150.00	
5. Bio-analytical laboratory directorship, specialty license		
[iv.]**i.** Examination (specialty license)	150.00	
[v.]**ii.** Re-examination (specialty license)	150.00	
[vi.]**iii.** Exemption (specialty license)	150.00	
[vii.]**iv.** Biennial registration	[60.00]	**120.00**
[5.]**6.** Midwifery (license)		
i. Examination (lay midwife license)	50.00	
ii. Re-examination	50.00	
iii. Endorsement (lay midwife license)	50.00	
iv. Biennial registration	[60.00]	**120.00**
7. Certified Nurse Midwifery (registration)		
[v.]**i.** Examination, C.N.M.	50.00	
[vi.]**ii.** Re-Examination C.N.M.	50.00	
[vii.]**iii.** Endorsement, C.N.M.	50.00	
[viii.]**iv.** Biennial registration, C.N.M.	[60.00]	**120.00**
[6.]**8.** Athletic Trainer (registration)		
i. Temporary registration or authorized registration without examination	60.00	
ii. Examination	(reserved)	
iii. Re-examination	(reserved)	
iv. Registration fee after examination	60.00	
v. Biennial registration	[60.00]	**120.00**
vi. Reinstatement fee	25.00	
vii. Endorsement	(reserved)	
[7.]**9.** Orthoptist (registration)		
i. Registration by credentialing	25.00	
ii. Biennial registration	[60.00]	**120.00**
[8.]**10.** Acupuncturist (**registration**) [certification]		
i. Examination [including certification]	[150.00]	**325.00**
ii. Re-examination	[150.00]	**325.00**
iii. Endorsement	[150.00]	**175.00**
iv. Biennial registration	[60.00]	**120.00**
v. Reinstatement	25.00	
vi. Non-refundable administrative processing fee	**25.00**	
[9. Hearing Aid Dispenser		
i. Biennial registration	60.00]	
[10.]**11.** General		
i. Recording of name change and issuance of replacement license	25.00	
ii. Duplicate copy of license	25.00	
iii. Preparation of certification papers for applicants to other states	25.00	

(a)

STATE BOARD OF MEDICAL EXAMINERS

Hearing Aid Dispensers Examining Committee Fee Schedule

Proposed Amendment: N.J.A.C. 13:35-8.25

Authorized By: Hearing Aid Dispensers Examiners Committee, William O. Jones, Ph.D., President; New Jersey State Board of Medical Examiners, Edward W. Luka, President.

Authority: N.J.S.A. 45:1-3.2, 45:9A-7.

Proposal Number: PRN 1987-216.

Submit comments by July 15, 1987 to:

Morris W. Eugene, Assistant Executive Director
Hearing Aid Dispensers Examining Committee
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

This proposed amendment would amend the Committee's fee schedule by increasing the biennial registration fee for hearing aid dispensers. Those fee increases are calculated to provide the Committee with adequate funding to discharge its statutory obligation to evaluate applicants for licensure and to regulate the practice of the hearing aid dispensing. By its proposed amendment to N.J.A.C. 13:35-6.13 published elsewhere in this issue of the New Jersey Register, the Board of Medical Examiners has sought to generate sufficient monies to enable it to address its present needs and to enhance its enforcement capabilities. By this proposed amendment, the Hearing Aid Dispensers Examining Committee hopes to achieve the same goals with respect to its licensees. Since the Committee and the Board share investigative and prosecutorial resources, the statements accompanying the proposed amendment to N.J.A.C. 13:35-6.13 apply with equal force to this amendment as well.

Social Impact

Just as there are anticipated benefits to be derived from the increase in enforcement capabilities relating to the other licensees regulated by the Board of Medical Examiners, the public can expect to derive a positive benefit through the increased attention which can be focused on regulating hearing aid dispensers.

Economic Impact

While obviously an increase impacts directly upon those who must pay the fees, the cost is minimal since the biennial registration will be raised from $50.00 to $80.00, a figure well within range of other professional licensee fees. This proposed amendment will also set forth a specific fee for reinstatement and the renewal of a temporary license.

Regulatory Flexibility Statement

Since this amended rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses, the analysis mandated by P.L. 1986, c. 169, the Regulatory Flexibility Act, is not required.

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

13:35-8.25 Fee schedule

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

1. Temporary licenses: $50.00;
2. Examination: $50.00;
3. License after passing the examination: $50.00;
4. Endorsement fee: $100.00;
5. Biennial registration: [$50.00] **$80.00;**
6. **Temporary License Renewal: $20.00;**
7. **Reinstatement: $25.00.**

(a)

DIVISION OF CONSUMER AFFAIRS
Motor Vehicle Advertising Practices
Reproposed Repeal and New Rules: N.J.A.C. 13:45A-2

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.
Authority: N.J.S.A. 56:8-4.
Proposal Number: PRN 1987-215.

Submit comments by July 15, 1987 to:
James J. Barry, Jr., Director
Division of Consumer Affairs
Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Division of Consumer Affairs (Division) originally adopted N.J.A.C. 13:45A-2 in July 1973. Amendments to the rules became effective in November 1976. New rules and repeal of the existing rules were proposed on December 2, 1985 at 17 N.J.R. 2861(a). The 30-day comment period ended January 2, 1986 and the Division subsequently extended the comment period. A total of eight written comments and two verbal comments were received through April 21, 1986. Based upon these comments, the Division published reproposed rules on December 15, 1986 at 18 N.J.R. 2419(b). The 30-day comment period ended January 14, 1987, and the Division subsequently extended the comment period. A total of three written comments and three oral comments were received through April 15, 1987. All the comments have been reviewed and some revisions, substantive as well as procedural, have been incorporated in the reproposed rules.

The reproposed new rules, with minor exception, substantially retain the existing rules which have been clarified, reordered, and renumbered for easier readability. The reproposed new rules clarify existing substantive provisions and their phrasing, as well as address specific deceptive advertising practices observed by the Division since the 1976 revisions took effect.

An initial major change effected by the new rules is that a dealer or lessor must have an advertised motor vehicle on its premises on the date the advertisement runs. This requirement will serve to decrease both "bait and switch" and "high pressure" sales tactics.

Additionally, requirements concerning lease advertisements are specified and clarified. Motor vehicles offered for lease will have to be clearly distinguished from those offered for sale, the minimal disclosure requirements will be necessary with regard to the type of lease, the total cost and consumers' obligations.

The reproposed new rules continue the requirement that advertising contain a single "bottom line" price so that purchasing consumers will be provided with meaningful disclosure as to the actual price to be paid for the vehicle as well as establishing a clear reference point for the purpose of comparing prices among competitors. The term "advertised selling price" now describes the "bottom line" price and must appear in type at least twice the size of any other price relative to an advertised motor vehicle. The new rules also continue the exception for "general availability" advertisements where an advertiser merely wishes to communicate the fact that a general class of vehicles is available for sale, such as a model or series for a new year, or statements involving the general qualities or virtues of a vehicle series or lines. Where, however, the advertisement intends to convey the availability for sale of a particular vehicle as distinguished from an announcement of general availability or quality, the disclosure requirements become operative.

To assure that advertisements claiming price reductions are both bona fide and substantial, the reproposed new rules continue the requirement that a claimed price reduction be at least five per cent less than the usual price at which the vehicle has been previously sold or offered for sale. The rules also require that if an advertisement is a price reduction advertisement, the price from which the reduction is advertised must be the advertiser's usual selling price. Since the motor vehicle seller is in the position of knowing the usual selling price of a vehicle offered for sale to the consuming public over a period of time, and since the data necessary to establish prior selling prices is found primarily in the books and records of the seller, a recordkeeping requirement has been added whereby records establishing the usual selling price must be maintained for a period of 90 days from the date the advertisement is placed. Furthermore, to clearly establish an operative guidepost for defining the usual price from which a price reduction may be advertised and thereby to guard against claimed price reductions which in fact are fictitious, the rules require a showing of not less than three sales at the usual selling price or offering of the advertised vehicle or its substantial equivalent at the usual selling price during the 90 days preceding the date of the price reduction advertisement.

The definition of "advertisement" has been amended to specifically mention leases. The definition of "advertiser" has been amended to delete reference to rental of motor vehicles. The treatment of advertising agents and newspapers in this definition has been replaced with the language of the New Jersey rule governing Merchandise Advertising at N.J.A.C. 13:45A-9.1 et seq.

In addition, the reproposal requires that, with the exception of radio and television broadcasts, the last six numbers of the vehicle identification number be included in any advertisement for a new or used car. The price of each extra cost option installed by the dealer or anyone other than the original manufacturer is also required to be listed, whether or not the price is included on the Monroney label. Misleading or fictitious discounts are prohibited, and disclaimers or qualifying phrases placed in a footnote must appear in at least 10 point type. Misuse of terms such as "public notice" are prohibited. The statement "price(s) include(s) freight, transportation, shipping, dealer preparation and any other additional costs to be borne by a consumer except for licensing costs, registration fees and taxes" must now appear, and if placed in a footnote, be set forth in at least 10 point type. The rules contain a new requirement (parallel to that in the Division's General Merchandise Advertising Regulations) that the current advertisement be conspicuously posted on the premises.

The reproposed N.J.A.C. 13:45A-2.8 deals with warranties. First, if a warranty is a manufacturer's or factory warranty or guaranty and the advertisement states that it is such a warranty, the disclosure requirements of the section do not apply. Second, if the actual warranty contains certain minimum provisions, the amount of disclosure required is less extensive than when the warranty does not contain these minimum provisions. The reproposed rules do not require that a warranty contain any specific provisions, but require different amounts of disclosure depending on the provisions of the actual warranty.

It is intended that the reproposed new rules be construed and applied in a manner consistent with the purpose of preventing the evils engendered by deceptive and misleading advertising, thereby affording the consuming public forthright and honest presentations of motor vehicle information as well as promoting a truly competitive climate within the marketplace.

Social Impact

By refining definitional and disclosure requirements, the regulations will enhance consumer confidence and ability to meaningfully compare motor vehicle advertisements. Motor vehicle advertisers will benefit by the enhanced clarity in definition phrasing, as well as by the prohibition of specifically identified deceptive practices. Both consumers and advertisers will benefit by more complete, standardized disclosure requirements. Such requirements will serve to further minimize the ability of the unscrupulous minority of motor vehicle advertisers who would seek to gain unfair advantage.

Economic Impact

The economic impact on motor vehicle advertisers will be minimal, in terms of the several additional requirements. The reproposed new rules require 10 point type disclosure for terms placed in a footnote and clarification of certain terms and explanations, in order to curtail potential deceptive advertising. A copy of the advertisement must be posted, and applicable disclosure requirments will be extended to radio and television advertising. Also, dealers and lessors will be required to have in stock advertised vehicles, so as to curtail abuses in "bait and switch" advertising.

Advertisers and sellers will benefit economically by virtue of the curtailment of unfair advantage to the unscrupulous advertising minority. Consumers will benefit by clearer and more precise comparative disclosure requirements, and savings in time and money not wasted in response to deceptive advertising.

Regulatory Flexibility Statement

The motor vehicle dealer industry in New Jersey is comprised of approximately 780 licensed dealers. These licensed dealers are mainly small businesses, although several dealers have more than one business location

and several have operations which engage in the leasing of used or new motor vehicles rather than exclusively engaging in the sale of used or new motor vehicles. Thus, the reproposed new rules do not impose disparate additional burdens upon small businesses since all motor vehicle dealers are affected equally.

Moreover, certain aspects of the proposed new rules merely expand existing compliance and recordkeeping requirements. For example, N.J.A.C. 13:45A-2.7(c) requires a motor vehicle dealer, in whose name a price reduction advertisement is placed, to maintain such records as may be necessary to establish the usual selling prices for a period of 90 days following the date of publication of the advertisement. These records shall be made available for inspection by the Division of Consumer Affairs. The existing rules require records to be maintained for a period of 60 days.

Only two new compliance and recordkeeping requirements are found in the proposed new rules. The first, N.J.A.C. 13:45A-2.5(a)(21)(ii), requires motor vehicle dealers who run advertisements offering advertised motor vehicles for sale that are contracted to run without change more than once to maintain a copy of the sales agreement for a period of 90 days following the date of sale in the event that the advertised motor vehicle is sold before the contracted advertising schedule has been completed. These records shall be made available for inspection by the Division of Consumer Affairs. The second requirement, N.J.A.C. 13:45A-2.9(a)(17), requires motor vehicle dealers who run advertisements offering advertised motor vehicles for lease that are contracted to run without change more than once to maintain a copy of the leasing agreement for a period of 90 days following the date of lease in the event that the advertised motor vehicle is leased before the contracted advertising schedule has been completed. These records shall also be made available for inspection by the Division of Consumer Affairs.

It is clear that there is no need for professional services for the motor vehicle dealer to comply with the proposed new rules. Moreover, any costs in complying with the provisions of N.J.A.C. 13:45A-2.7(c), 13:45A-2.9(a)(17), 13:45A-2.9(a)(18) and 13:45A-2.5(a)(21)(ii) will be borne uniformly by all dealers.

In view of the fact that the rules operate evenly by their application and since that class of persons regulated is composed largely, if not entirely, of small businesses whose interests have been considered in the rules' formulation, the intent of the Regulatory Flexibility Act vis a vis minimizing adverse economic impact has been satisfied.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-2.

Full text of the proposed new rules follows:

SUBCHAPTER 2. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A-2.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act.

13:45A-2.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed within this State concerning motor vehicles advertised as available at locations exclusively within this State; and

2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed to any substantial extent within this State concerning motor vehicles advertised as available at locations within this State and outside this State, or at locations exclusively outside the State.

13:45A-2.3 Definitions

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

"Advertised motor vehicle" means any new or used motor vehicle offered for sale or lease in an advertisement in which the motor vehicle is specifically identified by either:

1. Stating the advertised selling price or the manufacturer's suggested retail price; or

2. Stating the amount of any payment or the deferred payment price; or

3. Listing information relating to essential elements or components of a particular motor vehicle, such as transmission type, brakes, steering or extra cost options so as to make clear to a consumer that a specific motor vehicle is being offered for sale.

With respect to an advertisement which offers a group of new motor vehicles for sale covering a specified price range (for example, "1988 Escorts for sale—$8,000 to $10,000"), the least expensive and most expensive motor vehicles are considered to be advertised motor vehicles.

"Advertised selling price" means a single specific dollar figure indicating the amount of money the advertiser expects to receive or will accept for the sale or lease of an advertised motor vehicle.

"Advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, paper, sign or radio or television broadcast which offers or in any way indicates the availability of a motor vehicle for sale or lease at retail.

"Advertiser" means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale, leasing or financing of motor vehicles at retail or who in the course of any 12 month period offers more than three motor vehicles for sale or lease or who is engaged in the brokerage of motor vehicles whether for sale or lease and who directly or indirectly initiates, requests or causes an advertisements. An advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertiser shall be deemed an advertiser within the meaning of this rule, when such entity prepares and places an advertisement for publication. No such entity shall be liable for a violation of this rule when the entity reasonably relies upon data, information or material supplied by an advertiser for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertiser on whose behalf such advertisement was placed. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this rule.

"Dealer" means any person who in the ordinary course of business is engaged in the sale or leasing of motor vehicles at retail or who in the course of any 12-month period offers more than three motor vehicles for sale or lease at retail.

"Extra cost option" means optional equipment, regardless of its place of installation, on the motor vehicle, the price of which would not be included in the manufacturer's suggested retail price for the basic vehicle.

"General availability advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle including any statement appearing in a newspaper periodical, pamphlet, circular, or other publication, paper, sign or radio or television broadcast which offers or in any way indicates the availability of a general class of vehicles for sale or lease, such as a make, model or series for a new year, or statement involving the general qualities or virtues of a vehicle series or lines.

"Lease" means a contract for the use of a motor vehicle for a period of time exceeding four months whether or not the lessee has the option to purchase or otherwise become the owner of the motor vehicle at the expiration of the lease.

"Lessee" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who leases a motor vehicle.

"Lessor" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who in the ordinary course of business leases, offers to lease, or arranges for the leasing of motor vehicles.

"Monroney sticker" is the label required by Section 3 of the Automobile Information Disclosure Act, 15 U.S.C. §1232.

"Motor vehicle" means any vehicle driven otherwise than by muscular power, excepting such vehicles as those which run only upon rails or tracks.

"Price reduction advertisement" means any advertisement which in any way states or suggests directly or indirectly that the advertised motor vehicle is being offered or made available for sale at a lower price than that at which it has been usually sold or offered for sale.

"Rebate" means the payment of money by the manufacturer to a consumer or payment to a dealer or third party on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle.

"Sale" means a sale as defined by N.J.S.A. 56:8-1(e) of any motor vehicle.

"Taxes, licensing costs and registration fees" means those usual taxes, charges and fees payable to or collected on behalf of governmental

agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle.

"Used motor vehicle" means any motor vehicle possessing an odometer reading of greater than 1,000 miles.

"Warranty advertisement" means any advertisement in which any warranty or guaranty for any motor vehicle or part thereof is offered in connection with the sale of such motor vehicle.

13:45A-2.4 Bait and switch

(a) The following motor vehicle advertising "bait and switch" practices shall be unlawful:

1. The use of an advertisement as part of a plan or scheme not to sell the motor vehicle advertised or not to sell the same at the advertised selling price;

2. Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell a motor vehicle as advertised or not to sell the same at the advertised selling price;

i. Refusal to show, display or sell the motor vehicle advertised in accordance with the terms of the advertisement, except that an advertiser shall not be required to provide a road test of a motor vehicle unless so stated in the advertisement;

ii. The disparagement by act or word, either before or after the sale of the advertised motor vehicle, of the guaranty, warranty, credit terms, availability of service, repairs or parts or of anything in any other respect a material fact connected with the advertised motor vehicle. However, disparagement shall not include an accurate factual description of the difference or differences between the advertised motor vehicle and other motor vehicles when and where the customer requests such information;

iii. The refusal to take orders for advertised motor vehicles or the taking of orders at a price greater than the advertised selling price;

iv. The failure to submit orders to the manufacturer or other source used in the ordinary course of business for the advertised motor vehicles;

v. The showing, demonstrating or delivery of any advertised motor vehicle which is known to be or should have been known to be defective, unusable or unsuitable for the purpose represented or implied in the advertisement;

vi. Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser;

vii. The failure to make a delivery of the advertised motor vehicle within the promised delivery period, unless such failure is caused by reasons beyond the control of the advertiser;

viii. The use of a sales plan or method of compensating or penalizing salesmen, designed to prevent or discourage them from selling the advertised motor vehicle or from selling the same at the advertised selling price. However, this provision shall not apply to a sales plan or method of compensation whereby a salesman realizes a fixed percentage rate of the gross amount of his sales made within a specified time period nor to salesman bonus plans designed primarily to encourage or reward salesmen for selling motor vehicles other than the advertised motor vehicle.

13:45A-2.5 Advertisements; general requirements for disclosure

(a) With respect to any advertisements offering or making available for sale a new or used motor vehicle other than an advertisement indicating the general availability of a make, model or series of new motor vehicles, the following motor vehicle advertising practices shall be unlawful:

1. The failure to state the advertiser's true name and business address or the word "dealer";

2. The failure to state a single specific dollar amount indicating the advertised selling price in type size at least twice the size of any other dollar figure pertaining to the advertised motor vehicle;

3. The failure to set forth a statement, located immediately adjacent to or contained in the description of the advertised motor vehicle, that "price(s) include(s) freight, transportation, shipping, dealer preparation and any other costs to be borne by a consumer, except for licensing costs, registration fees, and taxes." If this statement appears as a footnote, it must be set forth in at least 10 point type;

4. The setting forth of an advertised selling price which has been calculated by deducting a down payment, trade-in allowance, rebate or any other dollar figure which does not represent a reduction in the amount of money the dealer will accept for the advertised motor vehicle;

5. The setting forth of an advertised selling price which is effective only if another thing of value is purchased;

6. The failure to list all disclaimers, qualifiers or other such related information immediately adjacent to any stated special offer, price, discount, annual percentage rate or savings. If the disclaimers, qualifiers or other such related information appear as a footnote, they must be set forth in at least 10 point type;

7. The offering of equipment free or at a discount and failing to state its retail value or show it as a dollar deduction with regard to the specific advertised motor vehicles to which such offering applies;

8. The setting forth of a dollar figure representing a discount which is applicable to only a limited group of consumers and incorporating it in the advertised selling price;

9. The failure to state the manufacturer's suggested retail price, if any, as it appears on the Monroney label clearly denominated as such;

10. The failure to state the manufacturer's suggested retail price clearly denominated as such and without qualifying adjectives and terms in any advertisement relating to a new vehicle which is not required to have a Monroney label but for which the manufacturer does suggest a retail price. The motor vehicle dealer shall retain such records as may be necessary to establish the above noted manufacturer's suggested retail price;

11. In any advertisement relating to a new motor vehicle, the statement of a price as the manufacturer's suggested retail price when the manufacturer does not provide a suggested retail price;

12. In any advertisement relating to a new motor vehicle, the failure to set forth the original manufacturer's suggested retail price for any basic vehicle which has been converted at additional cost by someone other than the original manufacturer;

13. The failure to clearly indicate that the manufacturer's suggested retail price is identical, when applicable, to the advertised selling price;

14. In any advertisement relating to a new motor vehicle, the failure to list each extra cost option installed by the dealer or any one other than the original manufacturer clearly denominated as such together with the retail price of each as determined by the dealer whether or not that price is included on the Monroney label.

15. The failure to state the following information:

i. The number of engine cylinders;

ii. Whether the transmission is automatic or manual;

iii. Whether the brakes and steering mechanism are power or manual;

iv. Whether the vehicle has air conditioning;

16. With respect to an advertisement offering a used motor vehicle for sale, the failure to state the actual odometer reading as of the date of placing the advertisement for publication;

17. The failure to state the year, make, model and the series where the advertised motor vehicle has a designated series or model;

18. The failure to set forth the last six digits of the vehicle identification number of an advertised motor vehicle. In any advertisement which offers two or more motor vehicles with the same manufacturer's suggested retail price, the last six digits of the vehicle identification number for at least two of these must be stated. The six digit number shall be preceded by the letters "VIN." This provision shall not apply to radio and television broadcasts;

19. The failure to state the exact number of models of advertised motor vehicles with the same manufacturer's suggested retail price on premises on the date the advertisement runs;

20. With respect to advertisements that are contracted to run once, the failure to have an advertised motor vehicle on premises on the date the advertisement runs;

21. With respect to advertisements offering advertised motor vehicles for sale or that are contracted to run without change more than once:

i. The failure to have an advertised motor vehicle on the premises on the first day the advertisement runs;

ii. In the event an advertised motor vehicle is sold before the contracted advertising schedule has been completed, the dealer must notify any consumer who inquires by telephone of the sale and maintain a copy of the sales agreement for a period of 90 days following the date of sale which shall be made available for inspection by the Division of Consumer Affairs;

iii. For the purpose of (a)21ii above, such contracted advertising schedule shall be limited to the four days immediately following the initial publication. In the event the advertisement appears after the four day limit, it shall be subject to the provisions of (a)21i or ii above, whichever is applicable;

22. For any advertised motor vehicle having an odometer reading in excess of 1,000 miles, the failure to state the nature of prior use unless previously owned by individuals for their personal use.

13:45A-2.6 Certain credit and installment sale advertisements

(a) The following motor vehicle advertising practices concerning credit and installment sale advertisement shall be unlawful:

1. The advertising of credit, including but not limited to such terms as easy credit or one-day credit, other than that actually transacted by the advertiser on a regular basis in the ordinary course of business;

2. The failure to state the following information in any advertisement offering to sell a motor vehicle on an installment basis:

i. The total cost of the installment sale indicated by a single specific dollar amount (including the down payment, or trade-in, if any, plus the total deferred payment price) in type size no smaller than the size of the monthly payment figure pertaining to the advertised motor vehicle;

ii. The annual percentage rate;

iii. The monthly payment figure (calculated on the basis of the total cost of the installment sale) and the number of required payments;

iv. The amount of any down payment or trade-in required or a statement that none is required;

v. The disclosures in (a)2i through iv above shall be placed adjacent to the description of the advertised motor vehicle and shall not be contained in a footnote, unless the disclosures are the same for all motor vehicles advertised.

3. The use or statement of an installment payment on any basis other than a monthly basis.

13:45A-2.7 Price reduction advertisements

(a) In any advertisement wherein a reduction from the usual selling price is stated or indicated either directly or by implication, the following motor vehicle advertising practices shall be unlawful:

1. The use or statement of any price from which a reduction is indicated either directly or by implication where such price is not the usual selling price;

2. The placement of a price reduction advertisement where the price reduction is less than five percent of the usual selling price.

(b) For the purpose of this section, a usual selling price is the price at which the advertiser has sold or offered for sale the advertised motor vehicle or a substitute equivalent on not less than three occasions during the 90-day period immediately preceding the date of publication of the advertisement. The use of the terms "sale," "discount," "savings," "price cut," "bargain," "reduction," "special savings," "prices slashed," "clearance," "buys" and other terms of similar import shall be deemed to indicate a price reduction advertisement.

(c) In the event that an advertiser places a price reduction advertisement, the motor vehicle dealer in whose name the advertisement is placed shall retain such records as may be necessary to establish the ususal selling price. Such records shall be maintained for a period of 90 days following the date of publication of the advertisement and shall be made available for inspection by the Division of Consumer Affairs.

13:45A-2.8 Warranty advertisements

(a) Unless the warranty advertised states that it is a manufacturer's or factory warranty or guaranty, or complies with the requirements of (b) below, advertising a warranty or guaranty shall be an unlawful motor vehicle advertising practice if the actual warranty does not at a minimum include the following provisions:

1. Duration: The warranty must start on the vehicle's purchase date and extend at least 30 days thereafter or 1,000 miles beyond the odometer reading at the time of purchase, whichever occurs first;

2. Coverage: The following parts of the vehicle must be covered thereunder:

i. Engine: The following internal lubricated parts: pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, intake manifold, valve springs, guides, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shaft and cylinder heads. The engine block is covered if damaged by a defect or malfunction of one or more of the above listed internal lubricated parts;

ii. Transmission: All internal lubricated parts contained within the transmission case and torque converter case. The transmission case and torque converter case are covered if damaged by a defect or malfunction of one or more of these internal lubricated parts;

iii. Drive axle assembly: The following parts: drive shaft and universal joints and all internal lubricated parts contained within the drive axle housing. The drive axle housing is covered if damaged by a defect or malfunction of one or more of these internal lubricated parts; and

iv. Water pump impeller, shaft bearings and bushings.

3. Purchaser's obligation to contribute toward warrant repairs or replacement costs shall be no greater than 50 percent of the selling dealer's regular retail charges for all parts and labor furnished in the repairs or replacements performed under the warranty.

(b) Where the warranty or guaranty being offered in an advertisement does not conform to the minimum standards of (a) above, failure to include the following disclosures in the actual advertisement shall be an unlawful motor vehicle advertising practice:

1. Limitation of warranty or guaranty as to duration, inclusion or exclusion of service or labor charges, and characteristics or properties of the motor vehicle or part thereof included or excluded by the warranty or guaranty;

2. Whether the warranty or guaranty will be performed by repair, replacement, refund or any other means and whether such manner of performance is at the option of the advertiser.

13:45A-2.9 Lease

(a) With respect to any advertisement offering or making available for lease a new or used motor vehicle other than an advertisement indicating the general availability of a make, model or series of new motor vehicles, the following motor vehicle advertising practices shall be unlawful;

1. The failure to state the advertiser's true name and business address;

2. The failure to clearly and conspicuously identify the advertised transaction with the term "lease";

3. The failure to state the amount of the monthly payment in type size at least twice the size of any other dollar figure pertaining to the advertised motor vehicle, and the number of required payments;

4. The failure to state the total amount of any payment, including all non-refundable payments such as security deposit, down payment or capitalized cost reduction required at the beginning of the lease, or a statement that no such payment is required;

5. A statement of whether the lessee has the option to purchase the motor vehicle and, if at the end of the lease term at what price, and, if paid to the end of the lease term, at what time, and the price or method of determining the price;

6. The failure to state the amount of any liabilities the lease imposes upon the consumer at the end of the term; and, if the consumer shall be liable for any difference between the estimated value of the leased motor vehicle and its realized value at the end of the lease term;

7. The use or statement of any lease payment on any basis other than a monthly basis;

8. The failure to set forth in any advertised lease price a statement that "Price(s) include(s) freight, transportation, shipping, dealer preparation; and any other additional costs to be borne by a consumer except for licensing costs, registration fees and taxes", immediately adjacent to or contained in the description of the advertised motor vehicle. If this statement appears as a footnote it must be set forth in at least 10 point type;

9. The setting forth of an advertised leased price which has been calculated by deducting a down payment, trade-in allowance, rebate or any other dollar figure which does not represent a reduction in the amount of money the lessor will accept for the advertised motor vehicle;

10. The failure to list all disclaimers, qualifiers or other such related information immediately adjacent to any stated special offer, price, discount, or savings. If the disclaimers, qualifiers or other such related information appear as a footnote they must be set forth in at least 10 point type;

11. The failure to state the manufacturer's suggested retail price, if any, as it appears on the Monroney label clearly denominated as such and without qualifying adjectives and terms in any advertisement relating to a new motor vehicle;

12. The failure to state the following information;

i. The number of engine cylinders;

ii. Whether the transmission is automatic or manual;

iii. Whether the brakes and steering mechanism are power or manual;

iv. Whether the vehicle has air conditioning;

13. The failure to state the year, make, model and the series where the advertised motor vehicle has a designated series or model;

14. The failure to set forth the last six digits of the vehicle identification number of an advertised vehicle. In any advertisement which offers two or more motor vehicles with the same manufacturer's suggested retail price the last six digits of the vehicle identification number for at least two of these must be stated. The six digit number shall be preceded by the letters "VIN." This provision shall not apply to radio and television broadcasts;

15. The failure to state that exact number of models of advertised motor vehicles with the same manufacturer's suggested retail price on premises on the date the advertisement runs;

16. With respect to advertisements that are contracted to run once, the failure to have an advertised motor vehicle on premises on the date the advertisement runs;

17. With respect to advertisements that are contracted to run without change more than once:

i. The failure to have an advertised motor vehicle on premises on the first day the advertisement runs;

ii. In the event an advertised motor vehicle is leased before the contracted advertising schedule has been completed, the dealer must notify any consumer who inquires by telephone of the lease and maintain a copy of the leasing agreement for a period of 90 days following the date of the lease which shall be made available for inspection by the Division of Consumer Affairs;

iii. For the purpose of this paragraph such contracted advertising schedule shall be limited to the four days immediately following the initial publication. In the event the advertisement appears after the four day limit it shall be subject to the provisions of (a)17i or ii. above, whichever is applicable;

18. For any advertised motor vehicle having an odometer reading in excess of 1,000 miles, the failure to state the nature of prior use unless previously owned by individuals for their personal use;

19. With respect to an advertisement offering a used motor vehicle for lease, the failure to state the actual odometer reading as of the date of placing the advertisement for publication;

20. The setting forth of any annual percentage rate with respect to any offer of a motor vehicle for lease.

13:45A-2.10 Guaranteed satisfaction, discount and quality claims

(a) The following motor vehicle advertising practices concerning guaranteed satisfaction, discount and quality claims shall be unlawful:

1. The use of the terms "guaranteed discount", "guaranteed lowest prices", or any other similar term unless the advertiser clearly and conspicuously discloses the manner in which such guaranty will be performed and any conditions or limitations controlling such performance;

2. The use of any guaranty, warranty or any other representation regarding the quality of a motor vehicle or part thereof which creates a false impression of the quality, durability, maintenance needs or any other material fact concerning any motor vehicle or part thereof (for example, failure to disclose the fact that substantial repair or body work has been performed on a motor vehicle when such prior repair is known or should have been known by the advertiser or the person for whom he acts).

13:45A-2.11 General prohibitions

(a) The following motor vehicle advertising practices shall be unlawful;

1. The use of any type, size, location, lighting, illustration, graphic depiction or color so as to obscure or make misleading any material fact in any advertisement;

2. In any advertisement, the use of deception, fraud, false pretense, false promise or misrepresentation as to the size, inventory or nature of the advertiser's business; as to the expertise of the advertiser, his agents or employeers; or as to the ability or capacity of the advertiser to offer price reductions or price savings;

3. In an advertisement, the use of the term "low prices," "lowest prices," "lower than anyone else" or of any other term suggesting that the prices offered are lower than those usually offered in the business area of the advertiser when in fact the prices are not reasonably below those usually offered in the business area of the advertiser or any other term which is any respect misleading;

4. The use in any advertisement, directly or indirectly, of a comparison to the dealer's cost, inventory price, factory invoice, wholesale, at no profit, floor plan balance, dealer issue or terms of similar import;

5. The use of the terms "Public Notice," "Public Sale" or words or terms of similar meaning in any advertisement offering motor vehicles for sale, where such sale is not required by court order or by operation of law; or terms such as "Authorized Distribution Center," "Factory Outlet," "Factory Authorized Sale" or other term(s) which imply that the advertiser has an exclusive or unique relationship with the manufacturer;

6. The failure to conspicuously post notice of advertised motor vehicles on the premises to which the advertisement applies in proximity to the advertised motor vehicles or at the main entrance(s) to the business premises ordinarily used by prospective buyers. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the motor vehicles stating the advertised selling price as well as any other substantive disclosures required herein;

7. The use in any advertisement of the term rebate, or any other terms indicative of cash payment or something of value (for example, savings bond, gift certificate or vacation trip), to describe anything other than the giving of such consideration to the purchaser or lessee of a motor vehicle by the manufacturer at the time of purchase or shortly thereafter. The term rebate (or other consideration as specified above) shall not be used to described a bonus, give back or credit offered to the dealer by the manufacturer which may or may not be passed on to the purchaser.

8. The setting forth of any special offering involving price, discount, annual percentage rate savings, bonus or terms of similar import and failing to specifically and clearly explain any conditions, exclusions, qualifiers or other such related information immediately adjacent to the offering. If the explanation appears as a footnote it must be set forth in at least 10 point type;

9. The failure to display the Monroney label, as required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231-1233 and the failure to display the fuel economy label, as required by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §2006, on every new motor vehicle offered for sale;

10. The failure to display the Used Car Buyers Guide, as required by the Federal Trade Commission's Used Car Rule, 16 C.F.R. Part 455.2, on every used motor vehicle offered for sale.

(b) The rules in this subchapter shall apply to any advertisement published or circulated within the State of New Jersey where an advertiser intends to sell or lease or actually sells or leases motor vehicles on a regular basis to New Jersey residents.

(a)

DIVISION OF CONSUMER AFFAIRS

Representations Concerning and Requirements for the Sale of Kosher Products

Proposed Repeal and New Rules: N.J.A.C. 13:45A-21 and 22

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1987-206.

Submit comments by July 15, 1987 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Under the current rules of the Division of Consumer Affairs, effective on April 2, 1984, it is unlawful for any establishment engaged in the sale of Kosher food or food products to sell, offer for sale, serve or possess with intent to sell any food which is falsely represented as Kosher. These proposed new rules were developed as a result of an evolution of experiences which occurred through a monitoring practice of actual implementation of the existing rules. Through this monitoring practice, it is discovered that the Kosher meat/poultry consumer needed additional protection, and that protection should be extended to the consumer of general Kosher foodstuffs as well.

The proposed new rules seek to enhance the protection afforded the consumer of Kosher meat and poultry. The proposed rules require that all meats which are to be sold as Kosher should be maintained as Kosher. This is done by requiring that all meats must be properly deveined and washed within the time prescribed by Orthodox Jewish law. The consumer must be notified whether the meat has been soaked and salted. There is a provision in the proposed rules which requires the separation of meats from dairy products and also requires the use of separate utensils for meats and dairy products. The proposed rules provide for an identification procedure for consumers of meat and poultry which ensures a reliable method of ascertaining that the meat they are purchasing is in fact Kosher. This is done by requiring that meats and poultry are properly identified by tags and plumbas placed on the designated portion by the slaughterer or the wholesaler. These rules do not create any novel concepts; rather, they clarify what should already be the practice in Kosher establishments.

Finally, certain provisions of the existing rules which address advertising, the use of Kosher food symbols and handling requirements have been broadened in the proposed new rules.

Social Impact

The proposed new rules will have a positive social impact. By replacing the existing rules with broader new rules, the consumer of Kosher meat and poultry will be further protected from possible misrepresentation. Additionally, protection is extended to the consumers who purchase Kosher foodstuffs other than meat or poultry. These consumers are equally entitled to the full protection of the law to ensure that their purchases are not falsely represented as Kosher.

Economic Impact

The only provisions of the proposed new rules requiring a financial outlay are those requiring the butcher to purchase a sign informing customers whether or not the meat has been soaked and salted and to mark packaged meat with the date of packaging. The new rules will save money for markets that do not carry nonpackaged Kosher meat by lifting all sign and divider requirements. Any nominal expenses incurred by the adoption of these rules would be mitigated by the additional protection provided by them.

Regulatory Flexibility Statement

These rules will impact upon establishments that sell Kosher food products and will include small businesses. The nature of these rules are such that they deal not with administrative compliance but rather with the direct relationship between the consumer and the purveyor. Accordingly, it would be inappropriate to exclude any establishments from these rules including small businesses.

Additionally, it should be noted that stores which do not handle nonpackaged meats on their premises will be excused from most handling and display requirements, and thereby effect a savings for them.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-21 and 22.

Full text of the proposed new rules follows:

SUBCHAPTER 21. REPRESENTATIONS CONCERNING AND REQUIREMENTS FOR THE SALE OF KOSHER PRODUCTS

13:45A-21.1 Definitions

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

"Advertises, represents or holds itself out" means engaging in promotional activities including but not limited to newspaper, radio and television advertising and distribution of fliers.

"Kosher" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion.

"Kosher brand" means a brand of a type approved by the United States Department of Agriculture.

"Kosher for Passover" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion relating to the Jewish holiday of Passover.

"Kosher-style," "Kosher-type," "Jewish," "Hebrew" or other similar words mean a Non-Kosher food or food product which has not been prepared or maintained in strict compliance with the laws and customs which are generally recognized as being among the Orthodox Jewish religious requirements, but rather has either been prepared in such a way as to simulate the taste, appearance and/or consistency of a kosher food or food product or has originally been prepared in accordance with the above religious requirements but has not been maintained in the proper manner.

"Non-dairy" or "Pareve" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion relating to non-dairy, pareve, foods.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or, any other legal or commercial entity. When used in N.J.A.C. 13:45A-21.2, "person" shall include, in addition to all retail establishments, all dealers in Kosher food or food products, New Jersey-based manufacturers, wholesalers, processors, slaughterhouses and all others along the chain from the time the product is manufactured or, in the case of meat or poultry, from the slaughter to the time of its sale, and hold themselves out as Kosher or dealing with Kosher food or food products.

"Plumba" means the tin seal commonly used in the Kosher industry with the word "Kosher" indicated thereon either in English or Hebrew letters, and with certain letters, figures or emblems indicated thereon that will positively identify such plumba with the particular slaughterhouse where the animal was slaughtered or processed.

"Properly sealed packages" means those packages placed on the Kosher meat or Kosher food or food product by the manufacturer.

"Tag" means a tag of whatever form bearing the name and address of the slaughterhouse where the animal was slaughtered, the name of the person who sanctioned the Kosher slaughtering of meat at the slaughterhouse named and the date of the slaughter.

13:45A-21.2 Unlawful practices

(a) It shall be an unlawful consumer practice for any person to sell, offer for sale, expose for sale, serve or have in his possession with intent to sell, by any of the following means, in any restaurant, hotel, store or catering facility or other place, any food or food product which is falsely represented to be Kosher, Kosher for Passover, under Rabbinical Supervision, non-dairy or pareve or as having been prepared under and/or with a product sanctioned by Orthodox Jewish religious requirements:

1. By direct statements, orally or in writing; or

2. By display of the word "Kosher" in English or Hebrew letters, or by display of any sign, emblem, insignia, six-pointed star, symbol or mark in simulation of the word Kosher; or

3. By inscription on any food or food product or its package, container or contents, the word "Kosher," "Pareve," "Glatt," or "Rabbinical Supervision" in English or Hebrew letters, or by display or inscription of any sign, emblem, insignia, six-pointed star, symbol or mark in simulation of the word Kosher. For the purposes of this paragraph, the marking of any food or food product or its package, container or contents with the English words "Kosher" or "Pareve," or with the letters "K," "KP," "KD," or "KOS," shall be deemed to be an unlawful practice if the product is not under rabbinical supervision; or

4. By display on any interior or exterior sign or menu or otherwise, the words "Kosher-Style," "Kosher-Type," "Jewish," "Hebrew," "Holiday (Jewish) Foods," "Traditional," "Bar Mitzvah," "Bat Mitzvah," or other similar words, either alone or in conjunction with the word "Type," "Style" or other similar expression, unless there is clearly and conspicuously stated a disclaimer in the same size type or letters in some prominent place or location that these terms refer to a Non-Kosher food or food product or food handling facility that does not observe Orthodox Jewish dietary laws; or

5. By advertisement, either oral or in writing, using the words "Kosher-Style," "Kosher-Type," "Jewish, " "Hebrew," "Holiday (Jewish) Food," "Traditional," "Bar Mitzvah," "Bat Mitzvah," or other similar words, either alone or in conjunction with the word "Type," "Style" or other similar expression unless there is clearly and conspicuously stated a disclaimer in type no smaller than the smallest type in the advertisement, and in no event less than 10-point type, that the product or products offered for sale are not Kosher.

i. The disclaimer shall appear in a box within the advertisement and shall be preceded with the word "NOTICE," or other similar word, in not smaller than bold 14-point type.

ii. An advertisement that utilizes any Kosher symbol that also promotes the sale of non-kosher food or food products is in violation of this section unless there is clearly and conspicuously stated in the advertisement a disclaimer in accorance with the requirement of this paragraph, that some of the food or food products offered for sale are Non-Kosher; or

6. By unauthorized use of a Kosher food symbol including, but not limited to OU, OK, VH, NK, SK, CRC, KAJ, KOF-K.

13:45A-21.3 Display and handling requirements

(a) A Kosher food or food product sold by a restaurant, hotel, store, catering facility or other place which advertises, represents or holds itself out as selling, serving or offering for sale both Kosher and Non-Kosher food or food products may be falsely represented to be Kosher within the meaning of N.J.A.C. 13:45A-21.2 unless the following display and handling requirements are observed.

1. Interior display and handling requirements are as follows:

i. Kosher meats, food or food products which are not prepared, cut, sliced, carved, broken down or divided into smaller portions on the premises of the place in which they are offered for sale, and which are contained in properly sealed packages, may be commingled with Non-Kosher meats, food or food products, provided, however, that if an establishment indicates by sign or label that kosher products are contained in a separate display cabinent or section, only Kosher products may be contained therein;

ii. Kosher meats, food or food products which are prepared, cut, sliced, carved, broken down or divided into smaller portions on the premises of the place in which they are offered for sale shall not be commingled with Non-Kosher meats, food or food products, Kosher meats, food or food products shall be kept in a separate display cabinet which shall not contain any Non-Kosher meat, Non-Kosher food or food products, or any dairy products and shall be separated from any Non-Kosher meats, Non-Kosher food or food products or any dairy products by a clearly visible divider.

iii. There shall be a clearly visible sign in block letters affixed to the separate display cabinet or Kosher section of said cabinet indicating that only KOSHER FOOD is contained therein and indicating which section contains only DAIRY products and which section contains only MEAT.

iv. Kosher dairy foods shall be prepared in utensils that are separate and distinct from those used to prepare Kosher or Non-Kosher meats and all servicing and eating utensils shall be kept separate and apart as either meat or dairy. Such Kosher meat and food or food products shall be sliced with a separate knife, and on a separate cutting board, or on a separate slicing machine, used solely for Kosher meat and food or food products and labelled "Kosher" in clearly visible block letters affixed to the knife or, in the case of a slicer, either affixed to the slicer or displayed in a prominent place on the premises where the slicer is maintained.

v. No articles of food or food products, including meats, shall be sold as Kosher or Kosher for Passover unless a Kosher or Kosher for Passover identification is securely affixed thereto by the manufacturer or packer at his premises. No person other than such manufacturer or packer shall possess or affix such marks of identification.

vi. No raw meat or poultry may be sold or offered for sale as Kosher unless the words "soaked and salted," "not soaked and salted" or "soaked and salted upon request only," as the appropriate case may be, is prominently displayed on a sign in conjunction with the product. If the raw meat or poultry is packaged, the words "soaked and salted" or "not soaked and salted" may be marked on the package label in lieu of, or in addition to, the above requirement, but in no event shall packaged raw meat be sold or offered for sale as Kosher without the date of packaging clearly marked on the label. No person may sell or offer for sale, as Kosher, any raw meat or poultry that is identified as "soaked and salted" unless the product has been soaked and salted in a manner which makes it Kosher.

