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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 20, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 17, 1990

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order No. 15(1990)

Entitlements for State Employees Called to Active Duty in the Reserve and National Guard

Issued: September 13, 1990.

Effective: September 13, 1990.

Expiration: Indefinite.

WHEREAS, the President of the United States issued an Executive Order on August 22, 1990, authorizing the Secretary of Defense to call up select members of the Reserve and National Guard to active duty during the Middle East crisis and authorizing the Secretary of Transportation to similarly call up members of the Coast Guard Reserve;

WHEREAS, Reserve and National Guard members who are activated during this crisis serve a vital national interest for which they deserve the full support of the citizens of this State;

WHEREAS, the State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in time of emergency or natural disaster;

WHEREAS, the State of New Jersey encourages its employees to serve in the Reserve and National Guard and recognizes the personal and economic sacrifices of its employees who are called to active duty during the Middle East crisis;

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

1. New Jersey State employees who are called to active duty during the Middle East crisis shall be entitled upon termination of active duty to return to State employment with full seniority and benefits consistent with State and federal military reemployment and seniority rights.

2. During active duty for a total of up to 180 days, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military pay.

3. These State employees shall be entitled to State employee health benefits, life insurance and pension coverage during active duty service for which they receive differential salary as prescribed in this order as if they were on paid leave of absence.

4. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

RULE PROPOSALS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Permit Applications, Operating Standards, and Recordkeeping Requirements

Proposed Amendments: N.J.A.C. 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, and 12.4

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 031-90-09.

Proposal Number: PRN 1990-518.

Submit comments by November 14, 1990 to:
The Administrative Practice Officer
Office of Policy and Planning
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing amendments to N.J.A.C. 7:26-9, 10, 11, and 12 affecting hazardous waste management. The amendments will bring these subchapters of the State's hazardous waste management program into equivalency with the Federal program, as mandated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. The proposed amendments are already in force as Federal regulations (see 50 FR 28702, July 15, 1985). New Jersey received final authorization of its hazardous waste regulatory program from the United States Environmental Protection Agency (USEPA) on February 21, 1985, but in order to maintain that authorization the State must revise its program to remain equivalent with Federal regulations.

The proposed amendment at N.J.A.C. 7:26-9.2(b)5 prohibits the practice of using any waste oil or any other hazardous waste for the oiling of roads by specifically prohibiting the application of waste oil or other hazardous waste for dust suppression road treatment purposes. This practice is currently prohibited by N.J.A.C. 7:26-9.2(a)2, which contains a general prohibition of unauthorized discharge of pollutants to any environmental medium. Another proposed amendment at N.J.A.C. 7:26-9.2(e) prohibits the placement, including disposal, of any hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave by any person.

The proposed amendment at N.J.A.C. 7:26-10.6(b), at subsection (b) and at subparagraphs (b)1ii and (b)1iii therein, provides that, as part of the liner system requirements for surface impoundments, waste migration shall be prevented during the post-closure period as well as during the active life of the facility.

The proposed amendment at N.J.A.C. 7:26-10.6(b)1 requires that a new surface impoundment at an existing hazardous waste treatment, storage, and disposal (TSD) facility, a replacement of an existing surface impoundment, a lateral expansion of an existing surface impoundment, or a new surface impoundment shall have a liner system that is designed, constructed, and installed in accordance with N.J.A.C. 7:26-10.6(b)1i through x, including a leachate collection system between the liners. A lateral expansion is an increase in area of an existing surface impoundment.

The proposed amendment at N.J.A.C. 7:26-10.6(b)2 requires interim status surface impoundments subject to section 3005(j)1 of RCRA to have either complied with the N.J.A.C. 7:26-10.6(b)1 liner system requirements for new surface impoundments (that is, be retrofitted) or have initiated closure by November 8, 1988. Existing surface impoundments not subject to RCRA but subject to this section of the State rules shall comply with N.J.A.C. 7:26-10.6(b)1 or submit a closure plan within 18 months of the effective date of this amendment and cease receiving hazardous waste within two years of the effective date of this amendment. N.J.A.C. 7:26-10.6(b)2i and ii standards for interim status impoundments are deleted. USEPA has provided a variance for facilities which choose to contest required retrofitting of an existing surface impoundment or existing portions of surface impoundment units that are under interim status. Essentially, if the subject unit or portion thereof has no liner and there is no evidence that the unit is causing groundwater contamination, minimum technology retrofitting requirements may be waived. In New Jersey, experience has indicated that the majority of surface impoundment units which have single liners are contaminating local groundwater to some degree. Therefore, New Jersey will not allow this variance from compliance with N.J.A.C. 7:26-10.6(b)1.

The proposed amendment at N.J.A.C. 7:26-10.8(c), (c)1ii and (c)1iii requires that the liner system of a hazardous waste landfill or cell prevent migration of wastes out of the landfill throughout the post-closure monitoring period in addition to the active life of the landfill. An additional technical correction has been made to N.J.A.C. 7:26-10.8(c)1ii and (c)1iii correcting the conversion of 40 mils to 0.04 inches, from 0.4 inches, as a required minimum thickness of liners.

The proposed amendment at N.J.A.C. 7:26-10.8(c)1 requires that a new landfill or cell at an existing hazardous waste facility, a replacement of an existing landfill or cell, a lateral expansion of an existing landfill or cell, or a new landfill or cell shall be designed, constructed, and installed in accordance with N.J.A.C. 7:26-10.8(c)1i through x, including installation of double liners with leachate collection systems.

The proposed amendment at N.J.A.C. 7:26-10.8(e)10iii and 11.4(a)8 prohibits the disposal of waste containing free liquids, whether or not absorbents have been added to the waste, in any hazardous waste landfill. N.J.A.C. 7:26-11.4(a)8i and ii, which previously allowed disposal of bulk or non-containerized liquids subject to certain conditions, are deleted.

The proposed amendment at N.J.A.C. 7:26-11.3(i) and (j) requires double liners and leachate collection systems for new, replaced or expanded surface impoundments at existing TSD facilities. The May 8, 1985 date at N.J.A.C. 7:26-11.3(i) refers to the effective date of the Federal regulation at 40 CFR 265.221(a), upon which the proposed subsection is based. All surface impoundments in New Jersey were required to comply with the Federal regulation by that date. Upon adoption of this provision, the State regulation will be enforced as well. These facilities must notify the Department at least 60 days before receiving waste and must submit a Part B application within 180 days of the Department's receipt of that notification. The proposed amendments to N.J.A.C. 7:26-1.4(c) and (d) impose similar requirements on landfills.

The proposed amendment at N.J.A.C. 7:26-12.2(a) specifies that facilities operating under permit-by-rule requirements at N.J.A.C. 7:14A-4.5 are exempt from N.J.A.C. 7:26-12.2 permit requirements.

The proposed amendment at N.J.A.C. 7:26-12.2(c) specifies the procedure for correcting a Part A application that the Department believes is deficient.

The Department is proposing several amendments to permitting standards at N.J.A.C. 7:26-12.4. The first of the proposed amendments, at N.J.A.C. 7:26-12.4(a), specifically requires that a hazardous waste facility permit contain whatever provisions are necessary to protect human health and the environment, based on existing State rules. The proposed amendment at N.J.A.C. 7:26-12.4(a)17ii requires the permittee to certify annually that a program is in place to minimize the volume and toxicity of hazardous waste generated and that the method of treatment, storage, or disposal used minimizes the threat to human health and the environment. The proposed amendment at N.J.A.C. 7:26-12.4(a)18 requires the permittee to maintain records of all monitoring information for a minimum of three years. The proposed amendment at N.J.A.C. 7:26-12.4(i) requires that the Department review each permit upon expiration and modify the permit as necessary before its reissuance.

Social Impact

The proposed amendments will have a positive social impact in that they will eliminate some differences between the State and Federal hazardous waste regulatory programs, and will clarify certain current practices (for example, the procedure for correcting a deficient Part A permit) by making them part of the official regulatory requirements. The amendments will provide greater protection to the citizens of the State by imposing more stringent standards on facilities that treat, store, or dispose of hazardous waste, and will facilitate compliance by clarifying requirements and making them consistent with Federal regulations.

Economic Impact

The proposed amendments will impose minimal additional costs to TSD facilities, but those costs are justified by the increased protection to the general public and are necessary in order to maintain equivalency with Federal regulations. Road oiling is already generally prohibited under N.J.A.C. 7:26-9.2(a)2, but the amendments contain a more specific prohibition. No additional financial impact is anticipated because Federal regulations have required compliance with the Federal equivalent of the proposed rules since 1985 (see 50 FR 28702, July 15, 1985). The amendments clarify when a facility must submit a permit application and require the Department to consider the most current new regulations when revising a permit. The design and operational requirements for hazardous waste treatment, storage, or disposal facilities are equivalent to the above mentioned Federal regulations already in effect and no additional economic impact is anticipated.

Environmental Impact

There will be a positive environmental impact as a result of the proposed amendments. The environmentally unsound practice of road oiling will be specifically prohibited. Expired permits are presently reviewed and modified to incorporate new conditions as a result of regulatory or statutory amendments, and the amendments will clarify and provide notice of this requirement. There will be a positive environmental impact from the proposed operational requirements as well. New surface impoundments and landfills or replacements or expansions of existing surface impoundments and landfills will be required to have double liners, groundwater monitoring, and leak detection systems. Existing surface impoundments and landfills that have leaking or inadequate liners will be required to comply with the standards for new facilities. The result will be a reduction in the likelihood of discharge of hazardous waste into the environment.

Regulatory Flexibility Analysis

The proposed amendments will apply to all hazardous waste treatment, storage, and disposal facilities. It is estimated that of the total number of approximately 200 facilities affected by these amendments, most are "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (P.L. 1986, c.169). The compliance requirements of the amendments, and the reporting and recordkeeping requirements imposed at N.J.A.C. 7:26-12.4(a)17ii and 18, are as described in the Summary above. The proposed amendments are not expected to have an economic impact because these requirements were previously adopted as Federal requirements (see 50 FR 28705, July 19, 1985). Therefore, small businesses should already be in compliance with the Federal regulation.

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

7:26-9.2 General prohibitions

(a) (No change.)

(b) [No]A person shall **not** cause, suffer, allow or permit:

1.-4. (No change.)

5. The application of waste oil or any other hazardous waste, or the application of any other material contaminated with dioxin or any other hazardous waste, to the land for the purpose of dust suppression or road treatment.

Recodify 5.-7. as **6.-8.** (No change in text.)

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

(e) A person shall not cause, suffer, allow, or permit the placement, including disposal, of any hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave.

7:26-10.6 Surface impoundments

(a) (No change.)

(b) A surface impoundment that is used for storage, treatment or disposal of hazardous waste shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the surface impoundment to the adjacent subsurface soil or groundwater or surface water during the active life of the surface impoundment, [(]including the closure period as described in N.J.A.C. 7:26-9.8(i), **and any post-closure monitoring period as described in N.J.A.C. 7:26-9.9(b)**[)].

1. A new surface impoundment, **a new surface impoundment at an existing facility, a replacement of an existing surface impoundment, or a lateral expansion of an existing surface impoundment or cell** shall be designed with a liner system in accordance with the following:

i. A surface impoundment shall have two **or more** liners installed to cover all surrounding earth likely to be in contact with the waste or leachate **and shall have a leachate collection system between such liners. The liners and leachate collection system shall protect human health and the environment**;

ii. The primary or upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature **so as** to ensure **that** the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life [(], including the closure period[)], **and post-closure period** of the facility;

iii. The secondary or lower liner shall consist of soil at least three feet (.091 meters) thick with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature **so as** to ensure **that** the prevention of liquid flow through the liner is maintained throughout, **at** a minimum, the active life [(], including the closure period[)], **and post-closure period** of the facility;

iv.-x. (No change.)

2. [If the following conditions are not met,] **The owner or operator of** an existing surface impoundment [shall comply with the design standards of (b)1 above:] **which is subject to section 3005(j)(l) of the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6925(j)(l), shall comply with the design standards of (b)1 above or have initiated closure by November 8, 1988 in accordance with section 3005 of RCRA. The owner or operator of an existing surface impoundment that is not subject to section 3005 of RCRA but is subject to this section of the State's hazardous waste management rules shall comply with the design standards of (b)1 above or shall submit a closure plan to the Department within 18 months after (the effective date of this amendment) and shall cease receiving hazardous waste within two years after (the effective date of this amendment) and initiate closure in accordance with N.J.A.C. 7:26-9.8.**

[i. The surface impoundment is underlain by a liner that consists of soil or material with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec) or a synthetic material which is designed to prevent the flow of liquids through the liner. The liner shall have properties of such a nature to ensure that prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility; and

ii. The Department has approved of the liner based on a review of existing data from groundwater monitoring.]

(c)-(h) (No change.)

7:26-10.8 Hazardous waste landfills

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

(c) A landfill that is used for the disposal of hazardous wastes shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water during the active life of the landfill, including the closure period as described in N.J.A.C. 7:26-9.8(i), **and any post-closure monitoring period as described in N.J.A.C. 7:26-9.9(b)**.

1. A new landfill **or cell, a new landfill or cell at an existing facility, a replacement of an existing landfill or cell, or a lateral expansion of an existing landfill or cell** shall be designed, constructed, and installed with a liner system in accordance with the following:

i. The liner system shall consist of two **or more** liners which shall be installed to cover all surrounding earth likely to be in contact with waste or leachate **and with a leachate collection system installed between such liners. The liners and leachate collection system shall protect human health and the environment**;

ii. The primary or upper liner shall consist of a synthetic material at least 40 mils ([0.4]**0.04** inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure **that** the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life [(], including the closure period[)], **and post-closure period of the facility**;

iii. The secondary or lower liner shall consist of soil at least five feet (1.5 meters) thick with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of synthetic material at least 40 mils ([0.4]**0.04** inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure **that** the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life [(], including the closure period[)]**, and post-closure period of the facility**;

iv.-x. (No change.)

2. (No change.)

(d) (No change.)

(e) Operational standards for hazardous waste landfills include the following:

1.-9. (No change.)

10. The following shall not be placed in a hazardous waste landfill:

i.-ii. (No change.)

iii. Waste containing free liquid **whether or not absorbents have been added**;

iv.-v. (No change.)

11.-22. (No change.)

(f)-(j) (No change.)

7:26-11.3 Surface impoundments

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

(i) The owner or operator of a surface impoundment shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26-10.6(b) for each new surface impoundment at an existing facility, replacement of an existing surface impoundment, or lateral expansion of an existing surface impoundment that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(j) The owner or operator of a surface impoundment referred to in (h) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of such notice.

7:26-11.4 Hazardous waste landfills

(a) Operational standards for hazardous waste landfills include the following:

1.-7. (No change.)

8. Bulk or non-containerized liquid waste or waste containing free liquids, **whether or not absorbents have been added,** shall not be placed in a hazardous waste landfill [unless:

i. The hazardous waste landfill has a liner which is chemically and physically resistent to the added liquid and a functioning leachate collection and removal system with a capacity sufficient to remove all leachate produced; or

ii. Befored disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, so that free liquids are no longer present];

9.-13. (No change.)

(b) (No change.)

(c) The owner or operator of a hazardous waste landfill shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26-10.8(c) with respect to each new landfill or cell at an existing facility, replacement of an existing landfill or cell, or lateral expansion of an existing landfill or cell that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(d) The owner or operator of a landfill or cell referred to in (c) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of that notice.

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

7:26-12.2 Public participation in the permit process

(a) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign and submit an application to the Department as described in this section. Procedures for applications, issuance and administration of emergency permits are found exclusively in N.J.A.C. 7:26-12.9. Procedures for claiming confidentiality are found in N.J.A.C. 7:26-17. **Owners or operators of a facility eligible for a permit-by-rule under N.J.A.C. 7:14A-4.5 are not required to obtain a hazardous waste facility permit under this section for that facility.**

(b) (No change.)

(c) If the Department, upon examination of a Part A application, has reason to believe that the application fails to meet the requirements of N.J.A.C. 7:26-12.2(e) below, the Department shall notify the owner or operator in writing of such apparent deficiency. Such notice shall specify the grounds for the Department's belief that the application is deficient. The owner or operator shall have 30 days from the receipt of the Notice of Deficiency to respond and to explain or remedy that deficiency. If, after such notification and opportunity for response, the Department determines that the application is deficient, the Department may terminate the facility's existing facility status pursuant to N.J.A.C. 7:26-12.3(f)3.

Recodify (c)-(l) as **(d)-(m)** (No change in text.)

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this subchapter. **Each hazardous waste facility permit shall include permit conditions necessary to protect human health and the environment and to achieve compliance with State rules, including all applicable requirements at N.J.A.C. 7:26-9 through 12, as well as any other applicable rules. To satisfy this requirement, the Department may directly incorporate applicable requirements of these or other subchapters into the permit or may establish other permit conditions that are based on these or other subchapters.** All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter **and/or other subchapters** shall be given in the permit.

1.-16. (No change.)

17. The following reports required by N.J.A.C. 7:26-9 and 10 shall be submitted in addition to those required by (a)12 above:

i. (No change.)

ii. An annual certification shall be submitted by the permittee that the permittee has a program in place to reduce the volume and toxicity of hazardous waste generated by the permittee, and that the method of treatment, storage, or disposal of the generated hazardous waste is that method currently available to the permittee that minimizes the present and future threat to human health and the environment.

18. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, the certification required by (a)17ii above, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application.

(b)-(h) (No change.)

(i) Each permit shall be reviewed by the Department upon expiration. The Department shall modify the permit as necessary to ensure that the facility continues to comply with the currently applicable regulatory requirements.

HEALTH

(a)

ALCOHOLISM AND DRUG ABUSE

Good Drug Manufacturing Practices

Proposed New Rules: N.J.A.C. 8:21A

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Authority: N.J.S.A. 24:5-1 et seq., specifically 24:5-1; 24:2-1.
Proposal Number: PRN 1990-530.