2. Washing and deveining requirements are as follows:

i. Kosher meats must be maintained Kosher and must be properly deveined and, with the exception of liver, washed within 72 hours after slaughter, and within each subsequent 72 hour period in accordance with the laws and customs of the Orthodox Jewish religion. The date and time of the day (A.M. or P.M.) of each washing and the name of the person performing such duty shall be legibly indicated on all tags attached to the said meat.

ii. Meats to be washed enroute shall be packed in such a manner as to allow washing to be done as prescribed above. The date and time of day of the washing shall be indicated on all tags or by means of a written statement securely attached inside the car or other vehicle and signed by the person supervising the washing. Upon receipt of the meat so washed enroute, the information contained in the written statement shall be legibly transferred to tags attached to the meat by the person receiving the meat.

iii. When tongues, offal and other parts of meat that are packed in containers and are not deveined, soaked, salted and rinsed in accordance with the Jewish laws of Koshering meat prior to shipping, they must be packed in containers that are sufficiently perforated to permit the free flow of water to reach all sides of said tongues, offal and other parts of meat packed therein and to enable the water to freely flow out again.

iv. When calves are shipped unflayed and part of the skin is detached from the meat, the water shall also reach every portion of the meat under the detached skin.

v. All marks of Kosher identification shall be removed by the owner or consignee from meat which has not been properly washed immediately after the time of washing has expired provided, however, that liver shall be excepted from the requirements of this paragraph. All marks of Kosher identification shall be removed by the owner or consignee from meat on which the date and time of day (A.M. or P.M.) of each washing have not been properly indicated on all tags attached thereto. Stamps, inscriptions and incision of Kosher marks of identification impressed on the meat shall be removed by the owner of consignee by blotting out and/or obliterating such marks of identification.

3. Exterior sign requirements are as follows:

i. Any restaurant, hotel, store, catering facility or other place as is described in (a) above shall display in a prominent place in its front window the following sign which shall be printed in block letters at least four inches in height:

"KOSHER AND NON-KOSHER FOOD PRODUCTS SOLD HERE."

13:45A-21.4 Identification requirements

(a) All meats sold as Kosher, regardless of the size of the portion, must have affixed thereto at the slaughterhouse a tag and/or plumba. The tags shall be affixed as follows:

1. For all forequarters of steers, cows, bulls, heifers, and yearling calves, the following Kosher identifications shall be affixed to each of the following parts:

i. Breast, rib, plate (outside), plate pieces (inside), chuck, shoulder, heart, lung, oxtail, tripe, milt (spleen), tenderloin (hanger): plumba and tag;

ii. Liver: two Kosher brands and two plumbas, one of each to opposite ends of liver, so that if the liver is cut in half through the vein each half will bear one plumba and one Kosher brand;

iii. Feet: plumba and tag to each foot;

iv. Breads: plumba and tag to each pair;

v. Brains: plumba to each brain, when sold separately from the head;

vi. Tongue: plumba and tag at the tip, and a Kosher brand at the tip on smooth surface;

vii. Breastbone: incisions in the form of Hebrew characters, showing date of slaughter.

2. For all foresaddles of veal, the following Kosher identification shall be affixed to each of the following parts:

i. Breast: incision on each in the form of Hebrew characters, showing date of slaughter;

ii. Rack: two incisions on the inside, one of them on each side of the spine, in the form of Hebrew characters, showing the date of slaugher;

iii. Shoulder: plumba and tag;

iv. Liver: plumba affixed to center of liver at the vein, and a Kosher brand on the upper surface of liver;

v. Haslett: plumba and tag through the heart and milt;

vi. Lung: plumba and tag;

vii. Feet: plumba and tag to each foot;

viii. Breads: one tag, and one plumba drawn through three pairs;

ix. Brains: plumba to each brain, when sold separately from the head;

x. Tongue: plumba and tag at the tip, and a Kosher brand at the tip of the smooth surface.

3. For all foresaddles of lamb and mutton, the following Kosher identifications shall be affixed of the following parts:

i. Breast: incision on each in the form of Hebrew characters, showing date of slaughter;

ii. Rack: two plumbas and two tags, one of each to either side of spine;

iii. Shoulder: plumba and tag;

iv. Haslett: plumba and tag through the liver and milt;

v. Tongue: one tag, and one plumba drawn through each group of six;

vi. Brains: plumba to each brain, when sold separately from the head;

vii. Liver: plumba and tag at center of liver, when sold separately from the haslett.

(b) The slaughterer and/or wholesaler of Kosher poultry is responsible to ensure that plumbas are affixed and remain on each and every portion. A New Jersey based slaughterer and/or wholesaler may not refuse to accept returned poultry that is missing the necessary plumbas and must provide a refund for same.

13:45A-21.5 Filing requirements

(a) Any restaurant, hotel, store, catering facility, or other place which advertises, represents or holds itself out as selling, serving or offering for sale exclusively Kosher food or food products, shall either file with the Director of the Division of Consumer Affairs a document in writing from a supervising rabbi or rabbinical organization that said establishment meets Othodox Jewish dietary laws or, if said establishment is not under rabbinical supervision, so advise the Director. The Director of the Division of Consumer Affairs shall be informed in writing, within 10 business days, of any change in the Kosher or rabbinical supervision status referred to above. Failure to advise the Director of the Division of Consumer Affairs of a change in the Kosher or rabbinical supervision status as provided herein, shall constitute an unlawful practice as defined by N.J.A.C. 13:45A-21.2.

(b) Any person or organization giving Kosher supervision to any restaurant, hotel, store, catering facility, slaughter, or other place shall file with the Director of the Division of Consumer Affairs a document in

writing listing the name, address and type of establishment that is certified. The Director of Division of Consumer Affairs shall be informed in writing, within 10 business days, if said supervision or supervising agency removes such supervision. Failure to advise the Director of Division of Consumer Affairs of said removal shall constitute an unlawful practice as defined by N.J.A.C. 13:45A-21.2.

13:45A-21.6 Presumptions

Possession of any Non-Kosher food or food product in any restaurant, hotel, store, catering facility or other place where food or food products are sold and/or served which advertises, represents or holds itself out as only selling Kosher food or food products, is presumptive evidence that the person is in possession of such food or food products with the intent to sell the same.

13:45A-21.7 Exculpatory section

A restaurant, hotel, store, catering facility or other place where food or food products are sold and/or served shall not be deemed to have committed an unlawful practice under N.J.A.C. 13:45-21.2 if it can be shown by a preponderance of the evidence that it relied in good faith upon the representations of a slaughterhouse, manufacturer, processor, packer or distributor of any food or food product represented to be Kosher, Kosher for Passover or as having been prepared under or sanctioned by Orthodox Jewish religious requirements.

SUBCHAPTER 22. INSPECTIONS OF KOSHER MEAT DEALERS, KOSHER POULTRY DEALERS, AND DEALERS OF KOSHER FOOD AND FOOD PRODUCTS; RECORDS REQUIRED TO BE MAINTAINED BY KOSHER MEAT DEALERS AND KOSHER POULTRY DEALERS.

13:45A-22.1 Definitions

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

"Dealer in Kosher food or food products" means any store, restaurant, hotel, catering facility or other place where foods or food products are sold or offered for sale or served as Kosher or as having been prepared under and/or with a product sanctioned by Orthodox Jewish religious requirements.

"Kosher meat dealer" means any person engaged in the slaughtering or wholesaling of properly identified Kosher meat or who purchases, obtains or receives properly identified Kosher meat from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher meat into smaller quantities or portions intended for sale to a customer as Kosher meat. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process Non-Kosher meat and other Kosher and Non-Kosher food products.

"Kosher poultry dealer" means any person engaged in the slaughtering or wholesaling of properly identified Kosher poultry who purchases, obtains or receives properly identified kosher poultry from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher poultry into smaller quantities or portions intended for sale to a customer as Kosher poultry. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process Non-Kosher poultry and other Kosher and Non-Kosher food products.

"Non-Kosher meat" means meat which is not obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the Kosher plumba or Kosher tag placed on such Kosher meat at the slaughterhouse where the animal was slaughtered. Non-Kosher meat also means meat which is obtained from animals which are approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the Kosher plumba or Kosher tag placed on such meat at the slaughterhouse where the animal was slaughtered.

"Non-Kosher poultry" means poultry which is not approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the Kosher plumba or Kosher tag placed on such poultry at the slaughterhouse where the poultry was slaughtered. Non-Kosher poultry also means poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the Kosher plumba or Kosher tag placed on such poultry at the slaughterhouse where the poultry was slaughtered.

"Properly identified Kosher meat" means Kosher meat which is obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba or Kosher tag placed on such Kosher poultry at the slaughterhouse where the poultry was slaughtered.

13:45A-22.2 Records required to be maintained by Kosher meat dealers and Kosher poultry dealers

(a) Complete and accurate records of all purchases of properly identified Kosher meat and properly identified Kosher poultry from slaughterhouses, wholesalers or any other source shall be kept by every Kosher meat dealer and by every Kosher poultry dealer, including the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Kosher meat dealers and Kosher poultry dealers shall retain all such records for a two year period following the purchase of properly identified Kosher meat and properly identified Kosher poultry.

(b) Kosher meat dealers and Kosher poultry dealers shall not remove the attached plumbas or tags or any duly affixed identifications affixed thereto by the slaughterhouse or Kosher meats, Kosher poultry, or any other Kosher products received therefrom until the time immediately preceding the point in time when said Kosher meat, Kosher poultry, or product whenever appropriate is ready to be cut, sliced, carved, broken down, or divided into smaller quantities or portions.

(c) Complete and accurate records of all purchases of Non-Kosher meat and Non-Kosher poultry from slaughterhouses, wholesalers or other sources shall be kept by any Kosher meat dealer and by any Kosher poultry dealer, who also purchases, sells, handles, packages or processes Non-Kosher meat, poultry or food products, including the name and address of the slaughterhouse wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Such records shall be kept separate and apart from all records required to be kept for Kosher meat and for Kosher poultry. Kosher meat dealers and Kosher poultry dealers shall retain all such records for a two year period following the purchase of Non-Kosher meat and Non-Kosher poultry.

(d) A failure to keep complete and accurate records in accordance with (a) and (c) above shall be punishable as an unlawful act under this subchapter.

13:45A-22.3 Inspections of Kosher meat dealers, Kosher poultry dealers and dealers in Kosher food or food products.

(a) The inspection provided for by this section shall only be conducted by authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety.

(b) In conducting an inspection as provided for by this subsection, the authorized inspectors shall utilize the inspection report form, approved by the Director of the Division of Consumer Affairs of the Department of Law and Public Safety, to report the date of the inspection, the nature and scope of the inspection and the findings of the inspection.

(c) For the purpose of making any inspection under this section, the authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall have a right of entry to, upon and through the business premises of all Kosher meat dealers, Kosher poultry dealers, and dealers in Kosher food or food products.

(d) Authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall make inspections of Kosher meat dealers, Kosher poultry dealers and dealers in Kosher food or food products for the purpose of:

1. Determining by examination of the meat, poultry, food products, tags, plumbas, or any other proper identification and by inspection of the records whether the establishment under inspection is in compliance with these rules.

(e) The scope and manner of inspection shall be as follows:

1. At the commencement of all inspections provided for by this section, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall present appropriate identification to the Kosher meat dealer, kosher poultry dealer and/or Kosher food or food products dealer, owner, manager or any sales person and shall advise the kosher meat dealer, kosher poultry dealer

and/or Kosher food or food products dealer, owner, manager or any sales person of the purposes of the inspection to be conducted under the provisions of this section.

2. All inspections provided for by this section shall be limited to:

i. The meat and poultry and other food products located on the business premises of the Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer. The business premises shall include all places of storage of meats, of poultry and/or of food or food products, all places where meat, poultry and/or food or food products are cut, sliced, carved, broken down, or divided into small quantities or portions and all places where meat, poultry and/or food or food products are sold to customers; and

ii. The records required to be kept by Kosher meat dealers and Kosher poultry dealers under the provisions of this subchapter.

3. The inspections provided for by this section shall be made during the regular business hours of the Kosher meat, Kosher poultry and/or Kosher food or food products dealer, and at any time including non-business hours when deliveries of meat, poultry and/or food or food products are made to the dealer or when the dealer is engaged in the cutting, slicing, carving, breaking down, preparing, packaging, processing, or dividing of meat, poultry and/or food or food products into smaller quantities or portions.

4. In carrying out the requirements of this section, no advance notice of an inspection shall be provided to any person.

5. All inspections of the meat, poultry and/or food or food products located on the business premises of Kosher meat dealers, Kosher poultry dealers and/or Kosher food or food products dealers and all inspections of the records required to be kept by them under the provisions of this subchapter shall be conducted in such a manner as to not unduly interfere with the regular business operations of the Kosher meat dealers, Kosher poultry dealers and/or Kosher food or food products dealers.

(f) A failure to allow an authorized inspector a right of entry upon the business premises of a Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer in accordance with the requirements of this section shall be punishable as an unlawful act under this subchapter.

(g) At the completion of all inspections provided for by this section, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall make an inspection report, which shall show the date of the inspection, the nature and scope of the inspection and the findings of the inspection. A copy of the inspection report shall be filed with the records of the Director of the Division of Consumer Affairs.

(h) Inspectors authorized by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may, under the following circumstances, tag meat, poultry and/or food or food products as evidence of a possible violation of this subchapter:

1. Upon reasonable suspicion that certain meat, poultry and/or food or food products in the possession of a Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer is not Kosher;

2. Upon discovery that certain meat and/or poultry in the possession of the Kosher meat dealer and/or Kosher poultry dealer is not identified in accordance with N.J.A.C. 13:45A-21.4;

3. Upon discovery that certain meat and/or poultry in the possession of the Kosher meat dealer and/or Kosher poultry dealer has not been maintained in accordance with N.J.A.C. 13:45A-21.3(a)2.

(i) A Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer whose meat is tagged as evidence in accordance with (h) above may not remove the tag or dispose of the meat, poultry and/or food or food product for a period of 72 hours unless notified otherwise by an authorized representative of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety. If an administrative complaint is issued within the above 72 hour period by the Division of Consumer Affairs, the tagged meat, poultry and/or food or food product may be impounded by an authorized inspector. Removal of the aforesaid tag or disposal of tagged meat, poultry and/or food or food product in violation of this paragraph shall constitute an unlawful practice as defined in this section.

TRANSPORTATION

(a)

DIVISION OF DESIGN

Utility Accommodation

Proposed New Rules: N.J.A.C. 16:25

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-19, 7A-7, 40:62-35, 62-65, 62-134, 178-40, 48:7-1, 7-2, 9-17, 9-25.4, 13-10, 13-11, 17-8, 17-10, 17-16, 19-17.

Proposal Number: PRN 1987-160.

Submit comments by July 15, 1987 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows.

Summary

The State of New Jersey is heavily industrialized, densely populated and depicted as the "Corridor State." The State has attempted to provide a safe and modern highway system for its citizens, millions of visitors and transients, while at the same time, insuring the degree of safe and adequate utility services that its citizens and industries demand. Freeways, parkways and expressways are being designed and constructed to satisfy the needs of the motoring public and conventional highways are being widened, dualized and grade separated to meet the needs of the local driver and hauler.

Utilities must continually modify their facilities to conform to these highway construction projects, in addition to carrying out their own plant improvement and expansion programs to meet ever increasing customer demands. Rarely, if ever, can either the Department of Transportation or utility companies construct or improve their respective facilities without somehow affecting the other. The Commissioner of Transportation has therefore formally established, through the rules on Utility Accommodation, the basic criteria that will be used in controlling the use of highway rights-of-way, and the policies and procedures to be used in achieving this control.

The Department of Transportation proposes new rules N.J.A.C. 16:25 Utility Accommodation to implement these policies and procedures. Under the provisions of Executive Order No. 66(1978), Chapter 25 expired on February 5, 1984. In view of major changes in the Department's policy, a complete review was undertaken to revise the chapter, rather than effectuate a series of amendments. Additionally, a review was completed to ascertain whether the rules are necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated.

The rules in this chapter are provided for use in regulating the location, design and methods for installing, adjusting, accommodating, and maintaining utilities on highway rights-of-way. The proposed rules establish guidelines for the location of a utility, but do not change any regulations or authority for installing utilities for determining financial responsibility for replacing or adjusting utilities. The proposed rules are limited to matters which are the responsibility of highway authorities for preserving the integrity of the highway and its safe operation.

Where laws or orders of public authority, industry or governmental codes or highway authorities prescribe a higher degree of protection than provided by these rules, the higher degree of protection shall prevail.

Chapter 25 was initially proposed February 8, 1973 at 5 N.J.R. 57(b) and adopted August 9, 1973 at 5 N.J.R. 292(c) under N.J.S.A. 27:1A-62. The Department has not experienced any difficulty with the rules nor the agencies to which they apply.

The chapter is outlined as follows:

Subchapter 1 is the Introduction and provides the general provisions of the Chapter.

Subchapter 2 entails the general considerations as to location and design of utility accommodations.

Subchapter 3 provides the general specifications pertaining to pipelines.

Subchapter 4 outlines general considerations concerning installation on Highway Structures.

Subchapter 5 establishes guidelines concerning overhead power and communication lines.

Subchapter 6 pertains to the general scenic enhancement.

Subchapter 7 provides the general requirements for underground electric power and communication lines.

Subchapter 8 governs irrigation and drainage pipes, ditches, and canals.

Subchapter 9 provides guidelines and procedures for the enhancement of safety and general provisions for restoration.

Subchapter 10 outlines the requirements for permits and agreements for related work on the rights-of-way.

Subchapter 11 specifies the prerequisites for special permits and agreements.

Subchapter 12 establishes the guidelines for reimbursement for the relocation or adjustment of existing utility lines.

Social Impact

The proposed new rules will establish specific guidelines wherein utilities will provide safe and adequate utility services to conform to ever-increasing highway construction projects, and criteria to be used in controlling the use of highway rights-of-way. Utilities have complied with these rules in the past and have had no problems meeting the criteria established.

Economic Impact

The Department and Utility will incur direct and indirect costs for personnel, mileage and equipment requirements. Additionally, the Utility will incur costs involved in obtaining permits and shall bear all costs of any restoration and/or repairs to the utility facility and any highway property disturbed or damaged in the normal operations and requirements in the occupancy of highway rights-of-way or property.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or other compliance requirements on small businesses as defined in P.L. 1986, c.29. The new rules primarily affect publicly, privately and cooperatively owned utilities, none of which employ less than 100 employees.

Full text of the proposed new rules follows:

CHAPTER 25
UTILITY ACCOMMODATION

SUBCHAPTER 1. GENERAL PROVISIONS

16:25-1.1 Definitions

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

"Arterial Highway" means a highway primarily for through traffic, usually on a continuous route.

"Average Daily Traffic" means average 24-hour volume, being the total volume during a stated period divided by the number of days in that period. Unless otherwise stated, the period is a year. The term is commonly abbreviated as ADT.

"Backfill" means replacement of suitable material around and over a pipe or conduit system.

"Bedding" means organization of soil or other suitable material to support a pipe or conduit system.

"Bury or Cover" means depth of top of pipe or conduit system below grade of roadway or ditch.

"Cap" means rigid structural element surmounding a pipe or conduit system.

"Carrier" means pipe directly enclosing a transmitted fluid (liquid or gas).

"Casing" means a larger pipe enclosing a carrier.

"Chief, Bureau of Utilities, Railroad Safety and Engineering" means individual authorized by the Commissioner of the Department of Transportation to prepare Utility Orders and/or Agreements covering rearrangment and/or occupancy of State Highways or Freeways by Utilities in connection with all roadway construction and/or improvement projects.

"Clear Roadside Policy" means the policy by the New Jersey Department of Transportation to provide a clear roadside area in order to increase safety, improve traffic operation, and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat, and rounded as practical and free as practical from physical obstructions above the ground such as trees, drainage structures, massive sign supports, utility poles, and other groundmounted obstructions. CRA is also referred to as clear zone area.

"Clear Zone Area" means that roadside border area, starting at the edge of the traveled way, available for use by errant vehicles.

"Coating" means material applied to, or wrapped around a pipe.

"Conventional Highway" means an arterial highway without access control.

"Conduit or Duct" means an enclosed tubular runway for projecting wires or cables.

"Control of Access" means the condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by State.

"Control of Access—Full" means the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.

"Control of Access—Partial" means the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

"Cradle" means rigid structural element below and supporting a pipe.

"Department" means New Jersey Department of Transportation.

"Direct Burial" means installing a utility underground without encasement.

"Drain" means appurtenance to discharge liquid contaminants from casings.

"Encasement" means structural element surrounding a pipe.

"Encroachment" means unauthorized use of highway right-of-way or easements as for signs, fences, buildings, etc.

"Engineer of Permits" means individual authorized by the Commissioner of the Department of Transportation to establish policies, procedures, rules and regulations relating to issuance of permits for occupancy of State Highways and/or lands owned by the Department where such occupancy is not covered by either Utility Orders or Agreements.

"Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

"Flexible Pipe" means a plastic fiberglass, or metallic pipe having large ratio of diameter to wall thickness which can be deformed without undue stress.

"Freeway" means an expressway with full control of access.

"Frontage Road" means a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

"Gallery" means an underpass for two or more utility facilities.

"Grounded" means connected to earth or to some extended conducting body which serves instead of the earth whether the connection is intentional or accidental.

"Grout" means a cement mortar or a slurry of fine sand or clay.

"Highway, Street or Road" means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Investor Owned Utility" means utility type facility that is owned by stockholders.

"Jacket" means encasement by concrete poured around a pipe.

"Major Highway" means an arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

"Manhole Includes Chambers or Vaults" means an opening in an underground system which workmen or others may enter for the purpose of making installations, inspections, repairs, connections, and tests.

"Median" means the portion of a divided highway separating the traveled ways for traffic moving in opposite directions.

"Normal" means crossing at a right angle.

"Oblique" means crossing at an acute angle.

"Parkway" means an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of parklike developments.

"Pavement Structure" means the combination of subbase, base course, and the surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

"Permit" means the document by which the Commissioner of the Department of Transportation approves the use and occupancy of highway rights-of-way or property by any utility facility. Permits are not required where Utility Orders or Agreements are to be issued in connection with highway improvements.

"Pipe" means a tubular product made as a production item for sale as such. Cylinders formed from plate in the course of fabrication of auxiliary equipment are not pipe as defined herein.

"Pressure" means relative internal pressure in psig (pounds per square inch gauge).

"Public Owned Utility" means utility type facility owned and or operated by the State or any political subdivision thereof.

"Public Utility Agreement (P.U.A.)" means the document by which the Commissioner of the Department of Transportation, in connection with Freeways or Parkways (as defined by N.J.S.A. 27:7A-1) enters into an agreement with a public utility owned or operated by the State or any political subdivision thereof, a public utility not covered by N.J.S.A. Title 48, or a public utility having compensable property rights as to the removal and/or relocation of its facilities. Also the document by which the Commission of the Department of Transportation, in connection with State Highways (non-Freeways or Parkways) enters into an agreement with the owner of any utility type facility occupying State Highway rights-of-way as to the removal and/or relocation thereof. The Agreement further serves as the permit to occupy highway rights-of-way and specifies the requirements for, and the conditions of said occupancy.

"Public Utility Order (P.U.O.)" means the document by which the Commissioner of the Department of Transportation, in connection with Freeways or Parkways (as defined by N.J.S.A. 27:7A-1) orders a public utility (as defined by N.J.S.A. Title 48) to remove and/or relocate its facilities. The Order also serves as the utility's permit to occupy highway rights-of-way and specifies the requirements for, and conditions of said occupancy.

"Right-of-Way" means a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

"Rigid Pipe" means a welded or bolted metallic pipe or reinforced, prestressed or pretensioned concrete pressure pipe designed for diametric deflection of less than 1 percent.

"Roadside" means a general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Safety Rest Areas" means a roadside area with parking facilities separated from the roadway provided for motorists to stop and rest for short periods. It may include drinking water, toilets, tables and benches, telephone, information, and other facilities for travelers.

"Scenic Overlook" means a roadside area provided for motorists to stop their vehicle beyond the shoulder, primarily for viewing the scenery in safety.

"Semi-rigid Pipe" means a large diameter concrete of metallic pipe designed to tolerate diametric deflection from 1.0 percent to 3.0 percent.

"Sidefill" means backfill around and to a level of one foot over a pipe or conduit system.

"Slab, Floating" means slab between, but not contacting pipe or pavement.

"Sleeve" means short casing through pier or abutment of a highway structure.

"Traveled Way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow open excavation.

"Untrenched" means installed without breaking ground or pavement surface, such as by jacking or boring.

"Vent" means appurtenance to discharge gaseous contaminants from a casing.

"Walled" means partially encased by concrete poured alongside the pipe.

16:25-1.2 Rights-of-way

(a) In the State of New Jersey utilities have the right, by franchise, to occupy highway rights-of-way. The Commissioner of Transportation has the right, by law, to regulate and control the manner in which such occupancy shall be accomplished.

(b) The rules contained in this chapter formally establish the criteria used by the Commissioner of Transportation in controlling the use of rights-of-way of State Highways, Parkways and freeways.

16:25-1.3 Applicability

The rules contained in this chapter apply to all public and private and cooperatively owned utilities, including electric power, telephone, telegraph, cable television, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigations, and similar facilities that are to be located, adjusted, or relocated within the rights-of-way under the auspices of the New Jersey Department of Transportation. Such utilities may involve underground, surface, or overhead facilities, either singularly or in combination.

16:25-1.4 Scope

(a) The rules in this chapter are provided for use in regulating the location, design, and methods for installing, adjusting, accommodating, and maintaining utilities on highway rights-of-way. The rules do not alter current rules, regulations or authority for installing utilities nor for determining financial responsibility for replacing or adjusting utilities. The rules are limited to matters which are the responsibility of highway authorities for preserving the integrity of the highway and its safe operation.

(b) Where laws or orders of public authority, industry or governmental codes, or highway authorities prescribe a higher degree of protection than provided by these rules, then the higher degree of protection shall prevail.

16:25-1.5 Standards and references

(a) Utility facility design and construction are normally subject to minimum safety standards and construction requirements prescribed by the respective National or Industry Standard Codes. Reference in these rules to such Codes are to the current or amended issue of the respective Code, and may vary from time to time as such Codes are amended, revised, or superseded by later rules or regulations.

(b) In the absence of applicable National, State or Local Regulatory Agency Standard Codes (such as the National Electrical Safety Code of the National Bureau of Standards and the New Jersey Department of Health Code in their respective industries), the Industry Standard Code shall apply to all utility type facilities located on, over, under, or across highway right-of-way, except that the minimum applicable standards as set out in the current Standard Specifications of the New Jersey Department of Transportation,[1] The American Association of State Highway and Transportation Officials' Guide for Accommodating Utilities within Highway-Right-of-Way[2] and currently applicable Federal Highway Regulations, shall apply in all instances where any such applicable highway specifications are more restrictive or require greater safety factors or require higher standards of construction, materials, or workmanship that the applicable National or Industry Standard Code.

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[1]Standard Specifications for Road and Bridge Construction. New Jersey Department of Transportation, 1983.

[2]A Guide for Accommodating Utilities within Highway Right-of-Way, American Association of State Highway and Transportation Officials, 444 N. Capitol Street, N.W., Suite 225, Washington, D.C. 20001, 1981.

16:25-1.6 Authority of utilities to use and occupy the rights-of-way of State highways (land service roads)

(a) The rights of investor owned utilities are as follows:

1. The rights investor-owned utilities have in State highways are established by N.J.S.A. 48.

2. Where usage is permitted, the statutes typically provide that the public utility involved "may use the public highways, streets and alleys", subject to the consents for approvals as the statute may require. Included in this category are:

i. Electric companies—N.J.S.A. 48:7-1.2;
ii. Telephone companies—N.J.S.A. 48:17-8, 10;
iii. Telegraph poles—N.J.S.A. 48:17-16;
iv. Sewer lines—N.J.S.A. 48:13-10,11;
v. Water lines—N.J.S.A. 48:19-17;
vi. Gas lines—N.J.S.A. 48:9-17, 25.4.

(b) The rights of municipally owned utilities are as follows:

1. The rights of municipal utilities with respect to State Right-of-Way are defined by Statutes within N.J.S.A. Title 40. Included are:

i. Electric poles—N.J.S.A. 40:62-35;
ii. Water lines—N.J.S.A. 40:62-65, 134 and 40:178-40.

16:25-1.7 Freeways and parkways

(a) The usage granting statutes discussed in N.J.A.C. 16:25-1.6 apply only to conventional highways, and any usage of freeway and parkway right-of-way is subject to the discretion of the Commissioner of Transportation.

(b) The Department has excluded longitudinal facilities from freeway and parkway rights-of-way, unless extreme cases of need can be demonstrated to the satisfaction of the Department and can further be shown to be in the best public interest, and the Department has eastablished regulations for crossings of such roads by utility facilities.

(c) The Commissioner is also authorized to order the removal and relocation of utility facilities from freeway or parkway right-of-way at State expense.

SUBCHAPTER 2. GENERAL CONSIDERATIONS

16:25-2.1 Location of utility lines

(a) Utility lines must be located to permit servicing such lines with minimum interference to highway traffic and to minimize need for later adjustments to accommodate future highway improvements.

(b) Longitudinal installations must be located on uniform alignment as near as practicable to the right-of-way line so as to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.

(c) To the extent feasible and practicable, utility line crossing of the highway should cross on a line generally normal to the highway alignment.

(d) The horizontal and vertical location of utility lines within the highway right-of-way limits must conform with the clear roadside policies applicable for the system, type of highway, and specific conditions for the particular highway section involved. The location of above ground utility facilities must be consistent with the clearances applicable to all roadside obstacles for the type of highway involved. With pole type facilities, where a guide rail is present, poles should always be located behind the guide rail allowing sufficient clear distance behind the guide rail for the guide rail's design deflection.

(e) In all cases, full consideration must be given to the measures, reflecting sound engineering principles and economic factors necessary to preserve and protect the integrity and visual quality of the highway, its maintenance, efficiency and the safety of highway traffic.

(f) Utility crossings of freeways are to be held to a practical minimum and where permitted will meet all applicable provisions of these rules.

16:25-2.2 Design of utility facilities

(a) The utility shall be responsible for the design of the utility facility to be installed within the highway rights-of-way or attached to a highway structure.

(b) The Department shall be responsible for review and approval of the utility's proposal with respect to the location of the utility facilities to be installed and the manner of attachment. This includes the measures to be taken to preserve the safe and free flow of traffic, structural integrity of the roadway, maintenance, appearance of the highway, and the integrity of the utility facility.

(c) Utility installations on, over, or under the rights-of-way of State highways and utility attachments to highway structures must meet the following minimum requirements:

1. Electric power and communication facilities shall conform with the currently applicable National Electrical Safety Code[1].

2. Water lines shall conform with the currently applicable specifications of the American Water Works Association[2].

3. Pressure pipelines shall conform with the currently applicable sections of ANSI Standard Code for Pressure Piping of the American National Standards Institute[3] and applicable industry codes, including:

i. Power piping, ANSI B31.1.0

ii. Petroleum refinery piping, ANSI B31.3

iii. Liquid petroleum transportation piping systems, ANSI B31.4

iv. Gas transmission and distribution piping, ANSI B31.8

4. Liquid petroleum pipelines shall conform with the currently applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways[4].

(d) Ground-mounted utility facilities shall be of a design compatible with the visual quality of the specific highway section being traversed.

(e) All utility installation on, over, or under highway rights-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

(f) On new installments or adjustments of existing utility lines, provision should be made for known or planned expansion of the utility facilities, particularly those located underground or attached to bridges. The utility lines shall be planned so as to minimize hazards and interference with highway traffic when additional overhead or underground lines are installed at some future date.

[1]National Electrical Safety Code, current issue, Bureau of Standards, U.S. Department of Commerce. (For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

[2]American Water Works Association Standards and Specifications, current issue, AWWA, 2 Park Avenue, New York, New York 10016.

[3]ANSI Standard Code for Pressure Piping of the American National Standards Institute, 1430 Broadway, New York, New York 10018

[4]API RP 1102, Recommended Practice for Liquid Petroleum Pipelines Crossing Railroads and Highways, current issue, American Petroleum Institute, 1271 Avenue of the Americans, New York, New York 10020

SUBCHAPTER 3. PIPELINES

16:25-3.1 Location and alignment

(a) For all crossings, the angle of crossing should be based on economic considerations of practical alternates. The crossing shall be located as near normal to the highway alignment as practical.

(b) Conditions which are generally unsuitable or undesirable for pipeline crossing should be avoided. These include locations such as:

1. In deep cuts;

2. Near footings of bridges and retaining walls;

3. Across intersections at grade or ramp terminals;

4. At cross drains where flow of water, drift, or stream bedload may be obstructed;

5. Within basins of an underpass drained by a pump if pipeline carries a liquid or a liquified gas;

6. In wet or rocky terrain where it would be difficult to attain minimum bury.

(c) On longitudinal installations, utility locations parallel to the pavement at or adjacent to the right-of-way line are preferable so as to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders, and embankment; and the safe operation of the highway. As a minimum, their lateral location shall be offset a suitable distance beyond the slope, ditch, or curb line, as the Department may stipulate.

(d) Vertical and horizontal clearance between a pipeline and a structure or other highway or utility facilities should be sufficient to permit maintenance of the pipeline and the other facilities.

(e) The locations of all pipelines will be reviewed by the Department to ensure that the proposed utility installation will not interfere with existing or planned highway facilities or with highway maintenance and operation processes.

16:25-3.2 Bury

(a) The critical controls for bury over a pipeline crossing are the low points in the highway cross-section. Usually these are the bottoms of the longitudinal ditches.

(b) In establishing the bury below an unpaved ditch, consideration should be given to potential increases in ditch depth resulting from scour, ditch maintenance operations, or the need to increase the capacity of the ditch.

(c) On longitudinal installations, the critical controls for bury are the depths of lateral drainage facilities, landscaping, buried utility lines, bridge structures, and likely highway maintenance operations.

(d) The depth of frost penetration should be taken into consideration in determining the bury. The bury shall be sufficient so that the liquid transmitted will not freeze. In addition, the depth shall be sufficient to withstand the greatly increased impact loads transmitted through the frozen soil.

16:25-3.3 Controls for the bury of pipelines

(a) The bury over pipelines will be at a minimum of 36 inches; however, special consideration shall be given on the basis of engineering and safety factors for the area, the product carried, and maximum working or test pressures for the pipelines before varying from minimum depth.

(b) Pipelines will be designed, installed and tested in accordance with the Minimum Federal Safety Standards of the U.S. Department of Transportation as published in Part 192 of Title 49, Code of Federal Regulations, and any amendments thereof.

(c) Where less than minimum bury is made necessary because of other utilities, water table, ordinances, or similar reasons, the pipe should be rerouted or else protected in a suitable manner.

(d) Cover for pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable particularly if carried at high pressure or potential, must not be reduced below acceptable safety limits.

16:25-3.4 Encasement and allied mechanical protection generally

(a) Definite guides for the encasement of pipelines cannot be fully resolved from present experience and knowledge. An arbitrary policy of requiring encasement for all highway crossings is too expensive, not only to the utility consumer but also to the highway user; however, considering past experience and current appraisal of future hazard, it would not be prudent to waive all encasement requirements. Consequently, the Department shall evaluate all factors concerning each highway crossing and determine the need for encasement to protect the roadway.

(b) The acceptable methods available to provide such protection include, but are not limited to:

1. Tunnels and galleries;
2. Casing pipe;
3. Grouting by mortar filling;
4. Bore-hole annulus;
5. Cradling;
6. Capping;
7. Walling;
8. Boxing or jacketing;
9. Provisions of thickened wall carrier pipe;
10. Joints of mechanical or welded leakproof type of construction;
11. Coasting and wrapping;
12. Cathodic protection;
13. Electrical bonding;

(c) Of these methods, only the casing and tunnel or gallery provide complete independence of the carrier from the surrounding earth. Grouting restores the continuity and integrity of the earth supporting the pavement. Cradling enhances the supporting capacity of rigid pipes. Walling does the same for semi-rigid and flexible pipes. Capping strengthens both rigid and flexible pipes, and protects them from highway operations penetrating the fill. When applied to weak or brittle pipes, boxing or jacketing provides protection from earth loads, leakage, corrosion, or abrasion. On uncased carrier pipes thickened wall sections and leakproof type joints enhance the potential for a trouble free installation of long service life expectancy. Coating or wrapping prevents contact with corrosive water, soil, or vapor.

16:25-3.5 Encasement

(a) Casings may be required for the following conditions:

1. As an expediency in the insertion, removal, replacement or maintenance of carrier pipe crossings or freeways, expressways, and other controlled access highways and at other locations where it is necessary in order to avoid open trenched construction;

2. As protection for carrier pipe from external loads or shock, either during or after construction of the highway;

3. As a means of conveying leaking fluids or gases away from the area directly beneath the traveled way to a point of venting at or near the right-of-way line or to a point of drainage in the highway ditch or a natural drainage way.

(b) Jacked or bored installations of coated carrier pipes must normally be encased. Exceptions may be made where assurance can be provided against damage to the protective coating.

(c) Consideration shall be given to encasement or other suitable protection for any pipeline:

1. With less than minimum bury;

2. Near footings or bridges or other highway structures or across unstable or subsiding ground;

3. Near other locations where there may be a hazard.

(d) Rigid encasement or suitable bridging shall be used where support of pavement would be impaired by depression of flexible carrier pipe.

(e) Casings when utilized shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall equal the structural requirements for highway drainage facilities. Casings shall be composed of materials of satisfactory durability under conditions to which they may be exposed.

(f) Where pipelines are encased, the encasement shall extend a suitable distance beyond the slope or ditch lines. Where appropriate, the encasement shall extend to the access control lines, to the outside of frontage roads, or to an indicated line that allows for future widening of the highway.

(g) Casing pipe when utilized shall be sealed at the ends with a flexible material to prevent flowing water and debris from entering the annular space between the casing and the carrier. The installations should include necessary appurtenances, such as vents and markers.

16:25-3.6 Allied mechanical protection

(a) For some conditions, a pipeline crossing a highway may be installed without encasement. Normally, such an installation will be limited to open trenched construction. The following controls shall be applied for providing allied mechanical protection to an uncased pipeline crossing a highway.

1. On uncased construction, the carrier pipe shall conform to the material and design requirements of utility industry and governmental codes and specifications. In addition, the carrier pipe shall be designed to support the load of the highway plus superimposed loads thereon when the pipe is operated under all ranges of pressure from maximum internal to zero pressure. Such installations shall employ a higher factor of safety in the design, construction and testing than would normally be required for cased construction.

2. Suitable bridging, concrete slabs or other appropriate measures shall be used to protect existing uncased pipelines which by reason of shallow bury or location make them vulnerable to damage from highway construction or maintenance operations. Such existing lines may remain in place without further protective measures if they are of adequate depth and do not conflcit with the highway construction or maintenance operations, provided both highway and utility officials are satisfied that the lines are, and will remain, structurally sound and operationally safe.

3. Uncased crossings of welded steel pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable, particularly if carried at high pressure or potential, may be permitted, provided additional protective measures are taken in lieu of encasement. Such measures would employ a higher factor of safety in the design, construction and testing of the uncased carrier pipe, including such features as thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping and cathodic protection.

16:25-3.7 Appurtenances

(a) Vents, drains, markers, manholes, and shut-offs are appurtenances to pipeline installations. Required controls for such appurtenances are as follows:

1. Vents are appurtenances by which fluids or gases between carrier and casing may be inspected, samples exhausted, or evacuated. These fluids or gases may be leakage from the carrier within or the soil without, or atmospheric vapor and condensate, or decomposition products of pipes and coatings. Light gases are exhausted through risers or standpipes projecting above the ground surface. Vent standpipes shall be located and constructed so as not to interfere with maintenance of the highway nor to be concealed by vegetation; normally they should stand on a fence or right-of-way line.

2. Drains are appurtenances by which liquids or heavy gases may be evacuated or exhausted. They shall be provided for casings, tunnels, or galleries enclosing carriers of liquid, liquified gas, or heavy gas. Drains will not outfall into roadside ditches or natural water courses.

3. The utility shall place readily indentifiable and suitable markers at the right-of-way line where it is crossed by pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable, particularly if carried at high pressure or potential, except where a vent will serve as a marker. Markers are also desirable for other pipelines.

4. New manholes shall normally not be located in the pavement of major highways, including urban highways. Exception may be made at those locations where manholes are essential parts of existing lines that are permitted to remain in place under existing and proposed roadways. Manholes may be retained or installed under paving on low traffic roadways, less than 750 ADT, within municipalities. Effort should be made to minimize such installations and to avoid their location at street intersections, insofar as practicable. Manholes shall be designed and located in such a manner that will cause the least interference to other utilities and future highway expansion.

5. Shut-off valves, preferably automatic, shall be installed in lines at or near ends of structures and near unusual hazards, unless hazardous segments can be isolated by other sectionalizing devices within a reasonable distance.

16:25-3.8 Restriction against varied use

(a) The following precautionary measures are required for pipeline installations:

1. Pipeline installation permits shall specify the class of transmittant, the maximum working, test, or design pressures, and the design standards for the carrier.

2. When it is anticipated that there will be a change in the class of transmittant or an increase in the maximum design pressure specified in the permit, the utility will be required to give the Department advance notice and obtain approval for such changes. The notice should specify the applicable codes to be used.

16:25-3.9 Installation

(a) Installation or replacement of pipelines along or crossing existing highways for the most part may be controlled by end-product specifications.

(b) However, safety of traffic and preservation of the earth structure supporting the pavement requires some restricting of methods used in the operation.

(c) Several acceptable methods of installation are detailed in N.J.A.C. 16:25-3.10, 3.11 and 3.12.

16:25-3.10 Trenched construction and backfill

(a) The essential features for trench and backfill are as follows:

1. Restoration of the structural integrity of entrenched roadbed;
2. Security of the pipe against deformation likely to cause leakage;
3. Assurance against the trench becoming a drainage channel;
4. Assurance against drainage being blocked by the backfill.

(b) The integrity of the pavement structure, shoulders, and embankment slopes are of primary concern. Details of specifications should recognize differences in climate and soil.

(c) Trenched construction, bedding and backfill are required to conform to the Department's standard specifications for earthwork and culverts. The use and occupancy agreement should include the following:

1. Trenches shall be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of pipe, plus two feet. They shall be shored where required.

2. Bedding shall be provided to a depth of six inches or half the diameter of the pipe, whichever is the least. Bedding shall consist of granular material, free of lumps, clods, stones, and frozen materials and should be graded to a firm but yielding surface without abrupt change in bearing value. Unstable soils and rock ledges shall be subexcavated from the bedding zone and replaced by suitable material. The bottom of the trench shall be prepared to provide the pipe with uniform bedding throughout the length of the installation.

3. Backfill under the roadway shall be placed in two stages: first, sidefill to a level of one foot above the top of pipe or conduit system, and second, to former surface grade. Sidefill should consist of granular material laid in six-inch layers, each consolidated by mechanical tamping controlled addition of moisture, to a density of 95 percent as determined by AASHO Method T-99. Backfill should be layered and consolidated to match the entrenched material in cohesion and compaction. Consolidation by saturation or ponding will not be permitted. For backfill of entrenched pavement, materials and methods of compaction shall be adapted to achieve prompt restoration of traffic service. There shall be additional cutback of base and surfacing and transitioning of trench to minimize later development of sag in the grade of pavement over the trench.