Submit comments by November 14, 1990 to:
Lucius A. Bowser, R.P., M.P.H.
Chief
Office of Drug Control
Department of Health
CN 362
Trenton, NJ 08625-0362

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:21A expired on April 1, 1990. The Department of Health has reviewed the rules as required by the Executive Order and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, and is proposing the expired rules as new. The Department of Health is also proposing a new rule, N.J.A.C. 8:21A-2.59, to bring the Good Manufacturing Practices rules into conformity with the Federal rules cited at 21 CFR 211. N.J.A.C. 8:21A-2.59 will encompass tamper-resistant packaging requirements and the labeling of tamper-resistant packaging to ensure that products for over-the-counter consumer use are safe.

The expired rules proposed as new set forth the minimum good manufacturing practice methods to be used in, and the facility controls over, the manufacturing, processing, packing, holding, and labeling of a drug to ensure that such drug meets the requirements of N.J.S.A. 24:1-1 et seq. The proposed rules contain requirements for identity, strength, quality and purity of a drug, as well as requirements for safety in packaging, including safety/tampering closures to be used to prevent accidental ingestion or contamination.

N.J.A.C. 8:21A-1.1 through 1.3 describe the purpose and applicability of the good manufacturing practices, as well as defining words and terms used in this chapter.

N.J.A.C. 8:21A-2.1 identifies the scope of Subchapter 2.

N.J.A.C. 8:21A-2.3 through 2.5 describe the qualifications and responsibilities of personnel and consultants used by a drug manufacturer.

N.J.A.C. 8:21A-2.6 through 2.13 contain requirements for physical plant construction and lighting; ventilation/heating/cooling, air filtration; plumbing, sewage and refuse maintenance; washing/toilet facilities; general sanitation; and repair maintenance.

N.J.A.C. 8:21A-2.14 through 2.18 contain requirements for equipment design, size, location; construction; cleaning and maintenance and use of automated, mechanical and electronic equipment, and filter systems.

N.J.A.C. 8:21A-2.21 through 2.25 cover all the aspects of product components, containers and closures; their use, testing and rejection.

N.J.A.C. 8:21A-2.26 establishes requirements for written procedures and deviations from such procedures.

N.J.A.C. 8:21A-2.27 contains requirements for drug production methods, including receiving, identifying, weighing, measuring of ingredients and the identifying of batches and containers.

N.J.A.C. 8:21A-2.28 sets forth procedures for the calculation of yield of products to be produced.

N.J.A.C. 8:21A-2.29 outlines procedures of equipment identification to ensure proper use, cleaning and maintenance.

N.J.A.C. 8:21A-2.30 through 2.36 control the in-process sampling and testing of product; controls for microbiological contamination; the methods for reprocessing batches and lots of products after production; and examination of all materials used in, and labels used on, drug products.

N.J.A.C. 8:21A-2.37 contains requirements for product inspection and recordkeeping during and at the end of production to ensure that the product is what it is purported to be.

N.J.A.C. 8:21A-2.38 establishes methods for determining and using expiration dates on products to ensure stability, and includes exceptions for specified products.

N.J.A.C. 8:21A-2.39 and 2.40 set forth procedures to be followed in warehousing, storing and distributing drug products.

N.J.A.C. 8:21A-2.41 through 2.45 contain requirements for laboratory control methods, general testing, stability testing, special testing of drug products and reserve samples.

N.J.A.C. 8:21A-2.46 sets forth the criteria for use and care of animals used in drug production studies and processes.

N.J.A.C. 8:21A-2.47 outlines procedures to control for possible penicillin contamination of drug products.

N.J.A.C. 8:21A-2.48 through 8:21A-2.55 establish requirements for records and reports: equipment cleaning and use log; components, containers, closures and labeling; production, master and batch records; and laboratory and distribution records.

N.J.A.C. 8:21A-2.56 specifies the procedures and records necessary to handle complaints on any drug product.

N.J.A.C. 8:21A-2.57 and 2.58 control procedures for handling drug products that may be returned; methods for and records kept on drug product salvaging operations.

N.J.A.C. 8:21A-3, the proposed new rules, will establish the criteria for the use of tamper-resistant packaging for over-the-counter human drug products.

Social Impact

The expired rules proposed as new, which cover good manufacturing practices, and the proposed new rule on safety/tampering resistant packaging for over-the-counter human drug products, will ensure that all drug products are produced safely and packaged for the protection of all citizens. These proposed new rules will affect drug product manufacturers and afford them greater protection from lawsuits and product liability claims. Citizens can be assured that every drug product meets high standards of quality, purity and potency and are labeled as the drug they purport to be.

Economic Impact

The proposed new rules are expected to have no discernible new economic impact upon the pharmaceutical and drug industry over whom they will apply. The impact on the drug industry results from the mandate of the Food and Drug Administration, cited at 21 CFR 210 and 211, setting forth precisely how drug products are to be manufactured and packaged to ensure safety and effectiveness. These rules duplicate Federal requirements. No data is currently available on the total economic impact of the proposed rules. The proposed new requirements for safety/tampering packaging for over-the-counter human drug products should have no additional impact on drug manufacturers, since the same safety/tampering packaging requirements are well established in Federal regulations. There is no readily available data on the amount of the additional costs to the pharmaceutical and drug industry made necessary by these rules.

Regulatory Flexibility Analysis

The expired and proposed as new rules on good manufacturing practices and the proposed new rules on safety/tampering resistant packaging will affect approximately 110 manufacturers of drug products in New Jersey, of whom some 15 can be considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, these small businesses are already subject to the Federal Food and Drug regulations cited at 21 CFR 210 and 211 as to records, production procedures, labels, and packaging and these rules would have no added impact. The Department is not able to establish differential requirements based on business size, since to do so would be contrary to applicable Federal laws and regulations.

Full text of the expired rules proposed as new may be found in the New Jersey Administrative Code at N.J.A.C. 8:21A.

Full text of the proposed new rules follows:

SUBCHAPTER 3. TAMPER-RESISTANT PACKAGING REQUIREMENTS FOR OVER-THE-COUNTER HUMAN DRUG PRODUCTS

8:21A-3.1 Penalties, definitions, packaging and labeling

(a) An over-the-counter (OTC) human drug product (except a dermatological, dentrifice, insulin, or lozenge product) for retail sale that is not packaged in a tamper-resistant package or is not properly labeled under this section shall be considered adulterated or mis-

branded or both. Penalties may be imposed pursuant to N.J.S.A. 24:17-1.

(b) For purposes of this subchapter, the following definitions shall apply, unless specifically defined otherwise within the subchapter:

1. "Aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container;

2. "Distinctive design" means the packaging cannot be duplicated with commonly available materials or commonly available processes;

3. "Tamper-resistant package" means a packaging having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

(c) Each manufacturer and packer who packages an OTC drug product (except dermatological, dentrifice, insulin or lozenge product) for retail sale, shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design (for example, an aerosol product container) or by the use of an identifying characteristic (for example, a pattern, name, registered trademark, logo or picture). A tamper-resistant package shall be one of the following: an immediate container or closure system, or a secondary container or carton system, or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution and retail display.

(d) Each retail package of an OTC drug product covered by (b) and (c) above, except ammonia inhalent in crushable glass ampoules, aerosol products as defined in (b) above or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirements of (b) and (c) above is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band may state the following: "For your protection, this bottle has an imprinted seal around the neck."

8:21A-3.2 Requests for exemptions from packaging and labeling requirements

(a) A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for exemption is required to be submitted in a form of a citizen petition to the U.S. Food & Drug Administration and should be clearly identified on the envelope as a "Request for Exemption from Tampering-Resistant Rule". The petition shall contain the following:

1. The name of the drug product or, if the petition seeks an exemption for a drug class, the name of the drug class, and a list of all products within that class;

2. The reasons that the drug product's compliance with the tampering-resistant packaging or labeling requirement of this section is unnecessary or cannot be achieved;

3. A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the drug product or drug class will be subject to malicious adulteration; and

4. Other information justifying an exemption.

8:21A-3.3 OTC drug products subject to approved new drug applications

Holders of approved new drug applications for OTC drug products are required under 21 CFR 314.8(a)(4)(vi); (5)(xi); or (d)(5) to provide changes in packaging, and under 21 CFR 314.8(a)(5)(xii) to provide for changes in labeling to comply with the requirements of 2.59(C).

8:21A-3.4 Poision Prevention Packaging Act of 1970

This subchapter does not affect any requirement for "special packaging" as defined in 21 CFR 310.3(1) and required under the Poison Prevention Packaging Act of 1970 regulations, 16 CFR 1700.

8:21A-3.5 Effective dates

(a) Pursuant to 21 CFR 211, the packaging requirements in N.J.A.C. 8:21A-3.1(a) became effective on February 7, 1983 for each affected OTC drug product (except oral and vaginal tablets, vaginal and rectal suppositories, and one piece soft gelatin capsules) packed for retail sale on and after that date, except for the requirement for a distinctive indicator or barrier to entry.

(b) Pursuant to 21 CFR 211, the packaging requirement in N.J.A.C. 8:21A-3.1(b) became effective on May 5, 1983 for each OTC drug product that is an oral or vaginal tablet, a vaginal or rectal suppository, or one piece soft gelatin capsule packaged for retail sale on and after that date.

(c) Pursuant to 21 CFR 211, the requirement of N.J.A.C. 8:21A-3.1(c) that the indicator or barrier to entry be distinctive by design and the requirement in N.J.A.C. 8:21A-3.1(d) for a labeling statement became effective May 5, 1983 for each affected OTC drug product packaged for retail sale on or after that date, except that the requirement for a specific label reference to any identifying characteristic became effective on February 6, 1984 for each affected OTC drug product packaged for retail sale on or after that date.

(d) Pursuant to 21 CFR 211, the tamper-resistant packaging requirement of N.J.A.C. 8:21A-3.1(c) above became effective February 6, 1984 for each affected OTC drug product held for sale on or after that date that was packaged for retail sale before May 5, 1983. This does not include the requirement in N.J.A.C. 8:21A-3.1(d) that the indicator or barrier to entry be distinctive by design. Products packaged for retail sale after May 5, 1983 are required to be in compliance with all aspects of the requirements without regard to the retail level effective date.

(a)

ALCOHOLISM AND DRUG ABUSE CONTROL
Controlled Dangerous Substances
Proposed Readoption: N.J.A.C. 8:65

Authorized By: Francis J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 24:21-3 and 24:21-9.

Proposal Number: PRN 1990-531.

Submit comments by November 14, 1990 to:
Lucius A. Bowser, R.P., M.P.H.
Chief
Office of Drug Control
Department of Health
CN 362
Trenton, NJ 08625-0362

The agency's proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:65 will expire on December 2, 1990. The Department of Health has reviewed the rules as required by the Executive Order and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The Department is proposing the readoption of these rules without change.

These rules set forth the requirements for the registration of persons or firms to handle controlled dangerous substances (hereinafter referred to CDS); security; manufacturing; records; official Order Forms; prescription writing and dispensing; reports of losses/thefts; and disposal of CDS products.

N.J.A.C. 8:65-1 covers the requirement for registration, who must register, who may be exempt and fees for registration to handle CDS substances.

N.J.A.C. 8:65-2 establishes the minimum security requirements for storage for CDS products.

N.J.A.C. 8:65-3 explains the labeling procedures and language on the labels in regards to CDS drugs and substances.

N.J.A.C. 8:65-4 is reserved at present.

N.J.A.C. 8:65-5 details types of records and systems of recording production, distribution, sale, inventory or prescribing of CDS substances.

N.J.A.C. 8:65-6 explains the need for and procedures for the use of federal Order Forms in ordering, returning or selling of Schedule I and II CDS products by all registrants.

N.J.A.C. 8:65-7 sets forth the definitions used in this chapter relating to practitioners, prescriptions and "register/registered" persons. It also delineates the manner of issuance of a prescription; quantity and refill authorization; and the use of electronic systems for prescription information storage and retrieval.

N.J.A.C. 8:65-8 is a miscellaneous section citing requirements for reporting distribution of CDS substances between pharmacies and physicians; the procedures in distribution of CDS drugs to ocean going vessels and aircraft; procedures for dispensing of CDS drugs and proper transfer of CDS upon discontinuance of business or practice. It further establishes an exemption of certain CDS drugs for use in bona fide ceremonies of the North American Church in their rituals.

N.J.A.C. 8:65-9 is Reserved at present.

N.J.A.C. 8:65-10 contains the listing of specific controlled substances, by schedule, and provides for certain exceptions from the rules.

N.J.A.C. 8:65-11 contains requirements for narcotic treatment centers.

Social Impact

The proposed readoption of these rules will have a social impact on New Jersey residents in that they will be assured that controlled dangerous substances (that is, narcotics, stimulants, depressants, hallucinogenic and addictive and potentially addictive substances) are being monitored for proper manufacturing/distributing purposes and that diversion from licit to illicit channels does not occur. The readoption will have a social impact on the lawful handlers of controlled drugs who have a responsibility for these types of drugs and substances, in that they will be required to maintain records of production, distribution and disposal, and will, therefore, need to provide employee training in these areas.

Economic Impact

There will be no added economic impact on registrants of controlled dangerous substances in New Jersey, since they are already registered under the provisions of the Federal Controlled Substances Act, cited as 21 U.S.C. 828, and its regulations, cited as 21 CFR 1308, and have been functioning within those regulations since May, 1971. There will be no added costs of operators for these registrants. The current rules are being proposed for readoption without change. The current economic impact, a result of fee, production, recordkeeping, and other requirements, cannot be estimated specifically, since costs vary from business to business. However, such costs can be considered to be an expected factor in conducting a business of this kind and, as such are part of the retail price for such items.

The citizens of this State will not incur any additional economic burden by the readoption of these rules.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 8:65 will affect more than 29,000 persons and firms, most of whom are considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since they are individual practitioners (that is, physicians, dentists, podiatrists, veterinarians and pharmacies). The rules impose fee, reporting, recordkeeping, security, labeling, packaging and handling requirements on those who manufacture, distribute, or dispense those drugs listed at N.J.A.C. 8:65-10. Uniformity of enforcement of these rules is necessary, due to an overriding concern for public health and safety, and due to the necessity of conforming to Federal law and regulation. Therefore, the Department has determined that no differentiation based on business size can be made in these rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:65.

(a)

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

Authorized By: Drug Utilization Review Council, Robert Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6(e).
Proposal Number: PRN 1990-532.

A public hearing concerning this proposal will be held on Wednesday, November 7, 1990, at 2:00 P.M. at the following address:

Hall Conference Room, 8th Floor
New Jersey Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit written comments by November 14, 1990, to:

Sol Mendell, R.Ph.
Principal Field Representative
Drug Utilization Review Council
New Jersey Department of Health
Room 807, CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

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

For the past decade, whenever a product was proposed for addition to the List of Interchangeable Drug Products, the Drug Utilization Review Council (while not being legally bound to do so) has taken into consideration the Food and Drug Administration's (FDA's) advisory opinion on the "therapeutic equivalence" of the proposed generic. With only one recent (and erroneous) exception, which has now been corrected, no product has been added to the List of Interchangeable Drug Products when, in the FDA's opinion, the generic has not proved therapeutically equivalent to the brand for which it was to be substituted.

In the January-June (6th) supplement to its List of Approved Drug Products with Therapeutic Equivalence Evaluations, the FDA formally **changed** its opinion on five generic products, downgrading them from a rating of "AB" (therapeutically equivalent) to one of "BX" (insufficient information to assure therapeutic equivalence). All five products had been added to the New Jersey generic formulary before the rating was changed.

In order to be consistent with its 10 years of precedent, the Drug Utilization Review Council proposes that five products (Chelsea's amitriptyline with perphenazine tablets, 50/4; Chelsea's perphenazine tablets, 8 mg; Chelsea's oxazepam capsules (10, 15, and 30 mg); Chelsea's verapamil tablets (40, 80, and 120 mg) and Superpharm's ibuprofen tablets, 400 mg) be deleted from the List of Interchangeable Drug Products.

Social Impact

There would be little social impact on prescribers, pharmacies or patients, because the brand name products remain on the market and would still be available, as would other generics.

Economic Impact

A negative economic impact would primarily affect the involved manufacturers, Chelsea and Superpharm, which would lose most current sales in New Jersey because their products would no longer be acceptable as legal substitutes for the branded counterparts.

To the extent that some of the generics cannot be returned to suppliers for credit, a secondary economic impact would also be felt by certain pharmacies that stocked medications made by these companies. Those losses cannot be estimated.

There would be no significant negative economic impact on either the New Jersey Medicaid Program or cash-paying consumers because other generic products would remain in the Formulary.

Regulatory Flexibility Analysis

There are no reporting requirements accompanying this proposal for manufacturers, pharmacies, prescribers, or any other small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements involve the discontinuation of use of previously approved substitutes for specific branded drugs. The proposed amendments may affect a number of small businesses; specifically over 1,500 pharmacies. The Department has elected to treat small and large businesses alike, due to a concern for public health.

Full text of the proposal follows:

The Drug Utilization Review Council proposes to **delete** from the List of Interchangeable Drug Products the following products:

Amitriptyline/perphenazine tablets 4/50	Chelsea
Ibuprofen tablets 400 mg	Superpharm
Oxazepam capsules 10 mg, 15 mg, and 30 mg	Chelsea
Perphenazine tablets 8 mg	Chelsea
Verapamil tablets 40, 80, 120 mg	Chelsea

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration

Proposed Readoption with Amendments: N.J.A.C. 10:48

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

Authority: N.J.S.A. 30:4-6 et seq., N.J.S.A. 30:1-12 et seq., and 30:6D-5(b).

Proposal Number: PRN 1990-529.

Submit comments by November 14, 1990 to:
James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, NJ 08625

The agency proposal follows:

Summary

The Commissioner, Department of Human Services, pursuant to the authority of N.J.S.A. 30:4-1 et seq., proposes to readopt N.J.A.C. 10:48, Administration, with amendments. Pursuant to Executive Order No. 66(1978), the current chapter will expire on January 21, 1991. Amendments are proposed to subchapter 1, Appeals Procedure, which establishes policies and procedures to resolve differences between an appellant and the Division of Developmental Disabilities. All references to the handling of contested matters are consistent with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The proposed amendments are intended to make the appeals procedure more understandable and better organized.

Subchapter 2, Viral Hepatitis, was initially adopted on August 21, 1989, and subchapter 3, Lead Control Program, was initially adopted on July 3, 1989. The Department has also reviewed the rules in subchapters 2 and 3 and has determined them to be necessary, reasonable and proper for the purpose for which they were originally intended. Therefore, they are being readopted without amendment.

The following is a summary of proposed amendments and content of N.J.A.C. 10:48.

N.J.A.C. 10:48-1

N.J.A.C. 10:48-1.1, General provisions, contains a number of new requirements regarding the appeals procedures, including settlements, time lines for filing appeals and review of initial appeals.

N.J.A.C. 10:48-1.2, Definitions. New definitions have been added to include the terms "appeal", "appellant", "evidence", "final decision", "non-contested matter", "Office of Administrative Law", "recommended decision", "settlement" and "transfer".

N.J.A.C. 10:48-1.3, Informal conference, more specifically describes the time lines for scheduling an informal conference and the steps involved.

N.J.A.C. 10:48-1.4, Final step, Administrative Review or Administrative Hearing, remains unchanged.

N.J.A.C. 10:48-1.5, Contested cases, remains unchanged.

N.J.A.C. 10.48-1.6, Non-contested cases, has been revised to provide greater detail concerning the conduct of paper reviews and administrative review conferences.

N.J.A.C. 10:48-2 delineates the Division of Developmental Disabilities' policies and procedures regarding viral hepatitis. The rule describes screening and immunization guidelines, monitoring requirements and provisions to protect the rights of clients and/or staff in the Division's service components.

N.J.A.C. 10:48-3 establishes the Division of Developmental Disabilities' policies and standards for a lead control program and a pica/lead registry. The subchapter includes requirements to insure that buildings used in the Division's service components are lead-safe. It also contains the medical precaution requirements for individuals with elevated blood lead levels.

Social Impact

The proposed amendments in subchapter 1 are expected to have a positive social impact since it is anticipated that their implementation will bring disagreements between the Division and consumers or licensees to a speedier resolution. The amendments provide greater detail as to the steps involved in the appeals process. Much time was lost in interpreting the previous rules to the individual appellants.

The amendments provide greater clarity and detail concerning who may appeal, the time limits for filing an appeal and the sequence of events in holding informal appeals and administrative reviews.

Because there are no amendments to subchapters 2 and 3 in this proposed readoption, there will be no negative social impact on either the Viral Hepatitis or Lead Control programs. It is anticipated that both programs will continue to benefit clients and staff in Division service units by providing immunization, testing, monitoring and treatment services for individuals with Hepatitis, elevated blood levels and/or exhibiting pica behavior.

Economic Impact

The proposed amendments to the appeals procedure are expected to have no direct negative economic impact on the Department's applicants, recipients, providers or the public at large. There may, however, be costs associated with the pursuit of an appeal such as attorney fees and expert witnesses or evaluations.

There is no negative economic impact associated with the rules in subchapter 2 on Viral Hepatitis. While the providers are obligated to screen and immunize clients, the rules stipulate that the Division of Developmental Disabilities shall bear the costs of immunization and screening if costs cannot be borne by any other source.

Regarding the rules in subchapter 3 on the Lead Control Program, there may be some negative economic impact on providers in the potential costs associated with maintaining appropriate client placement and effecting lead abatement procedures if a structure is found not to be lead-safe. Clients will not be placed with providers if their location is not certified as lead-safe.

Regulatory Flexibility Analysis

The proposed amendments to subchapter 1 do not impose any reporting and/or recordkeeping requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, there are compliance requirements for small business appellants as set forth in the procedures for appeals. Such requirements are administratively necessary and are applied consistently to all appellants engaged in the appeals process.

Subchapters 2 and 3 do place some recordkeeping requirements on provider agencies, some of which may be considered small businesses under the Act. The requirements of the subchapters include: the testing and monitoring of persons with viral hepatitis or who have elevated blood lead levels; administration (management, admission, transfer and release, personnel duties, reporting and recordkeeping); care, training and supervision of clients, residents and staff, support services (site evaluation, safety and site certification process), and the maintenance of a hepatitis B registry and pica/lead registry.

There are no capital costs associated with the proposed readoption. There may be situations in which a provider will use the services of an outside treating physician in order to meet the compliance requirements regarding client monitoring and treatment.

The Department considers exemptions based on the business size to be inappropriate, because of an overriding concern for the health, safety

and welfare of the clients and staff. Therefore, no differentiation based upon business has been provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:48.

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

10:48-1.1 General provisions

(a) (No change.)

(b) [The rule] **This subchapter** pertains to all disputes and disagreements with service components of the Division of Developmental Disabilities involving [members of the public, clients of the Division and/or their authorized representatives, grantees, licensees and prospective licensees, all herein referred to as complainants.] **a competent adult receiving services from or applying for services of the Division, the guardian of a minor or incompetent adult, the proposed guardian, a licensee of the Division or an authorized representative of a competent adult, guardian of a minor or incompetent adult. In the instance of an attorney, written verification of a client/attorney relationship shall be required.**

(c) It is expected that, in most disputes between [complainants] **appellants** and service components, the [complainant] **appellant** will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the [information office] **Administrative Practice Office** of DDD (609) [984-5525] **633-2209.**

(d) Disputes relating to decisions on educational program issues involving [clients] **persons** of legal school age shall be discussed at a conference with the [complainant] **appellant** and the educational service provider, and/or a conference with the [complainant] **appellant** and the Office of Education, Department of Human Services. If agreement is not possible, further resolution of the dispute shall be made by written request to the Department of Education pursuant to N.J.A.C. 6:28-2.7.

(e) Division staff are responsible for informing persons served and their families/guardians about appeals and to supply them with copies of the appeal procedure.

(f) An appeal may be settled at any time by agreement of both parties, if the agreement is accepted by the chairperson, hearing officer or review officer. A settlement agreement shall be included in the decision of the chairperson, hearing officer or review officer. The settlement shall be considered the final decision. The terms of the settlement shall be binding upon the appellant and the Division.

(g) A settlement may be accepted by the chairperson of an informal conference or the review officer in an administrative review in the same manner as an Administrative Law Judge, in the definition of settlement at N.J.A.C. 10:48-1.2.

(h) After an attempt at informal resolution, the Division Director shall determine a matter to be contested or uncontested. Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Uncontested matters shall be referred for administrative review.

(i) Appeals of eligibility or licensure action shall be initiated within 30 calendar days of written notification.

(j) Appeals of services shall be limited to those services indicated in the current service plan.

(k) Except in emergencies, a transfer may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing within 30 days of the proposed transfer and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the transfer. The Division Director shall decide whether or not to defer the transfer.

(l) If a transfer is made on an emergency basis, the appeal may be filed within 30 days followng the transfer. The individual shall be maintained in the placement to which he or she was transferred during the pending of the appeal.

(m) If an appellant fails to follow the time limits established, the Director's decision is final.

(n) No transcript shall be made of an informal conference.

(o) An initial appeal shall be made in writing to the administrative head of the service component with which the dispute exists.

(p) The administrative head of the component shall review the appeal to ensure that it conforms with the definition herein. If the administrative head determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the administrative head shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the administrative head of the component.

(r) The informal conference may be waived if, prior to the informal conference, the appellant contends that the appeal is a contested matter. The request for waiver shall be forwarded by the administrative head to the Division Director. The Division Director shall review the waiver request and, if he or she concurs that the matter is contested, the informal conference shall be waived. If the matter is determined to be non-contested, the informal conference shall be held.

(s) Evidence may be submitted in informal conferences or administrative reviews. An allegation or conjecture does not constitute evidence.

10:48-1.2 Definitions

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

"Administrative hearing" [shall mean the proceeding which will be conducted by an Administrative Law Judge upon receipt of an appeal determined to be a contested matter or an appeal of a non-contested matter that is referred to the Office of Administrative Law by the Division Director for resolution] **means a proceeding which is conducted by the Office of Administrative Law.**

"Administrative review" [shall mean the informal proceeding which may be scheduled at the discretion of the Division Director to review a non-contested matter upon receipt of an appeal of the first level informal conference decision. This process may take the form of an Administrative Paper Review of relevant records, correspondence, etc., or an Administrative Review Conference with involved parties present.] **means a proceeding which is conducted by a review officer appointed by the Division Director or a paper review as decided by the Division Director following an informal conference concerning a non-contested matter.**

"Appeal" means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division which involves eligibility, provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, parties involved and reasons for the decision. General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1. A competent adult receiving services from or applying for services of the Division;

2. The guardian of a minor or incompetent adult who is receiving services from or applying for services of the Division;

3. The proposed guardian of an individual receiving services where that individual has been assessed in need of a guardian but a guardian has not yet been appointed;

4. A licensee of the Division in response to a licensure action; or

5. An authorized representative of a competent adult receiving services, a guardian of a minor, a guardian for an incompetent adult receiving services or a licensee. Written verification from the competent adult or guardian of a minor or incompetent adult authorizing representation shall be required.

"Chairperson" means the individual appointed by the administrative head of the component to hold an informal conference.

"Contested matter" [shall mean] **means** [a] **an adversary** proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right[s] or by statute to be determined by an agency by decisions, determinations or orders, addressed to them[,] or disposing of their interests, after

opportunity for an agency hearing. (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1.[-1.1 et seq.])

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay (N.J.A.C. 1:1-2.1)

"Final decision" means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules (N.J.A.C. 1:1-2.1).

"Informal conference" [shall] **means** a meeting in which the respective parties may informally attempt to resolve [the issue at hand] **the issue which is the subject to appeal.**

Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision (N.J.A.C. 1:1-2.1).

"Involved parties" [shall mean] **means** the [complainant, his/her] representative [if any] **of the appellant**, and the service component.

"Office of Administrative Law" (OAL) means an independent unit assigned to the Department of State which has the authority to hear contested matters.

"Recommended Decision" means the initial determination made by a Division review officer. That decision is subject to comments or exceptions by the parties and may be accepted, modified or rejected by the Division Director.

"Service component" [shall mean] **means** the operational unit of the Division of Developmental Disabilities ([e.g.] **for example**, Developmental Center, region, bureau, etc.) which has responsibility for the disputed matter.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge (N.J.A.C. 1:1-2.1).

Transfer" means a proposed move from one institution to another, from a community based program to an institution, from an institution to a community based program. (Moves between living units within an institution shall not be considered to be a transfer. Such moves shall be subject to appeal after the move is made).

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Development Disabilities , may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o); N.J.A.C. 1:1-2.1).

10:48-1.3 Initial step: Informal Conference

(a) [Disagreements between conplainants and service components of the Division shall be reviewed informally between the complainant and the service component where a decision is being challenged. This shall be initiated upon request by the complainant to the head of the service component who shall schedule the conference within seven working days of receipt of the request. Extension of the conference date beyond seven working days may only occur upon mutual agreement of both parties.] **Within 10 working days of receipt of the request, an informal conference shall be scheduled by the head of the service component. The informal conference shall be held no more than 20 working days from the receipt of the request. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.**

(b) [The head of the service component, or his/her designee, shall prepare a written report of the Informal Conference that summarizes the matter in dispute and the results of the conference. This report shall be retained in the files of the service component and shall be made available in the event of further appeal.] **The administrative head of the service component, or the chairperson, shall prepare a statement specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.**

(c) [A written response of the results of the conference shall be provided to the complainant within 20 working days.] **If resolution cannot be reached at the informal conference, the appellant may submit a written request to the Director, Division of Development Disabilities, for further appeal within 10 working days of receipt of the written summary. The request shall include the following:**

1. The name, address and telephone number of the appellant;

2. The name and address of the person with developmental disabilities (if different from appellant);

3. The appellant's relationship to the person with developmental disabilities; and

4. A brief statement of the issue under appeal; witnesses, if any to be called; and reference to the law, rule, regulation, policy or procedure alleged to be violated, if applicable.

[(d) Complainants appealing issues thought to be "contested matters" may elect to waive the initial step, Informal Conference and proceed directly to the final step delineated in N.J.A.C. 10:48-1.5.]

[(e)] **(d)** Representation and procedure **requirements are as follows**:

1. Neither the [complainant] **appellant** nor the service component designee shall have legal representation at the Informal Conference.

2. Only those persons who have direct knowledge of the issues involved shall be admitted.

3. The Rules of Evidence shall not be strictly enforced.

4. No transcripts of the proceedings shall be made.

(e) Failure to file an appeal within the prescribed time limits shall render the agency action final.

10:48-1.4 Final step: Administrative Review or Administrative Hearing

(a) Should resolution not be possible at the [Informal Conference] **informal conference** level, the [complainant] **appellant** may submit a written request to the Director, Division of Developmental Disabilities, for administrative appeal.

1. Written request for administrative appeal shall be made within 15 calendar days of the mailing of the written response.

2. If the issue being appealed is thought to be a "contested matter" and the [complainant] **appellant** elects to waive the [Informal Conference] **informal conference**, the written request shall be made within 15 calendar days of the date the head of the service component was notified of the initial step waiver.

3. The request for administrative appeal shall contain the name, address and telephone number of the [complainant] **appellant**; name and address of the client (if different from [complainant] **appellant**); the [complainant's] **appellant's** relationship to client; the date of the complaint; a brief statement of the complaint; witnesses, if any to be called; and reference to the law, rule, regulation, policy or procedure alleged to be violated, if applicable.

(b) The Director, Division of Developmental Disabilities or [his/her] **his or her** designee shall review the complaint and determine if it is a contested or non-contested matter.

10:48-1.5 Contested cases

(a) Those matters determined to be contested[,] shall be referred to the Office of Administrative Law (OAL) **for a hearing**[.], **in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

1. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue informally.

2. The Director, Division of Developmental Disabilities may, at his **or her** discretion **with the agreement of the Director of the OAL**, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o)).

(b)-(c) (No change)

(d) The Director shall notify the appellant that a matter has been transmitted to OAL.

10:48-1.6 Non-contested cases

[(a) If the matter is determined to be non-contested, the Director, Division of Developmental Disabilities at his discretion, shall:

1. Dismiss the case, notifying the complainant that further appeal may be made to the Appellate Division of Superior Court. If the Director dismisses the case he shall set forth his reasons for doing so in writing; or

2. Refer the case back for an Informal Conference, if such a conference has not been held or has been waived pending determination whether the matter is contested or non-contested.

3. Refer the case to a designated Review Officer who shall determine if a paper review without the parties appearing, or an Administrative Review Conference with the parties present, is appropriate.]

(a) If the matter is determined to be non-contested, the Director shall offer an administrative review conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an administrative review officer.

(b) Administrative paper review **requirements are as follows**:

[1. This review shall take place within 10 working days of the date of receipt of the appeal.

2. A written decision shall be forwarded to the involved parties within 10 working days of the review. This shall be considered the Recommended Decision. The written decision shall set forth the reasons for conducting a paper review.]

1. Each party shall submit written arguments supporting their position to the review officer within 20 calendar days of notification of the paper review. Evidence may also be provided.

2. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement of an individual into evidence instead of an affidavit.

3. Discovery shall be limited to the client record as defined in N.J.A.C. 10:41-2.

4. A written decision shall be forwarded to the involved parties within 20 working days of the receipt of both arguments. The written decision shall set forth the reasons for conducting a paper review. This shall be considered the Recommended Decision.

5. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

6. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

7. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

(c) Administrative review conference **requirements are as follows**:

[1. The Review Officer shall schedule an Administrative Review Conference within 20 working days of receipt of the appeal.

2. The involved parties shall be notified at least five working days prior to the Review of the time and place of the conference.

3. The Review Officer shall forward to the involved parties a written decision within 20 working days of the Review Conference. This shall be considered the Recommended Decision.

(d) Written comments, objections or exceptions to the Recommended Decision, if any, shall be submitted to and received by the Division Director's office within 10 working days from the date of the Recommended Decision.

(e) After review of the Recommended Decision and any comments, objections or exceptions that may have been submitted in response to it, the Division Director shall issue a final decision in writing, within 20 working days of the close of the comment period.

(f) Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

(g) Representation and Procedure:

1. At the Administrative Review Conference, the complainant may be represented by an attorney or spokesperson and may present documentation and such witnesses as have direct knowledge of the issues involved.

2. The service component shall be represented by personnel designated by the head of the service component and may produce documentation and such witnesses as have direct knowledge of the issues involved.

3. A verbatim transcript of the proceedings shall be made.]

1. An administrative review conference shall be scheduled within 20 working days of receipt of the appeal. Adjournments may be granted by the Division Director for good and valid reason.

2. The appellant may be represented by attorney or spokesperson and may present documentation and such witnesses as have knowledge of the issues involved.

3. The service component shall be represented by a person designated by the administrative head of the component and may produce documentation and such witnesses as have direct knowledge of the issues involved.

4. A verbatim tape recording of the proceeding shall be made. The party requesting a written transcript shall bear the costs of transcription and shall provide copies to the other party and review officer at no cost.

5. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement by an individual if the individual is not present at the administrative review.

6. Discovery shall be limited to the client record as defined in N.J.A.C. 10:41-2.

7. The administrative review conference shall adhere to the following format:

i. An opening statement by each party;

ii. The presentation of testimony and evidence. There shall be the opportunity for cross examination;

iii. Rebuttal of testimony and evidence. There shall be the opportunity for cross examination; and

iv. A summary.

8. The review officer shall render a written decision within 20 working days of the review conference. This shall be considered the Recommended Decision.

9. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

10. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

11. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

INSURANCE

(a)

DIVISION OF FRAUD

Notice of Comment Period Extension
Towing and Storage Fee Schedule: For Private Passenger Automobiles Damages or Stolen
Proposed New Rules: N.J.A.C. 11:3-38

Take notice that the comment period deadline set forth in the notice of proposal for the proposed new rules N.J.A.C. 11:3-38, published in the August 20, 1990 New Jersey Register at 22 N.J.R. 2455(a), has been extended to October 19, 1990.

Submit comments by October 19, 1990 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF LOCAL HIGHWAY DESIGN
Urban Revitalization, Special Demonstration and Emergency Project Regulations
Proposed Readoption: N.J.A.C. 16:22

Authorized By: Robert A. Innocenzi, Deputy Commissioner, (State Transportation Engineer), Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:8-1 to 9.
Proposal Number: PRN 1990-524.