4. The Department shall require that backfill and repaving be performed under its direction utilizing specifications acceptable to the Department.

16:25-3.11 Untrenched construction and grouting

(a) Several techniques for installing pipelines under a highway without disturbing the surface are as follows:

1. Driving: A small pipe with a pilot shoe can be driven through compressible soils by a steady thrust, hammering, or vibrating. A casing or corrosion resistant carrier must be used. Long drives may wander far from the desired line and grade.

2. Coring: A small casing without pilot shoe can be drilled into more difficult soil, which enters the pipe as it advances. The core is removed by sluicing, during or after the drilling. Line and grade are fairly easy to control.

3. Boring: Large pipes can be jacked through oversize bores carved progressively ahead of the leading edge of the advancing pipe as spoil is mucked back through the pipe. Control is excellent. Annular void and overbreaks may be minimized when cutterhead is sized closely to pipe diameter and pipe is advanced with cutterhead in close proximity.

4. Wet-boring: A hole is sluiced by a jet of slurry and kept full of pressured slurry to prevent collapse. The pipe is pushed through the slurry, evacuating the excess. Coated pipes may be installed without damage, but some soils may soften, expand, or disintegrate from transfer of moisture from the slurry. This method will not be authorized on major highways. Special care and permission of the Department will be required when using this method elsewhere.

(b) The required controls for untrenched construction and grouting are as follows:

1. Untrenched construction will be required for all new or replacement pipeline crossings of controlled access and other major highways. On controlled access highways, as a minimum, the untrenched construction shall extend under and across the entire roadway prism. On the other major highways, the untrenched construction shall extend under and across the surfaced area of the highway.

2. Portal limits of pipeline crossings shall be beyond the surface areas of the highway so as to avoid impairing the roadway during installation of the pipeline. Where bulkheaded, the portal should be suitably offset from the surfaced area of the highway: where not bulkheaded, it should be offset not less than the vertical difference in elevation between the surfaced area of the highway and the pipeline.

3. The oversize of the boring excavation shall be restricted and the Department shall establish, case by case, the conditions specified under which the void outside the carrier must be back-filled with grout. Where the soils are favorable and the carrier is four feet or more deep, the boring hole may be five percent oversize in diameter. The Department may require grout backfill for pipes more than 12 inches in diameter for overbreaks, unused holes, or abandoned pipes.

16:25-3.12 Utility tunnels and bridges

(a) A utility tunnel or a bridge occasionally is provided for a pipeline crossing a freeway at a strategic location. Where it can be foreseen that several utility crossings will be needed the cost of the tunnel (either a large casing or a box culvert) or of the bridge may be less than that for the alternate of several untrenched or separately encased pipelines. Where these conditions exist the Department will take steps as necessary to insure that adequate study is made by the utilities to anticipate their needs for future crossings and to converage their facilities to a joint use single crossing.

(b) In a combined tunnel or bridge, provision shall be made to isolate mutually hazardous transmittants, such as fuels and electric energy, by compartmentizing or by auxiliary encasement of incompatible carriers. The utility-tunnel or utility-bridge structure shall conform in appearance, location, bury, earthwork, and markers to culvert and bridge practice of the Department.

16:25-3.13 Adjustment

(a) The following are required controls for adjusting existing pipelines that fall in the path of highway construction projects:

1. An existing or relocated pipeline shall be protected in such a manner as normally would be required for a new pipeline at the site.

2. An existing pipeline shall be relocated in plan and/or grade where:

i. The pipe bedding will be depressed by highway loads; or

ii. The top of the pipe is within six inches of subgrade.

3. An existing pipeline too weak to support highway loads shall be replaced by stronger pipe or protected in such a manner acceptable to both the Department and the utility.

4. An existing pipeline which would lack adequate cover for protection against vehicular live loads or highway construction operations may be protected by a floating slab.

5. Notwithstanding reinforcement or protection otherwise provided, the highway construction contractor will be responsible for the security of each existing pipeline within the construction zone. Where there are unusual utility hazards and where heavy construction equipment will be needed, the contractor will provide a temporary protective cover of earth or bridge the utility.

SUBCHAPTER 4. INSTALLATION ON HIGHWAY STRUCTURES

16:25-4.1 General considerations

(a) In most cases, attachment of utility facilities to highway structures, such as bridges, is a practical arrangement and considered to be in the public interest. However, attaching utility lines to a highway structure can materially affect the structure, the safe operation of traffic, the efficiency of maintenance as well as the appearance and therefore should be provided for during the design stage.

(b) Since highway structure designs and site conditions vary, the adoption of a standard method to accommodate utility facilities is not feasible; however, the method employed should conform to logical engineering considerations for preserving the highway, its safe operation, maintenance and appearance. Generally, acceptable utility installations are those which will occupy a position beneath the structure's floor, between the outer girders or beams or within a cell, and at an elevation above low point of super-structure steel or masonry.

(c) The general controls for providing encasement, allied mechanical protection and shut-off valves to pipeline crossings of highways and for restriction against varied use shall be followed for pipeline attachments to bridge structures, except that sleeves are required only through the abutment backwalls. Where a pipeline attachment to a bridge is encased, the casing should be effectively opened or vented at each end to prevent possible buildup of pressure and to detect leakage of gases or fluids.

(d) Since an encasement is not normally provided for a pipeline attachment to a bridge, additional protective measures shall be taken. Such measures shall employ a higher factor of safety in the design, construction, and testing of the pipeline that would normally be required for cased construction.

(e) Communication and electric power line attachments shall be suitably insulated, grounded, and carried in protective conduit or pipe from the point of exit from the ground to re-entry. The cable shall be carried

to a manhole located beyond the backwall of the structure. Carrier pipe and casing pipe should be suitably insulated from electric power line attachments.

(f) Guy wires in support of any utility shall not be attached to a bridge structure.

SUBCHAPTER 5. OVERHEAD POWER AND COMMUNICATION LINES

16:25-5.1 General

(a) The type of construction, vertical clearance above pavement, and location of poles, guys, and related groundmounted utility appurtenances along the roadside are factors of major importance to preserve a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway maintenance. A critical requirement for locating poles, guys and related facilities along the roadside is the width of the border area, that is, the space between the edge of shoulder or curb line and the right-of-way line, and its availability and suitability for accommodating such facilities. The safety, maintenance efficiency, and appearance of highways are enhanced by keeping this space as free as practical from obstacles above the ground. Where groundmounted utility facilities are to occupy this space, they should be placed as far as practical from the traveled way and beyond the clear roadside area. The nature and extent of roadside development and the ruggedness of the terrain being traversed are controlling factors for locating poles, guys and related facilities at the right-of-way line.

(b) In an effort to provide a safer environment for the traveling public and to improve the aesthetic qualities of newly designed freeways and land service roadways, above ground utilities are restricted in certain locations as follows:

1. No above ground facilities will be located within grade separated interchange areas designed to freeway standards.

2. No aerial crossing of control of access highway rights-of-way are permitted with the exception of electrical facilities operating at a potential of 26 KV or above.

16:25-5.2 Type of Construction

(a) Any longitudinal installation of overhead lines on the highway rights-of-way shall be limited to single pole type of construction.

(b) Joint-use single pole construction shall be encouraged, as indicated by Rule 222 of Part 2 of the National Electrical Safety Code[1], at locations where more than one utility or type of facility is involved. This is of particular significance at locations where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements or where separate installations may require extensive removal or alterations of trees.

16:25-5.3 Vertical clearance

(a) The minimum vertical clearance for overhead power and communication lines above the highway and the lateral and vertical clearance from bridges shall in no case be less than the standards prescribed by the National Electrical Safety Code.

(b) Greater clearances are allowed, to conform to Company Standards.

[1]Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines, current issue, National Bureau of Standards, U.S. Department of Commerce (for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

16:25-5.4 Location

(a) It is desirable that utility poles be located or relocated beyond the clear zone area for the highway section involved. Minimum offsets from the edge of traveled way shall be determined by the following table and as noted in this section.

Minimum Pole Offsets for Rural and Urban Highways[1]:

Posted Speed/ Design Speed	Posted Speed/ Design Speed
25 mph— 9 feet	50 mph—20 feet
30 mph—11 feet	55 mph—25 feet
35 mph—13 feet	60 mph—25 feet
40 mph—15 feet	70 mph—36 feet
45 mph—17 feet	

(b) The posted speed is for application on resurfacing, restoration and rehabilitation (3R) type projects which involve existing highways; the design speed is for application on reconstruction projects or projects on new alignment. A design exception will be required if minimum pole offsets cannot be met.

(c) On new alignments, the design speed shall be applied and the New Jersey Department of Transportation clear roadside policy used to determine the pole offsets.

(d) For existing urban arterials, collectors and local streets where there are curbed sections, utilities may be located in the border areas between the curb and sidewalk, at least 1.5 feet behind the face of curb, and where feasible, behind the sidewalk and as close to the right-of-way line as possible. For non-curbed urban sections, utility poles should be located or relocated beyond the clear zone for the highway section involved.

(e) Offsets are based on cut slopes of 3:1 or flatter and fill slopes 10:1 or flatter. For fill slopes, steeper than 10:1, the offset should be increased to at least the next higher speed category.

(f) Consideration should be given to increasing the minimum pole offsets on the outside of horizontal curves, particularly on those curves with a sharper degree of curvature than what are normal for the section of highway involved.

(g) For both rural and urban highways with or without curb and where posted speeds are 25 mph or less, poles should be placed as close to the right-of-way line as possible. If the locations of the poles, as stated herein, are infeasible and other mitigating conditions, such as parking or excess lane width lessen the exposure or potential accident severity, then placement of poles at least 1.5 feet behind the face of curb, edge of through pavement or edge of shoulder, based on engineering judgement can be considered.

[1]Based on the New Jersey Department of Transportation Clear Zone policy, Section 8-02.4 of the New Jersey Department of Transportation Design Manual—Roadway.

16:25-5.5 Design exceptions

(a) When the minimum offset, as identified under N.J.A.C. 16:25-5.4 cannot be provided, a design exception can be made where:

1. The documented cost estimates to relocate the utility poles, including any additional right-of-way, in relationship to the construction project are considered excessive, and

2. An accident analysis for the preceding three years for the highway section involved does not reveal a significant history of accidents involving the utility poles.

(b) The exceptions in (a) above shall be submitted to the Department for approval.

16:25-5.6 General considerations

(a) The desirable offset behind a guide rail is four feet. See the New Jersey Department of Transportation Design Manual—Roadway for further information.

(b) Poles shall always be located behind a guide rail wherever same exists and be at least 50 feet longitudinally from a Breakaway Cable Terminal (BCT), See New Jersey Department of Transportation Design Manual—Roadway, Section 8, Figure 8K.

(c) Poles are prohibited from occupying small island areas except where other locations are unusually difficult and unreasonably costly.

(d) Poles being constructed in proximity to bridge structures will maintain a minimum of 40 feet offset from the main portion of the bridge structure.

(e) For new utility pole replacements (scheduled) on existing highways, the poles should be located outside of the clear zone area. Where this is not practical, they should be located as close to the right-of-way line as feasible.

(f) Guy wires to ground anchors and stub poles should not be placed between a pole and the traveled way where they encroach upon the clear roadside area.

(g) Where irregular shaped portions of the right-of-way extend beyond the normal right-of-way limits, variances in the location from the right-of-way line may be allowed, as necessary, to maintain a reasonably uniform alignment for longitudinal overhead installations.

(h) Longitudinal installations of poles, guys, or other related facilities shall not be located in a highway median. Poles and other appurtenances for highway lighting may be located in the median if other alternatives are determined to be impractical and where suitable protection is provided to the highway user.

SUBCHAPTER 6. SCENIC ENHANCEMENT

16:25-6.1 General provisions

(a) The type and size of utility facilities and the manner and extent to which they are permitted along or within highway rights-of-way can materially alter the scenic quality, appearance, and view of highway roadsides and adjacent areas. For these reasons additional controls are

applicable in certain areas that have been acquired or set aside for their scenic quality. Such areas include scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, and the rights-of-way of sections of highways which pass through public parks, recreation areas, wildlife and waterfowl refuges and historic sites.

(b) Additional required controls are discussed in N.J.A.C. 16:25-6.2 through 6.4.

(c) The Department shall make a final decision on each request for variance from such controls.

16:25-6.2 Underground utility installations

New underground utility installations may be permitted where they do not require extensive removal or alterations of trees or other natural features visible to the highway user and do not impair the visual quality of the lands being traversed.

16:25-6.3 Aerial installations

(a) New aerial installations shall be avoided at such locations where there is a feasible and prudent alternative to the occupation of such lands by the aerial facility. Where this is not the case, the aerial installations should be considered only where:

1. Other locations are unusually difficult and unreasonably costly or are more undesirable from the standpoint of visual quality;

2. Undergrounding is not technically feasible or is unreasonably costly; and

3. The proposed installation can be made at a location and will employ suitable designs and material which give adequate attention to the visual qualities of the area being traversed.

16:25-6.4 Utility installations for highway purposes

These scenic enhancement controls shall also be followed in the location and design of utility installations that are needed for a highway purpose, such as for continuous highway lighting, or to serve a weigh station, rest, or recreational area.

SUBCHAPTER 7. UNDERGROUND ELECTRIC POWER AND COMMUNICATION LINES

16:25-7.1 General provisions

(a) There is wide variation in the techniques and practices for undergrounding electric power and communication lines due to differences in such factors as water conditions, type of subsoil, facility congestion and the like. Accepted methods for undergrounding such lines include trenching for conduit, duct construction or uncased buried cable; and direct burial for plowing of buried cable and jacking or pushing of pipe as conduit, especially for crossing of existing highways.

16:25-7.2 Required controls for underground electric power and communication lines

(a) General rules concerning required controls for underground electric power and communication are as follows:

1. Underground utility construction shall conform to all applicable codes, standards, and specifications.

2. The Department has established a minimum depth of bury of 36 inches.

3. Pedestals or other above ground utility appurtenances installed as part of buried cable plant shall be located at or near the right-of-way lines.

4. All proposed locations and utility designs shall be reviewed by the Department to ensure that the proposed construction will not cause avoidable interference with existing or planned highway facilities or with highway operation or maintenance.

5. On both cased or uncased installations, particularly on crossings of the highway, consideration should be given for placing spare conduit or duct to accommodate known or planned expansion of underground lines.

6. The controls outlined in N.J.A.C. 16:25-4.1 for electric power and communication line attachments to highway bridge structures shall be followed.

7. The general controls outlined in N.J.A.C. 16:25-4.1 for pipelines as relate to markers, installations, trenched and untrenched construction, and adjustment shall be followed, as applicable, on underground installations of electric power and communication lines.

(b) Location and alignment of underground utilities will be as follows:

1. On longitudinal installations, locations parallel to the pavement at or adjacent to the right-of-way line are preferable so as to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders and embankment, and the safe operation of the highway. As a minimum, their lateral location will be offset a suitable distance beyond the slope, ditch, or curb line, as the Department may stipulate.

2. Crossings should be located as near normal to the highway alignment as practical.

3. Conditions which are generally unsuitable or undesirable for underground crossings should be avoided. These include locations such as in deep cuts, near footings of bridges and retaining walls; across intersections at grade or ramp terminals; at cross drains where flow of water, drift or stream bedload may be obstructed; within basins of an underpass drained by a pump; and in wet or rocky terrain where it will be difficult to attain minimum bury.

(c) Cased and uncased construction shall be as follows:

1. Crossings of underground lines shall always be encased in protective conduit or duct, and the encasement shall extend a suitable distance beyond the slope or ditch lines. On curbed sections, the encasement should extend outside the outer curbs. On freeways, the encasement shall extend to the access control lines, to the outside of frontage roads, or to an indicated line that allows for future widening of the highway.

2. Consideration shall be given to encasement or other suitable protection for any wire or cable facilities:

i. With less than minimum bury;

ii. Near the footings of bridges or other highway structures;

iii. Near other locations where there may be a hazard.

3. Where encased bored installations are proposed by the utility, the utility shall be required to furnish information as to the controls and construction methods to be employed, before the proposed installations are considered by the Department. This is to insure the necessary protection of the utility facility and the integrity and operation of the highway facility.

4. Underground construction within grade separated interchange areas designed to freeway standards, shall, at a minimum, extend between the interchanges outermost ramps.

SUBCHAPTER 8. IRRIGATION AND DRAINAGE PIPES, DITCHES, AND CANALS

16:25-8.1 General considerations

(a) Irrigation and drainage facilities installed across highway rights-of-way generally should be designed and constructed in accordance with the Department's specifications for highway culverts. Ditches and canals that closely parallel the highway should be discouraged. Appurtenances which would constitute a hazard to traffic shall not be permitted within the clear zone area and preferably should be located outside of the right-of-way.

(b) Where ditch rider roads are adjacent to ditches or canals that cross the highway, consideration shall be given to safety, traffic operations, and economic features when providing for the continuity of such roads. For example, the enlargement of drainage structures to accommodate the crossing of ditch rider roads would rarely be economically justified.

SUBCHAPTER 9. SAFETY AND RESTORATION PROVISIONS

16:25-9.1 Preservation, restoration and cleanup

(a) The area disturbed by utility installations or relocations shall be kept to a minimum. Restoration methods shall be in accordance with the Department's specifications and/or special provisions in utility use and occupancy agreements.

(b) Care should be taken in utility installation to avoid disturbing existing drainage facilities. Underground utility facilities shall be backfilled with previous material and outlets provided for entrapped water. Underdrains shall be provided for entrapped water. Underdrains shall be provided where necessary. No jetting or puddling will be permitted under the roadway.

(c) The utility shall be prohibited from spraying, cutting and trimming of trees without written permission by the Department.

16:25-9.2 Control of traffic

(a) Traffic controls for utility construction and maintenance operations shall conform with the Manual on Uniform Traffic Control Devices for Streets and Highways[1] and the Department's Rules and Regulations for the Maintenance and Protection of Traffic Permit Operations[2]. All construction and maintenance operations must be planned with full regard to safety and to keep traffic interference to an absolute minimum.

(b) On heavily traveled highways, construction operations interfering with traffic will not be allowed during periods of peak traffic flow. Any such work shall be planned so that closure of intersecting streets, road approaches, or other access points is held to a minimum.

16:25-9.3 Servicing, maintenance and repairs

(a) All utility facilities shall be kept in good state of repair both structurally and from the standpoint of appearance.

(b) The utility use and occupancy agreement may identify the maintenance operations which are permitted and indicate situations where prior notification to the Department is required.

16:25-9.4 Multiple use of freeway rights-of-way

(a) In some instances and under certain conditions, it may be in the public interest for utilities to use and occupy the rights-of-way of freeways for parallel (longitudinal) utility installations.

(b) When such extreme case need is demonstrated to the satisfaction of the Department as being in the best public interest, and the design, location, and measures for protecting the integrity, operational characteristics, and safety of freeway traffic meet all of the conditions set forth in the Federal-Aid Highway Program Manual, Volume 7, Chapter 7, Section 8 (FHPM 7-7-8), formerly Policy and Procedure Memorandum (PPM) 90-5, Dated March 27, 1973, "Joint Development of Highway Corridors and Multiple Use of Roadway Properties", on the Application of Joint Development and Multiple Use Concepts to Freeways and Utilities, and the installation is approved by the Federal Highway Administration, then a joint use and occupancy agreement or permit may be entered into with the utility by the New Jersey Department of Transportation to allow such installations.

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[1]Manual on Uniform Traffic Control Devices for Streets and Highways, current issue (for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

[2]Maintenance and Protection of Traffic During Permit Operations. Rules and Regulations, The New Jersey State Department of Transportation.

SUBCHAPTER 10. PERMITS AND AGREEMENTS

16:25-10.1 Application for permit

(a) For a permit to be issued to provide for any utility construction, major maintenance or related work on State Highway rights-of-way or property, a written application shall be filed with the Department on the standard Department form which clearly describes the proposed facility installation, construction, or work, and establishes its location with reference to work, and establishes its location with reference to highway stationing, land section tie, some well known permanent landmark, road or street intersection, highway bridge, or other fixed reference point.

(b) Such written application shall consist of a complete description of the facility to be installed or constructed, or the work to be performed on an existing facility, and a sketch or plans which show the existing and/or proposed location of the facilities within the highway right-of-way in relation to the existing and/or planned highway improvement, the traveled way, the right-of-way lines, and control of access lines and approved access points where applicable. Profile view plans and cross sections shall also be furnished when required for clarity.

(c) All applications shall be signed by an official having contractual authority for the utility, or by the owner of the facility. Applications should also contain statements as to whether the proposed installation or construction is required to have, and if it has, the approval of the franchising municipality, or other applicable Federal, State or Local Government Agencies having jurisdiction thereover: and, if such agency approval is required, the name of the agency having such jurisdiction.

(d) All applications shall be made a part of the permit issued by the Department and shall be submitted in the number of copies, including plans or sketches, required by the Department for distributing the appropriate copies of the respective permit.

(e) All permits shall constitute a binding contract; therefore, proxy applications on behalf of the intended permittee, or verbal or unsigned requests for utility permits, will not be valid, and a permit will be withheld until a proper application is received and approved.

16:25-10.2 Opening permits

(a) Requests for opening permits, by any utility, that will involve the construction of underground facilities beneath paved roadway surfaces shall always be of special consideration.

(b) Normally no open-cuts of pavement will be allowed within freeway rights-of-ways. Any additional facilities required after completed construction of freeways will, where paving is encountered, normally be by the bore and jack methods and shall further be accomplished from outside the no access limits of the freeway.

(c) Under normal, non-emergency situations, major highway paving, whether new or improved, will carry a minimum "no open-cut" period of five years. This basic five-year period will be used only as a minimal guide, and in most cases where high traffic volume is encountered the "no open-cut" period will be extended indefinitely.

(d) Applications for open-cut permits, if approved, will be closely supervised by the Department's Regional Engineer to assure satisfactory replacement of base course and roadway paving.

16:25-10.3 Deposit or bond

(a) Pursuant to authority of the applicable New Jersey Statutes, a certified check or bond as a guarantee or compliance with the provisions of the permit to guarantee restoration of highway right-of-way or property shall be required if deemed necessary, in an amount sufficient to cover costs that may be incurred by the Department of Transportation in making repairs or restoration of its right-of-way or property if such satisfactory repair or restoration is not made by the permittee.

(b) The amount of the certified check or bond shall represent the best judgement and estimate of the Department's Regional Engineer of the actual cost to the Department as might be incurred to restore the highway to its original condition if such work were not properly performed by the permittee.

16:25-10.4 Approval and issuance

(a) The Department shall review all permit applications for conformance with the provisions of this chapter, especially where above ground facilities are involved.

(b) Permits for utility installations or work on any Interstate right-of-way shall have prior approval of the Federal Highway Administration. All permits for utility installations or work shall be issued under the authority of applicable New Jersey Statutes, and shall be so referenced therein.

(c) All utility permits shall be issued only to the permanent owner and operator of the utility facility, and not to the party, company, or contractor performing the installation or construction work, nor to the temporary agent or engineer handling preparation of the permit application for the permanent owner.

16:25-10.5 Acceptance of license or permit

The start or performance of any work under a permit shall constitute full understanding and acceptance of, agreement with, and shall represent the express intention and obligation of the utility to comply with, the terms and provisions hereof and of the permit.

16:25-10.6 Notice of starting work

The permittee shall notify the designated Departmental Regional Engineer in writing not less than three days prior to starting work in order that observation and inspection of the work may be provided, except that notification may be given on the day work is started on approved above ground construction or maintenance work which can be inspected after the work is completed, and on emergency maintenance and repair work.

16:25-10.7 Permit to be kept on job

(a) The approved permit, or a copy of same, shall be kept at the location of the work at all times work is in progress, and it shall be shown to Department Representatives upon request as proof of having received authorization to perform the work on highway right-of-way or property.

(b) Failure to furnish such proof of possession of, or to have approval for the issuance of, a valid permit may result in a Department directed stoppage of work.

(c) The burden of such proof shall be on the party, company, or contractor performing the work, or on the utility owner responsible for the work.

16:25-10.8 Occupancy by unwritten consent

(a) All utility lines, systems and facilities that have been, and that may be located on or across highway rights-of-way by operation of law and without the issuance by the Department of a written permit covering the installations, shall be considered, as occupying, crossing or otherwise using said right-of-way subject to the provisions of the applicable New Jersey statutes, the prior property rights, rules and regulations of the Department and the principles and requirements set forth herein.

(b) Any new rules, regulations, and specifications of the Department, and any new requirements in this chapter, are not to be applied retroactively against existing utility occupancies except that any such new rules, regulations, specifications, and new requirements shall apply to new or replacement facilities constructed as relocations whether required by the Department due to the existing facility obstructing or interfering with the present or proposed use of the highway right-of-way for highway purposes, or when such existing facilities are being replaced, relocated, or otherwise substantially changed by the utility owner for owner's purposes or convenience.

16:25-10.9 Right to revoke or annul permit

The Commissioner of the Department is authorized, subject to giving reasonable notice (and hearing if requested) to revoke or annul a permit if the utility fails to comply with the provisions of this chapter and terms

and conditions of the permit, or if the utility occupancy of the right-of-way becomes an interference to the use of the right-of-way for highway purposes. Any hearings conducted shall be subject to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

16:25-10.10 Responsibility for costs

(a) The utility, by applying for, accepting, and performing work under any permit, or by occupying highway right-of-way by unwritten consent, assumes the obligation by law and gives implied assurance of financial responsibility for all costs of the initial installation, subsequent operation, maintenance and servicing of the facility.

(b) The utility shall bear, or when applicable shall require its contractor or subcontractor to bear, all costs of any restoration and/or repairs to the utility facility and any highway property disturbed or damaged in the initial installation and/or subsequent maintenance or servicing operations associated with, or resulting from, permittee's normal operations and requirements in the occupany of highway rights-of-way or property.

(c) The utility shall be responsible for, or require its contractor or subcontractor to be responsible for, all costs of any restoration or repair work as may be necessary due to failure or break in such utility facility which results in damage to either or both the utility facility or highway property.

(d) The utility shall be responsible for such other work as may be required by the Department if the utility's facilities are not maintained in a good state of repair; and the utility shall make any such emergency repairs of breaks or line failure which cause any hazard to the public, interference to traffic, or damage to highway property as promptly as reasonably possible after learning or being advised of such break or failure.

(e) The utility shall begin any normal repairs required by the Department to restore its facility to a good state of repair within 90 days of receipt of written request thereof from the Department, and shall exercise due diligence to prosecute such repair work to an early and orderly conclusion.

(f) If any subsequent change in the highway facility necessitates the moving or adjusting of utility facilities located by a permit, or operation of law on, over, under, or across highway right-of-way or other highway property, then the Department shall bear all costs and expense of such required move or adjustment.

(g) The utility shall begin such move or adjustment following written notice and request to do so by the Department, and shall exercise due diligence to prosecute the work of such move or adjustment to an early and orderly conclusion, and without causing undue delay to, or interference with, highway construction, betterment or maintenance operations.

SUBCHAPTER 11. SPECIAL PERMITS AND AGREEMENTS

16:25-11.1 Railroad crossings

(a) The establishment of new railroad grade crossings or the modification of existing crossings, requires the prior approval of the Commissioner of Transportation. To obtain such approval, applicants must petition the Department pursuant to Title 48 of the New Jersey Statutes and the New Jersey Administrative Code.

(b) Current information concerning the petition content and the filing procedure may be obtained from the Chief, Bureau of Utilities, Railroad Safety and Engineering. Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

16:25-11.2 Local-Federal Aid Agreements

(a) Pursuant to the provisions of Paragraph 6.d, Federal-Aid Highway Program Manual 6-6-3-2[1] (Formerly PPM 30-4.1), the Department shall enter into agreements with appropriate county and municipal officials to provide for regulating the use and occupancy of Federal Aid Roads, and to assist local officials in establishing utility accommodation policies conforming, as appropriate for the type of highway involved, to the provisions of this chapter.

(b) Such agreements may be entered into on a project-by-project basis handled by the Bureau of Local Federal Aid Programs. Until a county or municipality adopts a utility accommodation policy approved by the Department conforming to Federal requirements, the Bureau of Utilities Railroad Safety and Engineering shall review for conformance with the State requirements in effect at the time all utility rearrangement schemes on Federal Aid Roads that are subject to the provisions of Federal-Aid Highway Program Manual 6-6-3-2 (Formerly PPM 30-4.1).

[1]Title 23, Code of Federal Regulations, Part 645B.

16:25-11.3 Private utilities

(a) Requests for permits by private persons or concerns to cross, occupy, or use Interstate freeways, State highways, or Federal Aid Road rights-of-way shall be treated as special cases; and the review, approval, and issuance of any such permits for the accommodation of such privately owned facilities shall be on the merits of the individual requests as to its necessity and legal basis consistent with New Jersey Law.

(b) Where the requested use and occupancy involves more than a road crossing or a relatively short segment of parallel line (for example, up to 1/8 mile), or where equivalent utility service is available without the private line installation, then the request shall be referred to the Department's Chief Counsel for an opinion as to whether the proposed private use of the highway right-of-way is in violation of State law. All such private lines must also meet all other applicable provisions of this chapter.

16:25-11.4 Highway lighting

Requests for permits to install or revamp highway lighting systems by electric utilities or municipalities shall be treated as special cases; and each such request shall be referred to the Department for review and recommendations as to acceptability of design, adequacy of lighting, and safety factors in addition to the normal review and processing for permit approval of an above-ground utility installation.

SUBCHAPTER 12. UTILITY RELOCATIONS AND ADJUSTMENTS

16:25-12.1 Reimbursement basis

(a) Reimbursement to utility owners for required relocations and adjustments of existing utility lines, systems and facilities required by highway construction or improvements shall be made in accordance with the detailed procedures of Federal Highway Administration, Federal-Aid Highway Program Manual 6-6-3-1[1] (Formerly FHPM 1-4-4 & PPM 30-4). As provided in such Federal regulations, the determination of eligibility for reimbursement shall be made pursuant to applicable State law, both statutory and case, and the Constitution; and such basis for determination of eligibility (compensable property interest) under New Jersey law is generally interpreted by legal counsel for the Department and should be administered, as follows:

1. Existing utilities located on private property on which the Department does not have any prior right, title, or interest therein shall be considered eligible for reimbursement.

2. Existing publicly owned utilities located on the street right-of-way of any incorporated town or city, and which right-of-way was not a part of, or on the State highway system at the time of the installation or construction of the utilities, shall be considered eligible for reimbursement.

3. Existing publicly owned utilities located on county road, dedicated urban development road, and/or private road rights-of-way which were not a part of, or on, the State highway system at the time of the installation or construction of the utilities, shall be considered eligible for reimbursement.

4. The installation or construction of extra utility properties (such as, but not limited to, encasement pipes and taller poles) and other extra costs of installing or constructing new utility facilities that will meet highway construction requirements and/or standards, (and when such construction is on approved highway location or alignment and the extra work will effect lower cost utility adjustments by being performed at the time such new utilities are being installed or constructed on private property or non-highway right-of-way on a Commissioner approved and programmed project) shall be considered eligible for reimbursement. Such "preventive" adjustments shall be handled according to the applicable policies and procedures of FHPM 6-6-3-1, and any amendments and supplements thereto.

5. Existing investor owned utilities located on existing State highway right-of-way by statutory grant and/or written consent of the Department shall be considered as eligible for reimbursement.

6. All utilities whether public or investor owned, when effected by freeway construction, shall be considered as eligible for reimbursement.

(b) The general criteria outlined in (a) above for determining eligibility for reimbursement for relocation costs shall be applied on the basis of the actual location of the existing utility facility in relation to existing highway right-of-way, except that in some cases, a determination of whether the Department or the utility possesses the prior property interest in the same location on existing highway right-of-way may be necessary to decide the Department's legal obligation.

(c) The general criteria outlined in (a) above shall apply in determining eligibility for reimbursement for the relocation of utilities on any construction or improvement project administered (constructed) by the De-

partment, except on projects on which determinations of eligibility are unnecessary due to the Department contracting with other agencies or political subdivisions of the State government to make arrangements for utility relocation to be provided at no cost to the Department.

(d) The Department shall make the contractual arrangements and reimburse for eligible adjustments on all Interstate and Federal aid primary projects and shall reimburse for eligible adjustments on all Federal aid secondary, and urban projects except those where the Commissioner stipulates or contracts with other agencies that eligible utility adjustments are to be provided either at no cost to the Department or that the Department shall participate with others in reimbursement for such eligible adjustment costs.

[1]Title 23, Code of Federal Regulations, Part 645A (23 CFR 645A).

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route 20 in Bergen County

Proposed Amendment: N.J.A.C. 16:28A-1.10

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 39:4-138.1, 39:4-199.

Proposal Number: PRN 1987-208.

Submit comments by July 15, 1987 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zones along Route 20 in the Borough of East Rutherford, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route 20 in the Borough of East Rutherford, Bergen County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.10 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route 20 in the Borough of East Rutherford, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

This proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposed amendment will primarily affect the motoring public in precluding parking at established bus stops.

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

16:28A-1.10 Route 20

(a) (No change.)

(b) The certain parts of State highway Route 20 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along (Paterson Plank Road) the eastbound (southerly) side in the Borough of East Rutherford, Bergen County.

i. Mid-block bus stop:

(1) Between Murray Hill Parkway and William Street—Beginning 215 feet west of the westerly curb line of Murray Hill Parkway and extending 135 feet westerly therefrom.

(b)

CONSTRUCTION AND MAINTENANCE

Permits

Proposed Readoption: N.J.A.C. 16:41

Proposed Readoption with Amendments: N.J.A.C. 16:41-2.4

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1, 27:7A-11 and 27:7A-17.

Proposal Number: PRN 1987-205.

Submit comments by July 15, 1987 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

Summary

N.J.A.C. 16:41, "Permits", will expire on November 15, 1987 under the provisions of Executive Order 66(1978). In order to avoid the expiration of the rules and maintain their effectiveness, the Department of Transportation proposes to readopt the existing text of N.J.A.C. 16:41 with minor technical changes which more properly reflect the current requirements and standards for application for Permit for Driveway (Access). No substantive changes are proposed to the current rules. The proposed amendments to N.J.A.C. 16:41-2.4 are essentially procedural, relating to the number of copies of detailed plans required to accompany an application for permit, and the specifications used in the industry. N.J.A.C. 16:41 was originally promulgated to comply with the requirements of N.J.S.A. 27 (Highways) which prescribes certain powers and duties of the Commissioner of Transportation to determine and adopt rules, regulations and specifications and enter into contracts covering all matters and things incidental to the acquisition, improvement, betterment, construction, maintenance and repair of State highways. The rules were also reviewed by the Department and found to be necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated.

Social Impact

The proposed readoption of N.J.A.C. 16:41 will have a beneficial social impact in that it will specify the procedural requirements for the application for permits and will continue to provide the necessary information required. Additionally, the proposed readoption outlines specifications and standards used in the industry.

Economic Impact

The proposed readoption will have no noticeable economic impact on those persons applying for permits because the rules outline the procedure and industry specifications to be followed in the permit application process.

Regulatory Flexibility Statement

The proposed readoption does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The readoption is strictly procedural.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 16:41.

Full text of the proposed amendments to the readoption follows (additions shown in boldface **thus;** deletions shown in brackets [thus]).

16:41-2.4 Permit provisions

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

(d) Plans to support application **should be collated and folded, and** shall include:

1. Applications for private access driveway permit must be supported by six copies of a detailed sketch or **a to scale** plan **no greater than 50 feet to one inch, preferably 30 feet to one inch, using an Engineer's scale.** [showing] **The plan or sketch should show** location and type of proposed driveway in relation to the gutter and/or curbline. **While all application plans for private access should be on State Standard 22 inch by 36 inch or Industry Standard 24 inch by 36 inch sheets, an 8½ inch by 11 inch sheet may be accepted.**

2. Applications for combined residence and business, automobile service station and commercial minor driveways must be supported by eight copies of a detail plan to a scale no greater than 50 feet to one inch, preferably 30 feet to one inch, using an Engineer's scale. Topographic features must be shown on both sides of undivided roads, and one side of divided roads, for 250 to 500 feet in each direction. Additionally, any features affecting sight distance must be noted. All application plans for combined residence and business, automobile service station and commercial minor driveways must be on State Standard 22 inch by 36 inch or Industry Standard 24 inch by 36 inch sheets. Also included shall be the information requested in (d)3 below.

[2.]**3.** Applications for [all other access] **commercial major** driveway(s) must be supported by [six copies and] eight copies [for a major development] of a detailed plan to a scale no greater than [50 feet to one inch preferably] 30 feet to one inch using an [e]Engineer's scale. [, setting forth] **Topographic features must be shown on both sides of undivided roads, and one side of divided roads, for 1,000 feet in each direction. Additionally, any features affecting sight distance must be noted. All application plans for commercial major driveways must be on State Standard 22 inch by 36 inch or Industry Standard 24 inch by 36 inch sheets. Also included shall be** the following information:

i. Site location [;] **map. Tax maps are unacceptable. Site location maps should show at least two cross streets, one each side of the property, milepost, north arrow and scale;**

ii.-v. (No change.)

vi. Drainage. **Must show complete existing and proposed drainage systems; calculations for existing and proposed development flows must be included.**

vii.-xviii. (No change.)

xix. Where applicable:

(1) Driveway grades;

(2) Corner clearance;

(3) Radius of curvature;

(4) Parking facilities;

(5) Estimated traffic count for access;

(6) Speed-change lanes (acceleration, deceleration or left turn slots);

(7) Typical section, which shall be included in all access plans showing existing and proposed lane and shoulder cross slopes, widths and pavement make up.

xx. Traffic planning and traffic management data substantiating the property owner's plans to control the amount of development related vehicular traffic.[;] **Traffic studies shall include calculations of peak hour traffic (A.M. and P.M.) for full buildout of the development and directional distribution plus counts on the highway at peak hour.**

xxi.-xxiv. (No change.)

(e) (No change.)

(f) Applications for concept review must be supported by [six] **eight** copies of a plan to a scale no greater than [one inch equals 100 feet,] **100 feet to one inch,** preferably [one inch equals] 50 feet **to one inch,** using an [e]Engineer's scale. This application should provide information sufficient to enable the Department of Transportation to determine the feasibility of the proposed project but is not required to include extensive construction details. **Traffic studies should include calculations of peak hour traffic (A.M. and P.M.) for full buildout of the development and directional distribution plus counts on the highway at peak hour.** The following information should generally be included in the application;

1.-14. (No change.)

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Tax Amnesty

Proposed New Rules: N.J.A.C. 18:39-1

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1987-209.

Submit comments by July 15, 1987 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed new rules supply the operating guidelines that the Division of Taxation will use in the administration of the "Tax Amnesty" provided for in P.L. 1987, c. 76 which was signed into law on March 11, 1987. The law provides that the Director of the Division of Taxation must designate a 90-day tax amnesty period ending not later than March 11, 1988. Taxpayers wishing additional information about amnesty should contact the taxation hotline or write to Amnesty Headquarters, New Jersey Division of Taxation, CN 277, Trenton, NJ 08646.

Social Impact

The legislation and these proposed rules are intended to provide a 90-day tax amnesty period during which taxpayers who have failed to pay any State tax that is payable to, or collectible by, the Division of Taxation may remit the tax and interest at the rate of nine percent per annum and will be excused of interest in excess of nine percent per annum and all other civil or criminal penalties arising out of that obligation. The law contains increased enforcement provisions, both civil and criminal, which take effect after the 90-day amnesty period. The Division of Taxation will increase the use of its technological capabilities with the application of resources in areas not previously scrutinized. The proposed rules provide the general operating guidelines that will be followed by the Division; the requirements which must be met to qualify for tax amnesty; those circumstances that will result in the denial of tax amnesty; and a number of specialized situations into which many taxpayers will fall. The proposed rules provide the means by which a taxpayer may come forth and pay existing tax liabilities, both known and unknown, to the Division of Taxation without any fear of criminal prosecution.

Economic Impact

P.L. 1987, c. 76 provides $50,000,000 in urban aid to help many of New Jersey's financially troubled municipalities. It is anticipated that the $50,000,000 will be funded by the revenues expected to be collected during the 90-day tax amnesty period. The legislation which these rules implement will increase the tax compliance level of New Jersey taxpayers by providing an incentive for prompt payment. No additional taxes are imposed. Subsequent to the tax amnesty period, compliance levels should be enhanced by the addition of taxpayers to the tax rolls resulting from their identification during the tax amnesty period.

Regulatory Flexibility Statement

The proposed rules will not result in any change in existing reporting, recordkeeping or other compliance requirements for any small business.

Full text of the proposed new rules follows.

CHAPTER 39
STATE TAX AMNESTY

SUBCHAPTER 1. NINETY-DAY TAX AMNESTY

18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with any outstanding New Jersey State tax liability for a taxable period or transaction or use occurring prior to January 1, 1987 are eligible for tax amnesty during the 90-day period (the "tax amnesty period") designated by the Director of the Division of Taxation.

(b) Tax amnesty will be granted only with respect to tax liabilities which arose prior to January 1, 198/.

Example 1: A taxpayer was issued a notice of deficiency in June of 1984 for underpayment of corporation business tax for the calendar year 1983. The eligible taxpayer could receive tax amnesty for that liability by submitting the application, paying the liability and paying interest at the rate of nine percent per annum until the date of payment.

Example 2: A taxpayer on a January 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in March of 1986. The result of this failure is the underpayment of the taxpayer's corporation business tax liability and interest charges for the insufficiency of corporation business tax installment payments. Even though the return was not due until after January 1, 1987, the taxable event occurred prior to that date and the taxpayer is eligible to receive tax amnesty on both the tax liability and the interest charges for the insufficient installment payment that would be due on the gain from the sale of the capital asset.

Example 3: A vendor sold an automobile in January 1987. He fails to remit the sales tax in February 1987. He is not eligible for tax amnesty as the transaction occurred after December 31, 1986. If the sale were made in December 1986 even though the return was not due until January 1987, the failure to remit the tax from the 1986 transaction is eligible for tax amnesty.

(c) A taxpayer may apply for and be granted tax amnesty for any tax which is payable to the Division of Taxation. Taxes not payable to the Division of Taxation such as unemployment and disability taxes (payable to the Department of Labor) boxing taxes (payable to the State Athletic Commission) or local property tax (payable to municipal tax collectors) are not eligible for tax amnesty.

(d) All taxpayers owing eligible State taxes for an eligible period may receive tax amnesty unless they are under criminal investigation for a State tax matter and that fact has been certified to the Division of Taxation by a county prosecutor or the Attorney General.

(e) Tax amnesty will not be granted with respect to taxes, penalties or interest otherwise eligible for tax amnesty which are or have been paid prior to the commencement of the tax amnesty period.

(f) If a taxpayer has paid a tax but still owes penalty and interest on that tax, outstanding liability for penalty and interest is eligible for tax amnesty. The taxpayer must complete and file an amnesty application. Tax amnesty is not automatically granted to taxpayers whose only liability to the Division is penalty, or interest, or both.

(g) Tax amnesty will be granted for penalty and interest only if the penalty and interest were assessed with respect to an eligible tax.

18:39-1.2 Scope of tax amnesty

(a) When tax amnesty is granted, all civil and criminal penalties and all interest in excess of nine percent per annum attributable to the tax and period for which tax amnesty has been granted will be waived.

(b) Once tax amnesty is granted, all penalties as defined by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., or any other State tax law and any civil, administrative or criminal proceedings other than interest at the rate of nine percent per annum are barred relating to the designated tax only.

(c) If tax amnesty is granted, the taxpayer's obligation to pay the full amount of the tax due and nine percent simple interest from the date the tax was due to the date of payment will not be forgiven.

(d) The waivers of penalties and prohibition against prosecution apply only to those amounts of tax and interest for which tax amnesty is granted. Penalties will be imposed and proceedings will not be barred relating to any amount of tax later found to be due in excess of the tax amnesty payment.

18:39-1.3 Application for tax amnesty

(a) To obtain tax amnesty, a taxpayer must submit a completed official tax amnesty application by midnight of the 90th day of the amnesty period, along with full payment of tax and interest at nine percent per annum from the due date of the tax to the date of payment.

1. The official form available from the Division of Taxation must be used. Required attachments (such as a New Jersey Form 1040 where appropriate) are considered a part of the tax amnesty application. An application without the required attachments will be considered incomplete.

2. The official Tax Amnesty Application is available by writing to:

Amnesty Headquarters
New Jersey Division of Taxation
CN 277
Trenton, NJ 08646

3. The filing must be postmarked by midnight of the 90th day of the tax amnesty period or delivered to the Division of Taxation by midnight of the 90th day of the tax amnesty period.

4. If the taxpayer applying for tax amnesty is unable to obtain or complete an official tax amnesty form by the 90th day of the tax amnesty period, he may submit a letter which will, for purposes of the filing date, be considered timely filed. That letter must include the following information:

i. The taxpayer's name;
ii. The taxpayer's address;
iii. The taxpayer's ID number, if known, or Social Security number;
iv. The tax for which tax amnesty is being requested;
v. The period for which tax amnesty is being requested; and
vi. Payment of the tax plus nine percent simple interest to the date of payment.

5. The letter, in lieu of an official application, must be received by midnight of the 90th day of the tax amnesty period, or postmarked by that date. The tax amnesty application will not be considered complete until an official form has been signed and filed. Thus, the letter application is to be used only in such emergencies where an official tax amnesty application cannot be obtained or completed prior to the final day of tax amnesty. Taxpayers should keep copies of the letter application and proof of mailing or delivery in order to avoid rejection of the subsequent filing of the official application on the grounds that such official filing is not timely.

(b) The taxpayer, in order to be eligible for any tax amnesty, must pay the tax plus nine percent interest within the 90-day period of tax amnesty.

1. If the taxpayer cannot calculate the interest due, he may pay all of the tax and approximate the amount of interest due and submit that to the Division of Taxation by the 90th day of the tax amnesty period. The Division will make a calculation of the correct amount of interest due and send the taxpayer either a bill or a refund. In order to continue to be eligible for tax amnesty, any bills submitted to the taxpayer must be paid within 30 days of the date of the bill.

2. If the taxpayer does not know or cannot calculate the tax due, he may approximate the amount of his tax liability plus interest at nine percent per annum and send payment for that approximation to the Division within the 90-day tax amnesty period. Any subsequent bill to the taxpayer for additional tax or interest due will bear full penalty and interest charges. It will not, however, affect the amount on which tax amnesty had previously been granted. Any bill must be paid within 30 days of the date of the bill for the taxpayer to maintain eligibility for tax amnesty.

18:39-1.4 Granting or denial of tax amnesty

(a) Tax amnesty will be specifically granted or denied by the Division.

(b) A taxpayer will be denied tax amnesty if the tax amnesty application is not complete enough for the Division to understand the period and tax for which amnesty is applied.

(c) Tax amnesty will be denied with respect to taxes not eligible for tax amnesty (for example, local property tax).

(d) A taxpayer will be denied tax amnesty for tax liabilities arising outside of the tax amnesty period in accordance with N.J.A.C. 18:39-1.1.

(e) A taxpayer will be denied tax amnesty if he is certified to be under criminal investigation by the Attorney General or a county prosecutor.

(f) A taxpayer may be denied tax amnesty for inadequate payment of tax, payment with a dishonored check, or failure to submit deferred payments on a timely basis.

18:39-1.5 Consequences of denial of tax amnesty

(a) A taxpayer denied tax amnesty for a reason other than having been certified as under criminal investigation will have his payments applied to other open tax accounts.

(b) If amnesty is denied due to the fact that the taxpayer is under criminal investigation as certified by the Attorney General or a county prosecutor, the application and amounts remitted will be returned to the taxpayer and the record of the application will be deleted from the Division of Taxation's files.

18:39-1.6 Inability to make payment within 90-day period

(a) If the taxpayer is unable to compute the tax for which he wishes to be granted tax amnesty, the taxpayer must, in writing, contact the Division. A Division representative will contact the taxpayer and assist him, but he still must pay the tax determination and interest within the tax amnesty period. (See N.J.A.C. 18:39-1.3(b) relating to timely payment of billed amounts.)

(b) If the taxpayer is unable to compute the interest due, the tax should be paid in full with a completed application and the Division will compute the interest and send a bill. The interest must be paid within 30 days of the date of the bill.

(c) A taxpayer who can substantiate a severe financial hardship may receive tax amnesty providing he pays 50 percent of the tax and interest due within the 90-day tax amnesty period and pays the balance of tax due with interest within 60 days of the end of the tax amnesty period.

18:39-1.7 Special rules

(a) A taxpayer who is subject to wage garnishment, attachment, or seizure of property by the Division of Taxation may apply and receive tax amnesty providing he complies with the terms of tax amnesty. Upon full payment of all taxes due and interest at nine percent per annum and the granting of tax amnesty, the Division will satisfy the applicable judgments and release any levies against real or personal property.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty providing it complies with the terms of tax amnesty. A corporate charter can only be reinstated upon full payment of all taxes due and interest at nine percent per annum, the payment of the fee to the Secretary of State, and approval of the Attorney General. Upon meeting these conditions, tax amnesty will be granted and the corporate charter reinstated.

(c) A taxpayer who has requested a conference with the Division of Taxation may apply for tax amnesty. This can be done providing the taxpayer sets forth the areas of the assessment with which he agrees and withdraws them from the conference process. The portion, if any, on which tax amnesty is not requested or granted will continue to be the subject of the conference.

(d) A taxpayer who has filed a complaint with the Tax Court may apply for tax amnesty, provided that the Tax Court agrees to the dismissal of the complaint with prejudice for the affected portions of the complaint.

(e) A taxpayer may receive partial tax amnesty on any part of tax paid with the proper amount of interest due. The balance of the liability remains subject to penalty and interest at the rates applicable to the pre- and post- amnesty periods. Note that on the date that tax amnesty ends, interest on delinquent taxes will begin to compound daily on the tax, penalties and interest then due at a rate of interest equal to the prime rate plus five percent per annum.

(f) A taxpayer currently under audit may be granted tax amnesty for any eligible tax and period on any part of an assessment he has agreed to. The taxpayer must, however, apply for tax amnesty on that part of the agreed upon deficiency, be eligible to receive it, and have it granted.

(g) A taxpayer seeking amnesty for gross income tax liabilities must pay the liability and interest at nine percent per annum, and, in addition to the amnesty application, must submit a return on the NJ-1040 or any other form acceptable by the Director of the Division of Taxation.

18:39-1.8 Rights of taxpayer denied tax amnesty

(a) A taxpayer denied tax amnesty for other than being certified as under criminal investigation can appeal the decision by sending a letter of disagreement within 30 days of the date of the notice denying tax amnesty stating the basis of his disagreement. If he is later found to be eligible for tax amnesty, he can pay the applicable tax and interest at nine percent per annum within 30 days from the date of a favorable decision.

(b) The letter of disagreement should be addressed to:

Amnesty Headquarters
New Jersey Division of Taxation
CN 280
Trenton, NJ 08646

18:39-1.9 Overpayment of tax

(a) Amounts submitted in excess of any amounts due are to be credited against open tax accounts for the subject taxpayer when tax amnesty is applied for. A taxpayer can, however, apply for a refund of any penalty and interest paid in excess of the amount required by tax amnesty provided he meets the following conditions:

1. The tax liability, penalty, and/or interest was paid during the tax amnesty period;

2. The taxpayer subsequently applies for tax amnesty and is determined to be eligible for tax amnesty.

(b) Refunds will not be granted with respect to any liabilities for which tax amnesty has been sought.

1. Consideration will be given to correcting errors made in a tax amnesty application during the 90-day amnesty period and appropriate transfers to other tax accounts or refunds may be made.

2. After the tax amnesty period, no such corrections, transfers, or refunds will be made. An application for tax amnesty by a taxpayer is an admission by the taxpayer that he owes the amount of tax for which amnesty is being requested.

3. Refund procedures available for taxes paid under other than tax amnesty conditions are not available for tax amnesty payments.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code
Fire Safety Code: Fire Code Enforcement

Adopted Amendments: N.J.A.C. 5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9 through 4.12 and 4.18, and 5:18A-2.3, 4.3 and 4.4.
Adopted New Rule: N.J.A.C. 5:18-4.17.
Proposed: June 16, 1986 at 18 N.J.R. 1225(a).
Adopted: May 22, 1987 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Filed: May 22, 1987 as R.1987 d.247, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions** of the proposal **not adopted.**
Authority: N.J.S.A. 52:27D-198.
Effective Date: June 15, 1987.
Expiration Date: February 1, 1990.

Summary of Public Comments and Agency Responses:

N.J.A.C. 5:18-2.5(c)

COMMENT: The process for obtaining a certificate of inspection increases the cost and paperwork for business owner. A need for simplification was noted.

RESPONSE: No change has been made at this time. The process is a requirement of the Uniform Fire Safety Act and cannot be changed by regulation.

N.J.A.C. 5:18-2.8

COMMENT: Several comments were received noting that the annual registration fee is excessive and that there is no basis for this fee in terms of service received.

RESPONSE: The fee schedule currently is under review by both the Department and the Fire Safety Commission.

N.J.A.C. 5:18-2.11(b)

COMMENT: It was suggested that 30 days, rather than 15, should be allowed to file an appeal. Additionally, there should be some system to notify the owner of the appeals process given with any notice of violation.

RESPONSE: No change has been made. Fifteen days is considered to be standard and adequate. The violation form will carry information about appeals.

N.J.A.C. 5:18-3.2

COMMENT: F-316.2.2, Definition of "portable" container should be narrowed to not more than 10 gallons for homeowners.

RESPONSE: No change is necessary. NFiPA 30 standard definitions should apply and these include definitions of portable containers.

N.J.A.C. 5:18-3

COMMENT:F-318-0, a need to review and revise requirements for fire drills was noted. Also, a need to address the problem of false alarms was noted.

RESPONSE: Several changes have been made to the requirements for fire drills which include the addition of requirements for day care centers, currently enforced by the Division of Youth and Family Services in the Department of Human Services, and limiting requirements in educational uses to grades K through 12. The problem of false alarms has been referred to the Fire Safety Commission's Ad Hoc Committee on Nuisance Alarms.

N.J.A.C. 5:18-3.2

COMMENT: F-2805.5, the inspection of underground storage tanks is to be taken over by the Department of Environmental Protection (DEP) following passage of relevant legislation.

RESPONSE: Bureau staff and Division staff are currently working with DEP's Bureau of Underground Storage Tanks to coordinate the inspection of underground storage tanks.

N.J.A.C. 5:18-3.2(a)2ii(6)

COMMENT: The Department of Environmental Protection (DEP) advised the Bureau of Fire Safety that, in regulating open fires, it considers all such fires to be "public" as they are conducted in the open.

RESPONSE: The term "public" was deleted from the provision to coincide with DEP's regulations.

N.J.A.C. 5:18A-2.8

COMMENT: The Bureau of Fire Safety should not only file, but also review, all amendments to the Uniform Fire Code made by municipalities.

RESPONSE: The Bureau of Fire Safety will review local ordinances and provide comment if the ordinances vary from the State law.

N.J.A.C. 5:18-4.1 et seq.

COMMENT: Several comments were received objecting to the institution of any retroactive requirements. Many commenters suggest that retrofit should be limited to the most hazardous uses. However, the Uniform Fire Safety Act, at N.J.S.A. 52:27D-198(b), calls for the adoption of retroactive requirements. Prior to the development of these standards, national fire records of life and property loss were reviewed and the circumstances surrounding these fires were studied. Based on the results of this research, a catalog of those building elements identified as contributing to fire losses was developed and minimum fire safety standards were drafted.

RESPONSE: It is the Department's position that the requirements are responsive to the particular identifiable hazards associated with the buildings covered by these rules and therefore, the institution of fire safety requirements is necessary and in the interest of public safety.

N.J.A.C. 5:18-4.1(c)10

COMMENT: The New Jersey Society of Architects feels that in stadiums, bleachers and grandstands, the provisions of this subcode should apply only to interior facilities.

RESPONSE: Since requirements such as the provision of adequate means of egress should apply regardless, no change has been made to this requirement.

N.J.A.C. 5:18-4.1(c) and (d)

COMMENT: The New Jersey Fire Prevention and Protection Association stated that day care centers should have been included in the first adoption at 5:18-4.1(b).

RESPONSE: Because of the economic impact that such a change would have, especially on smaller day care centers, it was decided to allow day care centers to remain in the third phase, providing two years for center owner/operators to comply with the requirements of this subchapter.

COMMENT: Many commenters requested that these sections be modified to clarify the intended three year phase-in program. Concern was expressed regarding the compliance time allowed and the economic impact, specifically, the impact on historic structures, and on hotels in areas with a seasonal economy. It was suggested that the compliance time be extended for hotels and multiple dwellings greater than four stories in height and that small bed and breakfast establishments be distinguished from larger hotels for purposes of applying the code. Concern also was expressed regarding the displacement of low and moderate income tenants which may result from the imposition of standards on residential buildings. In this regard, it was recommended that a phase-in of individual code requirements be implemented, that existing life safety codes be more strictly enforced and that tenants be notified when violations are found. In addition, concern was expressed regarding the availability of contractors and materials to meet the proposed timetable for compliance. It was suggested that some specific criteria for granting extensions for those demonstrating a "good faith" effort to comply be incorporated.

RESPONSE: The rules have been amended to clarify the three year phase-in program for compliance with the requirements of this subchapter. The fire safety hazards that this proposal addresses are deemed to be severe enough to justify the expenditure required. In addition, no data were presented to support allegations that the costs of compliance are too high. Extensions may be granted as warranted at the discretion of the local fire official. The question of what constitutes a "good faith" effort to comply and therefore warrants an extension may be the subject of a future bulletin or interpretation if clarification is deemed to be necessary.

COMMENT: Preservationists who met with the Fire Safety Commission suggested that the classification system should separate historic house museums and other small galleries from larger structures in this use group.

RESPONSE: No change has been made inasmuch as the requirements for this use group are not deemed to be onerous and applying the standards for some other use group, such as for single family homes, would not provide adequate protection.

N.J.A.C. 5:18-4.1(e)

COMMENT: Princeton University suggested that for owners controlling a complex or campus of facilities, a systems approach to fire protection should be taken.

RESPONSE: A section has been added to provide for the submission of a comprehensive facility fire protection plan to the Bureau of Fire Safety by owners of multi-locational facilities.

N.J.A.C. 5:18-4.2(a)

COMMENT: Some confusion was expressed with respect to the relationship between subchapter 4 and the State Fire Prevention Code.

RESPONSE: The problem expressed is one of communication and does not require a regulatory change.

N.J.A.C. 5:18-4.3(b)

COMMENT: The Building Officials' Association of New Jersey noted that requiring the "concurrence" of the fire official is contrary to the Uniform Construction Code Act and requested a change to "consultation" as in N.J.A.C. 5:18-4.3(c).

RESPONSE: A change has been incorporated to provide that a decision be made "in consultation with" the local fire official.

N.J.A.C. 5:18-4.3(c)

COMMENT: Representatives of preservation groups requested the publication of guidelines for making determinations with respect to historic buildings.

RESPONSE: Guidelines will be developed by the staff of the Bureau of Construction Code Enforcement in relation with the Uniform Construction Code, which is the governing standard for the application of code requirements to historic buildings.

N.J.A.C. 5:18-4.7(a)

COMMENT: This subsection requires all nightclubs, dance halls and discotheques with an occupant load of 50 or more to have a suppression system. A representative of Hilton Hotels suggested this be amended to say "buildings or areas" to accommodate mixed use buildings.

RESPONSE: The words "or portions thereof" have been added to each section to clarify the intent with respect to mixed use buildings and to alert the regulated public that mixed use buildings will be regulated under reserved subsection (k) to be proposed.

N.J.A.C. 5:18-4.7(b)

COMMENT: The Fire Safety Commission suggested that the words "and in which residents have access to rooms above the second story" should be deleted as a condition for the installation of suppression systems in boarding homes.

RESPONSE: A proposal has been submitted simultaneously with this adoption to delete these words. The Department has also deleted the conjunction "and" and replaced it with "or" to separate "greater than two stories above grade" and "having an occupant load greater than 20 excluding staff" to conform this subsection to the Rooming and Boarding House Regulations at N.J.A.C. 5:27-5.8.

N.J.A.C. 5:18-4.7(c)1i

COMMENT: The New Jersey Fire Prevention and Protection Association (N.J.F.P.P.A.) suggested that the type of construction should be in arabic numerals as in the model code. Also, exemption from suppression requirement should be limited to Type 1 or Type 2A construction.

RESPONSE: This correction has been incorporated as suggested.

N.J.A.C. 5:18-4.7(c)1ii

COMMENT: The Fire Safety Commission feels that an exception should not be allowed for day nurseries in Use Group I-2 (institutions).

RESPONSE: The language incorporated in the code is similar to variations granted under the Uniform Construction Code and permits an exemption from suppression requirements for day nurseries under very limited circumstances. This exemption will remain.

N.J.A.C. 5:18-4.7(d)

COMMENT: The Department of Corrections suggested that suppression systems should be installed in common areas of prisons, but not in cells (inmate confinement areas). Difficulties cited include moving prisoners to other areas given present overcrowded conditions and vandalism.

RESPONSE: An option has been incorporated into the code to permit correctional facilities to comply with Chapter 15 of the Life Safety Code, NFiPA 101, in lieu of the requirements contained in this subchapter.

N.J.A.C. 5:18-4.7(e)

COMMENT: The New Jersey Business and Industry Association (NJBIA) expressed concern over suppression systems installed in areas utilizing hazardous materials where special processes take place and/or where equipment is stored. Additional concern was expressed over the economic impact of the installation of supression systems on smaller businesses.

RESPONSE: The problem with installation in equipment storage areas is deemed to be a design problem currently being adequately handled by the agencies responsible for review of plans prior to installation. Therefore, no change has been made. In addition, the economic impact is not considered to be too great.

N.J.A.C. 5:18-4.7(g)

COMMENT: The NJBIA was also concerned about the economic impact on smaller businesses required to install kitchen suppression systems.

RESPONSE: The economic impact of installing a kitchen suppression system is considered minimal, and therefore, no change has been made to this requirement.

N.J.A.C. 5:18-4.7(h)

COMMENT: Various concerns were raised by several groups regarding this requirement for windowless stories, as follows: changes made to the suppression requirements for windowless stories are unacceptable in terms of the level of life safety provided. Additionally, the words "any combination" should be changed to "one or more of the three options below" to clarify what is required. Also, "stairwells" should be changed to "stairwell(s)". Concern was also expressed with the economic impact of compliance. A question was also raised as to whether the requirements contained herein conflict with those of N.J.A.C. 5:18-4.13(c) for Use Group F (factories). Another commenter indicated that facilities housing telephone switching/radio communication equipment should be treated as they are under the building code in terms of suppression requirements. It was suggested that any glazing material, not only plain, flat glass, should be permitted.

RESPONSE: This section has been reserved for further consideration. However, facilities housing telephone switching/radio communication equipment will be included in the future proposal as the fire safety record in such facilities dictates that this requirement be incorporated. Additionally, glazing materials such as plexiglass, bullet-proof glass and other glazing material would not be breakable and therefore could not be used to meet the intent of this requirement.

N.J.A.C. 5:18-4.7(j)

COMMENT: Princeton University and a representative of Hilton Hotels felt that supervision "as determined by the fire official" is too arbitrary. The same concern was noted at N.J.A.C. 5:18-4.9(c). Also, other commenters stated that requirements for supervision should differentiate between industrial buildings not open to the public having preventative maintenance programs and other commercial uses at the discretion of the fire official. Tamper switches and electrical alarms may not be required in facilities in the former category.

RESPONSE: No change has been incorporated as the method of supervision must be determined at the local level according to the options available there. Additionally, the local official may make a determination as to wehther industrial buildings deserve special consideration due to fire safety equipment and procedures present and deal with such cases by granting variations.

N.J.A.C. 5:18-4.7

COMMENT: A problem was noted with maintaining the suppression system and bleeding the pipes in systems in shore area hotel/motel buildings which are unoccupied during the winter months.

RESPONSE: No change has been incorporated as the technology exists for dealing with the problem described.

COMMENT: The NJBIA requested clarification as to whether the required standpipe is to be wet or dry and asked for a definition of wet standpipe.

RESPONSE: The rule specifies that a wet standpipe system is required.

N.J.A.C. 5:18-4.9

COMMENT: The New Jersey Catholic Conference expressed concern with the economic impact of installing alarm systems in parochial schools.

RESPONSE: No change has been incorporated as these fire safety improvements were recognized as essential in all public schools in the State many years ago and are deemed to be necessary.

N.J.A.C. 5:18-4.9(a)1i

COMMENT: The Fire safety Commission feels that a requirement for supervision should not be limited to Use Group I. Additionally, no exception should be given for day nurseries.

RESPONSE: This issue and the provision of N.J.A.C. 5:18-4.9(a)2 are to be referred to the Fire Safety Commission's Ad Hoc Committee on Nuisance Alarms for recommendations. Additionally, a proposal is being made simultaneous with this adoption to delete the exception for day nurseries.

N.J.A.C. 5:18-4.9(a)2i(2) and (3)

COMMENT: A representative of Hilton Hotels noted that the reference in paragraph (a)2i(3) to NFiPA 72E is inappropriate for single station smoke detectors, and reference should be made only to NFiPA 74. The American Hotel Association commented that the reference to U.L. 217 alone was improper, as U.L. 268 also governs detection.

RESPONSE: The words "as applicable" are to be added to clarify the use of NFiPA standards as elements from each standard apply, and the appropriate reference to U.L. 268 was added. The Department also changed the term "self-contained type in paragraph (a)2i(2) to "non-self-contained type" to remedy the inherent contradiction of requiring single-station detectors to be interconnected while smoke detectors were proposed to be self-contained.

N.J.A.C. 5:18-4.9(a)2ii and 2iii

COMMENT: The Hilton Hotel representative also questioned the requirements for printed instructions for occupants and for testing since they do not take into account whether the system is monitored. Additionally, it was suggested that monthly testing be changed to semi-annual for electronically supervised systems in accordance with NFiPA 72E. The same comment applies to 4.9(a)iv(1).

RESPONSE: The maintenance requirements have been deleted from this subchapter as they have already been adopted, substantially as recommended, in subchapter 3 of the Uniform Fire Code.

N.J.A.C. 5:18-4.9(a)2v(8)

COMMENT: Zoning for selective evacuation should be allowed in highrise buildings according to the Hilton Hotel representative.

RESPONSE: The prohibition of zoning has been deleted as suggested. This practice may be permitted at the discretion of the local fire official.

N.J.A.C. 5:18-4.9(a)2

COMMENT: The New Jersey Society of Architects recommended a requirement for visual alarms in hotels and multiple dwellings for the protection of the deaf and hearing impaired.

RESPONSE: A proposal has been made simultaneously with this adoption to require the provision of visual alarms in hotels.

N.J.A.C. 5:18-4.9(a)2,3,4

COMMENT: The N.J.F.P.P.A. recommended supervision in all schools, day nurseries, large hotels and multiple dwellings.

RESPONSE: No change has been made at this time, however, this issue is to be referred to the Committee on Nuisance Alarms for possible recommendations and to the Fire Codes Advisory Council of the Fire Safety Commission.

N.J.A.C. 5:18-4.9(b)

COMMENT: A hotel industry representative questioned the requirement for smoke detectors in common areas. See also 4.9(a)2v(4)

RESPONSE: A change has been incorporated to reference the appropriate NFiPA standards.

N.J.A.C. 5:18-4.10(a)3

COMMENT: The New Jersey Society of Architects recommended that exemptions to the manual fire alarm requirement should be modified to include buildings of Use Group R-1, one to two stories in height with doors from individual units opening directly to the exterior, but to exclude similar buildings of Use Group R-2.

RESPONSE: No change has been made as it is felt there is no justification for such a change.

N.J.A.C. 5:18-4.11(b)3

COMMENT: The New Jersey Society of Architects recommended that a single exit condition be permitted hotels and multiple dwellings on floors not more than 20 feet above grade.

RESPONSE: No change has been made. The Hotel and Multiple Dwelling rules have always set the limit at 16 feet above grade and there is insufficient substantiation for a change to this standard.

N.J.A.C. 5:18-4.11(b)3,4

COMMENT: The Department of Human Services requested an exemption for community residences for the developmentally disabled having a maximum occupant load of 16 rather than 12 as proposed. The Department of Human Services states that this maximum occupant load (16) is set by statute.

RESPONSE: Because the limit originally was set at 12 following discussions with the Department of Human Services, more substantiation must be provided to justify a change.

N.J.A.C. 5:18-4.11(b)4

COMMENT: The N.J.F.P.P.A. recommended a second means of egress requirement in all hotels and multiple dwellings with floors more than 16 feet above grade.

RESPONSE: No change has been made as inclusion of this suggestion would make this subchapter more restrictive than the Uniform Construction Code. The Fire Codes Council is to review this issue for possible recommendation to the Fire Safety Commission to sponsor a proposed change to the BOCA Basic/National Building Code.

N.J.A.C. 5:18-4.11(b)5

COMMENT: The New Jersey Society of Architects noted that the limit should be 3500 square feet and not 3000 square feet for consistency with BOCA.

RESPONSE: Consistency with BOCA National Building Code is not required in this instance inasmuch as this standard is to be applied to existing buildings.

N.J.A.C. 5:18-4.11(c)

COMMENT: The Multi-Family Housing Industry Committee (M.F.H.I.C.) requested an exemption for multiple dwellings when the second and third floor are part of the same dwelling unit as in the current Hotel and Multiple Dwelling Regulation's.

RESPONSE: Language has been added to permit the single exit condition to continue as allowed under the existing Hotel and Multiple Dwelling Relations.

COMMENT: The M.F.H.I.C. recommended that a single exit condition be permitted in all multi-level dwelling units in hotels and multiple dwellings, regardless of construction type.

RESPONSE: No change has been made as there is no justification to support this recommendation.

N.J.A.C. 5:18-4.11(f)

COMMENT: The Building Officials' Association of New Jersey and the M.F.H.I.C. noted that the proposal to calculate occupant load at five square feet per person conflicts with the building code. The need for consistency was noted. Also, concern was raised over fire officials changing occupant loads that were set at the time that the certificate of occupancy was issued. The N.J.S.A. and the N.J.F.P.P.A. supported the calculation of occupant load at five square feet per person and stated that it should have been included in the portion of subchapter 4 previously adopted.

RESPONSE: The requirement is set at five square feet per person for all use groups. The Bureau of Fire Safety will publish a bulletin explaining computation methods and clarifying terminology.

N.J.A.C. 5:18-4.11(g) Reserved Section

COMMENT: A suggestion was made that an "effective smoke barrier" be required for exit access corridors serving 30 or more occupants, but that specific requirements for self-closing transoms, etc. be deleted. Concern over the impact of related requirements on research labs that maintain negative air pressure in the corridors was also expressed. Additionally, concern was expressed that life safety is diminished by the omission of requirements for exit access corridor protection.

RESPONSE: This section continues to be reserved pending further consideration.

N.J.A.C. 5:18-4.11(i)1

COMMENT: Princeton University noted that compliance with the exit lighting requirement will require expensive rewiring in older buildings.

RESPONSE: No change has been made as there is no evidence to suggest that such wiring will be necessary in many cases.

N.J.A.C. 5:18-4.11(k)

COMMENT: The N.J.B.I.A. requested the option of externally and self-illuminated exit signs.

RESPONSE: Language has been added to clarify that approved self-luminous signs are acceptable to meet this requirement.

COMMENT: The M.F.H.I.C. requested an exemption for multiple dwellings from the exit sign requirement, without a limit on number of occupants.

RESPONSE: No change has been made as there is no justification for same.

N.J.A.C. 5:18-4.11(l)3

COMMENT: The N.J.F.P.P.A. recommended a requirement for self-closers on doors from dwelling units, guest rooms and rooming units.

RESPONSE: The requirement has been adopted as proposed without self-closers; however, the Fire Code Advisory Council is to consider this suggestion.

N.J.A.C. 5:18-4.11(l)3i

COMMENT: Various concerns were raised by several groups regarding this requirement for means of egress doors as follows: concern with replacement of doors in historic structures; cost of replacing existing doors and questions as to what types of modifications might be made to existing doors to achieve the required rating; concern was expressed over the lowering of the required rating from 20 minutes to 15 minutes; the requirement of modification of existing doors to be supervised by the fire official was questioned as inconsistent with the Uniform Construction Code; and such work is under the jurisdiction of the fire protection subcode official.

RESPONSE: An amendment has been made to indicate that modification to existing doors is under the purview of the Uniform Construction Code. With respect to the other concerns raised, the requirement has been adopted as proposed; however, the Fire Codes Council is to examine this issue and to recommend amendments.

N.J.A.C. 5:18-4.11(m) and (n)

COMMENT: The M.F.H.I.C. recommended that the languages be clarified to state that handrails and guardrails need only be replaced if they are in disrepair.

RESPONSE: The language has not been amended as handrails and guardrails judged to be hazardous should be replaced regardless.

N.J.A.C. 5:18-4.12(a)

COMMENT: The N.J.S.A. made the following recommendations with respect to interior finishes. The table should be labeled "Existing Interior Finish Requirements." In addition, a statement should be added to show that new finishes installed must comply with the BOCA/National Building Code which requires the use of class III material in hotels and multiple dwellings. Also, a table should be included for floor finishes.

RESPONSE: No change has been made as the requirement adequately covers the material as proposed.

N.J.A.C. 5:18-4.13

COMMENT: Several comments were made regarding the requirements for vertical opening protection, as follows: concern was expressed that the trade-offs listed diminish life safety; some redundancy was noted in that both suppression and vertical opening protection may be required; a question was raised as to whether limited area sprinkler systems could be employed to provide the required protection, and the aesthetic impact on historic structures was noted; a suggestion was made that historic house museums and other small structures be distinguished by size and occupant load for exception from the requirement for vertical opening protection; also, that multiple dwellings up to three stories in height with approved alarm systems should be exempt from additional requirement for vertical opening protection.

RESPONSE: The amendments to this section have not been adopted so that revisions can be considered further. Language has been added to N.J.A.C. 5:18-4.1(c) and (d) exempting those future compliance requirements from this section pending its revision.

N.J.A.C. 5:18-4.16

COMMENT: The Amusement Association suggested that retrofit to amusement buildings such as haunted houses be done on a case-by-case basis inasmuch as proposed requirements do not recognize the diversity of those amusement structures currently in use.

RESPONSE: Because individual assessment is not practical, no change has been made.

N.J.A.C. 5:18-4.17

COMMENT: Concern was raised by the N.J.B.I.A. over the time to comply with these requirements for highrise structures. Additionally, a question was raised as to whether a lab hood qualifies as a smoke control system. It was also suggested by Hoffman-LaRoche that control and communication systems should not be required in buildings equipped throughout with an automatic suppression system.

RESPONSE: No change has been made to this section. The systems required are essential for proper notification to occupants and for fire department operation. Additionally, there are no standards for the approval of the use of lab hoods as smoke control systems.

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

5:18-2.5 Required inspections

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

(c) Within 30 days following each annual and every other quarterly inspection of a life hazard use, the owner shall file an application for a certificate of inspection on forms provided by the *[Local Enforcing Agency]* ***local enforcing agency***. Forms shall be provided either before or at the time of inspection. The form shall request, and the owner shall provide, the information specified below, or where applicable, certify that it remains as stated on the registration survey. The form shall be returned to the local enforcing agency which shall review and forward it to the Bureau.

1. Building owner's full name, business and residential addresses, and respective telephone number. If complete agent information is supplied, the owner need not supply residential information.

2. The full name, business and residential addresses, and telephone numbers of an agent authorized to accept service of documents including rulings, orders or notices.

3. For partnerships, the name and business addresses of all general partners.

4. For corporations, the name, residential and business addresses, and telephone number of the registered agent. In addition, if it is not a publicly traded corporation, the name, business and residential addresses, and telephone numbers of each officer, director, or stockholder holding 10*[%]* ***percent*** or more of the stock.

5. If the fire official or local enforcing agency has identified life hazard uses within the building, and such uses are separately owned, the use-owner's full name, residential address, and business and residential telephone numbers, as well as the name, business and residential addresses of any person authorized to accept service of rulings, actions, orders or notices. If complete agent information is supplied, the use owner need not supply residential information.

(d) A certificate of inspection shall not be issued until the application is properly completed and reviewed and any violations cited have been corrected. The certificate of inspection shall be posted by the owner of the use in a conspicuous location therein.

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. Type 1 permit:

i.-vi. (No change.)

vii. The possession or use of fireworks, explosives or blasting agents, other than model rocketry engines regulated under N.J.A.C. 12:194;

viii-ix. (No change.)

(c)-(k) (No change.)

5:18-2.11 Appeals

(a) The person aggrieved may appeal any enforcement action including rulings, orders and notices by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or his authorized agent, may be a person aggrieved.

1. If from the act of a local enforcing agency, the request shall be made to the Construction Board of Appeals in the municipality where the building, structure or premises is located. If no such Board exists, then the request shall be to the County Construction Board of Appeals in the county where the building, structure or premises is located. At the time made, a copy of the request shall be sent to the local enforcing agency.

2. If from the act of the Department serving as the local enforcing agency, the request shall be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, New Jersey 08625.

3. All hearing requests shall be signed by a proper party and shall include:

i. The date of the act which is the subject of the appeal;

ii. The name and status of the person submitting the appeal;

iii. The specific violations or other act claimed to be in error; and

iv. A concise statement of the basis for the appeal.

(b) Hearing requests shall not be valid unless submitted within 15 days after service of a ruling, order or notice, except in cases of imminent hazards.

(c) In imminent hazard cases, except in emergent circumstances, the owner shall have a period of 24 hours to request a hearing before the order to close, vacate or remove shall be effective. In emergent circum-

stances, orders may be effective immediately. Hearing requests within the 24 hour period may be made orally to the person designated on the form served but shall be written in accordance with (a)3 above and served on the enforcing agency at the hearing. At the expiration of 24 hours, if the action required has been taken, the owner shall have a period of 15 days to request a hearing.

1. If a request is made within 24 hours, a hearing shall be conducted and a final decision issued within 48 hours of receipt of the hearing request.

2. If the request is to a Construction Board and no final decision is issued within two working days, thereafter, written application may be made to the Department at the address specified in (a)2 above for a hearing. The application shall clearly state that it is an imminent hazard appeal and shall indentify the local enforcing agency and Local Construction Board. In such case, a hearing shall be held and a final decision issued within three working days from receipt of the request.

3. If the hearing request is made in accordance with the 15 day provision, a hearing shall be held and a final decision issued within seven working days.

5:18-2.14 Imminent hazards

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

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1. (No change.)

2. Article 2 ("Definitions") is amended as follows:

i. (No change.)

ii. Section F-201.0 ("General Definitions") is amended as follows:

(1)-(5) (No change.)

(6) The term "bonfire" is added and is defined as "a large, *[public,]* open-air fire kindled to mark or highlight some *[public]* event."

3. Article 3 ("General Precautions Against Fire") is amended as follows:

i.-vii. (No change.)

viii. The following new sections F-316.0, F-316.1, F-316.2, F-316.2.1, F-316.2.2, F-316.2.3, and F-316.3 are added:

F-316.0-F-316.2.1 (No change.)

F-316.2.2 Portable containers: Portable containers for kerosene shall be either of a plastic or metal construction with fill and vent openings. The container shall be predominantly medium blue. The word "Kerosene" shall be displayed around the perimeter of the container.

F-316.2.3-F-316.3 (No change.)

ix. (No change.)

x. The following new sections F-318.0, F-318.1, F-318.2, F-318.3 and F-318.4 are added:

Section F-318.0 Fire Drills

Section F-318.1 General: Fire Drills shall be held in buildings and parts thereof, when of educational ***use (grade K-12)*** and ***of*** institutional use*[s]* ***in day care centers regardless of use group*** and in dormitories, having an occupancy load of 50 or more*[, that serve educational uses]*.

Section F-318.2 Frequency: Fire Drills shall be held at least once a month in ***day care centers and*** educational uses ***(grades K-12)***, at least twice annually in *[educational]* dormitories, and at least once every three months on each work shift in institutional uses. During severe weather, fire drills may be postponed.

Section F-318.3 Records: A record of fire drills shall be kept on the premises and shall be made available to the fire official upon request. Such records shall contain the following information:

(1) Date of drill;

(2) Time of drill;

(3) Weather condition at time of evacuation;

(4) Number of occupants evacuated;

(5) Total time for evacuation; and

(6) Any other information relevant to the drill.

Section F-318.4 Evacuation: In ***day care centers,*** educational uses and dormitories, fire drills shall include complete evacuation of all persons from the building. In institutional uses, fire drills shall be conducted to familiarize operating personnel with their assigned positions of emergency duty. Complete evacuation of occupants from the building at the time of the fire drill shall be required in institutional uses only where it is practicable and does not involve moving or disturbing persons under medical care or restraint.

SUBCHAPTER 4. FIRE SAFETY CODE

5:18-4.1 Code adopted*[/Scope]*; **scope***

(a) Pursuant to authority of the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts this subchapter as the State Fire Safety Code.

(b) The following buildings shall be in compliance with all applicable requirements of this subchapter by June 16, 1987.

1. Theaters incorporating a raised stage, platform, or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment, equipped with fixed seats; and which are classified as Use Group A-1-A in accordance with the Uniform Construction Code.

2. Night clubs, dance halls, discotheques without a theatrical stage and which are classified as Use Group A-2 in accordance with the Uniform Construction Code.

3. Eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more, and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

4. Amusement buildings and places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love, and similar uses and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

5. Institutional buildings and similar facilities including hospitals and long-term care facilities, which house people suffering from physical limitations due to age, health or handicaps and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

6. Institutional buildings or similar facilities including acute alcoholism treatment, out-patient surgery, renal dialysis facilities, abortion clinics and birthing centers, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

7. Day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

(c) The following buildings shall be in compliance with all applicable requirements of this subchapter ***except N.J.A.C. 5:18-4.13*** by the first anniversary of the subchapter's effective date.

1. High rise structures as defined in N.J.A.C. 5:18-1.5.

2. Prisons or other facilities where residents, occupants or inmates are kept under restraint and which are classified as Use Group I-3 in accordance with the Uniform Construction Code.

3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers which are classified as Use Group B in accordance with the Uniform Construction Code.

4. Residential health care facilities, boarding homes and similar facilities which are classified as Use Group I-1 in accordance with the Uniform Construction Code.

5. Eating and drinking establishments which are primarily eating establishments with a maximum permitted occupancy of 200 or more and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

6. Hotel or motel structures four stories or more in height or exceeding 100 rooms which have interior means of egress and which are classified as Use Group R-1 in accordance with the Uniform Construction Code.

7. Any story which meets the criteria of N.J.A.C. 5:18-4.7(h) and which has a maximum permitted occupancy of 50 or more persons, regardless of Use Group classification.

8. Motion picture theaters without a theatrical stage and which are classified as Use Group A-1-B in accordance with the Uniform Construction Code.

9. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area and which are classified as Use Group M in accordance with the Uniform Construction Code.

10. Stadiums, race tracks and other similar exterior places of assembly with grandstands and which are classified as Use Group A-5 in accordance with the Uniform Construction Code.

11. Industrial and commercial uses which incorporate any hazardous operation or storage of combustible material as described in N.J.A.C. 5:18-2.4(c)12.

12. Buildings used for the storage and use of materials and substances as described in N.J.A.C. 5:18-2.4(c)13.

13. Buildings in which flammable cleaning solvents are used for dry cleaning purposes and which are classified as Use Group H in accordance with the Uniform Construction Code.

14. Buildings which exceed 12,000 square feet of gross floor area and which have atrium spaces three or more stories in height regardless of Use Group classification.

15. Covered mall structures which exceed 12,000 square feet of gross floor area.

(d) All buildings for which requirements are established in this subchapter and which are not listed in (b) or (c) above shall be in compliance with such applicable requirements of this subchapter ***except N.J.A.C. 5:18-4.13*** by *[the first anniversary of the subchapter's effective date]* ***June 16, 1989.***.

1. Exception to (d) above: Owner-occupied buildings which are classified as Use Group R-3 in accordance with the Uniform Construction Code shall be exempt from the provisions of this subchapter.

***(e) A comprehensive facility fire protection plan may be submitted for facilities located within the jurisdiction of more than one local enforcing agency which are under single facilities management, ownership and operational control.**

1. The plan shall be submitted to the Bureau of Fire Safety for approval and shall include an original and one copy plus a copy for each local enforcing agency in which the subject facilities are located. The plan shall include the following:

i. A comprehensive fire protection plan which includes all buildings which are part of the facilities at every location included in the plan. The plan must include the use group of each building in accordance with the Uniform Construction Code and an evaluation of fire protection for each building which includes all requirements established in this subchapter for buildings of that use group;

ii. A timetable for compliance with the requirements of this subchapter; and

iii. A written application for a variance submitted in accordance with N.J.A.C. 5:18-2.3(b) for all proposed deviations from this subchapter.

2. The Bureau shall consult with the fire official in each local enforcing agency in which facilities included on the plan are located before taking any final action on a plan.

3. Within 60 days after receiving the facility fire protection plan, the Bureau of Fire Safety shall approve or disapprove of the plan submitted in writing. If the plan is disapproved, then the written statement shall include the reason(s) for such disapproval.

i. A plan which is not approved within 60 days shall be deemed to have been disapproved unless the 60 day period is extended by mutual agreement of the Bureau and the applicant;

ii. A disapproval may be appealed as provided in N.J.A.C. 5:18-2.11;

iii. No owner shall be required to retrofit a facility pending approval or disapproval of the plans by the Bureau.

4. The original approved plan will be maintained on file by the Bureau of Fire Safety. One copy of the approved plan will be returned to the applicant and one copy will be supplied to the fire official in each local enforcing agency in which facilities included on the plan are located.

5. Any deviation from the plan as approved must be submitted to the Bureau for approval in accordance with the procedure established herein for the submission and approval of plans.

6. Inspections for compliance shall be conducted by the fire official in each local enforcing agency in which facilities are located and shall be in accordance with the plans as approved.*

5:18-4.2 Compliance with the State Fire Prevention Code and Other Fire Safety Regulations

(a) All buildings which are specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 and which are subject to requirements previously established including, without limitation, any requirement of the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.), shall be in compliance with those requirements as of the effective date of this subchapter and shall remain in compliance throughout the life of the structure.

(b) All buildings which are not specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 shall continue to be subject to the provisions of applicable existing fire safety requirements as promulgated by the State or local agency having jurisdiction and shall remain in compliance with those requirements throughout the life of the structure.

5:18-4.3 Relation to Uniform Construction Code and other Codes

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to the more restrictive requirements established by this subchapter.

(b) A building in full compliance with the current fire safety requirements of the New Jersey Uniform Construction Code (N.J.A.C. 5:23), as determined by the construction official with the concurrence of the fire subcode official and ***in consultation with*** the fire official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a New Jersey Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the Bureau of Construction Code Enforcement after consultation with the Bureau of Fire Safety and with the fire official and with the concurrence of the Director, Division of Housing and Development.

2. For purposes of this subsection, "current fire safety requirements" means requirements set forth in the New Jersey Uniform Construction Code in effect at the time of adoption of the requirement as part of this subchapter.

3. Existing fire suppression, smoke detector and fire alarm systems that meet the intent of NFiPA standards and the New Jersey Uniform Construction Code shall be accepted as meeting the requirements of this Code.

(c) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local enforcing agency under the New Jersey Uniform Construction Code in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators International, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(d) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of the Uniform Fire Code***,*** shall remain valid, subject to the following conditions:

1. To be accepted, the variation must have been:

i. Granted in writing;

ii. Granted through formal process or procedure;

iii. Granted upon a finding that equivalent life safety was provided.

2. Notwithstanding the provisions of this section contained above, nothing shall prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.14 or the construction official from making a finding of unsafe building pursuant to N.J.A.C. 5:23-2.32 and requiring correction of such hazard or unsafe condition in accordance with those regulations.