Submit comments by December 5, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Bureau of Policy & Legislative Analysis
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:22, Urban Revitalization, Special Demonstration and Emergency Project Regulations, will expire on February 3, 1991. These rules were reviewed by the staff of the Bureau of Local Highway Design and were found to be adequate, necessary, reasonable and responsive to the purpose for which they were originally promulgated. These rules were originally proposed as new rules at 12 N.J.R. 286(a) and adopted at 12 N.J.R. 553(b), and amended March 15, 1982 (see 14 N.J.R. 97(a), 14 N.J.R. 284(a)). The rules expired July 17, 1985 and were proposed and adopted as new rules (see 17 N.J.R. 2385(a), 18 N.J.R. 304(a)). Amendments were made on July 6, 1987 (see 19 N.J.R. 625(a), 19 N.J.R. 1231(a)) and February 6, 1989 (see 20 N.J.R. 3000(b), 21 N.J.R. 307(c)).

Funds allocated under this program are used to implement projects that will significantly improve economic and social conditions particularly in older cities, demonstrate innovative transportation techniques that could benefit other municipalities in New Jersey and permit the rapid construction, reconstruction, or rehabilitation of emergency projects that would reduce undue hardship to the traveling public or correct unsafe conditions in a timely fashion.

The chapter is summarized as follows:

N.J.A.C. 16:22-1 outlines the general provisions of the chapter concerning appropriation of funds, objectives, standards, applications and agreements, and procedure and contracts.

N.J.A.C. 16:22-2 details the responsibility of the local government regarding plans and specifications.

N.J.A.C. 16:22-3 provides the method and requirements for the award and payment of contracts.

N.J.A.C. 16:22-4 establishes the conditions required for the State's participation in the costs of projects.

N.J.A.C. 16:22-5 outlines the general provisions required for an audit to be undertaken by an independent auditor or public accountant for local municipalities.

Social Impact

The rules proposed for readoption will continue the improvement of social conditions in older cities and will have an impact on local municipalities, since they outline the procedures and standards to be followed in disbursing funds to local governments. These rules are necessary to provide and promote uniformity in disbursement of the funds and avoid ambiguity or confusion in the procedure and disbursement.

Economic Impact

Funds under this program are appropriated by the Legislature from the State's share of the costs for reconstruction or rehabilitation of emergency projects that would reduce undue hardship to the traveling public or correct unsafe conditions. Allocation is according to a formula set forth in the legislation appropriating the funds. Any reduction in funding would adversely affect the Department's capability to fund local governments, which would affect the economic well-being of the populace they serve. The local governments will continue to incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant who meets the requirements of the State Single Audit Policy, which costs will not be reimbursed by the State.

Regulatory Flexibility Analysis

The proposed readoption will continue the compliance requirements relating to the auditing standards prescribed by the State Single Audit Policy, the receiving of funds to undertake specific projects in the local government, and the standards and design criteria which must be followed before projects are considered under this program. There are no recordkeeping or bookkeeping requirements on small businesses; however, there are performance requirements in N.J.A.C. 16:22-5 on auditors or independent public accountants, who may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and on professional engineers, who must fulfill the licensing and design requirements of this chapter. The Department has made no differential requirements for small businesses, since it believes that uniform adherence to generally accepted accounting principles, license requirements, and industry design specifications is in the public interest.

Full text of the proposed readoption may found in the New Jersey Administrative Code at N.J.A.C. 16:22.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
Speed Limits
Routes U.S. 9W in Bergen County
Proposed Amendment: N.J.A.C. 16:28-1.123

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Proposal Number: PRN 1990-519.

Submit comments by November 14, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish revised "speed limit" zones along Route U.S. 9W in the Boroughs of Fort Lee, Englewood Cliffs, Tenafly and Alpine in Bergen County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Local governments have requested that the speed limits be decreased in certain areas, and that the New Jersey Administrative Code reflect borough jurisdictions and mileposts.

Based upon requests from the local governments, in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of "speed limit" zones along Route U.S. 9W in the Boroughs of Fort Lee, Englewood Cliffs, Tenafly and Alpine in Bergen County were warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28-1.123, based upon the requests from the local governments and traffic investigations and surveys.

Social Impact

The proposed amendment will revise "speed limit" zones along Route U.S. 9W in the Boroughs of Fort Lee, Englewood Cliffs, Tenafly and Alpine for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zone signs, where additional signs are needed. The cost factors for the procurement of signs are variable, based upon the material used, the size and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28-1.123 Route [US] **U.S.** 9W

(a) The rate of speed designated for the certain [part] **parts** of State highway Route [US] **U.S.** 9W described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic

[i. Forty mph from the southerly terminus of Route US 9W, at Routes US 1 and 9 and 46, to a point 400 feet north of Linwood Avenue, Fort Lee; thence

ii. Thirty-five mph to a point 1,100 feet north of Bayview Avenue, Englewood Cliffs; thence

iii. Forty-five mph to a point 2,100 feet north of Palisades Avenue, Englewood Cliffs; thence

iv. Fifty mph to the northerly terminus of Route US 9W at the New York State line;

v. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a).]

i. In Bergen County:

1. Fort Lee Borough:

(A) 35 miles per hour (mph) between Route N.J. 4 and the Englewood Cliffs Borough-Fort Lee Borough line (approximate mileposts 0.0 to 0.95); thence

2. Borough of Englewood Cliffs:

(A) Zone 1: 35 mph between the Fort Lee Borough-Englewood Cliffs Borough line and Middlesex Avenue (approximate mileposts 0.95 to 1.27); thence

(B) Zone 2: 40 mph between Middlesex Avenue and 800 feet north of Demarest Avenue (approximate mileposts 1.27 to 2.60); thence

(C) Zone 3: 50 mph between 800 feet north of Demarest Avenue and the Tenafly Borough-Englewood Cliffs Borough line (approximate mileposts 2.60 to 3.74); thence

3. Borough of Tenafly:

(A) 50 mph between the Englewood Cliffs Borough-Tenafly Borough line and the Alpine Borough-Tenafly Borough line (approximate mileposts 3.74 to 5.26); thence

4. Borough of Alpine:

(A) 50 mph between the Tenafly Borough-Alpine Borough line and the New York-New Jersey State Line (approximate mileposts 5.26 to 11.15).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping

Routes U.S. 22 Alternate in Warren County; N.J. 71 in Monmouth County; N.J. 77 in Cumberland County; U.S. 130 in Burlington County; and N.J. 184 in Middlesex County

Proposed Amendments: N.J.A.C. 16:28A-1.14, 1.38, 1.41 and 1.46

Proposed New Rule: N.J.A.C. 16:28A-1.111

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1, and 39:4-199.

Proposal Number: PRN 1990-522.

Submit comments by November 14, 1990 to:

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

The agency proposal follows:

Summary

The proposed amendments and new rule will establish and revise "no stopping or standing" zones along Route U.S. 22 Alternate in Pohatcong Township, Warren County, and N.J. 184 in Woodbridge Township and the City of Perth Amboy, Middlesex County; a "time limit parking" zone along Route N.J. 71 in Ocean Township, Monmouth County; and "no parking bus stop" zones along Route N.J. 77 in Bridgeton City, Cumberland County, and U.S. 130 in Burlington Township, Burlington 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 requests from the local governments, and as part of a review of current conditions, and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted resurveys and traffic investigations. The resurveys and traffic investigations proved that the establishment and revision of "no stopping or standing" zones along Routes U.S. 22 Alternate in Pohatcong Township, Warren County, and N.J. 184 in Woodbridge Township and the City of Perth Amboy, Middlesex County; "a time limit parking" zone along Route N.J. 71 in Ocean Township, Monmouth County; and "no parking bus stop" zones along Route N.J. 77 in Bridgeton City, Cumberland County, and U.S. 130 in Burlington Township, Burlington County, were warranted. The "no parking" bus stop zones along Route N.J. 77 and U.S. 130 provide additional areas wherein bus passengers may on/off load safely without fear of danger.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.14, 1.38, 1.41 and 1.46, and add new rule N.J.A.C. 16:28A-1.111, based upon the requests from the local governments, the resurveys and traffic investigations.

Social Impact

The proposed amendments and new rule will establish and revise "no stopping or standing" zones along Routes U.S. 22 Alternate in Pohatcong Township, Warren County, and N.J. 184 in Woodbridge Township and the City of Perth Amboy, Middlesex County; a "time limit parking" zone along Route N.J. 71 in Ocean Township, Monmouth County; "no parking bus stop" zones along Routes N.J. 77 in Bridgeton City, Cumberland County, and U.S. 130 in Burlington Township, Burlington 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 in the areas designated along the highway system.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Depart-

ment will bear the costs for the installation of "no stopping or standing" zones signs and the local government will bear the costs for "No parking bus stop" and "time limit parking" zones signs. Costs for the signs will vary; however, approximate costs for single-post signs are $117.00 for planning, engineering and installation, and approximately $7.00 per square foot for fabrication of the sign. Motorists who violate the rules will be assessed the appropriate fine in accordance with the State of New Jersey "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7.3.

Regulatory Flexibility Statement

The proposed amendments and new rule do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments and new rule primarily affect the motoring public and those responsible for enforcement of the rules.

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

16:28A-1.14 Route U.S. 22 Alternate[1]

(a) The certain parts of State highway Route [US] **U.S.** 22 Alternate described in this subsection shall be [, and hereby are,] designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. No stopping or standing **along both sides:**

[i. Along both sides of Pohatcong Township, Warren County from a point 100 feet west of the westerly curb line of Maple Avenue to a point 100 feet east of the easterly curb line of Maple Avenue;

ii. Along the eastbound side from Russell Avenue to St. James Avenue.

iii. Along the north side from a point 100 feet west of the westerly curb line of Shimer Avenue.]

i. In Warren County:

(1) Pohatcong Township:

(A) Within the corporate limits, including all ramps and connections thereto under the jurisdiction of the Commissioner of Transportation.

[1]See also N.J.A.C. 16:28A-1.13.

16:28A-1.38 Route 71

(a) (No change.)

(b) The certain parts of State highway Route 71 described in this [section] **subsection** shall be designated and established as "Time Limit Parking" zones, where parking is prohibited except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. [Time limit parking zone—2 hours, 8:00 a.m. to 8:00 p.m. in Deal Borough, Monmouth County] **In Monmouth County:**

i. Deal Borough:

[i.]**(1) Two hours time limit parking from 8:00 A.M. to 8:00 P.M. daily** [Along] **along** the east side (Norwood Avenue)[: (1)], between Poplar Avenue and Roosevelt Avenue.

ii. Ocean Township:

(1) Two hours time limit parking from 8:00 A.M. to 6:00 P.M. daily along the west side from a point 133 feet north of Roosevelt Avenue running thence south to the northerly curb line of West Morgan Avenue.

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

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 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. In the City of Bridgeton, Cumberland County:

i. Along the southbound (**westerly**) side:

(1) Far side bus stop:

(A) Washington [Street (85 feet)] **Avenue—Beginning at the southerly curb line of Washington Avenue and extending 105 feet southerly therefrom.**

ii.-iii. (No change.)

2.-4. (No change.)

(c) (No change.)

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking bus stop" 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.-11. (No change.)

12. In Burlington Township, Burlington County:

i. Along the southbound (northerly) side:

(1) Near side bus stop:

(A) La Gorce Boulevard—Beginning at the prolongation of the northerly curb line of La Gorce Boulevard and extending 105 feet northerly therefrom.

ii. Along the northbound (easterly) side:

(1) Near side bus stop:

(A) La Gorce Boulevard—Beginning at the southerly curb line of La Gorce Boulevard and extending 135 feet southerly therefrom.

(c) (No change.)

16:28A-1.111 Route 184

(a) The certain parts of State highway Route 184 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. No stopping or standing:

i. In Middlesex County:

(1) Woodbridge Township:

(A) Along both sides of the entire length within the corporate limits of Woodbridge Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones. Signs to be posted only in areas where an official township resolution has been submitted;

(2) City of Perth Amboy:

(A) Along both sides of the entire length within the corporate limits of Perth Amboy City, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones. Signs to be posted only in areas where an official city resolution has been submitted.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Turns

Routes U.S. 130 in Camden County and N.J. 27 in Middlesex County

Proposed Amendments: N.J.A.C. 16:31-1.22 and 1.26

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Proposal Number: PRN 1990-520.

Submit comments by November 14, 1990 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish four right turn prohibitions along Route U.S. 130 in Brooklawn Borough, Camden County, at Community Road, Haakon Road, Nansen Avenue and Norton Avenue. Additionally, left turns will be prohibited from the southbound lane of Route N.J. 27 (Lake Avenue) to the eastbound lane of New Street in Metuchen Borough, Middlesex County between the hours of 7:00 A.M. and 9:00 A.M. and 3:00 P.M. to 6:00 P.M. These amendments are proposed to further the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments, and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no right turn" along Route U.S. 130 in Brooklawn Borough, Camden County, and "no left turn" along Route N.J. 27 in Metuchen Borough, Middlesex County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.22 and 1.26, based upon the requests from the local governments and the traffic investigations.

Social Impacts

The proposed amendments will establish a "no right turn" movement, along Route U.S. 130 in Brooklawn Borough, Camden County, and a "no left turn" along Route N.J. 27 in Metuchen Borough, Middlesex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" and "no right turn" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule", issued under the New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:31-1.22 Route U.S. 130

(a) [Under the provisions of N.J.S.A. 39:4-183.6 turning] **Turning** movements of traffic in certain parts of Route U.S. 130 described in this [section] **subsection** are regulated as follows:

1.-2. (No change.)

3. In Brooklawn Borough, Camden County:

i. No right turn:

(1) Southbound from Route U.S. 130 to westbound onto Community Road;

(2) Southbound from Route U.S. 130 to westbound onto Haakon Road;

(3) Southbound from Route U.S. 130 to westbound onto Nansen Avenue;

(4) Southbound from Route U.S. 130 to westbound onto Horton Avenue.

16:31-1.26 Route 27

(a) Turning movements of traffic in the certain parts of State highway Route 27 described in this [section] **subsection** are regulated as follows:

1. In the Borough of Metuchen, Middlesex County:

i. (No change.)

ii. No left turn from Route 27 (southbound) (Lake Avenue) to New Street (eastbound) between the hours of 7:00 A.M. and 9:00 A.M., and between 3:00 P.M. and 6:00 P.M., Monday through Friday.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Zone of Rate Freedom Exemptions

Proposed Amendment: N.J.A.C. 16:53D-1.3

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.25.

Proposal Number: PRN 1990-539.

Submit comments by November 14, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 16:53D-1.3, Exemptions, implements certain provisions of N.J.S.A. 48:2-21 and 48:4-2.25, relative to casino, charter and special autobus operations, concerning the filing by those operators of their schedules of rates, fares and charges with the State, and also notices to the public of any adjustments 30 days prior to the effective date of the new adjustment. The aforementioned autobus operations have been exempted from the rate regulation provisions of Title 48 and the Zone of Rate Freedom mechanism. Notwithstanding the exemption, advance notification to the Department and the public of any changes in rates, fares and charges continues for the protection of the public and the updating of tariffs on file with the Department.

The proposed amendment introduces an annual filing by January 2, of the then current schedules of rates, fares and charges. An annual filing would assure better compliance in this regard and provide proper advisory to the general public of any adjustments enacted.

The Department, therefore, proposes to amend N.J.A.C. 16:53D-1.3 to implement the filing and public notice requirements.

Social Impact

The proposed amendment will reinforce the requirement that the public and the Department receive advance notification of changes in rates, fares and charges of casino, charter and special autobus operations. The general public will be assured information on potential price increases with proper notification.

Economic Impact

The proposed amendment will have no economic impact since the amounts of rates, fares and charges for casino, charter and special autobus operations continue to be exempt from regulation by the Department. Flexibility is retained in the industry to set its pricing in response to the market. The consumers of such autobus service will continue to benefit from the pricing structure based upon market competitiveness. The Department will incur direct and indirect costs in the rulemaking process. Autobus carriers may incur costs associated with the preparation of public notices and the filing of an annual filing concerning the then current rates, fares and charges.

Regulatory Flexibility Statement

The proposed amendment does not place any additional recordkeeping requirements on small businesses as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, autobus carriers, who may be small businesses, will be required to submit an annual filing concerning the then current rates, fares and charges to the State and provide proper public notices. The proposed amendment affects casino, charter and special autobus operations. The costs involved are not expected to be significant; no need for professional services is anticipated. Given the notification purpose of the amendment, lesser requirements or exemptions cannot be provided for small businesses.

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

16:53D-1.3 Exemptions

(a) The Commissioner hereby exempts casino or regular route in the nature of special, charter and special autobus operations from the rate regulation **provisions** set forth in N.J.A.C. 16:53D-1.1 **and 16:53D-1.2** and in any other chapter of Title 48. Notwithstanding the **rate regulation** exemption, casino or regular route in the nature of special, charter and special autobus [operations] **operators** shall [continue to] **annually** file with the Department **by January 2 the then** current schedules of their rates, fares or charges **for such operations.**

(b) Notwithstanding the aforementioned exemption, any casino or regular route in the nature of special, charter or special autobus carrier which seeks to adjust its rates, fares or charges shall be required to:

1. Notify the Department by filing a complete schedule of all current rates, fares and charges, and all rates, fares and charges to be adjusted, at least 30 days prior to the effective date of the new adjustment; and

2. Post a public notice in all autobuses used in the service to be affected by the adjusted rates, fares or charges and in all bus termini served by those autobuses, at least 30 days prior to the effective date of the new adjustment. The autobus carrier shall verify to the Department by filing a copy of said public notice and an affidavit that it has in fact posted such public notice, at least 30 days prior to the effective date of the new adjustment.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

State Police Retirement System

Proposed Readoption: N.J.A.C. 17:5

Authorized By: State Police Retirement System, Michael Weik, Acting Secretary.

Authority: N.J.S.A. 53:5A-45.

Proposal Number: PRN 1990-521.