5:18-4.4 Relation to State Fire Prevention Code

The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.).

5:18-4.5 Modifications

(a) Any municipality may, by ordinance, modify this subchapter so as to make it more restrictive or more inclusive; provided, however, that this subchapter shall not be modified so as to be more restrictive than the New Jersey Uniform Construction Code (N.J.A.C. 5:23-1 et seq.) or so as to include one- or two-family, owner-occupied dwellings.

(b) Nothing in this Code shall be construed as preventing any State agency from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such actions shall not reduce the requirements of these regulations.

5:18-4.6 Pre-existing violations

No violation committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred, prior to the repeal or revision of any regulation or any part thereof by the enactment of this subchapter, shall be discharged, released or affected by the repeal or revision of the regulation or part thereof under which such offense, liability, penalty or forfeiture was incurred, and indictments, prosecutions and actions for such offenses, liabilities, penalties or forfeitures committed or incurred, prior to the effective date of this subchapter, shall be commenced or continued and be proceeded with in all respects as if the regulation or part thereof had not been repealed or revised.

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2 ***or portions thereof when separated in accordance with (k) below*** with a permitted occupant load of 50 or more shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(b) All buildings of Use Group I-1 ***or portions thereof when separated in accordance with (k) below*** greater than two stories in height above grade *[and]* having an occupant load greater than 20 excluding staff and in which residents have access to rooms above the second story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All buildings of Use Group I-2 ***or portions thereof when separated in accordance with (k) below*** shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to (c) above:

i. Buildings of Type *[I]* ***1*** or Type *[II]* ***2A*** construction of any height or of Type *[IIB]* ***2B*** construction not over one story in height as defined in the Uniform Construction Code.

ii. Day nurseries serving children below 2½ years of age, provided that all the children under 2½ years of age are cared for on the first floor in a room(s) having direct access to approved exits discharging directly to the exterior.

(d) All buildings of Use Group I-3 ***or portions thereof when separated in accordance with (k) below*** with an occupant load of six or more shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code ***or shall be in compliance with all applicable provisions of Chapter 15 "Existing Detention and Correctional Occupancies" of the Life Safety Code, NFiPA 101, 1985 edition****.

1. Exception to (d) above: All buildings of Use Group I-3 not required to be equipped throughout with suppression by these provisions shall be equipped with suppression in all padded cells, boiler rooms, storage and workshop rooms 24 square feet and larger, mechanical equipment and similar rooms.

(e) All buildings ***of use group H*** or portions thereof *[of Use Group H]* ***when separated in accordance with (k) below*** shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(f) All ballrooms, exhibit areas and accessory spaces of Use Group A-3 which exceed 12,000 square feet and are located in buildings of Use Groups R-1 and R-2, shall be equipped with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to (f) above:

i. Such assembly uses may be subdivided into fire areas not exceeding 12,000 square feet using permanent two-hour fire separation walls with 1-1/2 hour opening protectives. Such walls shall be continuous from the floor to the deck above except that the wall may terminate at the ceiling if the ceiling is part of a fire-resistance rated floor/ceiling or roof/ceiling assembly.

ii. A-3 uses which are completely separated both horizontally and vertically from R-1 and R-2 uses by fire separation walls and floor ceiling assemblies having a fire-resistance rating of not less than two hours with approved opening protectives having a fire-resistance rating of not less than 1½ hours. Walls shall be continuous from the floor to the deck above except that the walls shall be permitted to terminate at the ceiling if the ceiling is part of a fire-resistance rated assembly.

(g) All required kitchen exhaust systems used in conjunction with cooking operations which produce grease laden vapors shall be equipped with an automatic fire suppression system designed and installed in accordance with the State Fire Prevention Code and the New Jersey Uniform Construction Code.

1. Exception to (g) above: Suppression shall not be required for systems serving completely enclosed ovens, steam tables, or auxiliary equipment which does not produce grease laden vapors.

(h) *[In all buildings, an automatic fire suppression system shall be installed throughout all stories, including basements, which are not provided with firefighter access consisting of any combination of 1, 2 or 3 below:

1. Grade level doors providing at least 20 square feet of opening and spaced not more than 150 feet apart; or

2. Panels with minimum dimensions of 20 inches in width by 24 inches in height and constituting a minimum of 20 square feet in every 100 lineal feet of exterior wall; or

i. Panels shall be readily identifiable and shall be readily openable from the outside or shall be glazed with plain flat glass.

3. Enclosed stairwells providing direct access from the exterior to the occupiable space in such story or basement and complying with one of the following:

i. A fire resistance rating of not less than one hour when serving four stories or less; or

ii. A fire resistance rating of not less than two hours when serving more than four stories.

4. The following are exceptions to (h) above:

i. Suppression according to this section shall not be required in basements which do not exceed 2,500 square feet in area or in basements which do not exceed 5,000 square feet in area when subdivided into areas not exceeding 2,500 square feet by walls having a fire resistance rating of not less than two hours with approved opening protectives having a fire resistance rating of not less than 1½ hours. In both cases, such basements shall also be provided with an approved automatic fire alarm system having smoke detectors located in accordance with NFiPA 72E and shall be separated from upper floors by an assembly having a fire resistance rating of not less than two hours.]* ***(Reserved)***

(i) In all buildings of Use Group R-1 ***or portions thereof when separated in accordance with (k) below****, not required by N.J.A.C. 5:18-4.17 to have a complete automatic fire suppression system, all storage and workshop rooms and rubbish, laundry and similar rooms shall be equipped with a suppression system or smoke detector system connected to an approved continuously staffed location in the building. Such systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(j) Fire suppression systems required by this Code shall be supervised by one of the following methods as determined by the fire official:

1. Approved central station system in accordance with NFiPA 71;

2. Approved proprietary system in accordance with NFiPA 72D;

3. Approved remote station system of the jurisdiction in accordance with *[NJiPA]* ***NFiPA*** 72C; or

4. Approved local alarm service which will cause the sounding of an alarm in accordance with NFiPA 72A;

5. The following are exceptions to (j) above:

i. Underground gate valves with roadway boxes;

ii. Halogenated extinguishing systems;

iii. Carbon dioxide extinguishing systems;

iv. Dry chemical extinguishing systems; and

v. Limited area sprinkler systems.

(k) Mixed uses—Fire Separation Requirements.

5:18-4.8 Standpipe system

(a) All buildings having floors used for human occupancy located more than six stories above grade shall be equipped with wet standpipes. Standpipes shall be located and installed in accordance with the New Jersey Uniform Construction Code except as follows:

1. Standpipe systems shall be capable of accepting a delivery by fire department apparatus of a minimum of 250 gpm at 65 psi to the topmost remote standpipe outlet in buildings equipped throughout with an automatic fire suppression system or a minimum of 500 gpm at 65 psi to the topmost remote standpipe outlet in all other buildings.

2. Hose and hose cabinets shall not be required.

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;

i. *[Required alarm]* ***Alarm*** systems in buildings of Use Group I must be supervised.

(1) Exception to (a)1i above: Automatic fire alarm systems in day nurseries are not required to be supervised.

2. In all buildings of Use Group R-1 and R-2 as follows:

i. Smoke detectors shall be installed and shall be Underwriters Laboratories, Inc. (U.L.), Factory Mutual Research Corporation (F.M.) or other nationally recognized testing laboratory listed ionization or photoelectric type *[units]* ***detectors****.

(1) Single station *[units]* ***detectors*** shall have integral alarms capable of emitting a minimum sound intensity of 85 dbA at a 10 foot distance, an easily seen and activated manual unit test button or approved alternative, and a power source monitor light or trouble signal.

(2) Multiple station *[units]* ***detectors*** shall be either a series of interconnected single station *[units]* ***detectors*** or smoke detectors of the ***non-****self*[-]*contained type which are interconnected to a common alarm system.

(3) All *[units]* ***detectors*** shall be listed, shall meet the requirements of U.L. 217 ***when the detectors are of single station type and U.L. 268 when the detectors are of multiple station type,*** shall be installed and maintained as per manufacturer's recommendations and shall comply with NFiPA No. 72 E or No. 74 standards ***as applicable****, except as otherwise provided in this section.

ii. All smoke detectors and/or supervised systems shall be powered by an alternating current (AC) constantly active electric circuit which cannot be deactivated by the operation of any interconnected switching device and shall comply with NFiPA-70 (National Electric***al*** Code) requirements, except as otherwise provided in this section. All common area smoke detector units and systems shall be on circuitry that is connected into the building owner's electric meter. *[As an alternative]***In dwelling units or guestrooms***, battery-powered single station *[units]* ***detectors*** * may be installed *[in dwelling units]* provided that the *[following conditions are met:

(1) The owner or his representative shall inspect and clean all units and replace batteries in all units annually or as otherwise required per manufacturer's printed recommendations;

(2) The owner of a multiple dwelling or his representative shall place a tag on each unit and shall place the date of inspection and his initials on the tag.

(A) Entries shall be made on the tag upon initial installation, whenever a change of occupant occurs, when any reported malfunction of units is corrected, and when required maintenance is performed.

(B) An entry made on a tag shall constitute a certification that the unit is operating properly.

(C) Tags shall be affixed so as not to impair the functioning of the unit.

(3) The]* owner of *[a hotel]* ***the building*** or his representative shall inspect each *[unit]* ***detector*** whenever a change of occupant occurs and shall clean the *[unit]* ***detector*** or replace batteries whenever necessary.

*[iii. The owner of a multiple dwelling shall supply each occupant with a copy of the manufacturer's printed instructions for the testing of the installed unit(s).

(1) The owner of a multiple dwelling unit who has been notified either by an occupant, or by the fire official, that such occupant is unable to perform the required monthly testing of detector units in his dwelling or have this performed by a member of his household, shall perform such monthly testing.

(2) In all common areas of multiple dwellings and hotels and in dwelling units in hotels, the owner or his representative shall test all smoke detectors and detection systems monthly and maintain them in accordance with manufacturer's recommendations.

(3) Every occupant of a dwelling unit in a multiple dwelling shall test all detector units in his own dwelling unit monthly and report any malfunctions immediately to the building owner. If an occupant is incapable of performing this testing due to a mental or physical impairment, and has no member of his household capable of performing such testing, he shall so notify the owner or his representative.]*

*[iv.]***iii.*** Dwelling units ***or guestrooms*** shall have smoke detectors installed at locations as follows:

(1) Each dwelling unit ***or guestroom*** shall have a minimum of one approved single station smoke detector located in close proximity to each sleeping area.

(A) Smoke detectors shall be located so that the maximum distance from the detector to any sleeping area exit door shall not exceed 10 feet if outside the sleeping area or 15 feet if within the sleeping area.

(B) If any required detector is to be located closer than five feet to a kitchen or bathroom area, it shall be of photoelectric type only.

(2) A basement or cellar having direct access from within a dwelling unit and used solely by the occupants of that unit shall have a minimum of one approved smoke detector. Such basement detector(s) shall be interconnected with other units in the dwelling unless installed prior to the effective date of this subchapter.

(A) At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm(s).

(B) Basements or cellars that contain utility services or storage space for other dwelling units shall comply with common area requirements.

(3) In any dwelling unit other than a hotel room, rooming unit or efficiency apartment*,* the detector required to be in close proximity to each sleeping area shall be outside of the sleeping area.

*[v.]***iv.*** Common areas shall be required to have an approved system of multiple station *[units]* ***detectors*** installed as hereinafter provided. In buildings of Use Group R-1, less than four stories in height above grade, other than school dormitories for students up to and including the 12th grade, and in buildings of Use Group R-2 less than six stories in height above grade, the system shall not be required to be supervised or connected to an emergency power supply.

(1) Detection systems shall be powered by alternating current (AC), constantly active electric circuits that cannot be deactivated by the operation of any interconnected switching device and shall comply with NFiPA-70 (National Electric Code) requirements, except as otherwise provided in this section.

(A) Systems shall consist of smoke detectors of the non-selfcontained type or single station *[units]* ***detectors*** so interconnected that the activation of any one *[unit]* ***detector*** will simultaneously activate the individual alarms of all other *[units]* ***detectors*** or other separate alarms in the system.

(B) Alarms shall be located so as to be effectively heard above all other sounds, by all the occupants, in every occupied space within the building not separated by fire walls having a minimum fire-resistance rating of two hours.

(C) All detection and control units, wiring, and systems installations shall be listed as conforming to U.L. 217, 268, and 864 requirements and shall comply with NFiPA No. 72A, No. 72E and No. 74 standards, except as otherwise provided in this section.

(D) The maximum number of single station *[units]* ***detectors*** that can be interconnected in a multiple station system shall not exceed the number permitted in the installation manual or instructions provided with each detector and referenced in the detector marking.

(E) All components of any interconnected system shall be compatible with each other as indicated in the installation instructions provided with each such component.

(2) All public corridors up to 40 feet in length that form part of a means of egress shall have a minimum of one approved smoke detector.

(A) An additional smoke detector shall be installed for every additional 40 feet or part thereof.

(B) Detectors shall be located at a maximum distance of 20 feet from end walls.

(C) Where corridor width exceeds 10 feet, smoke detector *[unit]* spacing shall be reduced in accordance with NFiPA-72E standards.

(3) All interior stairways not enclosed by a minimum one hour fire-rated separation from other common areas or which function as a sole interior means of egress, shall have approved smoke detectors installed at each floor level at either the ceiling of the landing or the high point of the sloped staircase soffit.

(4) All interior common areas other than public corridors, interior stairs and basements or cellars shall have approved smoke detectors installed at spacings not to exceed 900 square feet of floor space coverage per smoke detector.

(A) No such detector shall be spaced further than 15 feet from the nearest wall or other vertical building element or be closer than three feet to a window, door or air vent unless not practicable or noted otherwise in NFiPA-72E standards.

(B) Attics with ceiling heights less than *[7'0"]* ***seven feet*** that are not used for any type of storage, and crawl spaces with ceiling heights less than *[4'-0"]* ***four feet*** that are not used for any type of storage and are separated from adjacent building spaces by minimum 1-1/2 hour fire rated walls and opening protectives shall not be required to have smoke detectors installed therein.

(5) Basements and cellars shall be subject to the following:

(A) All basements or cellars that lack a minimum one hour fire-rated smooth ceiling assembly shall have approved smoke detectors installed at spacings not to exceed 450 square feet of floor space coverage per smoke detector. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm. The maximum spacing between detectors in open joist ceilings perpendicular to the joists shall be 15 feet, and the maximum spacing between detectors parallel to the joists shall be 30 feet. Such detectors shall be installed on the bottom surface of the joists.

(B) All basements or cellars that have an existing approved minimum one hour fire-rated smooth ceiling assembly shall have a minimum of one approved smoke detector per 900 square feet of area. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening or other approved location where the earliest detection of fire would activate the alarm(s).

(C) Compartmentalized and partially enclosed basement or cellar areas shall have additional detectors as required to afford complete protection of the total basement/cellar area in conformity with the above spacing criteria. Where partitions do not extend beyond a distance of 18 inches below the ceiling surface, additional detectors shall not be required.

(6) Additional smoke detectors shall be required in all ceiling areas that are enclosed or separated by beams or similar type projections in order to afford complete protection of the total building area.

(A) Beams that project more than *[8]* ***eight*** inches from ceiling surfaces and girders which support open joists or beams and have less than a *[4]****four***-inch clearance between the top of girder and ceiling surface, shall have smoke detectors spaced at a maximum distance of 20 feet perpendicular to the beam or girder projections.

(B) In building areas containing a single beam or girder that projects more than 12 inches from the ceiling surface, smoke detectors shall be located at a maximum distance of 10 feet from the beam or girder projection.

(C) Ceiling bays created by beams that exceed 18 inches in depth and that are spaced more than *[8]* ***eight*** feet on centers, shall be treated as separate enclosed areas for determining the number of smoke detectors required.

(D) Additional smoke detectors shall not be required in atrium or coffered type ceilings that exceed 12 feet in height.

(E) Ceilings with beams or girders, or coffered type ceilings, or ceilings in atriums having a ceiling height of at least 12 feet, shall conform to the smooth ceiling requirements.

(7) All hotels four stories or more in height, all multiple dwellings six stories or more in height and having 30 or more dwelling units and all rooming houses with *[6]* ***six*** or more occupants any one of which is 62 years of age or older, shall have approved smoke detection systems located in all interior occupiable common areas, shall be connected to a supervisory type listed control panel conforming to U.L. 864 requirements and NFiPA No. 72A standards, except as otherwise provided in this section, and shall be powered by an approved emergency power source as required by NFiPA-70 (National Electrical Code).

(A) The control panel shall be of the multi-zoned type that will visually indicate the floor from which the alarm is activated.

(B) All such panels shall be located in accordance with NFiPA-72A standards or as directed by the local fire subcode official.

(8) A pre-signal alarm feature *[or the separate zoning of floors in multiple story hotels and multiple dwellings for selective floor evacuation are]* ***is*** not permitted.

(9) The separate zoning of floors in high rise buildings for selective floor evacuation is permitted at the discrection of the fire official.

*[(9)]****(10)*** Existing common area smoke detection systems that were installed in compliance with this subchapter prior to its effective date, for which a construction permit was issued subject to plan review approval, shall be accepted as conforming to this section, unless the fire official shall determine, in accordance with N.J.A.C. 5:18-1.4(g), that a hazardous condition exists.

*[(10)]****(11)*** With the approval of the local fire protection subcode official, fixed temperature or combination rate-of-rise and fixed temperature heat detectors may be substituted for smoke detectors in those locations where frequent nuisance alarms would be likely to occur.

Such building spaces include but are not limited to garages, crawl spaces, unhabitable attics, heater and boiler rooms, laundry rooms, kitchens, restaurants, service areas and other rooms where the ambient temperatures are under 40 degrees Fahrenheit or are above 100 degrees Fahrenheit and/or have a relative humidity either under 20 percent or above 85 percent or where environmental conditions are likely to produce nuisance alarms.

*[(11)]****(12)*** The maximum spacing between either heat *[detector]* units or the nearest side wall or partition and a heat detector *[unit]* shall not exceed the spacings permitted by Underwriters Laboratories, Inc. listings.

*[vi.]****v.*** In any municipality that enacted an ordinance requiring the installation of smoke detectors in hotels or multiple dwellings prior to November 12, 1980, a building fully conforming to the requirements of such ordinance prior to November 12, 1980 shall be deemed to be in either full or partial compliance with the requirements of this section if the fire official determines that the provisions of such ordinance provide reasonable life safety protection to the occupants and that replacement of equipment already installed in conformity with such ordinance would be an undue hardship for property owners.

(1) A general determination pursuant to this subsection shall be made by the fire official upon review of the ordinance and separate exceptions shall not then be required for individual properties covered by such general determination.

(2) If a general determination is made that full compliance with the ordinance is an acceptable substitute for partial compliance with the requirements of this section, the fire official shall specify all respects in which a building fully complying with the ordinance must be made to comply with this section.

3. In all buildings used as child day-care centers, regardless of Use Group.

4. In all buildings of Use Group E up to and including the 12th grade, the system shall consist of:

i. An approved system of automatic smoke detectors; or

ii. An approved automatic fire suppression system equipped with automatic fire alarm devices; or

iii. An approved system which combines the following elements shall be acceptable when devices are located as indicated below:

(1) Combination fixed temperature/rate-of-rise detectors in classrooms and ancillary spaces; ***and***

(2) Photoelectric or projected-beam smoke detectors in exit access corridors and at the top of the exit stair enclosures*[; and]****.***

(3) Fixed temperature detectors in such a system shall be accepted in locations such as boiler rooms, garage areas and other spaces in which conditions render other detectors inappropriate.

iv. Existing fire detection systems, installed and maintained in accordance with the manufacturer's recommendations, and meeting the intent of current standards for automatic fire alarms, shall be acceptable, provided:

(1) The existing system is tested, in accordance with the provisions of Article 4, Section F-404.6 of Subchapter 3 of this Code, by an approved service agency competent in the manufactured system, in the presence of the fire official or his designated representative. The fire official may accept a written report of test results in lieu of witnessing the test.

(2) Where a portion of an existing system is not serviceable and cannot be repaired, the existing system shall be replaced in accordance with the provisions of this Code.

(b) An automatic fire alarm system shall not be required in buildings equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFiPA ***72E or*** 74 ***as applicable***.

(c) Automatic fire alarm systems required to be supervised by this Code shall employ one of the following methods as determined by the fire official:

1. Approved central station system in accordance with NFiPA 71;

2. Approved proprietary system in accordance with NFiPA 72D;

3. Approved remote station system of the jursidiction in accordance with NFiPA 72C; *[and]*

4. Approved local alarm service which will cause the sounding of an alarm in accordance with NFiPA 72A.

5:18-4.10 Manual fire alarms

(a) A manual fire alarm system, designed and installed in accordance with the Uniform Construction Code, shall be required:

1. In all buildings more than *[3]* ***three*** stories in height having an occupant load of 25 or more;

2. In all buildings of Use Group E up to and including the 12th grade; and

3. In all buildings required to have an automatic fire alarm system in accordance with *[Section 4.9 above]* ***N.J.A.C. 5:18-4.9****, except hotels and multiple dwellings having an occupant load of less than 25 and having less than 10 dwelling units.

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions. Any new fire escapes shall be constructed and installed in accordance with Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

i. All occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

ii. Access to a fire escape shall be through a door, except that window access shall be permitted from single dwelling units or guest rooms in Use Groups R-1, R-2 and I-1 or when serving spaces having a maximum occupant load of 10 in other use groups.

iii. In all buildings of Use Group E, up to and including the 12th grade, buildings of Use Group I, rooming houses and child care centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

(b) In buildings having only one exit, the single exit condition shall be permitted to continue as follows:

1. In buildings of Use Group R-3;

2. In all buildings, in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet;

i. Exception to *(b)*2 above: In buildings of Use Group I and in rooming houses and child care centers, regardless of Use Group, two means of egress shall be required.

3. In buildings of Use Group R-1 and R-2, from floors that are not more than 16 feet above exterior grade.

i. In community residences for the developmentally disabled, the maximum occupant load, excluding staff, is 12.

4. In buildings of Use Group R-1 and R-2, not more than two stories in height, from floors that are more than 16 feet above exterior grade, when there are not more than four dwelling units per floor and the exit access travel distance does not exceed 50 feet. The minimum fire resistance rating of the exit enclosure and of the opening protection shall be one hour.

i. In community residences for the developmentally disabled, the maximum occupant load, excluding staff, is 12.

5. In buildings of Use Group B or S-2, not more than two stories in height, which are not greater than 3000 square feet per floor, when the exit access travel distance does not exceed 75 feet. The minimum fire resistance rating of the exit enclosure and of the opening protection shall be one hour.

6. Open parking structures where vehicles are mechanically parked.

(c) In multi-level dwelling units in buildings of Use Group R-1 or R-2 *[of Type I or Type II construction]*, an exit shall not be required from each level of the dwelling unit provided that ***the following conditions are met:*** *[the travel distance within the dwelling unit does not exceed 75 feet.]*

1. The building in which such dwelling units are contained is of type 1 or type 2 construction and the travel distance within the dwelling unit does not exceed 75 feet; or

2. The building in which such dwelling units are contained is not more than three stories in height and all third floor space is part of one or more dwelling units located in part on the second floor and no habitable room within any such dwelling unit shall have a travel distance that exceeds 50 feet from the outside of the habitable room entrance door to the inside of the entrance door to the dwelling unit.*

(d) All rooms and spaces having an occupant load greater than 50 or in which the travel distance exceeds 75 feet shall have a minimum of two egress doorways.

1. The following are exceptions to (d) above:

i. Storage rooms having a maximum occupant load of 10;

ii. Classrooms having a maximum occupant load of 75 in buildings equipped throughout with an automatic fire suppression system; *[and]*

iii. In buildings of Use Group I-2, any patient sleeping room or suite of rooms greater than 1,000 square feet shall have a minimum of two egress doorways.

(e) When buildings of Use Groups A-2 and A-3 have more than two individual rooms which can be used for separate functions and each room has an occupant load of more than 300, the required egress doors from such rooms shall lead directly outside or to an exit passageway.

1. Such passageways shall be completely enclosed by assemblies having a fire-resistance rating of not less than two hours.

2. Such passageways shall not be used for any other purpose and shall lead directly outside.

(f) The capacity of means of egress in each story shall be sufficient for the occupant load thereof.

1. The capacity per unit of egress width shall be computed in accordance with the following table for the specified use groups.

Table 5:18-4.11(f)1

CAPACITY PER UNIT EGRESS WIDTH

	Without fire suppression system Number of occupants		With fire suppression system Number of occupants	
Use group	Stairways	Doors, ramps and Corridors	Stairways	Doors, ramps and Corridors
A	75	100	113	150
B	60	100	90	150
E	75	100	113	150
F	60	100	90	150
H	—	—	60	100
I-1	60	100	90	100
I-2	22	30	35	45
I-3	60	100	90	150
M	60	100	90	150
R	75	100	113	150
S	60	100	90	150

2. The unit of egress width for all approved types of means of egress parts and facilities shall be 22 inches with a credit of one half unit for each 12 inches width in addition to one or more 22 inch units. Fractions of a unit of width less than 12 inches shall not be credited.

3. The maximum permitted occupant load of a given space shall be limited to the smallest number determined by:

i. Computing the occupant load at the rate of one occupant per five square feet of available floor area that can be physically occupied by a person, or

ii. The smallest number of occupants for which exit capacity is provided based on the capacity per unit of egress width of the individual components of the means of egress.

(g) (Reserved.)

(h) The length of a dead end corridor shall not exceed 35 feet.

1. The following are exceptions to (h) above:

i. The maximum length of a dead end corridor shall be 50 feet in buildings equipped throughout with an automatic fire alarm system installed in accordance with the New Jersey Uniform Construction Code.

ii. The maximum length of a dead end corridor shall be 70 feet in buildings equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(i) All means of egress shall be provided with artificial illumination as follows:

1. All means of egress in other than buildings of Use Group R-3 shall be equipped with artificial lighting facilities to provide the intensity of illumination herein prescribed continuously during the time that conditions of occupancy of the building require that the exits be available. Lighting shall also be provided to illuminate the exit discharge in all buildings other than Use Groups F, H and S. In buildings of Use Group R-2, means of egress lighting, except that lighting within a dwelling unit, shall be wired on a circuit independent of circuits within any dwelling unit. The disconnecting means and overcurrent protection device shall not be located within a dwelling unit or such that access must be obtained by going through a dwelling unit.

2. The intensity of light at floor level shall be not less than one foot candle.

3. In buildings of Use Groups A and E used for the exhibition of motion pictures or other projections by means of directed light, the illumination of aisles may be reduced during such period of projection to not less than 0.2 foot candle.

i. The lighting of exits, aisles and auditoriums shall be controlled from a location inaccessible to unauthorized persons. Supplementary control shall also be provided in the motion picture projection room.

(j) Means of egress lighting shall be connected to an emergency electrical system conforming to NFiPA 70 *[(NEC)]* ***(National Electrical Code)**** to assure continued illumination for a duration of not less than one hour in case of primary power loss in the following buildings:

1. In all buildings of Use Group A, E and I;

2. In all buildings of Use Group B containing more than 100 occupants;

3. In all buildings of Use Group M when greater than 3,000 square feet in area on any floor, or when having one or more floors above or below grade floor;

4. In buildings of Use Group R-1 containing more than 25 sleeping rooms;

5. In all buildings of Use Group R-2 in any means of egress which serves more than 50 occupants;

6. In all windowless buildings or portions thereof containing more than 50 occupants.

(k) In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated ***or self-luminous*** signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. Exception to (k) above: Exit signs shall not be required in buildings of Use Groups I-1, R-2 and R-3 having a total occupant load, excluding staff, of 20 or less.

2. "Exit" signs shall have red or green letters at least six inches high and the minimum width of each stroke shall be three-quarter inch on a white background or in other approved distinguishable colors. If an arrow is provided as part of an "Exit" sign, the construction shall be such that the arrow direction cannot be readily changed. The word "Exit" shall be clearly discernible when the internally illuminated sign is not energized.

3. Each sign shall be illuminated by a source providing not less than five foot candles at the illuminated surface.

i. Exception to *(k)*3 above: Approved self-luminous signs which provide evenly illuminated letters shall have a minimum luminance of 0.06 foot lamberts.

4. All "Exit" signs shall be illuminated at all times when the building is occupied. To assure continued illumination for a duration of not less than one hour in case of primary power loss, the "Exit" signs shall be connected to an emergency electrical system.

i. Exception to *(k)*4 above: Approved self-luminous signs which provide continuous illumination independent of external power sources need not be connected to an emergency electrical system.

(l) Means of egress doors shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel;

2. In buildings of Use Groups R-1 and R-2 all doors opening onto a grade passageway or exit stair shall be self-closing or automatic closing by smoke detection.

3. All dwelling unit, guest room or rooming unit corridor doors in buildings of Use Groups R-1, R-2, and I-1 shall be at least 1⅜ inch solid core wood and shall not have any glass panels, other than approved wire glass in metal frames. Corridor doors shall not be constructed of hollow core wood, shall not contain louvers and shall not be of panel construction. Doors shall fit both plumb and level in frames, and be reasonably tight fitting. All replacement doors shall have a 20 minute label.

i. Existing doors meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines *[#]* ***No.*** 8 or of Section 5 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed. for a rating of 15 minutes or better shall be accepted as meeting the provisions of this requirement.

(1) Modifications made to existing doors to achieve the required rating shall be conducted *[under the supervision of the fire official]* ***in accordance with the Uniform Construction Code****.

ii. Existing doors in buildings provided with approved, complete automatic suppression shall be required only to provide a smoke barrier; shall not contain louvers*[,]****;*** shall fit plumb and level*[,]**;* and be reasonably tight fitting.

4. Buildings of Use Group I-3 having remote power unlocking capability on more than 10 doors shall be provided with an emergency power source for such locks. Power shall be arranged to automatically operate upon failure of normal power within 10 seconds and for a duration of not less than one hour.

(m) Every required exit stairway having three or more risers and not provided with handrails or in which the existing handrails are judged to be in danger of collapsing when used under emergency exiting conditions, shall be provided with handrails for the full length of the run of steps on at least one side. All exit stairways more than 66 inches wide and subject to the maximum designed occupancy load shall have handrails on both sides. Where there are no handrails or where the existing handrails must be replaced in order to correct a hazardous condition, the handrails shall be designed and installed in accordance with the provisions of the New Jersey Uniform Construction Code.

(n) Every open portion of a stair, landing, or balcony which is more than 30 inches above the floor or grade below and not provided with guards or those in which the existing guards are judged to be in danger of collapsing when used under emergency exiting conditions, shall be provided with guards. Where there are no guards or where the existing guards must be replaced in order to correct a hazardous condition, the guards shall be designed and installed in accordance with the New Jersey Uniform Construction Code.

(o) (Reserved.)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. The following are exceptions to (a) above:

i. The use of vinyl or paper wall coverings not exceeding one-twenty-eighth of an inch in thickness which is applied directly to a noncombustible or fire retardant treated wood substrate shall not be regularly by this section.

ii. Interior trim which does not exceed 10 percent of the aggregate wall and ceiling area of any room or space shall not be regulated by this section.

iii. When an approved automatic fire suppression system is provided, interior finish of Class II or III materials shall be permitted where Class I or II materials, respectively, are required by this section.

iv. Exposed portions of structural members complying with the requirements for heavy timber construction in accordance with the Uniform Construction Code shall not be regulated by this section.

Table 5:18-4.12(a)
Interior Finish Requirements

Use Group	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, I	I	II	III
B, E, M, R-1, R-2	**I**	**II**	**No Minimum**

†See *[N.J.S.A.]**N.J.A.C.* 5:18-4.16(a)2 for amusement buildings.

(b) The classification of interior finishes referred to herein corresponds to flame spread ratings determined by ASTM E84 as follows: Class I flame spread, 0-25; Class II flame spread, 26-75; Class III flame spread, 76-200. In all cases, the smoke developed rating determined by ASTM E84 shall not exceed 450.

(c) All existing interior finish materials which do not comply with the requirements of this section shall be removed or shall be treated with an approved fire retardant coating in accordance with the manufacturers instructions to secure compliance with the requirements of this section.

(d) In buildings of Use Group I-3, interior furnishings, drapes, curtains, carpeting, decorations, bedding, etc. shall be flame retardant.

5:18-4.14 Information signs

(a) A sign shall be provided at each floor landing in all interior stairways more than three stories in height designating the floor level above the floor of discharge.

(b) All elevator lobby call stations on all floor levels shall be marked with approved signs reading, "Use Stairways in Case of Fire—Do Not Use Elevators".

5:18-4.15 Smoke barriers

(a) Wherever smoke barriers are required by this subchapter, they shall be constructed in accordance with the following provisions:

1. Smoke barriers shall have a fire resistance rating of not less than one-half hour and shall form an effective membrane continuous from outside wall to outside wall and from floor slab to floor or roof deck above, including continuity through all concealed spaces, such as those found above suspended ceilings, and including interstitial structural and mechanical spaces. Transfer grilles, whether equipped with fusible link-operated dampers or not, shall not be used in these partitions. Wire glass panels not exceeding 1,296 square inches in approved steel frames may be used in smoke barriers.

i. Exception to *[(1)]* ***(a)1**** above: Smoke barriers are not required in interstitial spaces when such spaces are designed and constructed with ceilings that provide resistance to the passage of fire and smoke equivalent to that provided by smoke barriers.

2. Doors in smoke barriers shall have a fire-resistance rating of not less than 20 minutes when tested in accordance with ASTM E152 without the hose stream and labeled by an approved agency. Double egress corridor doors shall have vision panels of one-quarter inch thick labeled wired glass mounted in approved steel frames. Such panels may also be provided in other doors in smoke barriers. The glass area of the vision panels shall be limited to 1,296 square inches for each door. The doors shall close the openings with only the clearance necessary for proper operation under self-closing or automatic closing and shall be without undercuts, louvers or grilles. Rabbets or astragals are required at the

meeting edges of double egress doors, and stops are required on the head and jambs of all doors in smoke barriers. Positive latching devices are not required on double egress corridor doors, and center mullions are prohibited.

i. Exception to *[(2)]* ***(a)2*** above: Protection at the meeting edges of doors and stops at the head and sides of door frames may be omitted in buildings equipped with an approved engineered smoke control system. The engineered smoke control system shall respond automatically, preventing the transfer of smoke across the barrier.

3. Doors in smoke barriers shall be self-closing or shall be provided with approved door hold-open devices of the fail-safe type which shall release the doors causing them to close upon the actuation of smoke detectors as well as upon the application of a maximum manual pull of 50 pounds against the hold-open device.

4. An approved damper designed to resist the passage of smoke shall be provided at each point a duct penetrates a smoke barrier. The damper shall close upon detection of smoke by an approved smoke detector located within the duct.

i. In lieu of an approved smoke detector located within the duct, ducts which penetrate smoke barriers above doors are permitted to have the approved damper arranged to close upon detection of smoke by the local device designed to detect smoke on either side of the smoke barrier door opening.

ii. Dampers are not required in buildings equipped with an approved engineered smoke control system.

iii. Dampers are not required where the openings in ducts are limited to a single smoke compartment and the ducts are of steel construction.

(b) In buildings of Use Group I-2, every story used for sleeping purposes for more than 30 occupants and stories which are usable but unoccupied shall be divided into not less than two compartments by smoke barrier walls such that each compartment does not exceed 22,500 square feet and no more than 150 feet in length and width.

5:18-4.16 Amusement buildings

(a) All buildings or portions thereof, of Use Group A-3, which are designed to disorient the occupant, reduce vision, present barriers or otherwise impede the flow of traffic, shall conform to all other applicable provisions of this Code and the following:

1. Every such amusement facility shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

2. The interior finish of all walls and ceilings shall in no case be less than class II materials in accordance with Sections 5:18-4.12(b) and (c).

3. Every such amusement facility shall be equipped with exit signs installed in accordance with N.J.A.C. 5:18-4.11(k).

4. Every such amusement facility shall be equipped throughout with an approved automatic fire alarm system installed in accordance with the Uniform Construction Code and in accordance with ***(a)*5** through 8 below.

5. The automatic alarm system shall activate a prerecorded message which can be clearly heard throughout the entire facility instructing the patrons to proceed to the nearest exit. Any alarm signals used in conjunction with the prerecorded message shall produce a signal which is distinctive from all sounds used in the normal operation of the amusement facility.

6. Every such amusement facility shall be equipped with emergency lighting equipment installed in accordance with the New Jersey Uniform Construction Code. The emergency lighting equipment shall automatically activate when*[;]**:*

i. The fire suppression system is activated;

ii. The fire alarm system is activated; or

iii. Loss of the primary power supply occurs.

7. All audio and visual equipment such as horns, bells, flashing or otherwise distracting stimuli and mechanized displays shall cease operation upon initiation of an alarm by the automatic fire alarm system or upon activation of the automatic fire suppression system.

8. Activation of the automatic alarm system shall automatically shut down the air distribution system.

5:18-4.17 High rise buildings

(a) In addition to all other applicable provisions of thise code, high rise buildings shall conform to the provisions of this section.

(b) All high rise buildings of Use Groups M and R-1 shall be equipped throughout with an approved automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All high rise buildings of Use Groups B and R-1 shall be equipped with central control station and communication systems as follows:

1. An approved public address communication system consisting of loud speakers on each floor of the building, in each elevator and elevator lobby and in each stair enclosure which shall be capable of being operated from the central control station;

2. A two-way fire department communication system which shall operate between the central control and every elevator, elevator lobby and entry to enclosed exit stairways;

3. A central control station for fire department operations shall be provided in a location approved by the fire department. It shall contain where applicable the public address system panel; the fire department communications panel; fire detection and alarm system annunciator panels; status indicators and controls for air handling systems; sprinkler valve and water flow detector display panels; and status indicators and a telphone for fire department use with controlled access to the public telephone system.

(d) In all high rise structures, each re-circulating air or exhaust system which serves more than one floor shall be equipped with approved smoke and heat detection devices in accordance with the Uniform Construction Code. The devices shall stop the fan(s) automatically and shall be of the manual reset type. Automatic fan shutdown is not required when the system is part of an approved smoke removal or smoke control system.

(e) In all high rise structures served by elevator(s), access to all floors shall be provided by at least one elevator equipped with emergency control and all elevators shall be equipped with car recall activated by a smoke detector in each lobby. The recall and control systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(f) In all high rise buildings of Use Group***s*** R-1 and R-2, smoke barriers conforming to N.J.A.C. 5:18-4.15(a) shall be provided around all elevator landings on every floor above the main floor level, with the following exceptions:

1. Such lobbies are not required in buildings provided with a complete automatic fire suppression system.

2. The smoke barrier shall be permitted to terminate*[d]* at the ceiling, provided the ceiling membrane provides resistance to the passage of smoke equivalent to that provided by smoke barriers.

5:18-4.18 Boiler/furnace equipment rooms

(a) Boiler/furnace equipment rooms shall be enclosed by one hour fire rated construction in the following facilities: day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code, shetler facilities, residences for the developmentally disabled, group homes, teaching family homes, transitional living homes, rooming and boarding houses, hotels and multiple dwellings.

1. Exception to (a) above: Furnace and boiler equipment of low pressure type (operating at pressures of 15 psig or less for steam equipment or 160 psig or less for hot water equipment) when installed in accordance with manufacturer recommendations or furance and boiler equipment of residential (R-3) type (200,000 BTU per hour input rating or less) is not required to be enclosed.

(b) Emergency controls shall be provided in all structures classified as day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code and in group homes, teaching family homes, and supervised traditional living homes in accordance with the following:

1. Emergency shutoff switches for furnaces and boilers in basements must be at the top of the stairs leading to the basement;

2. Emergency shutoff switches for furnaces and boilers in other enclosed rooms must be located outside of the room.

5:18A-2.3 Local enforcing agencies; establishment; dissolution

(a) Creation of a local enforcing agency shall be subject to the following:

1. (No change.)

2. The governing body shall create or designate a local enforcing agency within the limits of a requesting fire department or district.

3. The governing body shall designate a county enforcing agency or local enforcing agency other than the Bureau, to enforce the Code within the limits of a fire department or district if requested by the proper department or district authority.

Renumber 5. and 6. as 4. and 5. (No change in text.)

6. If neither the fire department nor district chooses to enforce the Code or designate an existing county fire marshal, or if the fire marshal declines designation, the municipality may create its own local enforcing

agency subject to (a)7 below. If no agency is created or designated, the Bureau will assume jurisdiction in accordance with *[2.2. above]* * **N.J.A.C. 5:18A-2.2***.

Renumber 8. as 7. (No change in text.)

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

(d) *[Dissolution of a fire district shall take place as follows:

1.]*If a fire district designated as a separate local enforcing agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution*,* to assume the local enforcing agency responsibilities. If the fire department does not exercise the option, it shall pass to another district within the municipality, and if not exercised by a district shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

*[2.]***1.*** If the dissolved district has combined with another district or districts to form a local enforcing agency (LEA), the remaining district(s) shall have the option, within 30 days of the dissolution, to assume local enforcing agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

*[3.]***2.*** Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body which enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Bureau.

*[4.]***3.*** The local enabling ordinance governing the Local Enforcing Agency shall be modified if necessary and promptly filed with the Bureau. The new local enforcing agency shall promptly assume LEA responsibilities and notify the Bureau.

*[5.]***4.*** If, within 60 days of dissolution, the Bureau has not received proper written notice of the assumption of a dissolved district's obligations, the Bureau shall assume responsibility.

(e) Fire Districts created after June 18, 1985, shall have 60 days from the date of the first meeting of the Board of Commissioners in which to request designation as a local enforcing agency in accordance with the provisions set forth in this subchapter. If such a request is made and a local enforcing agency exists, the district and such agency shall cooperate in transferring the LEA responsibilities.

5:18A-4.3 Certification required

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

(c) When a local enforcing agency, which enforces the Code in life hazard uses has a vacancy that leaves the agency without a certified fire official, then the appointing authority shall appoint a certified person to the position within 45 days of the vacancy having occurred. The appointing authority may request an extension of 30 days in which to make the appointment. Such requests shall be made within the initial 45 day period, by the appointing authority or his designee, to the Bureau, Attention: LEA Supervisor, shall set forth the reasons why additional time is necessary and shall indicate if any inspection or enforcement matters require Bureau assistance in the interest of public health, safety or welfare. Within seven business days from receipt of an extension request, the Bureau shall send a written determination either granting or denying the request.

1. Fire officials appointed to fill vacancies shall so notify the Bureau in writing on the local enforcing agency letterhead within five days of the appointment.

2. Fire officials shall undertake duties within 10 days of being appointed.

3. The appointing authority or his designee shall notify the Bureau, Attention: LEA Supervisor, in writing within five days of the date that the fire official vacates his office.

4. The Bureau shall be notified in writing by either the appointing authority or the fire official at least 10 days in advance of any leaves of absence by the fire official in excess of 30 days, which notification shall include the provisions which have been made to enforce the Code during the period of absence.

5. If no fire official is appointed within the applicable time, the Bureau shall assume responsibility for enforcement and modify the Registry accordingly. Registration fees collected for the period during which the Bureau is responsible, as well as for the preceding period of the fire official's vacancy, shall enure to the Bureau.

(d) (No change.)

5:18A-4.4 Requirements for certification

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

1. (No change.)

Renumber 3.-4. as 2.-3. (No change in text.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Use of Land and Water Areas

Adopted Amendment: N.J.A.C. 7:25-2.18

Adopted New Rule: N.J.A.C. 7:25-2.22

Proposed: March 2, 1987 at 19 N.J.R. 398(a).

Adopted: May 21, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 22, 1987, as R.1987 d.250, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-2, 13:1D-9, and 23:7-9.

DEP Docket Number: 001-87-02.

Effective Date: June 15, 1987.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

No comments received. The last clause in N.J.A.C. 7:25-22(a) was added to clarify the duration of public use limitation or closure. Subsection (b) is a codification of the Division's notice procedures following closure or limitation under this rule.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

7:25-2.18 Wildlife Management Areas

(a) This subchapter applies to the following designated Wildlife Management Areas:

1.-5. (No change.)