Submit comments by November 14, 1990 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:5, concerning the State Police Retirement System. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operations of the retirement system, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:5, the Division is satisfied that they are necessary and needed for the efficient operation of the State Police Retirement System. Accordingly, the Division of Pensions, in conjunction with the Board of Trustees of the State Police Retirement System, proposes to readopt the current rules within N.J.A.C. 17:5, which expire on December 2, 1990, pursuant to Executive Order No. 66(1978).

The current rules within N.J.A.C. 17:5 deal with administration, insurance and death benefits, membership, purchases and eligible service, retirement and transfers.

Social Impact

The rules governing the State Police Retirement System affect and work to the benefit of the past, present and future law enforcement officers within the New Jersey State Police. The taxpaying public is affected by these rules in the sense that public funds are used to fund the system.

Economic Impact

While the readoption of the rules by themselves will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

Regulatory Flexibility Statement

The rules of the State Police Retirement System only affect public employers and employees. Thus, this proposed readoption and repeal do not impose any reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:5.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Local Property Tax

Senior Citizens

Proposed Amendments: N.J.A.C. 18:14-1.1, 2.1, 2.2, 2.3, 2.4, 2.8, 2.10, 3.3, 3.7, 3.9, 3.10

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:4-8.47, 54:4-8.56.

Proposal Number: PRN 1990-517.

Submit comments by November 14, 1990 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments update the rules promulgated pursuant to P.L. 1976, c. 129, as amended, providing for a $250.00 property tax deduction for qualified senior citizens, disabled persons and their surviving spouses. A recent amendment to that statute, P.L. 1989, c. 252, expanded the class of individuals entitled to receive the deduction to include qualifying resident tenants of a cooperative or mutual housing corporation. The amendments are intended to provide further guidance to the general public and local taxing officials for use in determining entitlement to the deduction. A constitutional amendment necessary to authorize the extension of the exemption was voted upon in the November, 1988 election and was adopted.

Amendments were also made to N.J.A.C. 18:14-2.10 which allow 30 additional days for the filing of a statement of income, 60 additional days for extensions, and 90 additional days for the payment of disallowed tax deductions.

Social Impact

Under the proposed amendments, a broadened group of low income senior citizens, disabled persons and their surviving spouses will be eligible to receive the benefits of the deduction. The amendments affect those residing in cooperatives and mutual housing corporations who were previously ineligible for the benefits.

The lengthening of the time limits at N.J.A.C. 18:14-2.10 will give qualified senior citizens, disabled persons and their surviving spouses more time to comply with the requirements.

Economic Impact

The proposed amendments should have minimal impact on State revenue, paralleling and approximating that amount contemplated in the revenue statements considered by the Legislature at the time of adoption of the statute. A fiscal note prepared for the constitutional amendment which P.L. 1989, c.252 implemented indicated that State costs would increase by approximately $2 million for additional reimbursement to municipalities. The rules themselves are not intended to have a separate,

distinct or independent economic impact different from the underlying statute and constitutional provision.

The amendments to N.J.A.C. 18:14-2.10 will give more time to comply with requirements and may enable some senior citizens to receive the deduction who would not otherwise be eligible.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposal does not impose mandatory reporting, recordkeeping or other compliance requirements upon small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the amendments affect only certain groups of individuals.

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

18:14-1.1 Words and phrases defined

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

...

"Cooperative" means a housing corporation or association incorporated or organized under the laws of New Jersey which entitles a shareholder thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by the corporation or association.

...

"Mutual housing corporation" means a not for profit corporation incorporated under the laws of New Jersey on a mutual or cooperative basis within the scope of section 607 of the "National Defense Housing Act," Pub. L. 76-849 (42 U.S.C. §§ 1521 et seq.), which acquired a National Defense Housing Project authority.

...

18:14-2.1 Application for deduction

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

(d) Application forms for the senior citizen deduction, for the permanently and totally disabled and for surviving spouses in certain cases will be termed "property tax deduction forms" and identified as follows:

1. [PD-1—Claim for deduction by person of the age of 65 years or over] **Form PTD (June 1986) Claim for deduction by a person aged 65 years or over, or permanently and totally disabled or a surviving spouse of the age of 55 years or over, on a dwelling house located in ....;**

[2. PD-2 Claim for deduction by person who is permanently and totally disabled;

3. PD-3—Claim for deduction by the surviving spouse (age of 55 years or over of a senior citizen or a permanently and totally disabled citizen;]

Recodify existing 4. and 5. as **2. and 3.** (No change in text.)

18:14-2.2 Proof required to establish right to deduction of persons of the age of 65 or more years or less than 65 years of age who are permanently and totally disabled

(a) Every fact essential to support a claim for deduction must exist on October 1 of the year preceding the tax year with respect to which a deduction claimed, except that the age requirement or the date claimant was permanently and totally disabled must be met as of December 31 of the pretax year. It is essential that claimant, as of the said October 1, except with respect to the age requirement, or permanently and totally disabled prerequisites, establish that he **or she** was:

1.-2. (No change.)

3. The owner of a dwelling house which is a constituent part of the real property for which deduction is claimed; or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others; **or residing as a tenant shareholder in a cooperative or mutual housing corporation;** and

4. (No change.)

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

18:14-2.3 Proof required to establish right to deduction for a surviving spouse

(a) Every fact essential to support a claim for deduction must exist on October 1 of the year preceding the tax year with respect to which a deduction is claimed, except claimant therefor shall establish that he is or will be on or before December 31 of the pretax year 55 or more years of age and was 55 or more years of age at the time of the death of the decedent and unmarried. It is essential that claimant, as of the said October 1, except with respect to the age requirement and marital status, establish that he was:

1.-2. (No change.)

3. The owner of a dwelling house which is a constituent part of the real property of which the deduction is claimed; or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others; **or residing as a tenant shareholder in a cooperative or mutual housing corporation;** and

4. (No change.)

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

18:14-2.4 Proof of totally and permanently disabled

Every claim for a deduction by a person who is permanently and totally disabled shall include a physician's certificate or Social Security award certificate, Form SSA-30, **or a report of Confidential Social Security Benefits Information, Form SS-2458, or a Social Security Third Party Query Response,** verifying the claimant's permanent and total disability and in the claim by a person who is blind, he **or she** may additionally submit a certificate from the New Jersey Commission of the Blind certifying to blindness as defined. (See N.J.A.C. 18:14-1.1 for a definition of "blindness.")

18:14-2.8 Proof of ownership

(a) The act requires that the claimant be the owner of the dwelling house which is a constituent part of the real estate on which the deduction is claimed or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others, **or residing as a tenant shareholder in a cooperative or a mutual housing corporation**. See N.J.A.C. 18:14-1.1 for a definition of dwelling house. A claimant should be prepared to furnish, on request of the assessor or collector, proof of ownership of the property for which deduction is claimed. Deduction cannot be allowed on a dwelling house on which the claimant has only an estate for a term of years, a leasehold interest or an interest of any other nature less than an estate in fee. Deduction may be allowed where the claimant's interest in the dwelling house is that of a tenant for life provided the tenant is responsible for the payment of taxes on the property on which the deduction is granted. Where the claimant asserts that his **or her** interest in the dwelling house on which deduction is claimed arises from a will or the interstate laws of this State, care should be exercised to make certain that he **or she** is the owner of the legal title to such property, individually or jointly, or has a life estate in such dwelling house.

(b) (No change.)

(c) Where a claimant is a resident-shareholder in a cooperative or mutual housing corporation, claimant must submit such proof as may be required to establish residency therein as of October 1 of the pretax year.

18:14-2.10 Proof of income; post-tax year statement

(a) Every person allowed a real property tax deduction is required to file with the collector of the taxing district on or before [February 1] **March 1** of the post-tax year a statement under oath of his **or her** income for the tax year and his **or her** anticipated income for the current tax year as well as any other information deemed necessary to establish the right of the claimant to a tax deduction for such current tax year.

1. The collector may grant a reasonable extension of time for filing the statement required, which extension shall terminate no later than [March 1] **May 1** of the post-tax year, in any event which it shall appear to the satisfaction of the collector that the failure to file by [February 1] **March 1** was due to the illness of the claimant and the claimant has filed with the collector a physician's certificate stating that the claimant was physically incapacitated and unable to file on or before [February 1] **March 1**. In any case where such an extension

is granted by the collector, the required statement shall be filed on or before [March 1] **May 1** of the post-tax year.

(b) (No change.)

(c) The failure of any person to file the statement within time herein provided or to submit such proof as the collector deems necessary to verify a statement that has been filed, or if it is determined that the income of any such person exceeded the applicable annual income limitation for said tax year, his **or her** tax deduction for said tax year will be disallowed and his taxes to the extent represented by the amount of said deduction will be payable on or before [March 1] **June 1** of the post-tax year.

(d) Any taxes due under (c) above and not paid on or before [March 1] **June 1** of the post-tax year, constitute a lien on the property of the person liable for the tax and in addition become a personal debt of such person.

(e) (No change.)

18:14-3.3 Deduction where property owned by partnership, fiduciary or corporation

The right to claim a deduction extends to property the title to which is held by a partnership, to the extent of the claimant's interest as a partner therein, and by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim such deduction hereunder, but not to property, the title to which is held by a corporation; **except that a residential shareholder in a cooperative or mutual housing corporation shall be entitled to claim a deduction he or she is otherwise eligible to receive to the extent of the proportionate share of the taxes assessed against the real property of the corporation, or any other entity holding title, attributable to his or her unit therein.**

18:14-3.7 Deduction where claimant dies

(a) Where a claimant files a claim for deduction on form [PD 1, 2 or 3] **PTD (June 1986)** with the local assessor in the pretax year and the claimant dies prior to January 1 of the ensuing tax year, the claim for deduction for such tax year shall be disallowed.

(b) If it is determined that the claimant's application [(form PD 1, 2 or 3)] **form PTD (June 1986)** satisfied all the prerequisites essential to the deduction on October 1 of the pretax year and the claimant dies on January 1 of the tax year or subsequent thereto, the claim for deduction shall be allowed. There shall be no need for proration and no post-tax year statement need be filed during the year following such tax year, except as hereinafter provided.

(c) Where a claimant files an application [(form PD 1, 2 or 3)] **form PTD (June 1986)** for deduction with the tax collector during the tax year and the claimant dies after approval of such application, there shall be no need for proration and no post-tax year statement need be filed during the year following such tax year, except as hereinafter provided.

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

(g) An executor, administrator or any other person on behalf of a claimant who dies without having filed an application for deduction on form [(PD 1, 2 or 3)] **PTD (June 1986)** may not file an application for deduction on behalf of said decedent since this deduction is deemed to be a personal one.

18:14-3.9 Pro rata or complete revocation of deduction

(a) (No change.)

(b) Upon the failure of any such person to file the statement within the time prescribed or to submit such proof as the collector deems necessary to verify a statement that has been filed, or if it is determined that the income of any such person exceeded $10,000 for the tax year during which the change of circumstances occurred, his **or her** tax deduction for said tax year shall be disallowed and his **or her** taxes to the extent represented by the amount of said deduction shall be payable on or before [March 1] **June 1** of the post-tax year or, where an extension of time for filing has been granted no later than 30 calendar days after the expiration of said extension, after which date if unpaid, said taxes shall be delinquent, constitute a lien on the property, and, in addition, the amount of said taxes shall be a personal debt of said person.

18:14-3.10 Disallowance of claim; notice

(a) If the application for deduction has been disapproved, a notice of disallowance form (PD 4, April 1981) shall be forwarded to the claimant by regular mail and shall set forth the reason or reasons for disallowance of the claim and shall also set forth a statement notifying the taxpayer of his right to appeal to the county board of taxation on or before August 15 of the tax year.

1. By the assessor: Where an initial application for deduction under N.J.S.A. 54:4-8.40 et seq. [(form PD 1, 2 or 3)] **form PTD (June 1986)** has been filed with the assessor on or after October 1 and no later than December 31 of the year preceding the tax year for which the deduction is claimed and it has been denied, notice of disallowance form (PD 4, April 1981) shall be forwarded by the assessor to the claimant on or before June 1 of the tax year.

2. By the collector:

i. Where an initial application for deduction under N.J.S.A. 54:4-8.40 et seq. [(form PD 1, 2 or 3)] **form PTD (June 1986)** has been filed with the collector on or after January 1 and not later than December 31 of the tax year and it has been denied, notice of disallowance form (PD 4, April 1981) shall be forwarded by the collector to the claimant within 30 days of receipt of the application;

ii. Where the deduction has been denied by the collector because the claimant failed to prove his **or her** entitlement to the deduction for the tax year or to the continuation of the deduction for the ensuing tax year, as required by N.J.S.A. 54:4-8.44a, notice of disallowance form (PD 4, April 1981) shall be forwarded to the claimant on or before [February 10] **April 1** of the post-tax year or, where an extension of time for filing has been granted, no later than [10] **30** calendar days following the expiration of said extension[;].

[iii. Where a claimant in any subsequent year fails to qualify for such a deduction, and the claimant has previously filed an application for a veteran's deduction or an application as a widow of either a veteran or a serviceman and is otherwise entitled to such a deduction, a claim for a veteran's deduction or the claim of a widow of a veteran or a serviceman shall be determined to be in effect for such tax year or years without further application on the part of such claimants. However, nothing herein shall preclude the assessor from inquiring into the eligibility of the veteran or the widow of a veteran or serviceman to receive such a deduction for the tax year or years in question.]

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
Presentation of Agreements with Casino Licensees and Applicants
Proposed Amendment: N.J.A.C. 19:41-11.1

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(c), 92(c) and 104(b).

Proposal Number: PRN 1990-526.

Submit comments by November 14, 1990 to:
Richard P. Franz
Deputy Director, License Division
Casino Control Commission
Arcade Building, Second Floor
Tennessee Ave. and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.S.A. 5:12-104(b) requires in part that casino licensees and casino license applicants maintain and have available for review by the Casino Control Commission any written or unwritten agreements regarding the

realty, construction, maintenance or business of a proposed or existing casino hotel or related facility.

Pursuant to that section of the Casino Control Act, the Commission has adopted certain rules concerning the manner in which a casino licensee or a casino license applicant must make such agreements available to the Commission for its review (see N.J.A.C. 19:41-11). Under the current rules, an actual copy of an individual contract need not be filed unless specifically directed by the Commission. Generally, the casino licensee or casino license applicant need only file a Vendor Registration Form which identifies the persons associated with the business and describes the type of business being conducted. In addition, periodic reports on the amount of business transacted with each enterprise are filed with the Commission.

The proposed amendment would require copies of certain types of agreements to be filed with the Commission by a casino licensee or a casino license applicant within specified time periods after offer and acceptance. The categories of contracts included in this proposed amendment have historically resulted in the enterprises involved in such contracts being requested to file casino service industry license applications. By requiring the filing of the agreement itself, the Commission will have additional pertinent information to review in making its determination as to whether the company involved should be required to obtain a casino service industry license pursuant to N.J.S.A. 5:12-92. It is anticipated that adoption of the proposed amendment will allow the Commission to make its licensing decisions in a more expeditious manner.

Social Impact

The proposed amendment should aid the Commission in making a more rapid determination regarding which enterprises must be licensed as casino service industries pursuant to the Casino Control Act. It should allow the identification and investigation of appropriate casino service industries in a more timely manner. Accordingly, the proposed amendment should assist the Commission in achieving the legislative goal of assuring strict State regulation of all casino service industry enterprises (see N.J.S.A. 5:12-1(b)6).

Economic Impact

It is not anticipated that any additional companies will be requested to file a casino service industry license application as a result of this amendment. However, because requests for license applications may be made to the companies identified in this amendment earlier in their business relationships with the casino industry, this amendment may result in additional companies filing license applications. If that occurs, it will result in additional companies paying the appropriate license application fee to cover the cost of the license investigations. Since there will be additional investigations, however, it would appear that the overall impact on the Casino Control Fund will be negligible.

The proposed amendment can be expected to result in some additional costs to casino licensees and applicants in creating a system to identify and copy those contracts which must be submitted. The exact costs will depend in great part on the procedures established by each casino licensee or applicant and cannot be specifically identified by the Commission. However, since each casino licensee or applicant already has in place a system by which it files a Vendor Registration Form or confirms vendor registration for all new contractors, it is not anticipated that the added requirement to file an actual copy of the contract in the limited cases covered by this amendment will impose significant new costs.

Regulatory Flexibility Analysis

The proposed amendment requires the filing of certain contracts by casino licensees and applicants for a casino license. These companies do not fall within the definition of "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), N.J.S.A. 52:14B-16 et seq.

However, compliance by these licensees or applicants with the amendment may result in additional requests from the Commission to certain enterprises, some of which may be small businesses, to file casino service industry license applications. These small businesses would only be required to file, however, if it was determined that they were transacting "regular or continuing business" with a casino licensee or applicant as that term is defined in the Commission regulations (see N.J.A.C. 19:43-1.2). That being the case, the Commission has balanced the economic impact of the proposed amendment on small businesses with the obvious legislative intent of a comprehensive licensing scheme for those businesses transacting business with casino licensees. In light of that obvious legislative intent, no exemption from coverage is provided for small businesses. It is the opinion of the Commission that to grant an exemption when not authorized by the Legislature would negatively impact the public's confidence in the Commission's ability to effectively regulate the casino industry.

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

19:41-11.1 Presentation of the agreement

(a) Each casino licensee **or applicant for a casino license** shall be required upon directive of the Commission to present to and file with the Commission a fully signed copy of every written agreement and a precise written description of the terms of and persons involved in and associated with every other agreement regarding the realty [of its casino hotel facility or any business or person doing business with or on the premise of its] **, construction, maintenance or business of a proposed or existing** casino hotel **or related** facility, **regardless of whether the casino licensee or applicant for a casino license is a party to the agreement**.

[(b) Each applicant for a casino license, upon directive of the Commission, shall be required so to present to and file with the Commission every such agreement likely to not have been fully and completely performed in all respects by all parties prior to the issuance to the applicant of a casino license.]

Recodify existing (c) as (**b**) (No change in text.)

(c) Notwithstanding (a) above, each casino licensee or applicant for a casino license shall be required to present to and file with the Commission no later than 10 calendar days following the formal offer and acceptance of an agreement if the casino licensee or applicant is a party to the agreement, and no later than 15 business days following the formal offer and acceptance of an agreement if the casino licensee or applicant is not a party to the agreement, a fully signed copy of every written agreement or a precise written description of the terms of and persons involved in and associated with every other agreement between a casino licensee or applicant or persons acting on behalf of a casino licensee or applicant and any enterprise which is neither licensed nor an applicant pursuant to N.J.S.A. 5:12-92 if such agreement:

1. Will take one year or more to complete or does not contain a date certain for its termination;

2. Provides for payments which may reasonably be expected to exceed $75,000 over the life of the agreement;

3. Involves any real estate transaction including, but not limited to, the purchase, option to purchase or lease of real property; or

4. Requires the personal services of a specifically named individual or individuals, regardless of the form of business association used by the individual or individuals to provide such services.

(d) through (g) (No change.)

(a)

CASINO CONTROL COMMISSION

Casino Service Industries

Determination of Enterprises Conducting Business On A Regular Or Continuing Basis With Casino Licensees Or Applicants

Proposed Amendment: N.J.A.C. 19:43-1.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69c and 92c.

Proposal Number: PRN 1990-527.

Submit comments by November 14, 1990 to:

E. Dennis Kell
Senior Assistant Counsel
Casino Control Commission
Arcade Building, Second Floor
Tennessee Ave. and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.S.A. 5:12-92c requires all casino service industries to be licensed in accordance with the rules of the Casino Control Commission. Section

12 of the Casino Control Act, N.J.S.A. 5:12-12, defines a casino service industry as any form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance or business of a proposed or existing casino hotel or related facility "on a regular or continuing basis." Accordingly, the Commission's rules establish criteria which are considered by the Commission in determining whether an enterprise is doing business on a regular or continuing basis (see N.J.A.C. 19:43-1.2). The proposed amendments would modify one of these criteria and add an additional criterion for consideration.

Currently, unless the Commission determines otherwise, an enterprise is deemed to be transacting business with casino applicants or licensees on a regular or continuing basis if, within any 12-month period, the total dollar amount of such transactions is equal to or greater than $50,000 with a single casino applicant or licensee, or $150,000 with all casino applicants or licensees. The proposed amendments would increase these monetary thresholds to $75,000 in business transactions with a single casino applicant or licensee and $225,000 in business transactions with all casino applicants or licensees. The current monetary thresholds were established in 1981, and the proposed increases are intended to approximate the 1981 dollar amounts in 1990 dollars.

In addition, the proposed amendments would establish an additional criterion by which the total dollar amount of business conducted by enterprises which transport passengers for the direct or indirect benefit of casino applicants or licensees would be valued. Currently, many owners or operators of such enterprises are not paid directly by casino applicants or licensees. The proposed amendments would adopt the standards used for determining the dollar amount of business that casino licensees conduct with owners and operators of minority and female bus businesses in N.J.A.C. 19:53-2.6 and use these dollar amounts for purposes of determining whether enterprises have reached the monetary thresholds discussed above.

Social Impact

The proposed amendment to increase the monetary thresholds would place the thresholds at which an enterprise is deemed to transact regular or continuing business with casino applicants or licensees at approximately the same level, in constant dollars, as when the thresholds were originally adopted in 1981. The failure to increase the monetary thresholds since 1981 has, in effect, due to inflation, gradually reduced the thresholds. Accordingly, although the proposed amendment may result in some enterprises not being required to apply for casino service industry licensure who would otherwise be so required under the current rule, the regulatory goals of the Act will not be undermined since the Commission will simply be retaining the same regulatory standards adopted in 1981.

The proposed amendment which relates to enterprises which transport passengers to or from casinos would enable the Commission to identify those enterprises which should be licensed as casino service industries in a more effective and timely manner, thereby permitting the Commission to accomplish the statutory goal of strictly regulating all persons, including service industries, associated with the casino industry (see N.J.S.A. 5:12-1(b)6).

Economic Impact

The proposed amendment to increase the monetary thresholds will reduce the number of enterprises which will be required to obtain casino service industry licenses, on both an immediate and ongoing basis. The proposed amendment which relates to enterprises which transport passengers to or from casinos should immediately result in a number of those enterprises being required to obtain casino service industry licenses. The net effect of the proposed amendments should, in the long run, be that fewer enterprises will be required to obtain casino service industry licenses. This would result in the generation of fewer fees. However, this will be offset by a reduction in the number of investigations, so that the overall impact on the Casino Control Fund should be minimal.

The proposed amendment to increase the monetary thresholds will have no impact on casino applicants or licensees. The proposed amendment related to enterprises which transport passengers to or from casinos will not affect casino applicants but will require casino licensees to make additional reports to the Commission at some cost to the licensees.

Regulatory Flexibility Analysis

The proposed amendment related to enterprises which transport passengers to or from casinos will require casino licensees to submit additional reports to the Commission. None of the casino licensees falls within the definition of a "small business" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16.

The net effect of these proposed amendments should, in the long run, be to reduce the number of enterprises which will be required to obtain casino service industry licenses. Some of these enterprises are "small businesses" as defined under the Act. For these enterprises, there will be no obligation to obtain or pay for a casino service industry license. To the extent that the proposed amendment may require some additional small businesses to apply for and obtain a casino service industry license, the Commission maintains that the strict licensing requirements of the Casino Control Act mandate that no exceptions be granted except those which are authorized by the Act itself (see N.J.S.A. 5:12-1(b) and 92(c)).

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

19:43-1.2 License requirements

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

(d) Notwithstanding the provisions of (c) above, persons and enterprises which provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1. The total dollar amount of such transactions with a single casino applicant or licensee, its employees or agents, is or will be equal to or greater than [$50,000] **$75,000** within any 12-month period; or

2. The total dollar amount of such transactions with **all** casino applicants or licensees, their employees or agents, is or will be equal to or greater than [$150,000] **$225,000** within any 12-month period.

(e) For purposes of applying the provisions of (d) above, the total dollar amount of transactions by an enterprise which transports passengers for the direct or indirect benefit of a casino licensee shall be determined by adding together the following categories of compensation:

1. Direct or indirect payments to the enterprise. This category shall include the total dollar value of all business pursuant to which a casino licensee either directly or indirectly compensates an enterprise for transportation. The amount of business to be recorded under this category shall be equal to the value of the compensation provided to the enterprise. Examples of business in this category shall include, without limitation, arrangements whereby:

i. The casino licensee directly pays for the transportation;

ii. The casino licensee indirectly pays for the transportation by reimbursing the passenger specifically for the cost of transportation;

iii. The casino licensee reimburses a third party for providing the transportation for the passengers; or

iv. The casino licensee pays for the cost of advertising or other goods or services which directly benefit the enterprise which provides the transportation.

2. Complimentary goods or services offered to the passengers transported by the enterprise. This category shall include the total dollar value of all complimentary goods or services which are directly or indirectly offered by the casino licensee to the passengers transported by the enterprise (see N.J.A.C. 19:45-1.9). For example, if a casino licensee has an arrangement with an enterprise whereby the casino licensee agrees to provide each passenger brought to its casino by such enterprise with complimentary goods or services worth $20.00, the amount of business to be recorded under this category shall equal the actual number of passengers who are entitled to the complimentary goods or services multiplied by $20.00.

[(e)](f) The word "transaction", for the purpose of this section, shall be construed to effectuate the public interest and the policies of the Act.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Definitions; Cashiers' Cage; Accounting Controls within the Cashiers' Cage; Procedure for Acceptance, Accounting for and Redemption of Patron's Cash Deposits; Procedure for Accepting, Verifying and Accounting for Wire Transfers; Procedure for Exchange of Checks Submitted by Gaming Patrons; Procedure for Redemption, Consolidation or Substitution of Checks Submitted by Gaming Patrons; Procedures for Granting Credit and Recording Checks Exchanged, Redeemed or Consolidated; Procedure for Collecting and Recording Checks Returned to the Casino After Deposit, Slot Booths and Slot Count; Procedure for Counting and Recording Contents of Drop Buckets

Procedure for the Exchange of Slot Counter Checks by Slot Patrons (New Rule)

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.14, 1.15, 1.24, 1.24A, 1.25, 1.26, 1.27, 1.29, 1.34 and 1.43

Proposed New Rule: N.J.A.C. 19:45-1.25A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c and 70g.

Proposal Number: PRN 1990-523.

Submit comments by November 14, 1990 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building—4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed new rule and proposed amendments would permit casino licensees to issue credit to slot machine patrons from the cashiers' cage, slot booths, slot carousels and coin redemption windows or directly to a patron at a slot machine. The new rule sets forth the procedures to be followed by the casinos if they wish to offer slot credit in the previously mentioned areas. The proposed new rule and proposed amendments would also permit slot patrons to use Front Money Deposits in the same areas credit can be issued and permits the use of a computerized system to rate slot patrons. In addition, N.J.A.C. 19:45-1.1 has been revised to include definitions of master coin bank cashier, slot accounting area, slot cashier and slot counter check.

Social Impact

The proposed changes will benefit slot patrons by providing them with the ability of obtaining credit for slot play in a convenient slot area or directly at the slot machine and thus provide them with better service.

Economic Impact

It is anticipated that the offering of credit to slot patrons in a convenient slot area or directly at the slot machine will increase the amount of gross revenue and will have a positive economic benefit for the casino industry. In addition, if a casino elects to offer slot credit, the new rule would require the industry to generate a new form which would be a nominal expense for the casino.

Regulatory Flexibility Statement

The proposed amendments and new rule will affect only the operation of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.1 Definitions

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

...

"Master coin bank cashier" is defined in N.J.A.C. 19:45-1.15.

...

"Slot accounting area" means any area or structure on the casino floor in which a slot cashier or changeperson performs his or her functions.

...

"Slot cashier" means any person employed in the operation of the slot accounting area as a cashier and who possesses an imprest inventory of currency, coin and tokens and operates from such physical structures, including, but not limited to, slot booths, runways, carousels, coin redemption windows, jackpot and hopper fill windows.

...

"Slot Counter Check" is defined in N.J.A.C. 19:45-1.25A.

...

19:45-1.14 Cashiers' cage

(a) (No change.)

(b) Each establishment shall have within the cage or in such other area as approved by the Commission a physical structure known as a master coin bank to house master coin bank cashiers and to serve as the central location in the casino for the following:

1. The custody of currency, coin, tokens, forms, documents and records normally associated with the operation of the slot accounting area;

2. The exchange of currency, coin, coupons and tokens for supporting documentation;

3. The responsibility for the overall reconciliation of the slot accounting area;

4. The receipt of coin and tokens from the hard count room in conformity with this chapter; and

5. Such other functions normally associated with the operation of the master coin bank.

Recodify existing (b) and (c) as **(c) and (d)** (No change in text.)

[(d)]**(e)** Each casino licensee shall place on file with the Commission and Division the names of all persons authorized to enter the cage **and the master coin bank if it is not located within the cage**, those who possess the combination or keys to the locks securing the entrance to the cage **and master coin bank**, and those who possess the ability to operate alarm systems.

19:45-1.15 Accounting controls within the cashiers' cage

(a) (No change.)

(b) The cashiers' cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and such cashiers' functions shall be, but not limited to, the following:

i.-x. (No change.)

xi. Receive from check, chip bank and reserve cash cashiers' documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage; [and]

xii. Receive Voucher forms in accordance with N.J.A.C. 19:45-1.9A for the processing of travel expense reimbursements[.]**; and**

xiii. Exchange Slot Counter Checks in accordance with N.J.A.C. 19:45-1.25A.

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall be, but not limited to, the following:

i. Receive the original and redemption copies of Counter Checks **and Slot Counter Checks**;

ii. Receive from general cashiers checks accepted [by general cashiers] for total or partial Counter Check **and Slot Counter Check** redemptions;

iii. Receive checks from general cashiers for Counter Check **and Slot Counter Check** consolidations;

iv. Receive personal checks from general cashiers for Counter Check **and Slot Counter Check** substitutions;

v. (No change.)

vi. Receive Wire Transfer Acknowledgement Forms in accordance with N.J.A.C. 19:45-1.24A for the purpose of redeeming Counter Checks **and Slot Counter Checks** or accepting payment on returned Counter Checks **and Slot Counter Checks**; and

vii. (No change.)

3. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i. Receive cash, cash equivalents, **issuance copies of Slot Counter Checks,** personal checks received for non-gaming purposes, gaming chips and plaques from general cashiers in exchange for cash;

ii.-vi. (No change.)

5. Master coin bank cashiers' functions shall be, but not limited to, the following:

i. Receive currency, coin, tokens, gaming chips, coupons from slot cashiers and changepeople in exchange for proper documentation;

ii. Receive coin and tokens from the hard count room;

iii. Provide slot cashiers and changepeople with currency, coin and tokens in exchange for proper documentation; and

iv. Prepare the daily bank deposit of excess cash and coin.

(c) Signatures attesting to the accuracy of the information contained on the Cashiers' Count Sheet shall be, at a minimum, of the following cashiers after preparation of Cashiers' Count Sheet:

1.-2. (No change.)

3. The chip bank cashiers assigned to the incoming and outgoing shifts; [and]

4. The reserve cash cashiers assigned to the incoming and outgoing shifts[.];

5. The master coin bank cashiers assigned to the incoming and outgoing shifts; and

6. The slot cashiers assigned to the incoming and outgoing shifts.

(d) (No change.)

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron's cash deposits

(a)-(i) (No change.)

(j) A patron shall be allowed to use the deposit [at the gaming table] by supplying information required by the casino to verify his identification.

1. The pit clerk, **general cashier or slot cashier** shall ascertain, from the cashiers' cage, the amount of the patron deposit available and request the amount the patron wishes to use against this balance. The pit clerk, **general cashier or slot cashier** shall prepare a Counter Check in compliance with N.J.A.C. 19:45-1.25 **or a Slot Counter Check in compliance with N.J.A.C. 19:45-1.25A** with the exception that the words "Customer Deposit Withdrawal" shall be recorded on the Counter Check **or Slot Counter Check** in place of the name of the patron's bank.

(k) Distribution of the Counter Checks shall comply with N.J.A.C. 19:45-1.25 **and distribution of Slot Counter Checks shall comply with N.J.A.C. 19:45-1.25A.**

(l) The patron's deposit balance shall be immediately reduced by amounts equal to the Counter Checks issued in the pit **or Slot Counter Checks issued in the slot area or at the casino cage.**

(m)-(q) (No change.)

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers

(a) A casino licensee may, in accordance with the rules of the Commission, accept a wire transfer of funds to enable the following:

1. Establishment of a cash deposit pursuant to N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.24;

2. Redemption of an outstanding Counter Check **or Slot Counter Check** pursuant to N.J.S.A. 5:12-101c and N.J.A.C. 19:45-1.26 and 1.27; or

3. Payment of a returned Counter Check **or Slot Counter Check** pursuant to N.J.S.A. 5:12-101e and N.J.A.C. 19:45-1.29.

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

(f) Upon determining the purpose for the wire transfer, a cage supervisor shall prepare a Wire Transfer Acknowledgement Form, a two-part form containing, at a minimum, the following information:

1.-4. (No change.)

5. The purpose for the wire transfer (cash deposit; redemption; payment of returned Counter Check **or Slot Counter Check**);

6. (No change.)

7. The signature of either:

i. The check bank cashier, if the funds are to be used for Counter Check **or Slot Counter Check** redemption or the payment of a returned Counter Check **or Slot Counter Check**; or

ii. (No change.)

(g) Upon completion of the information required by (f)1 through 6 above, the cage supervisor who prepared the form shall obtain the signature required by (f)7 above on both copies of the Wire Transfer Acknowledgement Form, transmit the duplicate copy and any supporting documentation to the accounting department, and forward the original Wire Transfer Acknowledgement Form to:

1. The check bank cashier, if the funds are to be used for Counter Check **or Slot Counter Check** redemption or the payment of a returned Counter Check **or Slot Counter Check**, who shall:

i. (No change.)

ii. If appropriate, return the redeemed Counter Check **or Slot Counter Check** to the patron;

iii. (No change.)

iv. Forward to the accounting department the redemption copy of any Counter Check redeemed, in accordance with the requirements of N.J.A.C. 19:45-1.25 **or Slot Counter Check redeemed, in accordance with the requirements of N.J.A.C. 19:45-1.25A**; or

2. (No change.)

(h) (No change.)

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a)-(i) (No change.)

(j) The following procedures and requirements over Counter Checks shall be observed:

1.-2. (No change.)

3. For establishments in which Counter Checks are computer prepared, each series of Counter Checks shall be a four-part form, at a minimum, which consists of an original, a redemption copy, an issuance copy and [acknowledgement] **accounting** copy and shall be inserted in a printer that will: simultaneously print an original and duplicates and store, in machine-readable form, all information printed on the original and duplicates; and discharge the original and duplicates. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Counter Check.

(k)-(n) (No change.)

(o) If the total amount of chips or plaques possessed by a patron exceeds $500.00, the casino licensee shall request the patron to apply all chips or plaques in his possession to the redemption of Counter Checks **or Slot Counter Checks** exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino area.

(p) (No change.)

19:45-1.25A Procedure for exchange of slot counter checks by slot patrons

(a) A casino licensee may offer credit to slot patrons pursuant to N.J.A.C. 19:45-1.27. For casino licensees which issue credit to slot players, the following procedures and requirements over Slot Counter Checks shall be observed:

1. Slot Counter Checks shall be serially prenumbered forms. Each series of Slot Counter Checks shall be used in sequential order, and the series numbers of all Slot Counter Checks received by a casino licensee shall be distinguishable from Counter Checks issued pursuant to N.J.A.C. 19:45-1.25 and shall be accounted for by employees with no incompatible functions.

i. The original and all copies of voided Slot Counter Checks shall be marked "VOID" and shall require the signature of the preparer.

2. For establishments in which Slot Counter Checks are manually prepared:

i. Each series of Slot Counter Checks shall be a five-part form, at a minimum, which consists of an original, a redemption copy, an accounting copy, an issuance copy and acknowledgement copy and shall be attached in a book that will permit an individual slip in the series and its copies to be written upon simultaneously, while still contained in the book, and that will allow the removal of the original and all duplicate copies.

ii. Access to the Slot Counter Checks shall be maintained and controlled at all times by the general cashier or slot cashier responsible for control of and accounting for the unused supply of Slot Counter Checks, and the preparation of Slot Counter Checks for a patron's signature.