6. Belvidere

Renumber existing 6.-46. as 7.-47. (No change in text.)

48. Musconetcong

Renumber existing 47.-70. as 49.-72. (No change in text.)

7:25-2.22 *[Emergency r]**R***estrictions on use

(a) Nothing contained in N.J.A.C. 7:25-2 shall preclude the Division of Fish, Game and Wildlife from limiting, or closing from, public use any specific land and water areas under its control, effective immediately upon making the finding that prevailing conditions warrant such restriction to protect the users, or to protect and preserve the land and water areas, or both***, and continuing for so long as such conditions warrant***.

(b) Notice of the restrictions shall be given by the posting of signs on or about the restricted area or other appropriate location and one of the following:

1. Distribution of a press release to the news media;

2. Public notice published in the New Jersey Register; or

3. Public notice published in a newspaper in the locale.*

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Rules: Waste Oil

Adopted Amendments: N.J.A.C. 7:26-1.4, 7.5, 7.7, 8.2 and 8.13

Proposed: May 5, 1986 at 18 N.J.R. 878(a).
Adopted: May 1, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: May 4, 1987 as R.1987 d.234, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9 and 13:1E-6(a)2.

DEP Docket Number: 016-86-04
Effective Date: June 15, 1987.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The Department received written comments concerning the proposed amendments from the New Jersey Petroleum Council and Mobil Oil Corporation.

COMMENT: The term "after sale to a customer" should not be deleted from the definition of waste oil at N.J.A.C. 7:26-1.4, due to the severe economic consequences the oil refining industry would suffer. A significant quantity of off-specification product, raw material, and intermediates in the manufacturing process, as well as oil recovered from waste water treatment systems, is currently re-introduced into the refining process to produce a variety of products. In addition to imposing an economic hardship upon the refining industry, classification of these materials as hazardous waste will negatively impact the waste recycling and minimization efforts of both the State and the refining industry.

RESPONSE: As stated in the summary of the proposed amendment to the definition of waste oil (18 N.J.R. 878), it was the Department's intent to correct the arbitrary nature of the definition of waste oil without unduly expanding the universe of waste oils which are regulated as hazardous waste.

The Department has determined that deletion of "after sale to a customer" will, as intended, correct an arbitrary and unwarranted distinction in the definition of waste oil. At the same time it will eliminate an unwarranted and unjustifiable exemption from hazardous waste regulation. The Department will, therefore, delete the phrase "after sale to a customer" from its definition of waste oil.

The Department is aware that deletion of this phrase will expand the universe of waste oils which are regulated as hazardous waste. However, as part of an overall effort to encourage the reprocessing, reuse and recycling of hazardous waste, and in recognition of the unique capability that oil refineries possess to reprocess and recycle on-site-generated waste oils, the Department has provided an exclusion at N.J.A.C. 7:26-8.2(a)13.

This addition will narrowly exclude waste oil generated and treated on-site at an oil refinery from being regulated as a hazardous waste. The exclusion is limited to waste oil generated during the refinery's normal production and/or handling procedures. It must be reprocessed on site. The reprocessing must be in compliance with all applicable Departmental permits, and the waste oil must be utilized as a feedstock, in place of raw materials, in the refinery's production process. The resulting finished product must also be indistinguishable, in terms of composition and performance characteristics, from the product solely from the refinery's normal feedstock.

COMMENT: If "after sale to a customer" is deleted, the Department should provide an exemption for oil which is recovered or recycled on-site at oil refineries.

RESPONSE: As stated above, the Department has provided an exemption for waste oil which is recovered or recycled on-site at oil refineries, at N.J.A.C. 7:26-8.2(a)13.

COMMENT: Differentiate between oil that is discarded as a waste because it is no longer usable, and oil that is collected for reuse or reprocessing. An exemption for oil that is collected for reuse or reprocessing would enable current recovery practices to continue and be consistent with objectives to minimize the generation of hazardous wastes.

RESPONSE: To the extent that this comment reflects the desire of refinery operators to avoid the imposition of hazardous waste controls on waste oil collected for reuse or reprocessing at the refinery site, the Department agrees with it, and, as noted above, has provided an exemption for oil which is recovered or recycled on-site. The comment as written, however, could be interpreted to suggest that the Department create a much broader exemption from hazardous waste regulation for all oil collected for reuse or reprocessing—regardless of where it is generated, where it is "reprocessed" or where it is regulated. The Department remains of the opinion that, in general, waste oil must and should be managed as hazardous waste. The narrow exemption that has been provided simply reflects the unique capabilities of oil refineries to recycle waste oil on-site by immediately re-introducing it into the production process.

COMMENT: The definition of waste oil should be deleted entirely, since it serves no purpose. The general definitions of solid waste and hazardous waste, along with the X designations, adequately delineate waste oil types which the Department feels are hazardous.

RESPONSE: The Department believes that a definition for waste oil is a useful device to provide clarity in the regulations for both the regulators and the regulated community. In common parlance in the industry, waste oil is called "waste oil," and there is a certain utility in having regulatory language correspond to common language. Since there is no detrimental effect caused by this definition, and a distinct benefit is derived, the definition for waste oil will remain in the regulations.

COMMENT: If the definition of waste oil is retained, then add "and is discarded," so that the waste oil definition is consistent with the definition of solid waste, and to avoid confusion about when an oil becomes a waste, and therefore subject to hazardous waste regulations.

RESPONSE: The present definition of solid waste, at N.J.A.C. 7:26-1.6, includes various provisions to the effect that a solid waste is one which is discarded, or is sometimes discarded. The Department has found these requirements to be troublesome and difficult to interpret and implement. The Department also recognizes the increasingly important role that reuse and recycling will play in future management practices for hazardous waste.

Consequently, the Department is in the process of revising its definition of solid waste, replacing the "sometimes discarded" criterion with a more straightforward method of determining whether or not a material is a solid waste. This revision also encompasses the expanding arena of waste reuse and recycling. It would, however, be premature to introduce a revised definition of "waste" into the definition of "waste oil" before the general revision of the definition of solid waste. For the moment, the Department prefers not to make substantial changes in the definition of waste oil.

In light of the above, "and is discarded" will not be added to the definition of waste oil.

COMMENT: Delete the words "or vessels" and "or other vehicles" from the X724 classification of waste oil. Inclusion of these terms too drastically broadens the scope of this classification. An alternative would be to add the word "mobile" before any reference to vessels, so as to restrict the classification's applicability to vessels which are used for the transport of waste petroleum oil.

RESPONSE: The Department proposed amendments to the X724 classification at N.J.A.C. 7:26-8.13(b)4 in order to classify as hazardous waste that petroleum oil which is generated from the cleaning of the storage portion of other mobile vessels or vehicles, in addition to that generated when tank trucks are cleaned. Upon reflection, the Department has decided that the term "vessels," standing alone, could be misinterpreted so as to include cleanouts from stationary vessels as well as mobile ones. As this was not the Department's intent, the Department has modified the term "vessels" by adding the word "mobile" before it. The language "or other vehicles" is being retained. The Department sees no reason why cleanouts from other land-based vehicles such as rail cars should be treated differently from tank truck cleanouts.

COMMENT: The Department should refrain from amending the X724 listing to include "oily ballast water from product transport units of boats, barges, ships or other vessels," and from creating a new X729 listing to classify "oil contaminated bilge water generated from the cleanout and/or maintenance of boats, barges, ships or vessels" as hazardous.

This objection centers around two premises. The first is that this general approach by the Department to classify all cleanouts as hazardous waste greatly expands the universe of hazardous waste with no valid scientific or environmental basis. The second is that these classifications would create an unwarranted disposal problem for oil refineries, in that refineries currently handle these and other oil water mixtures in IWMF-NJPDES regulated waste water treatment facilities with the recovered oil

being used as a raw material feedstock in the refinery's manufacturing process. According to the refiners, this treatment system is environmentally sound, and provides a beneficial reuse of the recovered material.

RESPONSE: The Department originally intended to amend X724 to include oily ballast water from ships or other vessels because of a perceived need, in the Department's view, to regulate the processing of this waste stream.

On September 9, 1985, the United States Coast Guard adopted regulations at 33 CFR Parts 151 and 158, 150 FR 174. These regulations were promulgated in response to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 (Marpol 73/78). The regulations stipulate that oil/water bilge and ballast water cleanouts from ships and other marine vessels must be properly disposed of through designated port facilities. They also empower the Coast Guard to designate port facilities which must provide on-site treatment for these wastes, or arrange for them to be transported off-site.

The Coast Guard left the classification and ultimate disposal of oily bilge and ballast waters up to regulation by individual states. Consequently, the Department was faced with the possibility of a greatly expanded waste stream originating from those sources. It was felt that it was critical to deal with proper disposal of those wastes as expeditiously as possible.

The Department is satisfied that oily ballast water from product transport units of boats, barges, ships or other vessels is clearly a hazardous waste, by virtue of its contamination with petroleum oil (either crude or refined), the oil's unsuitability for its intended purpose, and the fact that these materials are sometimes discarded. (Previous to 33 CFR 151 and 158 and the Marpol Treaty, the preferred method of disposal for bilge and ballast waters was discharge-at-sea.) Ballast waste has been included under the X724 listing because it is similar in nature to tank truck cleanouts. The Department feels that the type of transport vehicle is not important. What is important is the particular waste stream's fitting the criteria of a hazardous waste, and the significant environmental harm that could result from the unregulated disposal of the substance. Consequently, the Department will not delete oily ballast water from the X724 waste oil classification.

In response to the comments which were received on the proposal to create a new category (X729) for oil contaminated bilge water, the Department has determined that bilge water is a highly heterogenous mixture, varying in composition and percentage of contaminants from vessel to vessel, and from cleanout to cleanout on the same vessel. The Department is adopting the position that, while a typical cleanout from the bilge tank of an ocean going vessel will be hazardous by virtue of its contamination with one or more types of listed waste oils (for example, X726), the composition and percent contamination of bilge water cleanouts is too highly variable to warrant a separate category and identification number for this waste type.

Consequently, the Department has deleted the X729 classification of bilge water at N.J.A.C. 7:26-8.13(b)9. Instead, the Department will continue to rely on the mixture rule (N.J.A.C. 7:26-8.1(a)2iii) in classifying bilge tank cleanouts, basing its classification upon the presence of listed waste oil and other wastes normally found in bilge water.

Finally, in recognition of the capacity that many oil refineries have to process oil/water mixtures in IWMF-NJPDES permitted waste water treatment plants, the beneficial use that recovered oil can be put to in the manufacturing process, and the fact that many oil refineries have been certified as tank cleanout port facilities under the Coast Guard's Certificate of Adequacy (COA) Program (and are acting as COA port facilities solely because they have been ordered to do so by the Coast Guard), the Department is providing an exclusion at N.J.A.C. 7:26-8.2(a)12. This exclusion allows for the treatment of oil/water mixtures from the cleanout of ballast and/or bilge tanks on boats, barges, ships or other marine vessels, provided that such waste is treated at oil refineries which are also the port facilities at which off-loading of the above materials occurred. Such waste must be re-refined. The resultant product must be indistinguishable from products produced solely from the refinery's normal feedstock, and such recycling must be performed in compliance with all applicable Departmental permits.

NOTE: The following comments, from BP Oil, Inc., were received after the close of the comment period. These were not considered as part of the record for this rulemaking, and did not result in changes in the final rule, but are responded to for informational purposes only.

COMMENT: Marine vessels, as a rule, have not filed with the United States Environmental Protection Agency (USEPA) as potential generators of hazardous waste. They therefore have no identification numbers for manifesting, etc. What will their status be under the proposed regulation?

RESPONSE: The U.S. Coast Guard and the USEPA are in the process of drafting guidelines which will both clarify the generator status of the vessel and the central port involved in removing the waste from the ship, and establish requirements for procuring an EPA generator's ID number for mainfesting purposes. Until those guidelines are promulgated, the Department, like the EPA, will continue its present practice of considering the ship to be the generator of bilge water, and both the ship and the party which off-loads the waste to be the generators of ballast water. (The EPA policy is reflected in a letter dated February 5, 1986, from the Office of Solid Waste to the Coast Guard's Office of Marine Environment and Systems. A copy is available from the Department on request.) Emergency ID numbers will be assigned, when needed, by the USEPA.

COMMENT: The compliance with hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of a terminal which provides a "Reception Facility" may be comprised by receipt of unknown waste from a marine vessel. What will the Department consider a marine terminal's RCRA status to be if it is required by the Coast Guard to provide "Reception Facilities," and if that terminal limits its activity to making arrangements for waste transporter to be available, if needed, for vessel clean-out?

RESPONSE: In this instance, the Department will rely on the above-stated policy of considering the ship to be the generator of bilge water, and both the ship and the party which off-loads the waste to be the generators of ballast water. The RCRA status of a marine terminal which only arranges for a waste transporter to be available for vessel cleanout, and which does not actually conduct the cleanout, or engage in storage or treatment of bilge and ballast water, would not be impacted or altered by this activity, since the generator would be either the ship or the transporter—not the terminal.

COMMENT: The Department should wait for forthcoming federal regulations regarding recycled and used oils, so as to avoid any conflicts with the federal regulations.

RESPONSE: With the exception of those regulations governing the combustion of used oil, the United States Environmental Protection Agency has withdrawn its proposed regulations which would have governed handling and disposal of used oil. Consequently, none of the Department's adopted regulations will conflict with or be impacted by proposed or existing federal regulations.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:26-1.4 Definitions

. . .

"Waste oil" means a petroleum based or synthetic oil which, through use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

. . .

7:26-7.5 Hazardous waste hauler responsibilities

(a) (No change.)

(b) A hauler of hazardous waste must also comply with N.J.A.C. 7:25-7.4 if the hauler:

1.-2. (No change.)

3. Accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, ***or*** X727*[, or X729]* from generators exempted by N.J.A.C. 7:26-7.7(b) or (c).

i. A hauler of hazardous waste who accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, ***or*** X727 *[, or X729]* from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall compile a list of sites corresponding to each manifested shipment at which the hauler accepts these hazardous wastes.

ii. The list of sites at which the hauler accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, ***or*** X727 *[, or X729]* from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall contain the waste owner's name and address, the quantity of waste accepted at the site, and the identification numbers of the manifest corresponding to the list.

iii. (No change.)

iv. The hauler shall obtain a signed receipt from each site at which he accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, ***or*** X727*[, or X729]* from generators exempted by N.J.A.C. 7:26-7.7(b) or (c), retain a copy of these receipts on file for a period of three years, and shall make these receipts available to the Department upon request.

v. The hauler shall notify the USEPA and update the hauler's notification of hazardous waste activities to include generator activities in addition to hauler activities.

(c)-(i) (No change.)

7:26-7.7 Exemption from manifest rules

(a) (No change.)

(b) Generators who only generate less than 1001 gallons/month of hazardous waste with hazardous waste numbers X721, X723, X724, X726, ***or*** X727***[**, or X729]*, or generators who only generate hazardous waste number X722 in any amount are exempted from the generator requirements as contained in N.J.A.C. 7:26-7.4 provided they are the original generators and they comply with (d) below.

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

7:26-8.2 Exclusions

(a) The following materials are not hazardous wastes, for the purpose of this subchapter.

1.-11. (No change.)

***12. Oil/water mixtures from the cleanout of ballast and/or bilge tanks on boats, barges, ships or other marine vessels, when cleanout and treatment occurs at oil refineries which are also the port facilities at which the off-loading of the above materials occurred, and provided that:**

i. Those wastes are processed on-site, in waste water treatment facilities which have an appropriate permit from the Department; and

ii. The oily fraction of those wastes is recovered and utilized on-site as a raw material feedstock in the refinery's production process and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such processing is performed in compliance with all applicable Departmental permits.

13. Waste oil generated during the course of normal production and handling procedures at an oil refinery, including waste oil recovered from wastewater treatment systems regulated by the Department, so long as:

i. The waste oil is recycled on-site, at the facility at which it is generated, without having left the premises of that facility; and

ii. The waste oil is utilized as a raw material feedstock in the refinery's production process, and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such recycling is performed in compliance with all applicable Departmental permits.*

(b) (No change.)

7:26-8.13 Hazardous waste from non-specific sources

(a) (No change.)

(b) N.J. Hazardous Waste Number	Hazardous Waste	Hazard*[ous*] Code
1.-3. (No change.)		
4. X724	Waste petroleum oil generated when tank trucks or other vehicles or ***mobile*** vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels.	(T)
5.-8. (No change.)		
*[9. X279	Oil contaminated bilge water generated from the cleanout and/or maintenance of boats, barges, ships or other vessels.]*	(T)

HUMAN SERVICES

(a)

Public Assistance Manual
Child Support and Paternity: Annual Notice of Child Support Collections
Adopted Amendments: N.J.A.C. 10:81-11.7 and 11.9

Proposed: February 17, 1987 at 19 N.J.R. 343(a).

Adopted: May 22, 1987 by Drew Altman, Ph.D., Commissioner, Department of Human Services.

Filed: May 22, 1987 as R.1987 d.253, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; the Child Support Amendments of 1984 (P.L. 98-378); Section 454(5) of the Social Security Act; 45 CFR 302.54.

Effective Date: June 15, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

10:81-11.7 Responsibilities of the State agency

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

1.-10. (No change.)

[12.]**11.*** (No change in text.)

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

(a) This unit shall be responsible for taking appropriate action to locate obligors, to establish paternity and/or secure child support due AFDC recipients and non-AFDC persons; to annually send a notice of the amount of support payments collected during the preceding year to individuals who have assigned rights to support, as per N.J.A.C. 10:81-11.2(a)2; for securing and timely transmittal of all health benefits information, both voluntary and from new or modified court orders for support of AFDC and non-AFDC clients to the State Bureau of Child Support and Paternity and the State Division of Medical Assistance and Health Services; for referral of cases, when the whereabouts of the obligors is unknown, to the State Parent Locator Service; for providing services for location, filiation and obtaining and enforcing support for non-public assistance persons; and for referral of requests from consumer reporting agencies, concerning the amount of overdue support owed by an obligor, to the State Bureau of Child Support and Paternity, via Form CSP-166. (See N.J.A.C. 10:81-11.7(a)1xii regarding responsibilities of the State agency.)

(b)-(l) (No change.)

(a)

Assistance Standards Handbook
Increase in AFDC Allowance Standards and Legally Responsible Relative Schedule
Adopted Amendments: N.J.A.C. 10:82-1.2, 2.13, and 5.11

Proposed: April 6, 1987 at 19 N.J.R. 500(a).
Adopted: May 22, 1987 by Steven Pelovitz, J.D.,
Acting Commissioner, Department of Human Services.
Filed: May 22, 1987 as R.1987 d.252, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:7-10.

Effective Date: June 15, 1987.
Operative Date: July 1, 1987—contingent on enactment of this State's Appropriations Act for Fiscal Year 1988 authorizing the proposed increase in public assistance allowance standards.
Expiration Date: October 29, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:82-1.2 Schedule of allowances
(a)-(b) (No change.)
(c) Public Assistance Allowance Standards AFDC Program.

Schedule I AFDC-C AFDC-F	Number in Eligible Unit	Schedule II AFDC-N
$162	1	$108
322	2	215
424	3	283
488	4	325
552	5	368
616	6	411
680	7	453
744	8	496
808	9	539
872	10	581
Add $64 each person	more than 10	Add $43 each person

(d) AFDC eligibility shall not exist for any month if the total income of the eligible unit exceeds the amount indicated in Schedule III for the appropriate eligible unit size and program segment. For this purpose, total income shall include all income of the eligible unit (without benefit of the disregards in N.J.A.C. 10:82-4.4 or 4.5) including the income of stepparents and alien sponsors determined available to the eligible unit in N.J.A.C. 10:82-2.9 and 3.13. Total income includes the earned income of the AFDC children except for earnings disregarded by provisions of N.J.A.C. 10:82-4.7(g). Child support payment, except for the first $50.00 monthly current child support received on behalf of the eligible unit, whether received directly by the household or collected through the CSP process, shall be counted in the determination of total income. See N.J.A.C. 10:82-2.13(f) for companion cases.
1. The AFDC grant shall not be considered as income for this purpose.
2. Funds exempted under N.J.A.C. 10:82-1.7 and 3.2(b)6 through 10 and monies disregarded under N.J.A.C. 10:82-4.6 shall not be considered income for this purpose.

Schedule III
Maximum Income Levels

Schedule I AFDC-C AFDC-F	Number in Eligible Unit	Schudule II AFDC-N
$ 300	1	$ 200
596	2	398
784	3	524
903	4	601
1021	5	681
1140	6	760
1258	7	838
1376	8	918
1495	9	997
1613	10	1075
Add $118 each person	More than 10	Add $80 each person

10:82-2.13 Companion cases
(a)-(d) (No change.)
(e) When any member of the eligible unit has income, earned or unearned, proceed as follows:
1.-2. (No change.)
3. Deduct the total income from the total allowance to determine the adjusted allowance (and grant) for the eligible unit.

Per Capita Table for Companion Cases

Total Eligible Unit	Number in -C or -F Segment								
	1	2	3	4	5	6	7	8	9
2	$161								
3	141	283							
4	122	244	366						
5	110	221	331	442					
6	103	205	308	411	513				
7	97	194	291	389	486	583			
8	93	186	279	372	465	558	651		
9	90	180	269	359	449	539	628	718	
10	87	174	262	349	436	523	610	698	785

Total Eligible Unit	Number in -N Segment								
	1	2	3	4	5	6	7	8	9
2	$108								
3	94	189							
4	81	163	244						
5	74	147	221	294					
6	69	137	206	274	343				
7	65	129	194	259	324	388			
8	62	124	186	248	310	372	434		
9	60	120	180	240	299	359	419	479	
10	58	116	174	232	291	349	407	465	523

(f) The Maximum Income Level: Per Capita Tables below shall be used to determine AFDC income eligibility for companion cases of two to 10 members. For cases of more than 10 members the maximum income level shall be the per capita of the standard for the total eligible unit on Schedule III, N.J.A.C. 10:82-1.2, multiplied by the number of members in that segment.

Maximum Income Level—Per Capita Table

Total Eligible Unit	Number in -C or -F Segment								
	1	2	3	4	5	6	7	8	9
2	298								
3	261	523							
4	226	452	677						
5	204	408	613	817					
6	190	380	570	760	950				
7	180	359	539	719	899	1078			
8	172	344	516	688	860	1032	1204		
9	166	332	498	664	831	997	1163	1329	
10	161	323	484	645	807	968	1129	1290	1452

Total Eligible Unit	Number in -N Segment								
	1	2	3	4	5	6	7	8	9
2	199								
3	175	349							
4	150	301	451						
5	136	272	409	545					
6	127	253	380	507	633				
7	120	239	359	479	599	718			
8	115	230	344	459	574	689	803		
9	111	222	332	443	554	665	775	886	
10	108	215	323	430	538	645	753	860	968

10:82-5.11 AFDC supplemental payments

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

(h) AFDC supplemental payment eligibility standards.

AFDC-C AFDC-F	Number in Eligible Unit	AFDC-N
$108	1	$ 72
215	2	143
283	3	189
325	4	217
368	5	245
411	6	274
453	7	302
496	8	331
539	9	359
581	10	387
Add $43 each person	more than 10	Add $29 each person

(i)-(j) (No change.)

(a)

General Assistance Manual
Increase in General Assistance Standards and Legally Responsible Relative Schedules
Adopted Amendments: N.J.A.C. 10:85-4.1 and 9.4

Proposed: April 6, 1987 at 19 N.J.R. 502(a).

Adopted: May 22, 1987 by Steven Pelovitz, J.D., Acting Commissioner, Department of Human Services.

Filed: May 22, 1987 as R.1987 d.251, **without change.**

Authority: N.J.S.A. 44:8-111(d).

Effective Date: June 15, 1987.

Operative Date: July 1, 1987—contingent on enactment of this State's Appropriations Act for Fiscal Year 1988 authorizing the proposed increase in public assistance allowance standards.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: Comments were received from the director of a municipal welfare department. The commentor is in favor of an increase in GA payment standards but advocates a more substantial increase than five percent.

RESPONSE: The Department believes that the five percent increase represents a significant incremental increase in public assistance benefits.

Full text of the adoption follows.

10:85-4.1 State and local responsibilities

(a)-(b) (No change.

Schedule I

Monthly Assistance Allowances

(Limited to persons determined unable to accept employment)

Number in Household	Eligible Unit 1	2
1	210	
2	145	289
3	130	260
4	116	232
5	107	214
6	101	201
7	86	172
8	83	166
9	79	156
10	75	150
11	74	148
12	72	146
13	70	141
14	69	139
15	68	137

Schedule II

Monthly Assistance Allowances

(For eligible units in which at least one person is employable)

Number in Household	Number in Eligible Unit 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	$140														
2	97	193													
3	81	163	244												
4	70	140	210	280											
5	64	128	192	256	320										
6	60	120	180	240	300	360									
7	57	114	171	227	284	341	398								
8	55	109	164	219	273	328	382	437							
9	52	104	157	209	261	313	366	418	470						
10	50	100	151	201	251	301	351	402	452	502					
11	49	98	148	197	246	295	344	393	443	492	541				
12	48	97	145	193	241	290	338	386	434	483	531	579			
13	48	95	143	191	238	286	334	382	429	477	525	572	620		
14	47	93	140	187	233	280	326	373	420	466	513	560	606	653	
15	46	91	137	183	229	274	320	366	412	457	503	549	594	640	686

In eligible units of more than 15, add $32.00 for each additional member.

(c) (No change.)

10:85-9.4 Determining amount of support

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

Schedule IV

Monthly Income Standards

Part A Spouse or Parent of Child Under Age 18	Family Size	Part B All Other LRRS
$ 430	1	$1189
574	2	1657
717	3	2135
789	4	2607
860	5	3000
932	6	3319
1004	7	3632
1076	8	3951
+$ 72	Each Additional Person	+$ 319

Schedule V

(No change.)

INSURANCE

(a)

INSURANCE GROUP AND AUTOMOBILE INSURANCE

Unfair Claims Settlement Practices and Auto Physical Damage Claims

Adopted Repeal: N.J.A.C. 11:2-17.14
Adopted New Rule: N.J.A.C. 11:2-17.14
Adopted Amendments: N.J.A.C. 11:2-17.11 and 11:3-10.3 and 10.10

Proposed: December 15, 1986, at 18 N.J.R. 2415(a).
Adopted: May 22, 1987, by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: May 22, 1987, as R.1987 d.249, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3)
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq. and 17B:30-1 et seq.
Effective Date: June 15, 1987.
Expiration Date: N.J.A.C. 11:2-17.14 and 11:2-17.11, December 2, 1990; N.J.A.C. 11:3-10.3 and 10.10, January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department received 15 written comments on its proposed amendments to N.J.A.C. 11:2-17 and 11:3-10. Commenters were: American International Adjustment Company, Inc. (AIAC); Alliance of American Insurers (AAI); Crum and Forster Corporation; Rudolph and Petriello—Attorneys at Law; Royal Insurance; State Farm Insurance Companies; Allstate; Harleysville Insurance Company; Kemper Group; Liberty Mutual Insurance Company represented by the law firm of LeBoeuf, Lamb, Leiby and MacRae; Henry S. Peters, President of the Garden Federation of Auto Body Repair Facilities; Black Oak Auto Body; Lakeview Auto Body; Elbert Zeigler Auto Body Center, Inc. and Citro's Auto Body.

In general, the auto body shops and the adjustment company, AIAC, supported the Department's amendments to the unfair claim settlement practices and auto physical damage claims rules. These commenters felt that the amendments give unlicensed shops the incentive to upgrade their operations and comply with the law. This, in turn, will upgrade the quality of automobile repairs in New Jersey thereby benefiting consumers.

The insurers and industry trade organizations tended to be more critical and expressed concerns of both a general and specific nature. With respect to general concerns, some commenters felt that the rule inappropriately places responsibility for enforcing the auto body licensing act on the insurance industry. One commenter claimed that this indirect enforcement, in addition to being less effective, increases costs because of inefficiency to both the enforcement and insurance systems. These commenters argued that the law should be directly enforced by the Division of Motor Vehicles.

The Department, for reasons which will be more specifically addressed below, has determined that utilization of unlicensed auto body repair facilities by insurers constitutes an unfair claims settlement practice, and, through this proposal, has moved to prohibit such practice. Accordingly, these amendments cannot be properly viewed as transferring enforcement responsibility to insurers any more than requiring that insurers deal only with properly licensed agents and brokers can be viewed as inappropriately transferring enforcement of licensing statutes to insurers. Of course, to the extent that the amendments to these rules facilitate the Division of Motor Vehicles' enforcement of its responsibilities under the auto body licensing act, the Department considers this result as salutary.

COMMENT: Several commenters interpreted the amendments to N.J.A.C. 11:2-17.11(b) and 11:3-10.10 to mean that an insurer in every instance must have knowledge of where the claimant ultimately repairs his vehicle so that the licensing status of the repair facility may be determined and claim file documentation maintained. These commenters argued that these amendments would create an administrative burden on an insurer. They explained that an insurer does not know in all cases where or, for that matter, whether a claimant ultimately has his vehicle repaired. For example, it was pointed out that some insurers use drive-in claim centers which prepare estimates of vehicle damage and make the direct payment to the claimant. In this case, once payment is made to the claimant, the insurer's involvement in the claims process ends, and the claimant is at liberty to use the payment as he sees fit.

In other cases, the site of the appraisal may, in fact, be an auto body repair facility but the insurer's procedure for adjusting the loss is essentially as described in the drive-in claim center scenario. One commenter felt it would be unreasonable to expect the insurer to refuse to appraise the vehicle solely because it is located at an unlicensed facility.

These commenters concluded that in cases where payment is made directly to the claimant and the insurer has no knowledge of and/or contact with a repair facility, the insurer's responsibility should be limited to informing the claimant that he must use a licensed repair facility, rather than requiring the insurer to comply with N.J.A.C. 11:2-17.11(b) and 11:3-10.10.

In relation to the previous arguments raised over N.J.A.C. 11:2-17.11(b) and 11:3-10.10, several commenters viewed the penalties for unknowing violations of these provisions to be unduly harsh. These comments, however, did acknowledge that a "knowing" use of an unlicensed repair facility should be prohibited.

Finally, one commenter argued that the amendments force an insurer to mislead a claimant by requiring an insurer to advise a claimant that he may only use the services of a licensed facility. The commenter noted that a claimant is, in fact, free to use any repairer in this State or remove the vehicle from New Jersey for repair.

RESPONSE: The commenters have misinterpreted the amendments. The amendments were not intended to mislead a claimant with regard to his right to select a repairer of his choice. Further, it was not the Department's intent to impose upon insurers the requirements of determining the license status of a repair facility and maintaining file documentation in cases where an insurer has no knowledge of or contact with the repairer used by the claimant, as in the aforementioned drive-in claim center example. A similar logic applies to the situation where the insurer merely appraises the vehicle at an unlicensed facility but has no contact with it. However, on a practical level, it must be recognized that this situation presents a greater potential for abuse and creates enforcement difficulties as well. Accordingly, the Department will further review this rule after adoption in order to determine if amendments designed to address this situation are necessary.

N.J.S.A. 39:13-1 et seq. places responsibility for compliance with its requirements on the auto body repair industry, not the public served by it, and further, it is not extra-territorial in effect. However, the Department finds the use by insurers of facilities that operate in contravention of the law to be an unfair claim settlement practice. Accordingly, it is important not only to prohibit such a practice but also to apprise claimants of the law and of its potential impact on them with respect to the settlement of their insurance claim. The Department's amendments were designed, in part, to ensure that insurers provide claimants with this information.

However, the commenters' concern demonstrates a need for clarification of the application of the amendments. Therefore, the Department has amended the rules upon adoption to provide that insurers specifically inform claimants in writing that N.J.S.A. 39:13-1 et seq. requires any entity subject to the law that is engaged in the business of auto body repairs must be licensed; that an insurer is prohibited from negotiating settlements or otherwise utilizing the services of an unlicensed facility; and that file documentation is required with respect to any facility utilized by the insurer in adjusting the loss or repairing the vehicle.

COMMENT: Two commenters expressed concern that insurers might be held responsible for verifying the accuracy of any licensing information provided to them by auto body repair facilities. These commenters argued that it would be administratively difficult for them to check the accuracy of this information. They argued that it would be unreasonable to penalize them for failing to uncover false licensing information.

RESPONSE: The amendments noted above and the Department's interpretation of the rule (that is, not applying the rule where an insurer has no contact with the repair facility), to some degree, should allay the commenters' concerns.

Furthermore, the Department believes that an insurer, with a reasonable and diligent effort, can verify the accuracy of a license number. For example, a licensed auto body shop is required by law to display its license in the shop. Also, such shops are required to have an exterior sign stating that it is a licensed shop and displaying its license number. The license number is also required to be on the repair estimate. It would not be difficult for the insurer to determine whether these requirements actually are satisfied at the body shop in question. Also, the Department has been advised by representatives of the Division of Motor Vehicles that the

Division is in the process of developing a list of licensed body shops which can ben made available to insurers and which will be updated by the Division on a periodic basis. Finally, in cases where the accuracy of the license number is highly suspect, the insurer can verify the license number by contacting the Division of Motor Vehicles.

Although it is implicit, the Department is amending N.J.A.C. 11:3-10.3(d) on adoption to indicate that an insurer must make a "reasonable and diligent effort" to ensure the auto body shops they negotiate settlements with are licensed.

COMMENT: One commenter questioned whether an insurer could negotiate a settlement with a dealership or local garage that does not perform body repairs. This commenter pointed out that there are dealerships and local garages which have not become licensed because they perform only interior or mechanical work and do not repair body damage.

RESPONSE: It would appear that the repair facilities referred to by this commenter have misunderstood the scope of the Act and, based upon the writer's description of their operation, are subject to licensing thereunder. "Auto body repair facility" is defined at N.J.S.A. 39:13-1(a) as "a business or person who for compensation engages in the business of repairing, removing or installing integral component parts of an engine, power train, chassis or body of an automobile damaged as a result of a collision".

It is the responsibility of the repairer to determine whether it should be licensed. Nonetheless, if the insurer suspects that the repairer is subject to licensing, the insurer should contact the Division of Motor Vehicles to determine the answer.

COMMENT: One commenter argued that the penalty provision in N.J.A.C. 11:2-17.14 was too harsh and may go beyond the Commissioner's authority. The commenter reasoned that the Trade Practices Regulated Act, N.J.S.A. 17:29B-1 et seq., upon which the Department based the penalty provision, sets up two statutory remedies for violations of the Act. Defined violations, as enumerated in Section 4, subject a violator to a cease and desist order under Section 7 and monetary penalties of up to $1,000 ($5,000 for knowing violations). Each violation of a cease and desist order can result in a penalty of up to $5,000 under Section 11. Undefined violations are treated differently. Under Section 9, the Commissioner first determines that the act or practice is unfair or deceptive and that there has been a violation, and then he may obtain an injunction if the violator's activity continues. The commenter doubted the courts would uphold the imposition of statutory penalties by regulation for undefined violations.

RESPONSE: The Department disagrees with the commenter for two reasons. First, the Department views the prohibition set forth in these amendments essentially as a clarification of N.J.S.A. 17:29B-4(9)(f), "Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonable clear". The Department considers it inherently unfair and inequitable to utilize unlicensed repair shops since they operate in violation of the law and cannot be presumed to be in compliance with the standards in the law and rule which are designed to protect consumers and prevent fraud.

Second, the Commissioner has broad regulatory authority to define unfair trade and/or claim settlement practices via the rulemaking process. (See N.J.S.A. 17.1-8.1, 17:1C-6(e) and 17:29B-1 et seq.) Once the Commissioner determines through the rulemaking process that a trade or claim settlement practice is unfair, the prohibited practice is defined and, accordingly, the penalties for defined practices are applicable. Consequently, the penalty provision in N.J.A.C. 11:2-17 is merely a reflection of the penalties permitted under the trade practices act and are not beyond the Commissioner's statutory authority.

COMMENT: One commenter suggested that an additional phrase, "with such frequency as to indicate a general business practice" be added to the penalty section to conform it with the intent of the Trade Practices Regulated Act.

RESPONSE: In amending the penalty, the Department is merely tracking the current text of the Trade Practices Regulated Act. Also, an appropriate reference to the business practice is already in the purpose section of N.J.A.C. 11:2-17. Thus, it is not necessary to include it in the penalty section of the rule.

COMMENT: Two commenters expressed concern over provisions of the rules which were not being amended by the Department.

RESPONSE: These comments are outside the scope of this rulemaking procedure and are not addressed.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletion indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 17. UNFAIR CLAIMS SETTLEMENT PRACTICES

11:2-17.11 Examinations

(a) Each insurer's claim files are subject to examination and inspection by the Commissioner or by his duly appointed designees pursuant to N.J.S.A. 17:23-4, 17:29B-5, 17B:21-3 and 17B:30-16.

(b) Detailed documentation and/or evidence shall be contained in each claim file in order to permit the Commissioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement. Such documentation shall include but is not necessarily limited to all investigative reports, payment vouchers, transactions, notices, memoranda and work papers. With respect to automobile damage claims, file documentation also shall include the name, address, telephone number and license number of any auto body repair facility ***that has been*** utilized ***by the insurer*** in the adjustment of the loss or repair of the automobile. All such documentation shall be properly dated and, for investigative reports, notes, memoranda and work papers, the parties preparing such documents shall be identified.

(c) Every insurer shall maintain records of all pertinent communications relating to a claim. The records must identify the date of the communication and the parties, and describe the substance of the communication.

11:2-17.14 Penalties

(a) If, after notice and hearing, the Commissioner finds that a person has violated this subchapter, he shall make his findings in writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such violation. The Commissioner may order payment of a penalty not to exceed $1,000 for each and every violation unless the person knew or reasonably should have known he was in violation of this subchapter, in which case the penalty shall not be more than $5,000 for every violation. The Commissioner shall collect the penalty in the name of the State in a summary proceeding in accordance with "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.).

(b) Any person who violates a cease and desist order of the Commissioner under (a) above, after it has become final, and while such order is in effect, shall be liable to a penalty not exceeding $5,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was willful shall be taken into consideration.

(c) The penalties provided herein shall be in addition to any other penalties authorized by law.

SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

11:3-10.3 Adjustment of partial losses

(a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days following receipt of notice of loss to inspect the insured's damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.

(b) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price. Early in negotiations, the insurer must inform and confirm in writing to the insured or the insured's designated representative all deductions that will be made from the agreed price, including the amount of applicable deductible.

(c) If the insurer inspects the damaged vehicle or causes it to be inspected, the insurer shall promptly upon completing the inspection furnish the insured or the designated representative of the insured with a detailed written estimate of the cost of repairing the damage resulting from the loss, specifying all appropriate deductions.

(d) No insurer shall negotiate the settlement of any physical damage claim involving an automobile as defined at N.J.S.A. 39:13-1b with an unlicensed auto body repair facility or in any manner utilize an unlicensed facility in the adjustment, negotiation or settlement of such a claim. ***It shall be the responsibility of the insurer to make a reasonable and diligent effort to determine whether the facility is properly licensed.****

(e) Subject to the requirements of (d) above, the insured may use any repair facility of his or her own choice. With respect to automobile damage claims, the insurer shall notify ***in writing*** any insured who elects to use his or her own repair facility that*, **pursuant to law, any entity engaged in the business of auto body repairs*** *[such facility]* must be duly licensed. ***The notice shall further advise the insured that the insurer is prohibited by law from negotiating, adjusting or settling an automobile damage claim with an unlicensed facility. The written notice shall be***

furnished at the time of acknowledgment of the claim as provided at N.J.A.C. 11:2-17.6 or upon the furnishing of its written estimate, as specified at (c) above, whichever is sooner.* The insurer must make all reasonable efforts to obtain an agreed price with the facility selected by the insured. The insurer may recommend, and if the insured requests, must recommend a qualified repair facility at a location reasonably convenient to the insured motor vehicle who will repair the damaged motor vehicle at the insurer's estimated cost of repairs, but in either event the provisions of (g) below apply.

(f) All estimates, including revisions and adjustments, prepared by any repair facility, estimator or appraiser must be included in each claim file.

(g) If the insured's vehicle is repaired at a repair facility whose name is required to be furnished by the insurer under (e) above for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

1. Shall select a repair facility that issues written guarantees that any work performed in repairing damaged vehicles meets generally accepted standards for safe and proper repairs;

2. Shall cause the damaged vehicle to be restored to the condition it was in prior to the loss, at no additional cost to the insured and within a reasonable time, if the repair facility as recommended above does not repair the damaged vehicle in accordance with generally accepted standards for a safe and proper repair.

(h) Whenever an insurer elects to repair its insured's vehicle, that is, physically take the vehicle and have it repaired, the election must be in writing addressed to the insured and contain a reasonable estimate of the time period within which the vehicle will be repaired. The insurer shall guarantee, in writing, that the work performed meets generally accepted standards for safe and proper repairs.

(i) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount by which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

(j) Deductions for previous damage or prior condition of the vehicle must be measurable, discernible, itemized and specific as to the dollar amount, and those deductions must be included in the insurer's claim file. The deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the estimation of the previous damage or the correction of the prior condition.

(k) The insurer must mail or hand deliver to the insured or the designated representative its proof of loss or payment within five working days after the insured has accepted the insurer's offer.

(l) The insured shall have the right to receive the proceeds of any settlement. The insurer may not insist on making settlement proceeds jointly payable to the insured and the repair facility, or payable to the repair facility only.

(m) The insured may elect to have the insurer pay the repair facility directly in order to expedite recovery of the motor vehicle. The insured must make this election in writing.

11:3-10.10 Examinations by the New Jersey Insurance Department

To ensure compliance with this rule, Department of Insurance personnel will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer's activities pursuant to the provisions of this rule, each insurer must maintain a complete file on each claim settled pursuant to this rule. The claim file shall contain all communications, transactions, notes and work papers relating to the claim. With respect to automobile damage claims, the file also shall include the name, address, telephone number and license number of any auto body repair facility ***that has been*** utilized ***by the insurer*** in the adjustment of the loss or repair of the automobile. All papers in the file must be accurately dated by the insurer.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Fire Protection

Adopted Amendments: N.J.A.C. 12:100-4.2

Proposed: January 5, 1987 at 19 N.J.R. 48(a).

Adopted: May 15, 1987 by Charles Serraino, Commissioner, Department of Labor.

Filed: May 19, 1987 as R.1987 d.241, **without change.**

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Effective Date: June 15, 1987.

Expiration Date: November 5, 1989.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Labor held a comment period open until February 5, 1987. The Department also solicited comments from a List of Interested Parties. Those Interested Parties are listed below:

Fire Fighters Association of New Jersey, West New York, N.J.
New Jersey Association of Counties, Trenton, N.J.
New Jersey Association of School Administrators, Trenton, N.J.
New Jersey Business and Industry Association, Trenton, N.J.
New Jersey Conference of Mayors, Trenton, N.J.
New Jersey School Boards Association, Trenton, N.J.
New Jersey Section, American Industrial Hygiene Association, c/o Carter-Wallace, Inc., Cranbury, N.J.
American Society of Safety Engineers; c/o New Jersey State Safety Council, Cranford, N.J.
New Jersey State Chamber of Commerce, Trenton, N.J.
New Jersey State League of Municipalities, Trenton, N.J.
New Jersey State Safety Council, Cranford, N.J.
Fire Fighters Association of New Jersey, Trenton, N.J.

No negative comments were received from the Interested Parties, with the exception of the Fire Fighters Associations.

There were seven responses from locals of the Fire Fighters Association of New Jersey (IAFF—AFL-CIO) and a response from the legislative office of the IAFF. In addition, there were two responses from the New Jersey State Firemen's Mutual Benevolent Association (FMBA), one from a local and one from the FMBA Health and Safety Committee.

COMMENT: The Fire Fighters Associations stated that local public employers had ample advance notice of their responsibilities under the Public Employees Occupational Safety and Health Act (PEOSHA) and that the implementation date for the wearing of personal protective clothing complying with the OSHA standards should be November 6, 1986 rather than November 6, 1988.