3. For establishment in which Slot Counter Checks are computer prepared, each series of Slot Counter Checks shall be a four-part form, at a minimum, which consists of an original, a redemption copy, an issuance copy and accounting copy and shall be inserted in a printer that will: simultaneously print an original and duplicates; store, in machine readable form, all information printed on the original and duplicates; and discharge the original and duplicates. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Slot Counter Check.

(b) For each Slot Counter Check exchanged, the general cashier or slot cashier shall:

1. Verify the patron's identity by either:

i. Obtaining, at a minimum, the amount of the requested Slot Counter Check and the patron's signature on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The general cashier or slot cashier shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his or her credit file. Such form shall be attached to the accounting copy of the Slot Counter Check exchanged by the patron and deposited into a locked accounting box for forwarding to the accounting department in conformity with (g) below.

(1) After the patron's identity has been verified by the general cashier or slot cashier as required above, the requirements for subsequent verification of the patron's identity may be satisfied by that general cashier or slot cashier signing a form attesting to the patron's identity before each subsequent Slot Counter Check is exchanged. The form shall include the patron's name and the serial number of the initial Slot Counter Check exchanged by the patron. Such form shall be attached to the accounting copy of the Slot Counter Check and deposited into a locked accounting box for forwarding to the accounting department in conformity with (g) below; or

ii. Obtaining the attestation of a slot supervisor as to the identity of the patron. The slot supervisor shall sign a form attesting to the patron's identity and shall record his or her license number thereon. Such form shall be attached to the accounting copy of the Slot Counter Check exchanged by the patron and deposited into a locked accounting box for forwarding to the accounting department in conformity with (g) below;

2. Determine the patron's remaining credit limit either from a check bank cashier or from a computer terminal located in an area as approved by the Commission;

3. Prepare the Slot Counter Check for the patron's signature by recording, at a minimum, on the face of the original and all duplicates of the Slot Counter Check, with the exception of the acknowledgement copy which shall only have recorded on it a designation for slots, or in stored data, the following information:

i. The name of the patron exchanging the Slot Counter Check;

ii. The name of the patron's bank (required on the original copy only);

iii. The current date and time;

iv. The amount of the Slot Counter Check expressed in numerals;

v. A designation indicating it is for slots;

vi. The signature of the cage supervisor or slot supervisor verifying that the Slot Counter Check was prepared for the correct amount and for the correct individual per the information recorded on the form referenced in (b)1 above; and

vii. The signature of the preparer or, if computer prepared, the identification code of the preparer;

4. Place an impression on the back of the original Slot Counter Check a restrictive endorsement "for deposit only" to the casino licensee's bank account;

5. Present the original and all duplicate copies of Slot Counter Check to the patron for signature;

6. Receive the signed original and all duplicate copies of the Slot Counter Check directly from the patron. The general cashier or slot cashier shall compare the patron's signature on the signed Slot Counter Check to the form referenced in (b)1 above and sign the form referenced in (b)1 above if the signatures appear to agree. In no instance shall currency, coin or tokens be given to the patron prior to the receipt of the signed copy of the Slot Counter Check by the general cashier or slot cashier. Distribution of the Slot Counter Check copies shall be as follows:

i. The issuance copy of the Slot Counter Check which shall serve as documentation of the exchange of currency, coin or tokens for the Slot Counter Check and shall be maintained by the general cashier or slot cashier in his or her impress fund immediately after the issuance of currency, coin or tokens to the patron.

ii. The original, redemption, and acknowledgement copies of the Slot Counter Check, if not issued by the general cashier, shall be expeditiously transported to the cashiers' cage by a security department member or via a pneumatic tube system where the original and redemption copies shall be maintained and controlled by the check bank cashier. If the Slot Counter Check was issued by a general cashier, the general cashier shall expeditiously transport the original, redemption and acknowledgement copies of the Slot Counter Check to the check bank cashier where the original and redemption copies shall be maintained. The acknowledgement copy shall be returned to the general cashier or slot cashier in accordance with either (d) or (e) below; and

iii. The accounting copy of the Slot Counter Check shall be attached to the form referenced in (b)1 above by the general cashier or slot cashier and deposited into a locked accounting box for forwarding to the accounting department in conformity with (g) below.

(c) Nothing in this section shall preclude a casino licensee from issuing a Slot Counter Check to a patron directly at a slot machine, provided the casino licensee follows the procedures and requirements established below:

1. A slot supervisor shall obtain, at a minimum, the amount of the requested Slot Counter Check and the patron's signature, on a two-part form ("Request"), and transport both copies of the Request directly to the general cashier or slot cashier. The general cashier or slot cashier shall compare the patron's signature pursuant to (b)1i above.

2. Once the patron's signature has been verified in accordance with (b)1 above, the general cashier or slot cashier shall prepare the Slot Counter Check in accordance with (b)2, (b)3i through v and (b)4 above.

3. The general cashier or slot cashier shall obtain the signature of the slot supervisor responsible for obtaining the information on the Request referenced in (c)1 above on the Slot Counter Check. The general cashier or slot cashier shall sign the Slot Counter Check as the preparer of the Slot Counter Check, and present the original and all duplicate copies of the Slot Counter Check and the original and duplicate copy of the Request, and the currency, coin, and/or tokens in the amount of the Slot Counter Check to an accounting department representative with no incompatible functions.

4. The accounting department representative, with no incompatible functions, shall verify the currency, coin and/or tokens against the amount recorded on the Slot Counter Check and the Request. If in agreement, the accounting department representative shall sign the original and duplicate copy of the Request and return the duplicate copy of the Request to the general cashier or slot cashier.

5. The general cashier or slot cashier shall retain the duplicate copy of the Request as evidence of the funds and Slot Counter Check being received by the accounting department representative.

6. Once the currency, coin and/or tokens has been verified in accordance with (c)4 above, the funds shall be secured in a sealed envelope or container along with the original and all copies of the Slot Counter Check and the original Request for transportation to the patron by the accounting department representative in the presence of the slot supervisor referenced in (c)1 above.

7. The accounting department representative shall present the original and all duplicate copies of the Slot Counter Check to the patron for signature.

8. Upon receiving the signed original and all duplicate copies of the Slot Counter Check directly from the patron, the accounting department representative shall verify the patron's signature on the Slot Counter Check against the patron's signature on the original Request. If in agreement, the funds shall be immediately given to the patron. In no instance shall the funds be given to the patron prior to the receipt of the signed Slot Counter Check from the patron.

9. Once the patron has received the funds, the slot supervisor referenced in (c)1 above shall sign the back of the accounting copy of the Slot Counter Check as a witness to the transfer of funds to the patron in exchange for the signed Slot Counter Check from the patron. The slot supervisor shall immediately deposit the accounting copy of the Slot Counter Check with the original Request in a locked accounting box for forwarding to the accounting department in conformity with (g) below.

10. The accounting department representative shall immediately return the original, redemption, acknowledgement (manual mode only) and issuance copies of the Slot Counter Check to the general cashier or slot cashier who issued the funds. The general cashier or slot cashier shall attach the duplicate of the Request to the issuance copy of the Slot Counter Check and shall maintain them in his or her imprest fund for forwarding to the main bank or master coin bank at the end of their shift.

i. The original, redemption and acknowledgement (manual mode only) copies of the Slot Counter Check, if not issued by the general cashier, shall be expeditiously transported to the cashiers' cage by a security department member or via a pneumatic tube system where the original and redemption copies shall be maintained and controlled by the check bank cashier. If the Slot Counter Check was issued by a general cashier, the general cashier shall expeditiously transport the original, redemption and acknowledgement copies of the Slot Counter Check to the check bank cashier where the original and redemption copies shall be maintained and controlled by the check bank cashier. The acknowledgement copy shall be returned to the general cashier or slot cashier in accordance with either (d) or (e) below.

(d) For establishments in which the chip bank cashier receives the original, redemption and acknowledgement copies of the Slot Counter Check, the chip bank cashier shall sign and time stamp the acknowledgement copy of the Slot Counter Check and expeditiously return it to the general cashier or slot cashier via a security department member or pneumatic tube system and shall transfer the original and redemption copies of the Slot Counter Check to the check bank cashier in return for properly signed documentation.

(e) For establishments in which the check bank cashier receives the original, redemption and acknowledgement copies of the Slot Counter check directly from the general cashier or slot cashier, whether directly through the use of the pneumatic tube system or transported by a security department member, the check bank cashier shall:

1. Sign and time stamp the acknowledgement copy and shall transmit it to the general cashier directly or to the slot cashier via a security department member or pneumatic tube system, and shall maintain the original and redemption copies of the Slot Counter Check. If there is no acknowledgement copy, the check bank cashier shall be responsible for consummating the transaction in the computer upon receipt of the original and redemption copies of the Slot Counter Check.

(f) Once the acknowledgement copy of the Slot Counter Check has been returned to the general cashier or slot cashier, it shall be attached to the issuance copy of the Slot Counter Check and forwarded to the main bank or master coin bank at the end of the cashier's shift.

(g) At the end of the gaming activity each day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of voided Slot Counter Checks and the accounting copy of the Slot Counter Check shall be picked up by a representative of the accounting department with no incompatible functions and returned to the accounting department for agreement, on a daily basis, with the issuance and acknowledgement copies of the Slot Counter Check received from the general cashiers or slot cashiers.

2. The redemption copy of a Slot Counter Check maintained and controlled in conformity with (b)6ii and (c)10i above shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original Slot Counter Check for agreement with the accounting and issuance copies of the Slot Counter Check or stored data.

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons

(a) The drawer of a Counter Check **or Slot Counter Check** may redeem it by exchanging cash, cash equivalents, gaming chips, plaques, or any combination of another check, cash, cash equivalents, gaming chips or plaques. If a drawer has more than one Counter Check **or Slot Counter Check** outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he wishes to redeem the identically dated checks.

(b) The drawer of a check may consolidate some or all Counter Checks **or Slot Counter Checks** by exchanging another check in an amount equal to the total of checks previously exchanged.

(c) The drawer of a Counter Check **or Slot Counter Check** may substitute a personal check for the Counter Check **or Slot Counter Check**.

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

(f) Under acceptance of cash or cash equivalents, gaming chips and plaques, or another check in redemption consolidation or substitution of a check(s), the general cashier shall immediately return to the gaming patron the check(s) being redeemed, consolidated or substituted. If such redemption, consolidation or substitution is accomplished by the acceptance of another check, the general cashier accepting such check shall date and time stamp the check, place his initials on the check, and record on the check the serial number of the Counter Check(s) **or Slot Counter Check(s)** being redeemed, consolidated or replaced.

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a) A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron:

1.-5. (No change.)

6. Banking information including:

i. The name and location of the patron's bank; and

ii. The account number of the patron's personal checking account upon which the patron is individually authorized to draw and upon which all Counter Checks, **Slot Counter Checks** and all checks used for substitution, redemption or consolidation will be drawn. Checking accounts of sole proprietorships shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.

7.-11. (No change.)

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

(g) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

1.-3. (No change.)

4. Consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subsequent to the patron's initial receipt of credit. The patron's player rating shall be readily available to representatives of the casino licensee's credit department prior to their approving a patron's request for a credit limit increase. [The]

5. For table game play, the information for the patron's player rating shall be recorded on a player rating form by casino department supervisors or put directly into the licensee's computer system pursuant to an approved submission and shall include, but not be limited to, the following:

i.-vii. (No change.)

6. For slot play, the information for the patron's player rating shall be recorded on a player rating form by slot department supervisors,

or put directly into the licensee's computer system pursuant to an approved submission, or generated by insertion of a card, by a patron, into a card reader attached to a slot machine. Such ratings shall include, but not be limited to, the following:

i. The patron's name;

ii. A designation indicating it is for slots;

iii. The rating as determined by a supervisor or an approved computer system;

iv. The signature and license number of the slot supervisor responsible for providing the patron's player rating information; if manually prepared; and

v. The date of play.

[5.]**7.** Include the information and documentation required by [paragraphs] **(g)**1 through 3 above and the patron's player rating indicated at the time the credit increase is approved in the patron's credit file.

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

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1. The date, amount and check number of each Counter Check **or Slot Counter Check** initially accepted from the patron;

2.-8. (No change.)

(l) A log of all Counter Checks **and Slot Counter Checks** exchanged and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:

1. (No change.)

2. For checks initially accepted and for checks received for consolidation, redemption or substitution:

i.-iii. (No change.)

iv. The Counter Check **or Slot Counter Check** serial number(s) for Counter Checks **and Slot Counter Check(s)** received; and

v. (No change.)

3. For checks deposited, redeemed by patrons for cash or cash equivalents, gaming chips and plaques, or any combination thereof, consolidated or replaced:

i.-iii. (No change.)

iv. The Counter Check **and Slot Counter Check** serial number(s) for Counter Check(s) **and Slot Counter Check(s)** deposited, redeemed, consolidated or replaced; and

v. (No change.)

4. (No change.)

(m) A list of all Counter Checks **and Slot Counter Checks** on hand, and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:

1.-3. (No change.)

4. The Counter Check **and Slot Counter Check** serial number(s) for Counter Checks **and Slot Counter Checks** received.

(n) At the end of gaming activity each day, at a minimum, the following procedures shall be performed:

1. The daily total of the amounts of checks initially recorded as described in (l)2 above shall be agreed to the daily total of Counter Checks **and Slot Counter Checks** issued;

2.-3. (No change.)

(o)-(p) (No change.)

19:45-1.29 Procedure for collecting and recording checks returned to the casino after deposit

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

(c) Continuous records of all returned checks shall be maintained by accounting department employees with no incompatible functions. Such records shall include, at a minimum, the following:

1.-4. (No change.)

5. The Counter Check **or Slot Counter Check** serial number for Counter Checks **or Slot Counter Checks**; and

6. (No change.)

(d)-(k) (No change.)

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-6. (No change.)

7. The exchange by patrons of signed Slot Counter Checks for currency, coin or slot tokens in conformity with N.J.A.C. 19:45-1.25A;

[7.]**8.** The issuance of Hopper Fills in conformity with N.J.A.C. 19:45-1.41;

[8.]**9.** The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40; and

[9.]**10.** The exchange with the cashiers' cage of any coin, currency, slot tokens, chips, plaques, **issuance copies of Slot Counter Checks** and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

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

19:45-1.43 Slot count; procedure for counting and recording contents of drop buckets

(a)-(i) (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. The wrapped coin and currency removed from the drop bucket shall be counted in the count room in the presence of a count team member and a Commission inspector, by a cage cashier or [slot cashier] **master coin bank cashier** prior to his having access to the information recorded on the Slot Win Sheet. The cage cashier or [slot cashier] **master coin bank cashier** shall attest by signature on the Slot Win Sheet to the accuracy of the amount of coin and currency received from the slot machines; after which the Commission inspector shall sign the Slot Win Sheet evidencing his presence during the count and the fact that both the cashier and count team have agreed on the total amount of coin and currency counted. The coin and currency thereafter shall remain in the custody of the cage cashiers or [slot cashiers] **master coin bank cashiers**.

2.-5. (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Indoor Air Quality Subcode

Pre-proposed New Rules: N.J.A.C. 5:23-11.1 through 11.11

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

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

Pre-proposal Number: PPN 1990-11.

Submit comments by November 14, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency pre-proposal follows:

Summary

The purpose of these pre-proposed rules is to establish an effective complaint process for public employees who work in buildings with indoor air quality problems. This pre-proposal references the most recent

technical standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, ASHRAE 62-89, titled "Ventilation for Acceptable Indoor Air Quality," and ASHRAE 55-81, titled "Thermal Environmental Conditions for Human Occupancy." These standards will be used to assess alleged air quality deficiencies. These rules also establish a clear complaint resolution process based on the nature of the complaint. The Department of Community Affairs will respond to building-related complaints; the Department of Health will respond to health-related complaints. These rules give the Department of Community Affairs and the Department of Health the authority to order a technical study of an affected building and to require the building owner to comply with the results of that study. It is important, however, to emphasize that no action is taken unless a complaint is received. These rules have been reviewed and approved by the Department of Labor, the Department of Health, and the PEOSHA (Public Employees Occupational Safety and Health Act) Board. These rules are being published as a pre-proposal to gain the benefit of public comment before a formal proposal is published.

Economic Impact

The economic effect of the proposed indoor air quality rules is expected to be minor. The complaint-driven resolution process established by these rules is not expected to require additional staff. The expense of any indoor air quality study or remediation will be borne by the building owner. Since individual circumstances vary widely, no current estimate of the economic impact upon building owners is available.

Social Impact

Public employees will benefit from the establishment of a clear complaint process that protects their health and resolves any indoor air quality problem.

Regulatory Flexibility Statement

Small businesses, as the term is defined under the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.) may be affected by these rules. The rules do not impose additional reporting or recordkeeping requirements on small businesses; however, performance requirements may be imposed upon building owners in that they may be required to bear the expense of any indoor air quality study or remediation, as determined by the Department. The Department does not believe it's appropriate to provide differential requirements based upon business size, since to do so may compromise the health of the public employees affected.

Full text of the preproposed new rules follows:

SUBCHAPTER 11. INDOOR AIR QUALITY

5:23-11.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and the Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq), and entitled "Indoor Air Quality", shall be known and may be cited throughout the regulations as subchapter 11, and when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter shall control matters relating to indoor air quality in existing buildings occupied by public employees during their regular work hours, including procedures for reporting and responding to complaints of indoor air quality in accordance with the Public Employees Occupational Safety and Health Act (PEOSHA).

(d) This subchapter seeks to provide an efficient administrative framework for reporting and responding to complaints of indoor air quality, and for the enforcement of indoor air quality standards. Additionally, this subchapter provides a uniform standard through the adoption of nationally-recognized standards.

5:23-11.2 Definitions

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

"Building-related problems" means complaints regarding such conditions as temperature, humidity and ventilation.

"Department" means both the Department of Community Affairs and the Department of Health, unless the context clearly indicates otherwise.

"Employee" means any public employee as defined in the Public Employees Occupational Safety and Health Act.