RESPONSE: The PEOSHA Advisory Board and the Department of Labor believe that the rule at issue is necessary to clarify public employer responsibility under the PEOSHA and to provide for an orderly transition to OSHA standards. This is the same approach taken by the Federal government in its implementation of the OSHA standards pertaining to protective clothing. The Department has been committed to ensuring the health and safety of firefighters and will continue its efforts by requiring the repair or replacement of items of protective clothing which present an imminent hazard to the wearer.

COMMENT: The Chief Counsel of the Firemen's Mutual Benevolent Association, Anthony D. Rinaldo, Jr., of Rinaldo and Rinaldo of Elizabeth, N.J., also objected to the November 6, 1988 implementation date. Mr. Rinaldo states that the Act directs the Commissioner to adopt the Federal standards no sooner than 180 days after the effective date of the Act and that the applicable statutory language implies the Legislature's intent that standards should be adopted as soon as possible after the 180-day minimum period.

He further states that the Legislature would not have directed the Commissioner to adopt standards at least as stringent as the OSHA standards and also include a specific provision regarding the operative date of these standards if it intended to grant authority to the Commissioner to build in further delays by way of amendments to rules.

RESPONSE: The Commissioner of Labor, through his November 5, 1984 adoption by reference of OSHA standards and subsequent amendments, has complied with the statutory time requirements. As a general

rule, statutory time periods for agency rulemaking establish maximum rather than minimum periods for action. For this reason, it can be inferred that the Legislature recognized the complexity of this matter and anticipated some of the issues which have arisen. Furthermore, the statute (N.J.S.A. 34:6A-30) provides that the Commissioner shall "**provide for the adoption** of all applicable occupational health and safety standards" (emphasis added) no sooner than 180 days after the effective date of the Act. The proposed rule as amended falls within the Commissioner's statutory authority to provide for an orderly adoption of the Federal standards.

The Commissioner recognized in the initial promulgation of these rules on November 5, 1984 that there were Federal administrative requirements among the OSHA standards which were clearly inapplicable for State PEOSHA purposes. That is why the following provision was included at N.J.A.C. 12:100-4.2(b):

"(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above".

This provision was inserted so that certain requirements relating to Federal OSHA program administration, such as those found at 29 CFR 1910.156(e)(1)(i), were not adopted. The requirements in question, which were intended to phase in the Federal OSHA regulations promulgated in 1980, provide that all protective clothing purchased after July 1, 1981 must conform to OSHA standards and all protective clothing in use after July 1, 1985 must comply with OSHA standards. These compliance dates were clearly inapplicable to local public employers, which were not subject to the PEOSHA until November 6, 1986.

The Bureau of Fire Safety of the Department of Community Affairs circulated a letter ballot requesting a recommendation from all fire commands for an implementation date for the mandatory use of personal protective clothing complying with the OSHA standards. These fire commands were paid, part paid, volunteer and unclassified. The survey was sent to all fire departments in the State. The results of this survey showed that nine percent of the fire commands wanted an implementation date of November 6, 1986, two percent wanted November 6, 1987, 32 percent wanted an implementation date of November 6, 1988 and over half, or 57 percent, of the fire departments wanted an operative date for the mandatory use of personal protective equipment complying with the OSHA standards to be after November 6, 1988.

The results of the survey show that the fire commands are about equally divided between "by November 6, 1988" and "after November 6, 1988." The results of the survey support the recommendation of Public Employees Occupational Safety and Health Advisory Board.

Therefore the Commissioner of Labor hereby adopts the amended rule as proposed.

Full text of the adoption follows.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-8. (No change.)

9. Subpart L—Fire Protection except that:

i. 29 CFR Part 1910.156(e)(1)(i) is amended to read: The employer shall assure that protective clothing ordered or purchased after November 6, 1986, complies with paragraph (e). As the new protective clothing is provided, the employer shall assure that all fire brigade members wear the protective clothing when performing interior structural fire fighting. After November 6, 1988, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of paragraph (e) when performing interior structural fire fighting. All personal protective clothing required to be provided to members of a fire brigade pursuant to paragraph (e) shall be provided at no cost to the employee.

10.-18. (No change.)

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

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(a)

Board of Examiners of Electrical Contractors General Rules and Regulations

Adopted New Rules: N.J.A.C. 13:31-1.12, 1.13, 1.14 and 1.15

Proposed: January 5, 1987 at 19 N.J.R. 49(a).

Adopted: May 5, 1987 by the Board of Examiners of Electrical Contractors, John Q. Larkin, Chairman.

Filed: May 20, 1987 as R.1987 d.242, **without change.**

Authority: N.J.S.A. 45:5A-6.

Effective Date: June 15, 1987.

Expiration Date: December 12, 1991.

Summary of Public Comments and Agency Responses:

The New Jersey State Council of Electrical Contractors Associations sent in a written comment on the proposal. Subsequently the Council's attorney and several members of the trade associations involved appeared at the Board's February and March public meetings to discuss the proposal. The trade associations recommended adoption of N.J.A.C. 13:31-1.14 and 1.15 concerning change of address notification and the prohibition of joint ventures between licensed and unlicensed electrical contractors. With respect to N.J.A.C. 13:31-1.13, trade association members expressed concern over what they perceived as some ambiguity in the proposal. The Board responded that because of a wide difference in the size and volume of work performed by licensed permit holders, a more precise definition of such terms as "regular and continuous absence" on the part of the licensed holder was not possible. Holders of business permits range from one-man part-time businesses who do only a few residential jobs a week to large corporations with hundreds of employees. The Board believes that the rules as promulgated clearly puts permit holders and licensees on notice that they must be aware of the level of competence of their employees, and of the complexity and potential hazards associated with the jobs they are to perform, rendering personal supervision accordingly. As required by statute, the licensee must be actively engaged in the business, assuming his primary responsibility under the statutory scheme for the supervision and inspection of all electrical work performed by the permit holder. After meeting with the Board, the trade association members withdrew their objections and agreed that the rule should be promulgated as proposed.

Similarly, the trade association members expressed concerns over N.J.A.C. 13:31-1.12, the new continuing education rule, specifically that the rule did not specify the number of hours for the code course or the standards for approval of courses. Their objections were withdrawn after the Board explained that rigid requirements for the course were impossible to set up until the code revisions were promulgated. The Board contemplates at this time that courses of a reasonably appropriate length and content will be taught under the auspices of trade associations, county colleges and vocational schools, and private groups. Adequate notice will be given administratively to licensees well in advance of any deadline for enrollment.

Full text of the adoption follows.

13:31-1.12 Continuing education

(a) At the time of publication of each new edition of the National Electrical Code, each licensee shall attend a course of study approved by the Board relating to the new Code.

(b) Proof of the completion of the Code course referred to in (a) above shall be provided to the Board by each licensee as a prerequisite to the renewal of his license.

13:31-1.13 Supervision of electrical work

(a) The licensee whose license qualifies the holder of a business permit to engage in the business of electrical contracting in the State of New Jersey shall assume full responsibility for the inspection and supervision of all electrical work to be performed by the permittee in compliance with recognized safety standards.

(b) The qualifying licensee shall be deemed not to have assumed such required responsibility where he engages in the following acts and practices:

1. Failure to personally inspect and supervise the work of employees where necessary and appropriate.

2. Failure to ensure that electrical workers are afforded the degree of personal on-site supervision commensurate with their level of competence and the complexity of the work to be performed.

3. Failure to be personally available on a reasonable basis where circumstances require personal availability.

4. Regular and continuous absence from the principal office of the permit holder where the permit holder maintains a New Jersey office; or the regular and continuous absence from the work sites of electrical work performed in New Jersey where the permit holder does not maintain a New Jersey office.

13:31-1.14 Notification of change of address

Every licensee and business permit holder shall give notice to the Board of any change of address within 10 days of such change.

13:31-1.15 Joint ventures

(a) Where two or more persons form a joint venture for the purpose of contracting to perform electrical work in New Jersey, each party to the joint venture shall hold a business permit issued by the Board to engage in electrical contracting in New Jersey.

(b) The term "persons," as used in (a) above, is defined to mean individuals, corporations, partnerships or other business entities.

DIVISION OF CONSUMER AFFAIRS

(a)

Board of Examiners of Electrical Contractors Requirement of Identification Card Defined Adopted New Rule: N.J.A.C. 13:31-1.16

Proposed: February 17, 1987 at 19 N.J.R. 352(a).
Adopted: May 5, 1987 by the State Board of Examiners of Electrical Contractors, John Q. Larkin, Chairman.
Filed: May 20, 1987 as R.1987 d.244, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:5A-6.

Effective Date: June 15, 1987.
Expiration Date: December 12, 1991.

Summary of Public Comments and Agency Responses:

The Board received two written comments on the proposal. The Chief of Construction Code Enforcement of the Department of Community Affairs suggested that the proposal should be amended to provide that licensees be required to present their identification card to Construction Code Officials upon request but that presenting the card should not be a requirement for obtaining a permit unless so requested. The Board voted to accept the comment and to amend the proposal accordingly, since the purpose of the proposal was simply to provide licensees with proof of their licensed status. In the situation where a sub-code enforcement official does not ask for or require such proof, the Board agrees that presentation of the card should not be a rigid requirement and that the purpose of the rule is served without this requirement.

A second comment was received from the vice-president of a large electrical contracting business who felt that the use of the card was unnecessary because electrical contractors have a seal to impress upon application and because a card could be lost or even duplicated. The Board rejected this comment because the problem of providing proof of current licensing status is not addressed by possession of the seal which can easily be retained even though a license or permit has expired or has been suspended.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

13:31-1.16 Requirement of identification card defined

(a) At the time of the biennial renewal of the license and business permit the Board of Examiners of Electrical Contractors shall furnish a wallet size identification card to every licensee. The card shall be used exclusively by the licensee in the conduct of his practice. A licensee who willfully or negligently allows an unlicensed or an unauthorized person to use his identification card shall be deemed to have engaged in occupational misconduct and shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:5A-1 et seq. and N.J.S.A. 45:1-14 et seq. The licensee is required to present said identification card ***upon request*** to the appropriate duly licensed inspection agency upon all applications for electrical permits.

(b) Use of an identification card by any person other than the licensee to whom it is issued or his duly authorized agent acting on the licensee's behalf shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense. Such conduct shall be unlawful and may be grounds for the suspension or revocation of the license of the unauthorized user if he is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license at any point in the future.

(b)

State Board of Mortuary Sciences Administration Itemization of Funeral Expenses Adopted Amendment: N.J.A.C. 13:36-1.9

Proposed: November 3, 1986 at 18 N.J.R. 2186(a).
Adopted: March 3, 1987 by the New Jersey State Board of Mortuary Science, Donald R. Codey, President.
Filed: May 20, 1987 as R.1987 d.243, **without change.**

Authority: N.J.S.A. 45:7-38.

Effective Date: June 15, 1987.
Expiration Date: November 19, 1989.

Summary of Public Comments and Agency Responses:

Comments were received by the Board from the New Jersey State Funeral Directors Association. The Funeral Directors Association suggested deletion of N.J.A.C. 13:36-1.9(b)2. The Association's concern was that paragraph (b)2 might be misconstrued by consumers as the State of New Jersey suggesting that not only does the State not require consumers to sign the contract, but that the consumers should not do so. The Board discussed the Association's comments at its February 3, 1987 Board meeting and decided to retain paragraph (b)2 because the consumer should be aware that he or she is not required to sign the contract and the funeral homes are not precluded from providing separate forms for contract and itemization expenses.

A full record of this opportunity to be heard can be inspected by contacting the Board office at 1100 Raymond Boulevard, Room 513, Newark, New Jersey 07102.

Full text of the adoption follows.

13:36-1.9 Itemization of funeral expenses

(a) (No change.)

(b) Such itemization form shall be on a single sheet of paper and shall include the full name, legal address and date of death of the deceased and at least the five general categories as listed below. All charges relative to the funeral are to be listed on the itemization form with sub totals and grand totals as indicated, and the name and address of the person making funeral arrangements. It shall be exclusive of promissory notes and other non-related items except that a contract may appear at the bottom of the itemization form. If such contract is included on the itemization form:

1. It shall be separated from the itemization section by a horizontal line extending across the face of the page;

2. The statement, "The State of New Jersey Does Not Require You to Sign the Below Contract" shall appear immediately below the horizontal line and shall be printed in bold face letters no less than one-quarter inch in height and;

3. The heading "Contract" shall appear immediately below the statement of as required by (b)2 above and shall be printed in bold face letters no less than one-quarter inch in height.

(c)-(f) (No change.)

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect/Engineer Selection Procedures

Adopted New Rules: N.J.A.C. 17:19-10.1 through 10.10

Proposed: April 20, 1987 at 19 N.J.R. 627(a).
Adopted: May 20, 1987 by James G. Ton, Director, Division of Building and Construction.
Filed: May 22, 1987 as R.1987 d.245, **without change.**

Authority: N.J.S.A. 52:18A-30 and 52:18A-151 et seq.

Effective Date: June 15, 1987.
Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 10. ARCHITECT/ENGINEER SELECTION PROCEDURES

17:19-10.1 Purpose

The architect/engineer selection procedures are established to allow qualified design firms an open opportunity for selection for State design assignments on the basis of demonstrated competence and experience. The selection of architects and engineers based upon a combination of technical qualifications and competitive cost proposals enables the public interest to be best served.

17:19-10.2 Scope

(a) The principal elements of the architect/engineer selection procedures provide for:

1. Verification of the professional qualifications of firms interested in providing design services to the State;
2. Advertisement of project;
3. Selection Board competition;
4. Screening of all interested and qualified firms by the Initial Screening Committee and Selection Board in order to establish those firms to be interviewed; and
5. Veto authority of the Board's recommendations by the Director, Division of Building and Construction (DBC).

17:19-10.3 Definitions

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

"Architect/engineer" means an architect, engineer or other design professional so recognized by the appropriate State professional licensing board.

"Architect/Engineer Selection Board" (Board) means the body appointed by the Administrator, General Services Administration to review and evaluate architectural and engineering firms competing for selection for Division design projects.

"Architect/Engineer Contracting Group" means a body within the Division responsible for the architect/engineer contracting process.

"Architect/Engineer Selection Group" means a body within the Division responsible for the selection of architects and engineers.

"Chairperson" means the principal member of the Architect/Engineer Selection Board so appointed by the Administrator, General Services Administration, who will be responsible for the management and operations of the Board.

"Competitive cost proposal" means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

"Construction cost estimate" for the purpose of these procedures means the estimated construction cost of the specific project developed and approved jointly by the using agency and the Division.

"Director" means the Director of the Division of Building and Construction or his duly authorized representative.

"Division" means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

"Exempt assignment" means an assignment which, due to its nature or circumstances, is awarded outside of the normal selection procedures.

"Initial Screening Committee" (Committee) means the body appointed by the Board to perform initial screening.

"Intermediate project" means a project which has a construction cost estimate between $350,000 and $650,000 where advertising is not required.

"Major project" means a project which as a construction cost estimate of $650,000 or more where advertising is appropriate.

"Member" means an individual appointed by the Administrator, General Services Administration, to serve on the Architect/Engineer Selection Board.

"Minor project" means a project which has a construction cost estimate between $25,000 and $350,000 where advertising is not required.

"Miscellaneous panel" means a list of professional architects and engineers, and other professional consultants, eligible for the assignment to projects with a construction cost estimate less than $350,000 or an anticipated architect/engineer fee less than $35,000.

"Multiple of actual salary cost" means a design fee based upon an established multiple or factor times direct salary cost. Direct salary is the gross salary paid an individual exclusive of taxes, fringe benefits, etc.

"Percentage fee" means a fee for architectural and engineering services based upon a percentage of the construction cost estimate.

"Prequalification" means a process of reviewing the information and experience questionnaire (DBA Form 48A) to determine the classification level and professional disciplines of architect/engineer firms.

"Program fee" means a separate fee, usually based upon a multiple of actual salary costs, covering the cost of program development and construction cost estimate.

"Screening" or "ranking" means the process of evaluation utilized by the Committee and Board to determine those firms to be given final consideration from among the total applicants for a specific project.

"Secretary" means the full time administrator of the day-to-day Board operations and procedures who is responsible for overseeing classification records, advertising of projects, scheduling of meetings, preparing agendas, recording board scores, preparing minutes of Board meetings and similar administrative activities.

"Technical scoring" means the process of developing numerical ratings for architects and engineers by individual Board members in their evaluation of those firms seeking assignments.

"Using agency" means that Department or other element of State government for which the Division procures or provides design and/or construction services.

17:19-10.4 Classification of design firms

(a) Architectural, engineering and other consulting firms desiring to be considered for consultant work with the Division must first submit an Information and Experience Questionnaire (DBC Form 48A) to the Division. The questionnaire provides comprehensive information on the management of the firm, its financial history, the type and value of past design work and other related information. This information is used by the Board members to assist in the evaluation of firms for Division work and by the Architect/Engineer Selection Group staff to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified.

(b) Review of the questionnaire by the Division for prequalification purposes shall be completed within 30 days of receipt of the questionnaire and a notification of results shall be mailed to the firm within the same time period.

(c) If a classification is denied the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the Supervisor of the Architect/Engineer Selection Group.

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the Supervisor, Architect/Engineer Selection Group for reconsideration. If resolution is not achieved, the Supervisor, Architect Engineer Selection Group shall request the Board's evaluation of the firm's qualifications. The Board will review the records and consider a reclassification. Results of this review will be made known to the firm in writing by the Secretary of the Board. If the firm still does not agree with its classification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update its Information and Experience Questionnaire (DBC Form 48A) with the Division on an annual basis. Major changes occurring in the firm's status during the course of a year should be brought to the attention of the Division in order that the prequalification record is always current.

(f) Any firm seeking classification must have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for classification.

(g) An architectural or engineering firm wishing to introduce its capabilities and experience to the Board is encouraged to request an appearance before the Board. This appearance is not associated with a specific project but is solely for the purpose of familiarizing the Board with the firm's background and design accomplishments. Such appearances are of benefit to Board members in their subsequent evaluations for specific projects.

(h) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files which will be reviewed during the selection process.

(i) The classification rating assigned does not necessarily reflect the level on which an architect/engineer has performed for other clients. The Board endeavors to assign a rating which is justified by applicable overall experience, length of time in business, prior Division experience, staffing, and management depth.

(j) Classification levels include the following categories:

1. $350,000: Architect/Engineers with this rating may be considered for State project workload up to $350,000;
2. $650,000: Architect/Engineers with this rating may be considered for State project workload up to $650,000;
3. $1,000,000: Architect/Engineers with this rating may be considered for State project workload up to $1,000,000;
4. $2,500,000: Architect/Engineers with this rating may be considered for State project workload up to $2,500,000;
5. $5,000,000: Architect/Engineers with this rating may be considered for State project workload up to $5,000,000;
6. $10,000,000: Architect/Engineers with this rating may be considered for State project workload up to $10,000,000;
7. $25,000,000: Architect/Engineers with this rating may be considered for State project workload up to $25,000,000;
8. Unlimited: Total workload is above $25,000 with no top limit.
9. Not Applicable: Special category wherein construction cost estimates are not applicable (such as soils engineering acoustics; landscaping; energy conservation, etc.).

(k) State project workload shall be determined by deducting the proportionate value of incomplete work on other State projects from the assigned classification level. The Board shall not make assignments which exceed the amount of maximum State project workload of a given firm without the written approval of the Director.

(l) Firms may increase eligibility for a specific project by a joint-venturing with other firms. To be approved as a joint-venture firm, the venture must be prequalified as an entity. In addition, each individual firm of the joint-venture shall have been prequalified.

(m) Firms may apply for a specific project on a joint-venture basis without prior preclassification as a joint-venture team by simultaneous submissions of DBC 48A and 48B (Specific Project Questionnaire).

17:19-10.5 Public notification

(a) The Chairperson of the Architect/Engineer Selection Board may solicit the interest of prequalified Architect/Engineer firms for projects in the major and intermediate project classifications. The chairperson will direct the secretary to advertise these projects:

1. In design and construction publications and trade journals covering the construction industry in New Jersey and contiguous areas;
2. In local newspapers;
3. By written notice to New Jersey professional societies; and
4. By use of direct mailings to prequalified firms.

(b) Public notification shall include instructions to the effect that any firm seeking to provide services for the projects so advertised must submit a Specific Project Questionnaire (DBC Form 48B) no later than the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

1. The DBC Form 48B shall identify the firm's capabilities and qualifications as these may relate to the specific project advertised. It shall include its consultants in order to provide the total team effort. This questionnaire supplements the information contained in the Information and Experience Questionnaire (DBC Form 48A) submitted for prior prequalification and classification purposes. Special expertise in relation to the project at hand is one of the factors considered by the Board in evaluating firms during the screening process.

(c) The Division will not acknowledge receipt of Specific Project Questionnaires (DBC Form 48B). These documents will be made a part of the Board's records and shall be retained for a period of one year after selection has been completed.

17:19-10.6 Project initiation

(a) The selection procedure will be initiated upon the receipt by the Division of a written request and encumbrance of funds from a State client using agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimated of the proposed project for both the design and the construction of the project.

(b) The Chairperson or his appointed representative shall evaluate the agency request and determine whether the scope of work and availability of funds are adequate. The Chairperson shall authorize the consideration of a project by the Board.

(c) When required, the Chairperson will ensure that all major projects are advertised as expeditiously as possible.

(d) The Director may authorize the initiation of specific projects without first receiving the necessary funding.

17:19-10.7 Project assignment procedures

(a) Major projects are those with a construction cost estimate of $650,000 and higher. Major projects shall be subject to the following procedures:

1. The consideration of the assignment of an architect/engineer for a major project by the Board shall commence as expeditiously as possible after the close of the advertisement period.
2. The Secretary shall tabulate a list of all firms which have submitted a DBC Form 48B for the project being considered, upon verification that each firm is prequalified in reference to the construction cost estimate for the project and within the limit of total State work for which it is classified. The Secretary shall distribute said list to all members of the Committee in addition to making available the files and other submissions of each of the firms for evaluation.
3. The Committee will evaluate and rate the firms on the basis of a predetermined rating system. The secretary will tabulate the results and list the final five firms and one selected at random in alphabetical order. The Board may adjust the number of final firms as projects warrant.
4. Prior to the scheduled meeting of the Board, each member shall have the responsibility to review the files and other submissions of the final listed firms in order that they may evaluate and rank each firm. The evaluations of each member shall be submitted to the Secretary who will tabulate the individual and total and the number of place preference votes scores for all of the firms being considered.

i. Any member of the Committee or Board whose score indicates below average performance or capabilities of a firm, must attach an explanation to their screening sheet prior to submission to the Secretary.

5. The Chairperson shall then convene a meeting of the Board for the purpose of reviewing the results of the screening process. The Board shall, after full review and evaluation of all the firms, select firms to be interviewed by the Board. The Board has the responsibility when pre-interview and/or interview conferences are not held to furnish those firms preparing interview presentations or cost proposals a complete description of the project and scope of work and also arrange for the time and access to the project site. If it is determined that the interview procedure would not be beneficial, the Board may exercise its authority to waive the interviewing process and select firms to submit cost proposals.
6. The Chairperson or his designee shall conduct a pre-interview conference on all major projects where it is deemed appropriate. The purpose of the pre-interview conference is to allow all of the firms to be interviewed an opportunity to review the scope of work for the project and to question the Board, Division design staff and agency representatives on the particulars of the project.
7. At a pre-interview conference, attendance by at least one principal of the firm is mandatory. Non-attendance by a principal may result in disqualification of the firm from further consideration on the project. The order and time of appearance of the firms for the selection interviews will be determined by lottery at the end of the pre-interview conference. The Chairperson or his designee will attempt to establish a date for the selection interviews acceptable to all parties.
8. The interview will take place during a regularly scheduled meeting of the Board. Upon completion of the interviews, the firms shall be rated individually by each member based on a predetermined standard list of criteria.

9. The Secretary shall tabulate the scores and after open discussion a vote will be taken to determine the firms to be invited to submit cost proposals.

10. The Chairperson or his designee shall call for and conduct a preproposal conference if it is deemed necessary. The purpose of the preproposal conference is to assure that the firms submitting cost proposals have a clear and equal understanding of both the scope of work and the contractual agreement. Attendance of representatives of the competing firms, the using agency and project management is required.

11. Sealed cost proposals will be accepted on a pre-determined day and time by the Supervisor of the Architect/Engineer Contracting Group who, in the presence of the Secretary, shall open and read aloud the competitive cost proposals. The Secretary shall record the proposals received and prepare a tabulation for distribution to the Board members. The opening shall be conducted in public, and any representatives of the competing firms may be in attendance.

12. The Board shall then convene at a time and date determined by the Chairperson and shall review the technical scores of the firms in conjunction with the cost proposals and other pertinent data. The Board will deliberate for another vote in making its final selection and recommendation. The Board shall have the responsibility of determining which selection will be most advantageous to the State, technical qualifications, cost and other factors considered.

(b) Intermediate projects are those with a construction cost estimate of $350,000 to $650,000.

1. The Board shall have full authority to waive advertising. Based upon such relevant factors as the location, size and nature of the project, and under the guidance of the Chairperson, the Board Secretary shall develop a list of prequalified firms in sufficient number to insure adequate competition. Due consideration will be given to assignments of work to small, minority-owned and women-owned businesses.

2. Screening and solicitation of cost proposals shall, thereafter, follow procedures as described under major projects.

(c) Minor projects are those with a construction cost estimate less than $350,000. Minor projects will be assigned through the use of miscellaneous panels as follows:

1. Annually, the Board shall advertise on a Statewide basis for those firms that may be interested in being placed on miscellaneous panels. The purpose of the list shall be to assign minor and exempt projects on an expedious basis directly from a pre-established list.

2. Following the advertisement and receipt of DBC Form 48B, the Board shall determine the composition of miscellaneous panels and publish the list.

3. The Board shall select the firms to be placed on the miscellaneous panels from among those firms submitting a completed DBC Form 48B. The Board shall also have authority to delete firms from the list for reasons of poor performance and to add others during the year as may be required to provide the capabilities necessary to support the Division's workload.

4. The list shall be published in a format clearly indicating a separation on a regional or Statewide basis and then by professional discipline. The list, once published, shall become a public document and available upon written request to all.

5. Assignments from the lists of miscellaneous panels will be made by the Supervisor, Architect/Engineer Contracting Group. In addition to making assignments, the Group will maintain appropriate records and will report to the assignments made. Selections from the miscellaneous panels shall reflect a fair equitable distribution of work, proximity of the firm to the location of the project and consideration of appropriate disciplines and specialities of the firm.

6. The Board will establish procedures to comply with NJ Small Business Set-Aside Act requirements.

(d) Facility consultants are those consultants which the Director may delegate to a department and/or institution the authority to issue work orders for professional assignment to architect/engineers as selected by the Board and contracted by the Division to include:

1. Prequalification and classification of firms interested in providing facility consultant services shall be similar to those prescribed under N.J.A.C. 17:19-10.4.

2. Facility consultant contracts will be issued on a fiscal year basis by the Division. Contracts may be modified, cancelled or extended by request of the department and/or institution and/or the Division, with concurrence of the Architect/Engineer Selection Board and upon approval of the Director.

(e) Exempt assignments are those which are of an urgent, critical or special nature, as may be identified and substantiated in writing by Departmental Commissioners and approved by the Director. The Board shall have the authority and responsibility to recommend to the Director that the selection procedures described above may be waived. With the Director's written approval and the Treasurer's written concurrence, by means of a waiver of advertising, the Board may make project assignments in the following categories:

1. Emergency projects: Such projects are of an emergency or critical nature, normally involving life-safety considerations, loss of property, or disruption of a vital State program (for example, storm or fire damage, equipment and/or systems failures in occupied facilities, jeopardized funding of a project, potential loss of an agency's program funding, etc.).

2. Continguous projects: Where the nature of a project is closely related to another ongoing project, or where a new project at the same facility is minor in nature as related to an ongoing project, it may be in the State's best interest to continue with an architect/engineer already working on an existing contiguous assignment.

3. Repetitive projects: Where an architect/engineer has designed a project which the State wishes to have repeated at the same site or adapted to another site, utilizing in a general manner the same basic documents, the substantial reduction in time required and in design costs for site adaptation may make assignment to the same architect/engineer advantageous to the State.

4. Special services: Where the nature of the project or the service is such that it does not fall within one of the categories listed elsewhere herein, the assignment may be considered a special service. Assignments in this category may include, but are not limited to, surveying, soils engineering, construction management, photogrammetry, and interior design. These services normally complement basic architect/engineer services on an ongoing project and may seriously affect and/or delay the ongoing project if immediate and expeditious selection is not made.

17:19-10.8 Final selection approval

(a) All selections and recommendations of the Board shall be approved by the Director, as well as all percentage or negotiated fees for any given project. The Director's approval shall be obtained by means of his/her signature on the minutes and recommendations of the Board as submitted by the Chairperson.

(b) The Director may, for substantial and justifiable reasons, reject the recommendations of the Board and request reconsideration. The Director's rejection must be made in writing to the Board. The Board will deliberate and reconsider the matter and resubmit its recommendations. In the event of disagreement, the decision of the Director is final provided it is approved by the Administrator, General Services Administration, in writing.

(c) Although the selection procedure may include the elements of advertisement, technical evaluation and cost competition, all selections and assignments imposed by the statutes must be approved by the Treasurer through a waiver of advertising pursuant to N.J.S.A. 52:34-8.

17:19-10.9 Selection Board composition

(a) The Administrator of the General Services Administration has full authority and responsibility to appoint and replace General Services Administration personnel serving as permanent members or alternates on the Architect/Engineer Selection Board. The permanent five-member Board shall be constituted as follows:

1. Chairperson, who shall be an architect or engineer employed by the Division.

2. Two other Division members, who shall be staff architects or engineers.

3. One other Division member who need not be a staff architect or engineer.

4. One member from the General Services Administration's administrative office staff who need not be an architect or engineer.

(b) Of the five members identified above, due consideration will be given to minority and/or female participation on the Board.

(c) Board participation by members is paramount. Every effort will be made to consider Board participation to assigned duties within the other activities of the General Services Administration.

(d) The Administrator of the General Services Administration shall also have the authority and the responsibility to appoint alternate members from the respective Director's staff. An alternate need not match the professional qualifications of the member he/she replaces.

(e) When the Board is considering project selections, composition of the Board shall be increased to include one voting representative of the sponsoring department or agency.

(f) Either the agency or the institution may send more than one representative to the Board sessions; however, the multiple representation shall be limited to a combined vote of one.

(g) In certain instances where a project is extremely complex, or is unusual in nature, or involves special considerations that require expert advice and assistance, the Administrator of the General Services Administration may add other voting participants to the board. However, the total number of voting participants on the Board shall never exceed nine.

(h) The Board shall proceed in their deliberations even if the agency or institution representatives fail to appear, providing the record indicates they were given proper notice.

(i) Representatives of using projects will be notified of those Board meetings where their projects will be considered in order that they may participate in the selection process.

17:19-10.10 Board rules of order

(a) On questions of parliamentary procedure not covered within these rules, the Board shall be governed according to the provisions of the latest edition of "Roberts Rules of Order." Those rules shall govern the parliamentary conduct of the Board in all cases to which they are applicable and in which they are not inconsistent with these rules and regulations. On matters of procedure of a minor nature, which are covered neither in the rules nor in "Roberts Rules of Order," the Board, by two-thirds majority vote, may adopt its own rules of conduct. If agreement cannot be reached, the dispute shall be referred to the Director for his decision, which will be final.

*[(b)]**1.** The minimum number of Board members including the Chairperson required to conduct business is four.

(b) The Board shall establish procedures to comply with the requirements of P.L. 1983, c. 482 and P.L. 1985, c. 384, the Minority Business Enterprise, Women's Business Enterprise and Small Business Enterprise set-aside programs.

(c) All meetings and deliberations of the Board shall be conducted in full accordance with the New Jersey Open Public Meeting Act, P.L. 1975, c. 231. The Board shall conduct regular meetings on each and every Wednesday, commending at 9:00 A.M. and continuing until completion of business. Other special meetings of the Board may be conducted with the approval of the Director.

(d) Although all of the meetings and deliberations of the Board are open to the public, the Board may request that representatives of firms having completed their presentations or waiting to make them, not sit in on the interviews of their competitors.

(e) The Board shall have authority, when it deems it is in the best interest of the State, to restrict a firm to a single assignment when several projects are being considered at the same time, providing all firms involved are so advised at the time of final interview or prior to the submission of cost proposals.

(f) The Board shall have the authority to restrict a firm receiving their first assignment(s) from receiving any subsequent assignment prior to substantial completion of its initial assignment(s).

(h) The Chairperson shall appoint a Vice Chairperson from among the permanent members, providing there is a ratification of the appointment by a majority of the Board. The Vice Chairperson shall assume the authority and responsibility of the Chairperson in his/her temporary absence or until a permanent replacement is appointed by the Administrator.

(i) The Secretary shall report to the Chairperson and shall have the responsibility under the Chairperson's supervision for the maintenance of records for architect/engineer classification and the Board's deliberations. The Chairperson shall have the responsibility to insure that the minutes of the deliberations of the Board and a record of its decisions and recommendations are retained for a period of no less than two years following the completion of construction of any project or the completion design of those projects which are abandoned.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax
Forms Enumerated
Adopted Repeal and New Rule: N.J.A.C. 18:24-1.1

Proposed: November 3, 1986 at 18 N.J.R. 2192(a).

Adopted: May 21, 1987 by John R. Baldwin, Director, Division of Taxation.

Filed: May 22, 1987 as R.1987 d.246, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:32B-24.

Effective Date: June 15, 1987.

Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***).

18:24-1.1 Sales and Use Tax Act forms enumerated

(a) The following list reflects sales and use tax forms currently available for use under N.J.S.A. 54:32B-1, et seq.

	REGISTRATION APPLICATIONS
CIS-1	Application for Registration with Division of Taxation
ST-2	Sales Tax Certificate of Authority
ST-5B	Application for Exempt Organization Permit
UZ-1	Urban Enterprise Zone Application for Reduced Sales Tax Collection
	SPECIALIZED USE FORMS
ST-3	Resale Certificate
ST-4	Exempt Use Certificate
ST-5	Exempt Organization Certificate
ST-6	Direct Payment Permit
ST-6A	Direct Payment Certificate
ST-7	Farmers Exemption Certificate
ST-8	Certificate of Capital Improvement
ST-10	Motor Vehicle Dealer Sales and Use Tax Exemption Report
ST-10A	Aircraft Dealer Sales and Use Exemption Report
ST-10V	Vessel Dealer Sales and Use Tax Exemption Report
ST-10V	Supplement 1—Supplement for a Foreign Corporation
ST-11	Report of Sales Tax on Motor Vehicles
ST-13	Contractor's Exempt Purchase Certificate
ST-16	Exemption Certificate for Student Text Books
	SALES AND USE TAX RETURNS
ST-18	Use Tax Return
ST-50	Sales and Use Tax Quarterly Return
ST-51	Monthly Remittance Statement
***ST-52**	**Consolidated Return Schedule**
ST-20A	**Deduction Worksheet for Computing New Jersey/New York Deductions***
	ATLANTIC CITY LUXURY TAX
ST-250	Atlantic City Luxury Tax/State Sales Tax Monthly Return
ST-252	Atlantic City Luxury Tax Certificate of Authority
	NEW JERSEY/NEW YORK COOPERATIVE TAX PROGRAM
ST-20	New Jersey/New York Combined State Sales and Use Tax Return
ST-20A	Deduction Worksheet for Computing New Jersey Deductions
ST-21	New Jersey/New York Combined State Sales and Use Tax Remittance
***DTF-24**	**Application for New Jersey and New York Simplified Sales and Use Tax Reporting**
DTF-17.1	**Business Description (used in computing form DTF-24)***

URBAN ENTERPRISE ZONE FORMS

UZ-2	Urban Enterprise Sales Tax Certificate of Authority
UZ-4	Urban Enterprise Zone Contractor's Exempt Purchase Certificate
UZ-4A	Urban Enterprise Zone Contractor's Exempt Purchase Permit
UZ-5	Urban Enterprise Exempt Purchase Certificate
UZ-5A	Urban Enterprise Exempt Purchase Permit
UZ-50	Combined Sales and Use Tax/Urban Enterprise

EXEMPTION STATUS

ST-5A	Exempt Organization Permit

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Appeal Board

Adopted Amendment: N.J.A.C. 19:17-2.1
Adopted New Rules: N.J.A.C. 19:17-3.1 through N.J.A.C. 19:17-4.5

Proposed: January 20, 1987 at 19 N.J.R. 196(a).
Adopted: May 22, 1987 by Public Employment Relations Commission, James W. Mastriani, Chairman.
Filed: May 22, 1987 as R.1987 d.248, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 34:13A-5.9.

Effective Date: June 15, 1987.
Expiration Date: July 15, 1988.

Summary of Public Comments and Agency Responses:

The Public Employment Relations Commission and Appeal Board initially proposed the new rules on August 4, 1986 at 18 N.J.R. 1521(a). As a result of the comments received at a public hearing on the proposal held by the Appeal Board on September 11, 1986, the rules were reproposed on January 20, 1987 at 19 N.J.R. 196(a). A summary of public comments and responses concerning the initially proposed rule, PRN-1986-295, was also published at 19 N.J.R. 196(a).

The Appeal Board held a second public hearing on March 17, 1987 at the Commission's and the Appeal Board's Trenton office. Written and/or oral comments were made by or on behalf of the following persons and organizations:

1. Local 195, International Federation of Professional and Technical Engineers, AFL-CIO (Local 195)
2. International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE)
3. New Jersey Education Association (NJEA)
4. National Right to Work Legal Defense Foundation, Inc. (Foundation)
5. Rutgers Council of AAUP Chapters (Rutgers AAUP)
6. Communications Workers of America, AFL-CIO (CWA)
7. Dennis J. Alessi, Esq. on behalf of the New Jersey Civil Service Association (NJCSA)
8. The New Jersey State Policemen's Benevolent Association, Inc. (PBA)
9. Richard Friedman, Esq. on behalf of NJEA.
10. Rudolf Lawton on behalf of NJEA.

A summary of public comments received on the reproposed rule and amendment, PRN-1987-41, follows. Section A contains comments and responses on general issues. Section B contains comments and responses on specific rules.

A. GENERAL COMMENTS AND RESPONSES

I. Necessity for rule-making and purpose of rules.

COMMENTS: The Foundation says that the rules should achieve the goals of Hudson and Boonton which are to provide unions with the costs of collective bargaining, give employees sufficient verified information to substantiate the unions' claims and a prompt and fair resolution of disputes. The Foundation also refers to a comment made by Larry Lang during the September 11, 1986 hearing about the need to use multiple forums (that is, the Appeal Board and the Commission) to redress claims concerning representation fees. (See 19 N.J.R. 196, Section A.I of Public Comments and Agency Responses). It says the rules should provide for a single proceeding to challenge both the structure of the demand and return system and the amount of the fee.

The PBA objects to past decisions of the Appeal Board which reversed initial decisions of Administrative Law Judges dismissing the claims of non-members who did not show up for hearings. It claims such decisions would allow harassment of majority representatives.

Rudolf Lawton of NJEA urged an expeditious completion of rule-making process.

RESPONSE: The agencies believe the rules include the safeguards required by the Hudson and Boonton decisions. A non-member can seek adequate relief in a single proceeding before the Appeal Board. The Appeal Board has jurisdiction to address the adequacy of demand and return systems used by majority representatives in determining whether a non-member is entitled to a return of all or part of his or her representation fees. The practical effect of a decree that a non-member is entitled to a full refund because the majority representative lacks an adequate demand and return system would be the adoption of adequate procedures by the majority representative since continued noncompliance with pertinent decisions, statutes and regulations would jeopardize the majority representative's ability to collect any representation fees. The Appeal Board's decision would specify in what ways a demand and return system was inadequate. See e.g. Jonathan Mallamud v. Rutgers Coun. of AAUP Chapters, A.B.D. No. 86-9, 12 *NJPER* 324 (¶17127 1986), appeal pending App. Div. Dkt. No. 4715-85T6. If relief beyond the remedial powers of the Appeal Board were sought from the Commission, then filings with both agencies would be consolidated into a single proceeding pursuant to court decisions and administrative rules [City of Hackensack v. Winner, 82 N.J. 1 (1980) and N.J.A.C. 1:1-14.1 et seq.] which mandate consolidation of multiple administrative filings arising from the same event.

The PBA's comments address issues beyond the scope of the rule-making proceeding. The propriety of a petition's dismissal is a matter for adjudication in each case. The dismissals to which the PBA refers were reversed in part because the burden of proof in Appeal board proceedings is borne by the respondent majority representative rather than by petitioning non-members. See for example, Daley v. CWA, A.B.D. No. 85-7, 11 *NJPER* 122 (¶16051, 1985).

II. Maximum amount of representation fees in lieu of dues, treatment of objecting and non-objecting non-members.

COMMENTS: Comments were received on the initial rule proposal, PRN-1986-295, published at 18 N.J.R. 1521(a) (August 4, 1986) from the New Jersey Education Association (NJEA), the Communications Workers of America (CWA), the American Association of University Professors (AAUP), the Rutgers Council of the AAUP (Rutgers AAUP), Sidney H. Lehmann, a labor relations attorney, and Robert Angelo of the American Federation of State County and Municipal Employees (AFSCME). Mr. Angelo stated that he shared the views expressed by CWA. All these commentators generally objected to the prohibition in the proposed rules against use of the fees of non-objecting, non-members to support political and ideological lobbying only incidentally related to the terms and conditions of employment. See 19 N.J.R. 197, Section A.II of Public Comments and Agency Responses. These speakers stated that every court and administrative agency decision has adhered to the premise that "dissent is not to be presumed." They believe that the rules should continue to allow majority representatives to support political and ideological activity with funds collected from representation fee payers who do not request refunds of the pro rata share of their fee spent on such activities.

These objections were raised by one or more of the speakers concerning the following proposed rules: 3.3, 3.4, 4.1 through 4.5.

Similar objections have been made with respect to the revised proposal, PRN-1987-41, published at 19 N.J.R. 196(a) (January 20, 1987) by NJEA, CWA, Rutgers AAUP, and PBA and IFPTE.

The PBA objects to the elimination of the requirement that a non-member object in order not to pay the portion of the fee which supports partisan political and ideological activity unrelated to the terms and conditions of employment.

NJEA cites Robinson v. Kean, 806 *F. 2d.* 442 (3d Cir. 1986), (Robinson II) in which the U.S. Court of Appeals for the Third Circuit observed that the New Jersey Supreme Court in Boonton construed the New Jersey Employer-Employee Relations Act in a way to make it consistent with Federal constitutional requirements. NJEA observes that since Federal

constitutional rights do not prohibit requiring that a non-member affirmatively object to be entitled to a rebate of monies spent for partisan political purposes or ideological activities, Boonton was decided upon the same premise.

NJEA attorney Richard Friedman stated that the portions of the Boonton opinion cited by the Appeal Board should be read as rejecting an argument that the demand and return system concept provided inadequate protection to non-members because it would always allow the majority representative an "involuntary loan" by collecting and using the money first and refunding it later. Mr. Friedman believes these passages from Boonton mean that the Act, assuming majority representatives use advance reduction or escrow systems, can be construed to protect the rights of objecting non-members not to give a forced loan to support activities of the majority represenative to which they object and which are not germane to policy goals in collective bargaining and contract administration.

CWA and Rutgers AAUP suggested that the Appeal Board should construe the statutory language instead of ambiguous language in Boonton. CWA and Rutgers AAUP believe it is appropriate for the Appeal Board to issue rules reflecting its own view of the issue, which could subsequently be reviewed by the courts since the Appeal Board is the only body with expertise and experience in the administration of the representation fee legislation.

RESPONSE: Despite the arugments made by the speakers concerning this issue, the agencies continue to adhere to the position expressed in response to comments received on the initially proposed rule PRN 1986-295. While the agencies do not necessarily disagree with the comments made by NJEA concerning Robinson II, the agencies observe that this issue was not in dispute in that case.

As stated in the rule reproposed at 19 N.J.R. 197, Boonton bars majority representatives from using representation fees in lieu of dues for any purpose "that is either in aid of activities or causes of a partisan, political or ideological nature only incidentally related to the terms and conditions of employment or applied to the cost of any other benefits available only to members of the majority representative." N.J.S.A. 34:13A-5.5. Referring to this section of the statute and the 85 percent maximum allowable fee, the Court commented,

> This ceiling clearly reflects the legislative intention to minimize the likelihood that non-member fees will be used for purposes proscribed by the statute. This clear legislative purpose cannot be reconciled with the interpretation of the statute urged by appellant, *i.e.* that subjecting impermissible lobbying expenses to rebate through the demand-and-return system necessarily reflects a legislative acquiescence in including such expenses in the annual representation fee charged to non-members. We reject that interpretation and hold that the provision requiring unions to refund fees used for impermissible political purposes was intended to describe a specific category of expenditures that could not constitutionally be financed by non-member fees. It was not designed to authorize the intentional collection of such fees from non-members on the theory that the money would later be recoverable through the rebate process. 99 N.J. at 549-550.

Although Federal courts have allowed unions to finance such activites with the agency shop fees of those non-members who do not affirmatively object, the agencies are obligated to abide by the mandates of state court decisions construing the representation fee legislation. Hence, the adopted rules reflect this prohibition. The rules preclude the use of any portion of representation fees in lieu of dues "in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment." N.J.S.A. 34:13A-5.5(c). That portion of the representation fee formerly characterized as "refundable", is no longer chargeable to any non-member regardless of objection. The rules do not prohibit a union from expending its funds on such activities through solicitations of members or non-members as allowed by law; however, representation fees may not be used for such purposes.

B. COMMENTS ON SPECIFIC PORTIONS OF PRN 1987-41

19:17-3.3(a)

COMMENTS: Local 195 states that personal service of the statement on all non-members is too burdensome on majority representatives. It suggests that after political objectors are identified and indicate a desire to see the information required to be provided by Hudson, the information should be provided to them. Otherwise maintenance of the information at an accessible location should suffice. Local 195 suggested that the phrase "make available" be substituted for the word "provide".

Hugh Reilly, attorney for the Foundation, stated that all non-members should be provided with the notice.

RESPONSE: Hudson does not expressly require personal service but does say that the fee payer is to be "provided" information. Since Hudson also says that the fee payer should not have to object to get information, the flow of information must be initiated by the majority representative and the fee payer should not have to request the information. Local 195's approach may not go far enough to satisfy Hudson and would add another step to the process.

Boonton, (P.E.R.C. No. 84-3, 9 *NJPER* 472 (¶14199 1983)) requires that a non-member be personally notified of the majority representative's demand and return system. It rejected the posting of the information on an employee bulletin board as adequate notice to the non-member. A majority representative is responsible for providing all fee payers with an adequate explanation of the fee's basis. The rule does not bar alternative means of providing the information, but if personal service is the only way the information can be received by all fee payers, then the majority representative must use that method.

19:17-3.3(a)1.

COMMENTS: The Foundation says that the rule should require the statement to identify "collective bargaining and contract administration costs." It states that Hudson requires such phrasing and also requires that the majority representative's statement of expenses be verified by an independent auditor.

NJEA believes that verification by an independent auditor should not be required in all instances. It cites Andrews v. Ed. Ass'n of Cheshire, 653 *F. Supp.* 1373 (D. Conn. 1987) which held that Hudson's independent verification requirement was not required in all instances, depending on the size of the union. It also urged that the role of the independent auditor not include the making of a legal judgment on whether an item is chargeable to non-members. The auditor should only verify whether the union spent its money on what it says it did. It suggests that the independent auditor requirement should be left to case-by-case adjudication, rather than a rule distinguishing between those unions which need an independent auditor and those which do not.

NJCSA suggested that the rule be amended to accommodate unions who have no affiliates and do not spend money on non-chargeable activities to allow such unions to issue a summary statement to non-members to satisfy the advance information requirements of the decision.

RESPONSE: The language used in this subsection to define what the statement must identify closely tracks the wording of N.J.S.A. 34:13A-5.5(c). The Boonton and Robinson decisions have found this language to be constitutional and its use in the rule is appropriate.

Andrews allowed the use of alternate methods of expense verification for local affiliates of the Connecticut Education Association, based upon the size of those employee organizations. Although Andrews has been appealed, the agencies believe that allowing small employee organizations to use less costly methods of having their expenses checked by a disinterested person is appropriate and will not diminish the rights of non-members to receive required information. Accordingly the rule has been adopted with the addition of the phrase "or other suitable method of expense verification." The propriety of the method used by any majority representative to verify expenses could be an issue in a proceeding to review representation fees or the procedures adopted to collect them. The rule does not determine when a majority representative is not required to use an independent auditor to verify expenses. However, majority representatives are cautioned not to assume that verification by an independent audit is not required simply because they are smaller than the Chicago Federation of Teachers, the union involved in Hudson.

The statement required by this subsection is not meant to be a completely detailed budget. It must provide the required Hudson information and be appropriately verified. Its content, rather than its length or form, is the most important feature.

19:17-3.3(a)2.

COMMENTS: The Foundation says the rule would only require the union to furnish non-members with a description of a union's internal review system. It should instead expressly require a copy.

RESPONSE: The Commission has required that notice of a demand and return system be provided to each non-member. Kramer and Bd. of Ed. of Town of Boonton and Boonton Ed. Ass'n and NJEA, P.E.R.C. No. 84-3, 9 *NJPER* 472, 480 (¶14199 1983), aff'd as mod., sub. nom., Boonton Bd. of Ed. v. Judith M. Kramer 99 N.J. 523 (1985), cert. den. ____ U.S. ____ (1986). The term description was intended to mean copy, and the rule has been adopted with the change suggested by the Foundation.

19:17-3.3(a)3.

COMMENT: The Foundation states that the rule should make it clear that there should be one account for all escrowed fees including the portion sent to affiliates.

RESPONSE: The rule requires that the majority representative disclose where disputed portions of representation fees are being escrowed. If more than one financial institution is involved the rule would require the name and address of all such institutions.

19:17-3.3(a)4.

COMMENT: Local 195 states that providing a schedule for the deduction of the fee may not be possible for a variety of reasons, including, for example, a delay in completing negotiations on a new agreement which may change salaries and correspondingly the amount of the fee (assuming percentage dues) in the middle of a dues year.

RESPONSE: The primary purpose of this rule is to tell non-members the fee amount or, in the case of fees based upon a percentage of salary, the formula used to calculate the fee. The schedule will tell non-members prior to the start of the dues year when the deductions will begin. If later events change that anticipated date, revised information can be prepared and provided to non-members.

19:17-3.3(b)

COMMENT: The Foundation urges that the public employer should receive the same information provided to non-members in accordance with 19:17-3.3(a)1. through 4. It says an employer must have the full information to check the expenditures of the majority representative.

RESPONSE: The adequate explanation of the basis of the fee required by Hudson is information for the benefit of representation fee payers. There is no need to provide it to the employer. Since the statement required to be furnished by this section will be appropriately verified, there will be an initial check on the majority representative's expenditures backed up by Act's requirement the majority representative bear the burden of justifying its expenditures in demand and return and Appeal Board proceedings. Thus only the demand and return system portion of the notice must be provided to the public employer.

19:17-3.4(a)

COMMENT: The organizations and individuals which believe that majority representatives can use the fees of non-objecting fee payers to support political and ideological activity object to the maximum representation fee allowed by this rule for the reasons set forth in Section A.II of this summary.

RESPONSE: As set forth in Section A.II, Boonton bars majority representatives from using representation fees for any purpose "that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied to the cost of any other benefits available only to members of the majority representative." N.J.S.A. 34:13A-5.5. See 99 N.J. at 548 to 550. This prohibition applies regardless of whether a representation fee payer objects. Thus the maximum fee set by this rule will not be adjusted based upon objection or lack thereof.

SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

19:17-4.1

COMMENT: Local 195 states that the rule should be modified to allow the union to first identify those non-members who wish to receive the information required by 19:17-3.3(a). It should first allow 30 days for all non-members to decide whether they want a section 3.3 statement from the majority representative and then allow another period of time in which to file objections.

The Foundation objects to the rule's requirement that the non-member exhaust the majority representative's internal system before proceeding before the Appeal Board. It suggests making exhaustion optional.

RESPONSE: All non-members are to be provided the information required by 19:17-3.3(a). N.J.A.C. 19:17-4.1 sets 30-days as a minimum period. A majority representative can allow a longer period for objections.

Exhaustion of internal union procedures is treated primarily in 19:17-4.3, although the Foundation has addressed its comments on the issue to this rule. The right to appeal to the Appeal Board is a statutory requirement of every demand and return system. A current procedural rule, N.J.A.C. 1:20-4.1 contemplates exhaustion of demand and return system proceedings, but does not bar filing with the Appeal Board if the majority representative's demand and return system is bypassed. N.J.A.C. 1:20-4.1(b). We believe exhaustion is compatible with Boonton and Hudson so long as the determination is reasonably prompt. A non-member may move on to the Appeal Board 60 days after the commencement of a majority representative's demand and return system or sooner if demand and return system proceedings are complete. Since a non-member has six months from the start of collections to file a petition with the Appeal Board (See section 4.5) the 60-day "waiting" period would not compromise this right. However, a determination as to whether exhaustion is required will continue to be made on a case-by-case basis.

19:17-4.2

COMMENT: The Foundation suggests that this rule make it clear that representation fees are to be deposited in escrow accounts.

RESPONSE: The rule has been adopted with technical changes incorporating the Foundation's suggestion. A technical change has also been made in the title of this rule.

19:17-4.3

COMMENT: The Foundation believes that this section should require that a mutually selected, neutrally appointed arbitrator preside over the majority representative's review system. It also suggests that the rule should not require exhaustion of both a majority representative's review system and one maintained by an affiliate.

Local 195 feels that it would be wasteful to allow review proceedings at local union and board level to proceed simultaneously.

CWA, NJEA and Rutgers AAUP believes that 60 days would be too little time for an independent arbitrator to complete his or her task. It suggests that the period be made 90 days.

RESPONSE: Since the Appeal Board fulfills Hudson's impartial tribunal requirement (See Robinson v. Kean, 806 F. 2d. 442 (3d Cir. 1986, "Robinson II), and must be included in all systems a majority representative's internal review system need not have an impartial arbitrator. Majority representatives may use impartial arbitrators if they wish. A technical change has been made in 19:17-4.3(b) to make it clear that exhaustion is required only for 60 days regardless of the number of levels in a majority representative's review system.

The rule allows a fee payer to pursue the majority representative's demand and return system even while pursuing an appeal if such proceedings will be productive. The completion of a majority representative's demand and return system, even while appeals are pending before the Appeal Board, could also provide the basis for a settlement of such appeals.

Hudson requires a reasonably prompt determination. The period for completion of the demand and return proceedings is consonant with that requirement. A union can expand the period it has to complete demand and return proceedings by providing early notice and delaying its collection of fees, since the time for completion of the demand and return proceedings starts from the date of collection, rather than the date the notice is provided.

19:17-4.4

COMMENT: NJCSA believes that the requiring judgment rate interest where the amount escrowed proves to be insufficient, too severely penalizes unions who have made honest mistakes.

RESPONSE: The rule is an incentive for unions to be cautious in determining amounts in dispute. Where there is doubt as to whether certain expenses are chargeable to non-members, a majority representative should place those amounts in escrow pending the resolution of challenges to the fee. A miscalculation could result in a determination that the union has impermissibly taken an involuntary loan from non-members.

19:17-4.5

COMMENT: The PBA believes six months is too long a period to allow for petitions to be filed with the Appeal Board. It suggests 30 days instead. The same suggestion had been previously made by CWA and NJEA. See 19 N.J.R. 199.

RESPONSE: The Board and the Commission believe it advisable to maintain the same six-month statute of limitations for Appeal Board filings as is provided for unfair practice proceedings.

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

SUBCHAPTER 2. PROCEDURES

19:17-2.1 Rules to be read on conjunction with the rules of the Office of Administrative Law

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1, and the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

19:17-3.1 Designation of fiscal year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a fiscal year system of accounting for the expenditures of such organization.

(b) The fiscal year may be the calendar year or any other 12 month period.

19:17-3.2 Designation of dues year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a dues year.

(b) The dues year may be the calendar year or any other 12 month period, except that the dues year may not commence prior to the start of the fiscal year.

19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee, which shall include:

1. A statement, verified by an independent auditor*[,]* ***or by some other suitable method**** of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to nonmembers of the majority representative.

2. A *[description]* ***copy**** of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2. above to the public employer.

19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)1.

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

19:17-4.1 Period for filing of requests for review

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

19:17-4.2 Fees of nonmembers *[requesting rebates]* ***filing requests for review****; escrow of amounts reasonably in dispute

(a) Prior to receiving representation fees in lieu of dues in any dues year, the majority representative shall open an interest-bearing ***escrow**** account in any financial institution in which to place *[in escrow]* all or part of representation fees in lieu of dues to be collected from nonmembers who have filed timely requests for review pursuant to N.J.A.C. 19:17-4.1.

(b) The majority representative shall place in escrow any amount which is reasonably in dispute.

19:17-4.3 Time for completion of demand and return system

(a) Proceedings in the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6 shall be completed within 60 days after the commencement of payroll deductions of representation fees in lieu of dues for the current dues year.

(b) After *[expiration of the period set forth in (a) above]* ***60 days from the commencement of payroll deductions of representation fees in lieu of dues for the current dues year****, or the completion of demand and return system proceedings, whichever date is earlier, any nonmember who has a pending request for review shall be deemed to have exhausted demand and return system proceedings pursuant to N.J.A.C. 1:20-4.1 and N.J.A.C. 19:17-4.5 and may file a petition of appeal with the Appeal Board in accordance with N.J.A.C. 1:20-6.1.

(c) Any majority representative which has commenced, but has not completed, demand and return system proceedings within the time set forth in (a) above shall continue such proceedings to completion, notwithstanding the filing of petitions with the Appeal Board by nonmembers who have requests for review pending with the majority representative, unless all pending requests have been withdrawn or presented to the Appeal Board.

(d) This section shall also apply to demand and return system proceedings conducted by any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative.

19:17-4.4 Results of demand and return system, payment of interest on amounts returned

(a) On completion of demand and return system proceedings, a written decision shall be served on each nonmember whose request for review of the fee is involved in such proceeding.

(b) If the demand and return system proceedings results in a determination that the amount charged to the nonmember was in excess of the amount allowed by statute, such excess amount shall accompany the written decision.

(c) If the amount returned is equal to or less than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the actual interest earned on the amount returned shall be paid to the nonmember.

(d) If the amount returned is greater than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the nonmember will receive interest payable at the judgment rate for the entire amount of the rebate. (See N.J. Court Rules, R. 4:42-11.)

19:17-4.5 Time for filing petitions with Appeal Board

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on April 16, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment is to adopt the Borough of Edgewater's Wastewater Management Plan. This plan addresses the expansion of the Edgewater Sewage Treatment Plant from 3.0 million gallons per day (mgd) to 6.0 mgd to handle the expected growth of the Borough.

(b)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on April 16, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment is to adopt the Chatham Township's (Chatham Glen) Wastewater Management Plan. This plan addresses the expansion of the existing Chatham Glen Sewage Treatment Plant from .12 million gallons per day (mgd) to .155 mgd to provide treatment for additional growth as part of a Mount Laurel settlement.

(c)

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on January 21, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment will provide for a Wastewater Management Plan for West Windsor Township. The Wastewater Management Plan refines the earlier sewer service area mapping, provides for new sewerage conveyance facilities, and revises the areas to be served by the Stony Brook Regional Sewerage Authority and Hamilton Township.

(d)

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 provide for a Wastewater Management Plan for the Hackettstown Municipal Utilities Authority (MUA). This Plan addresses an expansion of the Hackettstown MUA's Sewage Treatment Plant from 1.65 million gallons per day (mgd) to 3.3 mgd. The proposed sewer service area includes Hackettstown and portions of Independence, Mansfield, and Allamuchy Townships located in Warren County, and Mount Olive and Washington Townships located in Morris County.

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 Resources Management Planning, CN-029, 401 East State Street, 3rd Floor, 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 George Horzepa, Bureau of Water Resources Management 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. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(e)

THE COMMISSIONER

Water Pollution Control
Percolation Tests and Reports
Notice of Correction: N.J.A.C. 7:9-2.60

Take notice that missing text appears in the New Jersey Administrative Code at 7:9-2.60(a) concerning Percolation tests and reports. The rule was published in the New Jersey Register as a proposal at 9 N.J.R. 115(b) and as an adoption at 10 N.J.R. 61(b). N.J.A.C. 7:9-2.60 should appear as follows:

7:9-2.60 Percolation tests and reports

(a) At least one percolation test shall be performed at the site of each disposal area. More than one test will be required where the soil structure may vary or large disposal areas are required. Preliminary tests for tracts involving more than one disposal system may be made in the amount of one per acre or as prescribed by the Administrative Authority. All percolation tests shall be performed under the supervision of a licensed professional engineer, licensed Health Officer, or first-grade sanitarian and witnessed by the Administrative Authority or its Authorized Agent. The Administrative Authority or its Authorized Agent may waive the right to observe the percolation tests. If the Administrative Authority or its Authorized Agent is unable to witness the tests within 15 days of written request from a professional engineer, Health Officer or sanitarian **then certification from the engineer, Health Officer or sanitarian** will suffice.

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

LABOR

(f)

THE COMMISSIONER

Availability of Grants

Take notice that in compliance with Senate No. 1991, the Department of Labor hereby announces the availability of the following grant program:

A. Name of program.

Job Training Partnership Act (JTPA) P.L. 97-300 and the New Jersey Job Training Program (NJJTP)

B. Purpose.

The purpose of JTPA is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.

The purpose of NJJTP is to provide job training and employment opportunities for long term unemployed, underemployed, economically disadvantaged, displaced workers and other segments of the labor force who are in need of job training or retraining.

C. Amount of money in program.

The following allotments will be made to the State of New Jersey by the Federal government for the JTPA program during program year 1987:

Title IIA allotment	$37,106,859
Training services for the disadvantaged	
8 percent of above is designated for State Education Coordination and Grants	
3 percent is designated for older individuals	
6 percent is designated for incentives and technical assistance; and	
5 percent is designated for State administration	
Title IIB allotment	17,660,751
Summer Youth Employment and Training program	
Title III allotment	3,046,177
Dislocated Workers	

The following allotments have been made by the State legislature for the New Jersey Jobs Training Program (NJJTP):

Distributed to JTPA Service Delivery Areas	3,000,000
Customized Training	1,000,000

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for funding under the program.

Funds are allocated through the following procedures that are applicable to specific funding titles and sources:

JTPA Title II A and B and eight percent Education: By formula to Service Delivery Areas (SDAs) which are units of local governments with a population of at least 200,000 persons.

Title III and NJJTP: To a lead SDA that is designated to serve a regional area.

Three percent: To SDAs and other entities based on a Request for Proposals.

E. Qualifications needed by an applicant to be considered for the program.

Qualifications required under JTPA Title II:

At least 90 percent of all individuals eligible to participate in programs receiving assistance under this title must meet the following disadvantaged criteria:

1. Receives or is a member of a family which receives cash welfare payments under a Federal, State, or local welfare program.
2. Is a member of a family whose total income for a six month period was not in excess of the poverty level criteria established by the Director of the Office of Management and Budget.

10 percent of other eligible individuals must have encountered barriers to employment which include:

1. Limited English language proficiency
2. Displaced homemakers
3. School dropouts
4. Teenage parents
5. Handicapped
6. Older workers
7. Veterans
8. Offenders
9. Alcoholics
10. Addicts
11. Homeless

Qualifications required under JTPA Title III:

1. Have been terminated or laid off, meets Unemployment Compensation requirements, and are unlikely to return to their previous industry or occupation.
2. Have been terminated as a result of a permanent closure of a plant or facility.
3. Are long-term unemployed with limited opportunity for employment in their same or similar occupation.
4. Were self-employed and are unemployed due to economic conditions.

Qualifications required under the New Jersey Jobs Training Program:

1. Workers who are unemployed.
2. Workers who are underemployed.
3. Workers currently receiving public assistance as a supplement to their income.
4. Workers recently eliminated from the public assistance rolls because their gross income exceeded 150 percent of the grant standard.
5. Workers who are eligible for public assistance but are not receiving it because they have not applied.
6. Workers who are displaced or may be displaced because of plant closings, technological changes or modification in product line.

F. Procedure for eligible entities to apply for grant funds.

For JTPA Title II A and B and eight percent Education funds the SDAs, submit a job training plan that is consistent with Section 104 of Public Law 97-300, October 13, 1982 and with plan instructions issued by the New Jersey Department of Labor.

For JTPA Title III and NJJTP, SDAs and other entities submit an application for funds.

For JTPA three percent Older Worker funds, SDAs and other entities submit application for funds in response to a request for proposals.

G. Address for applications.

Application for funds should be submitted to:

Mary Jane Meehan
Assistant Commissioner for Human Resources
Division of Employment and Training
New Jersey Department of Labor
Labor and Industry Building, Room 1103
Trenton, New Jersey 08625-0055

H. Deadline by which applications must be submitted.

For JTPA Title II A and B and eight percent Education funds, the SDAs must submit a Job Training Plan by April 10, 1987.

For JTPA Title III, NJJTP and Title IIA three percent Older Workers, a Job Training Plan is submitted according to due date specified in application instructions.

I. Date by which applicants shall be notified of approval or disapproval.

Applicants shall receive notice of approval or disapproval of a Job Training Plan within 30 days after the date the plan was submitted, unless a petition for extension is requested whereby the approval period can be extended to 45 days.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Slot Machine Bill Changer System
N.J.A.C. 19:45-1.1, 1.17, 1.32, 1.33, 1.36, 1.37, 1.42, 1.43, 1.44 and 1.47
N.J.A.C. 19:46-1.25 and 1.26
Petitioner: Bally Manufacturing Corporation and Bally's Park Place, Inc.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on April 16, 1987, the petitioners filed a rulemaking petition with the Casino Control Commission proposing amendments to several rules to permit bill changers interacting electronically with slot machines to dispense change from the slot machine's hopper equal to the amount of currency inserted into the bill changer.

Specifically, the petitioners propose two alternatives to establish procedures to insure the security and integrity of bill changers and their component parts. Alternative I proposes a new rule, N.J.A.C. 19:45-1.47. Alternative II would amend N.J.A.C. 19:45-1.17, 1.33, 1.42 and 1.43. Both alternatives govern the removal and transportation of cash storage boxes from bill changers and provide guidelines for counting and recording the contents of cash storage boxes.

Either alternative would also require amendments to N.J.A.C. 19:45-1.1, 1.32, 1.36, 1.37 and 1.44, and N.J.A.C. 19:46-1.25 and 1.26.

These amendments, common to both alternatives, would provide, inter alia, a definition of the "Bill Changer System", authorize the payment of coins or tokens to make change from a slot machine's hopper, require that those coins dispensed as change be calculated in the slot machine win and direct the metering of all slot machines with attached bill changers to automatically record bill changer transactions. In addition, computers monitoring and recording the activities of slot machines with bill changers would also be used to record the number and total value of coins or tokens paid by the slot machine to make change. Finally, it was proposed that the contents of the cash storage boxes, used to collect currency accepted by the bill changers, shall be counted in the count room.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

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 May 4, 1987 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(d).

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.1987 d.1 means the first rule adopted in 1987.

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 number and 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: APRIL 20, 1987.

NEXT UPDATE WILL BE DATED MAY 18, 1987.

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
18 N.J.R. 1223 and 1326	June 16, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1327 and 1432	July 7, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1433 and 1504	July 21, 1986	19 N.J.R. 165 and 260	January 20, 1987
18 N.J.R. 1505 and 1640	August 4, 1986	19 N.J.R. 261 and 324	February 2, 1987
18 N.J.R. 1641 and 1726	August 18, 1986	19 N.J.R. 325 and 392	February 17, 1987
18 N.J.R. 1727 and 1862	September 8, 1986	19 N.J.R. 393 and 430	March 2, 1987
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 431 and 476	March 16, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 587 and 672	April 20, 1987
18 N.J.R. 2149 and 2234	November 3, 1986	19 N.J.R. 673 and 794	May 4, 1987
18 N.J.R. 2235 and 2344	November 17, 1986	19 N.J.R. 795 and 898	May 18, 1987
18 N.J.R. 2345 and 2408	December 1, 1986	19 N.J.R. 899 and 1006	June 1, 1987
		19 N.J.R. 1007 and 1120	June 15, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2—1:21	Administrative hearings	18 N.J.R. 1728(a)	R.1987 d.200	19 N.J.R. 715(a)
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)		
1:30-1.12, 3.6, 4.1	Agency rulemaking: correction to Administrative Code	———	———	19 N.J.R. 777(a)
1:30-3.1	Additional notice of proposed rulemaking	19 N.J.R. 675(b)		
1:30-4.1, 4.5	Filing of adopted rules; emergency rule adoptions	19 N.J.R. 676(a)		
1:31-1.2—2.1	Petition for a rule	19 N.J.R. 677(a)		
	(TRANSMITTAL 25, dated December 15, 1986)			
AGRICULTURE—TITLE 2				
2:22	Control of dangerously injurious insects	19 N.J.R. 479(a)		
2:32	Sire Stakes Program	19 N.J.R. 480(a)	R.1987 d.236	19 N.J.R. 924(a)
2:50	Milk production and supply	19 N.J.R. 433(a)	R.1987 d.232	19 N.J.R. 927(a)
2:69-1.11	Commercial values of fertilizers	19 N.J.R. 484(a)		
2:71-2.28	Fees for grading of fruits and vegetables	19 N.J.R. 901(a)		
2:90-1.5, 1.13, 1.14	Soil erosion and sediment control	19 N.J.R. 395(a)	R.1987 d.222	19 N.J.R. 861(a)
	(TRANSMITTAL 1987-2, dated April 20, 1987)			
BANKING—TITLE 3				
3:6-16	Qualified bank acquisitions of underwritten securities	19 N.J.R. 677(b)		
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:23	License fees	19 N.J.R. 485(a)		
3:25-1	Debt adjustment and credit counseling fees	19 N.J.R. 901(b)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		
	(TRANSMITTAL 1987-2, dated April 20, 1987)			
PERSONNEL (CIVIL SERVICE)—TITLE 4				
4:1-27.1	Overtime rules	19 N.J.R. 327(b)		
4:2-27	Overtime rules	19 N.J.R. 327(b)		
4:6	Overtime Committee Rules	19 N.J.R. 327(b)		
	(TRANSMITTAL 1987-1, dated January 20, 1987)			
COMMUNITY AFFAIRS—TITLE 5				
5:14-1.1—1.4, 2.1—2.3, 3.1—3.23, 4.1—4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-3.18. 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)		
5:23-4.5	Uniform Construction Code enforcement: conflict of interest	19 N.J.R. 332(a)		
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:24-1.12	Condominium and cooperative conversion	19 N.J.R. 797(a)		
5:26-8.2	Duties of community associations in planned real estate developments	19 N.J.R. 797(b)		
5:70	Congregate Housing Services Program	19 N.J.R. 678(a)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:80-22	Affirmative Fair Housing Marketing Plan	19 N.J.R. 798(a)		
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-7.1	Council on Affordable Housing: drastic alteration of development	19 N.J.R. 806(a)		
	(TRANSMITTAL 1987-3, dated March 16, 1987)			
DEFENSE—TITLE 5A				
	(TRANSMITTAL 1, dated May 20, 1985)			
EDUCATION—TITLE 6				
6:3-2	Pupil records	19 N.J.R. 333(a)	R.1987 d.209	19 N.J.R. 749(a)
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)	R.1987 d.239	19 N.J.R. 928(a)
6:20-4	Tuition for private schools for the handicapped	19 N.J.R. 336(a)	R.1987 d.210	19 N.J.R. 751(a)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:53	Vocational education safety standards	19 N.J.R. 485(b)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)		
7:1A	Water Supply Bond Loan Program: extension of comment period	19 N.J.R. 806(b)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)	R.1987 d.217	19 N.J.R. 861(b)
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-2.60	Percolation tests: correction to Administrative Code	_____	_____	19 N.J.R. 1109(e)
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)	R.1987 d.228	19 N.J.R. 868(a)
7:12-1.7	Closure of shellfish harvesting areas: expired rule	_____	_____	19 N.J.R. 888(a)
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: reproposed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)		
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook	19 N.J.R. 169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.8	NJPDES fee schedule	19 N.J.R. 706(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)	R.1987 d.207	19 N.J.R. 755(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)	R.1987 d.208	19 N.J.R. 766(a)
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)	R.1987 d.250	19 N.J.R. 1090(a)
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)		
7:25-5	1987-1988 Game Code	19 N.J.R. 808(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)	R.1987 d.234	19 N.J.R. 1091(a)
7:26-1.7	Temporary certification of solid waste transfer stations	Emergency (expires 6-29-87)	R.1987 d.231	19 N.J.R. 886(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-7.2, 9.1, 9.3, 10.8, 11.4	Hazardous waste management: containers, landfills, existing facilities	19 N.J.R. 441(a)		
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)	Expired	
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)		
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)	R.1987 d.206	19 N.J.R. 770(a)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
HEALTH—TITLE 8				
8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:20-1.2	Reportable birth defects	19 N.J.R. 909(b)		
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)	R.1987 d.227	19 N.J.R. 873(a)
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-5.7	Lifeguard training at ocean and tidal bathing beaches	19 N.J.R. 494(a)		
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.38, 4.62	Hospital reimbursement: outpatient dialysis	19 N.J.R. 840(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:31B-7	Uncompensated Care Trust Fund	19 N.J.R. 495(a)		
8:33E-1	Cardiac diagnostic facilities and services	19 N.J.R. 606(a)		
8:33E-2	Cardiac surgical centers	19 N.J.R. 610(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-5	Intermediate Adult and Special Psychiatric Beds: certification of need	19 N.J.R. 171(b)	R.1987 d.226	19 N.J.R. 873(b)
8:52-1.8	Local health educators	19 N.J.R. 398(b)	R.1987 d.216	19 N.J.R. 879(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:65-10.1, 10.2	Controlled substances: reschedule Alfentanil from Schedule I to Schedule II	19 N.J.R. 841(a)		
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		
8:65-10.3, 10.4	Reassignment of CDS Codes in Schedules III and IV	19 N.J.R. 911(a)		
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a), 19 N.J.R. 118(a), 216(b))	18 N.J.R. 537(a)	R.1987 d.133	19 N.J.R. 450(a)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c), 640(a))	18 N.J.R. 1167(a)	R.1987 d.220	19 N.J.R. 880(b)
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b))	18 N.J.R. 1775(a)	R.1987 d.221	19 N.J.R. 881(a)
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a))	19 N.J.R. 13(a)	R.1987 d.219	19 N.J.R. 880(a)
8:71	Interchangeable drug products	19 N.J.R. 615(a)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
HIGHER EDUCATION—TITLE 9				
9:2-3	Early retirement program for tenured faculty: rehiring as adjunct faculty	19 N.J.R. 912(a)		
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)		
9:2-9	Organization of Board and Department of Higher Education	Exempt	R.1987 d.240	19 N.J.R. 986(a)
9:5-1.1	Student dependency status defined	19 N.J.R. 264(c)	R.1987 d.204	19 N.J.R. 771(a)
9:6-6	Student membership on State college board of trustees	19 N.J.R. 265(a)	R.1987 d.205	19 N.J.R. 771(b)
9:7-4.11	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)		
	(TRANSMITTAL 1987-3, dated April 20, 1987)			
HUMAN SERVICES—TITLE 10				
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)		
10:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)		
10:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)		
10:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)	R.1987 d.253	19 N.J.R. 1093(a)
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.2, 2.13, 5.11	AFDC payment levels	19 N.J.R. 500(a)	R.1987 d.252	19 N.J.R. 1094(a)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-1.7, 1.8, 3.2	AFDC benefits and educational financial aid	19 N.J.R. 709(a)		
10:82-3.2, 4.13, 4.14, 4.15	ASH: resources and income in AFDC	19 N.J.R. 344(a)		
10:82-5.12	ASH: disregarded child support payments	19 N.J.R. 501(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.1, 9.4	General Assistance payment levels	19 N.J.R. 502(a)	R.1987 d.251	19 N.J.R. 1095(a)
10:85-5.3	Personal needs allowance for GA recipients in nursing homes and intermediate care facilities	19 N.J.R. 619(b)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:100-3.6	Submission of cemetery petition by funeral directors	19 N.J.R. 345(a)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
CORRECTIONS—TITLE 10A				
10A:1-1	Department operation and procedures	19 N.J.R. 620(a)		
10A:4-9.12	Representation of inmate in disciplinary case	19 N.J.R. 913(b)		
10A:5-5.2	Involuntary placement into protective custody	19 N.J.R. 842(a)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)		
10A:9-5.6	Earning work credits in county facilities	19 N.J.R. 843(a)		
10A:10-6	International transfer of inmates	19 N.J.R. 916(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)		
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)		
	(TRANSMITTAL 1987-2, dated April 20, 1987)			
INSURANCE—TITLE 11				
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:4-21	Limited death benefit policy forms	19 N.J.R. 843(b)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.16	Real estate contracts and leases subject to attorney review	19 N.J.R. 503(b)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)	Expired	
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
LABOR—TITLE 12				
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Protection of firefighters	19 N.J.R. 48(a)	R.1987 d.241	19 N.J.R. 1098(a)
12:100-4.2, 5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
	(TRANSMITTAL 1987-1, dated February 17, 1987)			
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
	(TRANSMITTAL 1987-1, dated March 16, 1987)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:19-9	Designated State official for notification of out-of-state motor vehicle convictions	19 N.J.R. 621(a)		
13:21-9.4	Restoration of driving privilege	19 N.J.R. 621(b)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)		
13:29-1.7	Conditional credit on Uniform CPA examination	19 N.J.R. 48(b)		
13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.6, 6.9, 8.2	Licensure of dental hygienists; duties of dental assistants; approval of schools of oral hygiene	19 N.J.R. 849(a)		
13:31-1.12, 1.13, 1.14, 1.15	Licensure of electrical contractors	19 N.J.R. 49(a)	R.1987 d.242	19 N.J.R. 1099(a)
13:31-1.16	Electrical contractor ID	19 N.J.R. 352(a)	R.1987 d.244	19 N.J.R. 1100(a)
13:32-1.9	Master plumber ID	19 N.J.R. 352(b)		
13:33-1.11, 1.13	Licensure as ophthalmic dispenser: temporary permit; apprenticeship	19 N.J.R. 917(a)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-6.13	Medical Examiners Board: fee schedule	19 N.J.R. 353(a)	R.1987 d.201	19 N.J.R. 772(a)
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(a)	R.1987 d.243	19 N.J.R. 1100(b)
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)	R.1987 d.238	19 N.J.R. 986(b)
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:40-2, 3.1, 6.1	Professional engineers and land surveyors: requirements for licensure; client relationships; applicant fees	19 N.J.R. 851(a)		
13:40-5.1	Preparation of land surveys	18 N.J.R. 2367(b)	R.1987 d.215	19 N.J.R. 881(a)
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)		
13:45A-2	Motor vehicle advertising practices	18 N.J.R. 2419(b)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:46-5.23	Boxing: time between bouts	18 N.J.R. 2423(a)	R.1987 d.214	19 N.J.R. 882(a)
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)	R.1987 d.230	19 N.J.R. 987(a)
13:51	Chemical breath testing	19 N.J.R. 444(b)	R.1987 d.229	19 N.J.R. 882(b)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 918(a)		
13:71-1.23, 1.24	Harness racing: correction to Administrative Code	———	———	19 N.J.R. 889(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
13:71-20.23	Harness racing: registration of nerved horses	19 N.J.R. 919(a)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
PUBLIC UTILITIES—TITLE 14				
14:1	Change of address: Board of Public Utilities	_____	_____	19 N.J.R. 890(a)
14:1-11	Board of Public Utilities: settlement conferences	19 N.J.R. 919(b)		
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:17	Change of address: Office of Cable Television	_____	_____	19 N.J.R. 890(a)
14:17-6.21	Cable TV: petition to set aside county refusal	19 N.J.R. 504(a)		
14:18-14.5, 14.6	Cable TV: notices of rate and channel line-up changes	19 N.J.R. 505(a)		
	(TRANSMITTAL 1987-3, dated April 20, 1987)			
ENERGY—TITLE 14A				
14A:3-4.1—4.6	Energy subcode	19 N.J.R. 433(b)		
14A:4-1.1—3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)		
	(TRANSMITTAL 1987-2, dated April 20, 1987)			
STATE—TITLE 15				
	(TRANSMITTAL 1987-1, dated February 17, 1987)			
PUBLIC ADVOCATE—TITLE 15A				
	(TRANSMITTAL 1987-1, dated April 20, 1987)			
TRANSPORTATION—TITLE 16				
16:20A-2.4, 4.1, 4.2, 5.1	Federal Aid Urban System Substitution Program: audits by local government	19 N.J.R. 622(a)		
16:20B-1.2, 3.1, 3.2, 5.1	1984 Transportation Trust Fund aid: audits by local government	19 N.J.R. 623(a)		
16:21-3.2, 5.1	State aid to counties and municipalities: audits by recipients	19 N.J.R. 624(a)		
16:21A-3.2, 5.1	Bridge rehabilitation and improvement funds: audits by local government	19 N.J.R. 624(b)		
16:22-3.2, 5.1	Urban revitalization, special demonstration and emergency projects aid: audits by local government	19 N.J.R. 625(a)		
16:28A-1.4, 1.7, 1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69, 1.85, 1.104	No parking zones and bus stops on various State routes	19 N.J.R. 710(a)		
16:28A-1.31	Bus stop zones on Route 45 in Woodbury	19 N.J.R. 920(a)		
16:30-10.4	Midblock crosswalk on Route 33 in Freehold	19 N.J.R. 857(a)		
16:44-3.2, 3.4, 7.5-7.9	Contract administration: construction plans; deferred payments to contractors	19 N.J.R. 181(b)	R.1987 d.218	19 N.J.R. 883(a)
16:56-14.1	Publicly funded airports and state audit policy	19 N.J.R. 921(a)		
16:75	NJ TRANSIT: bus allocation to private carriers	19 N.J.R. 506(a)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
TREASURY-GENERAL—TITLE 17				
17:1-1.10	Balances in withdrawn pension accounts	19 N.J.R. 446(a)		
17:1-1.10	Positive and negative balances in pension accounts	19 N.J.R. 447(a)		
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.36	Pension credit for peacetime military service	19 N.J.R. 353(b)	R.1987 d.198	19 N.J.R. 772(b)
17:1-12.8	State retirement systems: delinquent enrollment and employer liability	19 N.J.R. 626(a)		
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)		
17:19-10	Architect-engineer selection process for State projects	19 N.J.R. 627(a)	R.1987 d.245	19 N.J.R. 1101(a)
17:30	Urban Enterprise Zone Authority	18 N.J.R. 2191(b)	R.1987 d.203	19 N.J.R. 773(a)
17:30	Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 354(a)		
17:32	Municipal and county cross-acceptance of State Development and Redevelopment Plan	19 N.J.R. 509(a)		
	(TRANSMITTAL 1987-4, dated April 20, 1987)			
TREASURY-TAXATION—TITLE 18				
18:5-3.6	Purchase of cigarette revenue stamps	18 N.J.R. 2378(b)		
18:5-3.6, 3.7, 3.8	Purchase of cigarette tax stamps	19 N.J.R. 511(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:7-1.16, 5.2	"Financial business corporation" defined; computation of entire net income	19 N.J.R. 712(a)		
18:12-7.12	Homestead Rebate: extension of time to file	18 N.J.R. 2460(a)	R.1987 d.223	19 N.J.R. 884(a)
18:14-2.11	Veteran's and senior citizen's property tax deductions	19 N.J.R. 195(b)	R.1987 d.224	19 N.J.R. 884(b)
18:15-14.6	Farmland assessments	19 N.J.R. 447(b)	R.1987 d.237	19 N.J.R. 987(b)
18:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)	R.1987 d.246	19 N.J.R. 1104(a)
18:24-1.2, 1.3	Newspaper, periodical, and magazine defined	19 N.J.R. 858(a)		
18:26-12.2	Representation of estates	18 N.J.R. 2321(b)	R.1987 d.225	19 N.J.R. 885(a)
18:35-1.19	Filing extension for property tax credit: expired rule	———	———	19 N.J.R. 890(b)
18:38	Litter control tax	19 N.J.R. 400(b)		
	(TRANSMITTAL 1987-1, dated March 16, 1987)			
TITLE 19—OTHER AGENCIES				
19:4-4.152, 4.154, 4.155, 6.28	Commercial Park Zone	19 N.J.R. 53(a)	R.1987 d.212	19 N.J.R. 774(a)
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Rezoning in Secaucus	19 N.J.R. 54(a)	R.1987 d.211	19 N.J.R. 774(b)
19:4-6.28	Zoning change in Secaucus	19 N.J.R. 448(a)		
19:4-6.28	Zoning change in Little Ferry	19 N.J.R. 512(a)		
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	19 N.J.R. 196(a)	R.1987 d.248	19 N.J.R. 1105(a)
19:17-2.1, 3.1—4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		
19:30-2.1, 2.3, 2.4, 2.6	Economic Development Authority: application and closing fees; categorization of transactions	19 N.J.R. 922(a)		
	(TRANSMITTAL 1987-1, dated January 20, 1987)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-1.2	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:44-8.3	Minibaccarat training	18 N.J.R. 2322(a)		
19:45-1.1, 1.37, 1.40, 1.40A	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:45-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:45-1.33	Accuracy procedures for currency counting machines	19 N.J.R. 923(a)		
19:46-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:46-1.16, 1.18, 1.20	Gaming equipment and evidence of cheating or tampering	18 N.J.R. 2121(a)		
19:46-1.26	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)		
19:47-8.2	Big Six minimum wagers	19 N.J.R. 858(b)		
19:49-3.1	Junket prearrival reports	19 N.J.R. 860(a)		
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:65-1.2, 2.1, 2.4, 2.5, 2.7, 2.9, 2.10, 2.11	Casino Reinvestment Development Authority projects	19 N.J.R. 404(b)	R.1987 d.213	19 N.J.R. 775(a)
	(TRANSMITTAL 1987-2, dated April 20, 1987)			

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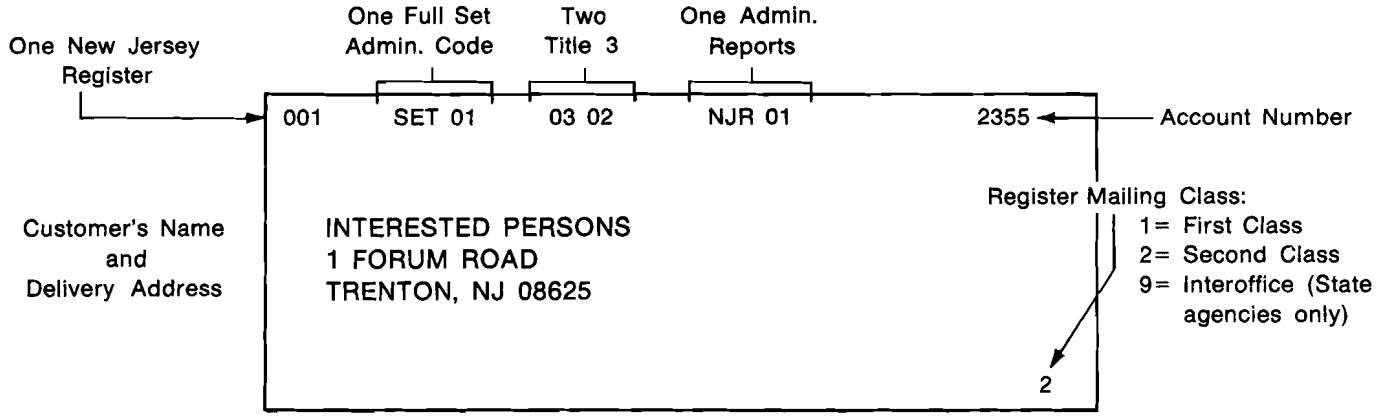

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