"Employer" means the employee relations officer or the head of human resources or such other individual as may be designated in writing to handle complaints on behalf of the public employer as defined in the Public Employees Occupational Safety and Health Act.

"Facility manager" means the person employed by the building owner and charged with the care and maintenance of the building.

"Health-related problems" means any complaint that involves a symptom such as headaches, nausea, dizziness, etc.

"Retrofit" means to bring a building or portion thereof which exhibits indoor air quality deficiencies into compliance with the standards adopted in this subchapter.

5:23-11.3 Adoption of standards

(a) Pursuant to the authority granted under P.L. 1975, c.217, as amended, the Commissioner hereby adopts the nationally-recognized standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 55-1981 (Thermal Environmental Conditions for Human Occupancy) and ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for evaluating indoor air quality in all buildings or portions of buildings subject to this subchapter.

1. Copies of these standards may be obtained from the sponsor at: ASHRAE Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329.

2. In addition to the provisions of the standards adopted above, the air from designated smoking areas shall not be recirculated to non-smoking areas in buildings covered by this subchapter.

(b) Where the Department, upon investigation, has reason to believe that a building or a portion of a building does not provide for an adequate level of indoor air quality when measured against the nationally recognized standards adopted in this subchapter, then the Department may require the building owner to perform a comprehensive ventilation and temperature evaluation in accordance with those standards. The Department may additionally require the building owner to obtain and furnish to the Department, at the building owner's expense, a report from a licensed engineer or registered architect or certified industrial hygienist or the equivalent outlining appropriate corrective measures to the building or portions of the building under investigation. Where retrofit is found to be necessary, it shall be performed in accordance with the standards adopted in this subchapter.

(c) Except as required by (b) above, nothing in this subchapter shall be interpreted as requiring the retrofit of all buildings subject to this chapter in comformity with the adopted standards. These standards are adopted in order to provide a nationally recognized objective measurement tool for the evaluation and retrofit of buildings or portions of buildings which exhibit indoor air quality deficiencies.

5:23-11.4 Enforcement

(a) The Department of Health shall be the sole agency for investigating complaints and enforcing standards for health-related problems.

(b) The Department of Community Affairs shall be the sole agency for investigating complaints and enforcing standards for building-related problems.

5:23-11.5 Initial complaint to employer

(a) The employee or employee's representative shall submit the complaint in writing to the employer or to the employee relations officer unless otherwise specified by the employer in writing.

(b) Within five working days of receipt, the employer shall acknowledge receipt of the complaint and shall outline the planned response action in writing to the employee. The response may include any combination of the following:

1. A description of any remedial action already taken;

2. An outline of any response action planned but not yet taken with a timetable for completion; and/or

3. An order for study of the problem with a timetable for completion.

(c) In a leased building, the employee shall submit the complaint to the employer. In such buildings managed and maintained by the building owner and not the employer, the complaint shall be forwarded by the employer to the lease management officer who, in turn, shall forward it to the building owner for corrective action pursuant to the terms of the lease and this subcode.

(d) Where a response action is planned or a study ordered it shall be initiated as soon as possible. The employer shall report the results in writing to the employee within 10 working days of completion.

5:23-11.6 Formal complaint to State agency

(a) If the condition persists or if the employer fails to respond to the complaint, the employee may request further action by notifying the Department of Health or the Department of Community Affairs in writing.

(b) Health-related complaints shall be reported to the Department of Health.

(c) Building-related complaints shall be reported to the Department of Community Affairs.

(d) Within five working days following receipt of the complaint, the Department of Health or the Department of Community Affairs shall notify the employer that a complaint has been filed.

1. If the employer has had an opportunity to respond as outlined in N.J.A.C. 5:23-11.5(a), the enforcing agency shall proceed to its investigation.

2. If the employee files the complaint directly with the Department of Health or the Department of Community Affairs, the enforcing agency shall give the employer the opportunity to respond as outlined in N.J.A.C. 5:23-11.5.

5:23-11.7 Formal complaint procedure; health-related complaint

(a) Health-related complaints shall be reported to the Department of Health as follows:

1. The employee or employee's representative shall notify the Department of Health in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from receipt of the complaint, the Department of Health shall notify the employer that a complaint has been filed.

i. Upon request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Health shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Health shall determine the extent of the problem.

4. If the extent of the problem indicates, the Department of Health shall determine or shall order the building owner or employer to contract for a study to determine whether at least one of the following three conditions exists. The investigation for contaminants shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

i. Known contaminants are clearly present;

ii. A definite point source of contamination exists; or

iii. Physical evidence indicates contaminants although exact identification has not been made.

5. If the study is contracted for by the building owner or employer, the building owner or employer shall report the results in writing to the Department of Health within five working days of its receipt.

6. If remedial action is indicated by the investigation, the Department of Health shall ensure that such remedial action is completed, provided his action relates to removal of identified source(s) of contamination or modification/abatement of work practices which generate air contaminants. Any remedial action involving repairs or modifications to the general ventilation system shall be referred to the Department of Community Affairs for enforcement.

7. A complete record of this investigation shall be kept by both the Department of Health and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

8. If, in the course of the investigation, the Department of Health discovers that the complaint includes a building-related problem which will not be corrected by the remedial action undertaken, the Department of Health shall refer that problem to the Department of Community Affairs for investigation in accordance with N.J.A.C. 5:23-11.8. If health symptoms reported are determined to be due to building renovation activities as obtained in Section 3019 of the BOCA National Building Code, 1990 edition, then the Department of Health shall refer the matter to the Department of Community Affairs for enforcement.

9. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be outlined from the enforcing agency having jurisdiction.

5:23-11.8 Formal complaint procedure; building-related complaints

(a) Building-related complaints shall be reported to the Department of Community Affairs as follows:

1. The employee or the employee's representative shall notify the Department of Community Affairs in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from the receipt of the complaint, the Department of Community Affairs shall notify the employer that a complaint has been filed.

i. Upon the request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Community Affairs shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Community Affairs shall investigate and determine the nature and extent of the problem. The investigation shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

4. Where the Department, in its sole discretion, determines that an engineering evaluation of the building or portion of a building and its mechanical systems is warranted, then the building owner or employer shall, at its expense, provide for such engineering evaluation as the Department determines is necessary and shall report the results in writing to the Department within five working days of receipt.

i. The comprehensive evaluation shall include, but not be limited to, monitoring of building air intake and exhaust flows, room temperatures, room air supply and return flows, and calculation of amount of outdoor air per occupant.

ii. Since the environmental parameters of temperature, radiation, humidity and air movement necessary for thermal comfort depend upon the occupant's clothing and activity level, the evaluation mentioned in (a)4i above shall take these items into consideration as recommended in the indoor air quality subcode. If humidity can be controlled by existing equipment in the building, it shall be evaluated in accordance with the indoor air quality subcode.

iii. The results of the ventilation and temperature evaluation, along with a plan for remediation of the indoor air quality, shall be submitted to the Department for review and approval. The remediation plan shall include target dates for the following:

(1) Evaluation of engineering control options;

(2) Selection of optimum control methods and completion of design;

(3) Procurements, installation and operation of selected control measures; and

(4) Testing and acceptance or modification or design of controls.

5. If remedial action is indicated by the investigation, the Department of Community Affairs shall ensure that such remedial action is undertaken and successfully completed.

6. A complete record of this investigation shall be kept by the Department of Community Affairs and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

7. If, in the course of the investigation, the Department of Community Affairs discovers that the complaint includes the existence of air contaminants which will not be corrected by any remedial action undertaken, the Department of Community Affairs shall refer that complaint to the Department of Health for investigation in accordance with N.J.A.C. 5:23-11.7.

8. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.9 Renovation work/cleaning operations

(a) Renovation work and/or cleaning operations shall be performed in accordance with Section 3019 of the BOCA National Building Code, 1990 edition. Every effort shall be made to isolate renovation areas in occupied buildings and to confine dust and debris to the renovation area.

(b) Before use of paints, adhesives, sealants, solvents, or installation of insulation, particle board, plywood, floor coverings, carpet backing, textiles, or other materials in the course of renovation or construction, the employer or the employer's hired contractor shall check product labels or seek and obtain information from the manufacturers of those products on whether or not they contain volatile organic compounds such as solvents, formaldehyde or isocyanates that could be emitted during regular use. This information shall be used to select products and to determine necessary measures to be taken to comply with this section.

5:23-11.10 Equipment maintenance

(a) The facility manager shall establish and follow a preventive maintenance schedule in accordance with the manufacturer's recommendations or with accepted practice for the following equipment and/or systems:

1. HVAC System. Scheduled maintenance of the HVAC system shall include checking and/or changing air filters, checking and/or changing belts, lubrication of equipment parts, checking the functioning of motors and confirming that all equipment is in operating order. Damaged or inoperable components shall be replaced or repaired as appropriate. Additionally, any reservoirs or parts of this system with standing water shall be checked for microbial growth.

2. Any other building systems equipment not listed above that requires routine maintenance in accordance with the manufacturer's instructions.

(b) The maintenance schedule shall be updated to show all maintenance performed on equipment. The schedule shall include the date that such maintenance was performed and the name of the person or company performing the work.

(c) The maintenance schedule shall be made available upon request to any representative of an enforcing agency.

(d) Porous building materials contaminated with microbial growth shall be replaced or disinfected.

5:23-11.11 Penalties

(a) For noncompliance with the provisions of this subchapter with regard to building-related problems, orders shall be issued and penalties shall be assessed in accordance with N.J.A.C. 5:23, the Uniform Construction Code, of which this subchapter is a part, by the enforcing agency having jurisdiction.

(b) For noncompliance with the provisions of this subchapter with regard to health-related problems, orders shall be issued and penalties shall be assessed by the Department of Labor in accordance with the Public Employees Occupational Safety and Health Act.

5:23-11.12 Appeals of Department decisions

(a) Whenever the Department of Community Affairs shall act as the enforcing agency, appeals may be made to the Division of Housing and Development. Whenever the Department of Health shall act as the enforcing agency, orders shall be issued by and appeals may be made to the Department of Labor, Division of Workplace Standards. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner of the department involved. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

(b) Appeals may be made by either the employee or the employer as defined in this subchapter.

(c) The application for appeal shall be taken within 20 business days of the receipt of written notice of the decision of the department involved.

(d) The application for appeal shall be in writing, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question and shall reference the specific sections of the regulations in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The department involved shall make available to the Office of Administrative Law the full record of the complaint which is the subject of the appeal.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Safe and Sound Methods of Banking

Readoption with Amendments: N.J.A.C. 3:7

Proposed: August 6, 1990 at 22 N.J.R. 2205(a).
Adopted: September 11, 1990 by Jeff Connor, Commissioner, Department of Banking.
Filed: September 12, 1990 as R.1990 d.497, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; 17:9A-256; 17:9A-260.

Effective Date: September 12, 1990, Readoption; October 15, 1990, Amendments.
Expiration Date: September 12, 1995.

Summary of Public Comments and Agency Responses:

The Department received one comment from a representative of an insurance company regarding the requirement in N.J.A.C. 3:7-2.1 that a bank or savings bank periodically review fire insurance policies covering mortgaged or owned properties. The comment suggested that this review is not necessary when the depository has insurance protection for nonexistence of insurance. This is particularly true since most insurance policies written for homeowners are written on a replacement cost basis, with an automatic increase in limits based on an index.

The Department agrees that periodic review of insurance policies is not necessary when the institution has other means for protecting its exposure to loss. Accordingly, a minor change has been made to allow omission of this review when the institution is using other means to protect itself from exposure to loss due to inadequate insurance.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:7.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

3:7-1.1 Required fidelity coverage of counsel

When a bank or savings bank permits counsel to handle funds, either for distribution at the time of settlement of a mortgage loan or for any other reason, the bank or savings bank shall procure an endorsement rider to its fidelity bond, procured by it pursuant to N.J.S.A. 17:9A-115, which will cover counsel and all employees of his or her office concerned with such transactions.

3:7-2.1 Review of fire insurance

Banks and savings banks shall periodically review all fire insurance policies supporting loans secured by mortgages and real estate owned by the bank or savings bank to ascertain if the amount of insurance is sufficient considering present values, especially where the policy contains a coinsurance clause. ***The bank or savings bank may use other prudent means instead of periodic review, such as obtaining insurance for inadequate coverage, to protect itself from exposure to loss from insufficient insurance coverage on these properties.***

3:7-3.2 Date of examination

The examination shall be commenced within the time period specified in N.J.S.A. 17:9A-253B. Prior to commencing the examination, the person scheduled to conduct the examination shall notify the Department of Banking so as to avoid conflict with an examination pursuant to N.J.S.A. 17:9A-260. In the transmittal or report to the bank, the person conducting the examination shall specify the date of completion of the examination.

3:7-3.9 Audit program

(a) The minimum audit scope to be performed in banks or savings banks, as applicable, includes the following:

1. (No change.)
2. Investment securities:
i.-iv. (No change.)
v. Review procedures with respect to amortization of premiums and accretion of discounts.
3.-26. (No change.)

3:7-5.4 Location and retention of statements of interest

(a) All statement of interest forms shall be maintained at the principal office or at such other office as may be designated by the board of directors. Statement of interest forms which have been superseded by new or corrected forms shall be retained with the new statement of interest forms for a period of two years.

(b) (No change.)

(b)

DIVISION OF REGULATORY AFFAIRS

Mortgage Loans

Readoption with Amendments: N.J.A.C. 3:27

Adopted Repeal: N.J.A.C. 3:27-2

Proposed: August 6, 1990 at 22 N.J.R. 2206(a).
Adopted: September 11, 1990 by Jeff Connor, Commissioner, Department of Banking.
Filed: September 12, 1990 as R.1990 d.498, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:12B-165; 17:12B-168.

Effective Date: September 12, 1990, Readoption; October 15, 1990, Amendments and Repeal.
Expiration Date: September 12, 1995.

Summary of Public Comments and Agency Responses:

The Department received one comment from a trade association regarding the proposed readoption with amendments. The comment indicated that the proposed amendments bring the rules into conformity with the mandates of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"). No changes in the proposal are necessary based on this comment.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:27.

Full text of the adopted amendments follows.

3:27-1.1 Required documents

(a) Each association shall maintain a mortgage file with respect to each mortgage loan. The file shall contain:

1.-8. (No change.)

3:27-1.2 Minimum requirements for title papers

(a) Title papers shall set forth, at a minimum:

1.-3. (No change.)

4. A certificate of counsel to the effect that the association's mortgage on the property in question is a first lien as defined by N.J.S.A. 17:12B-11, which shall be dated on or subsequent to the time the instrument was recorded.

3:27-1.3 Minimum requirements for title policies

Title policies shall set forth that the association's lien is within the meaning of N.J.S.A. 17:12B-11, or in lieu of such statement, a certificate of counsel which states that based upon his or her review of the title policy the association's lien is within the meaning of said Section.

3:27-1.7 Minimum requirements for Section 156 additional loans

Additional loans as authorized by N.J.S.A. 17:12B-156 require the same documentation as set forth in this subchapter with respect to applications and loan closing statements. If required by the association, additional credit information and appraisals may be obtained.

3:27-4.2 Federal laws and regulations

An insured association, subject to the limitations and provisions of this subchapter, may make any loan or investment which is permitted to be made by a Federal savings and loan association by Federal law or under rules and regulations promulgated by the Office of Thrift Supervision, or other appropriate Federal regulator, under the authority of Section 5 of the "Home Owners' Loan Act of 1933", as amended and supplemented or as the same may in the future be amended and supplemented.

3:27-4.6 Service corporations

(a) Any insured association, by resolution of its board of directors, may authorize its service corporation to engage in activities to the same extent as Federally chartered savings and loan associations under Part 545.74 of the Rules and Regulations for the Federal Savings and Loan System. A State chartered association making such investment shall comply with the following conditions and procedures:

1.-2. (No change.)

3. If the service corporation is to engage in activities not specifically outlined in Part 545.74 of the Rules and Regulations for the Federal Savings and Loan System, application shall be made to the Commissioner of Banking for approval where the service corporation is wholly owned by one or more State-chartered institutions. The application shall take the form of a resolution adopted by the State-chartered institutions, together with a letter explaining the nature and anticipated equity investment relative to the proposed activity. If the service corporation is jointly owned by both Federal and State chartered associations, a copy of the application filed with the Office of Thrift Supervision, or other appropriate Federal regulator, will be forwarded to the Commissioner for approval.

3:27-5.1 Limitations

The amount of any real estate loan or investment by a State association for any one property containing one or more dwelling units shall not exceed the amount the association is permitted to lend pursuant to Federal limitations on loans to one borrower as set forth in Federal statutes, or regulations promulgated by the Office of Thrift Supervision or other appropriate Federal regulator.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes

Adopted Amendments: N.J.A.C. 5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14, 3.15, 3.16, 3.17, 3.18, 3.20 and 4A.8

Proposed: August 6, 1990 at 22 N.J.R. 2208(a).

Adopted: September 18, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: September 20, 1990 as R.1990, d.507, **without change.**

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

Effective Date: October 15, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

A comment was received from the Mineral Insulation Manufacturers Association recommending adoption of the 1989 CABO Model Energy Code. The Department will consider the merits of this recommendation as part of its ongoing analysis of building codes and standards. However, inasmuch as the 1990 BOCA Energy Conservation Code is an updated edition of a model code that has already been adopted, the Department does not have the option of not revising its administrative rules to reflect changes in the text of the model code.

Full text of the adoption follows.

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, 514.0, 601.0 through 604.0, 606.0, 607.0, 609.0 through 620.0, and 624.0, articles 8 and 9; sections 2002.0, 2301.0 and 2302.0, articles 24 and 25; and sections 2606.0 through 2611.0, 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, 608.0, and 621.0 through 623.0 shall be enforced exclusively by the building subcode official.

3. Plan review functions of article 10 shall be enforced exclusively by the fire subcode official.

4. Construction inspection functions of sections 513.0, 601.0 through 601.8, 601.13 through 601.14.1, 601.14.3 through 624.0; articles 8 and 9; sections 2002.0 and 2302.0, article 24, sections 2606.0 through 2607.2 and 2607.4 through 2611.2 shall be enforced exclusively by the building subcode official.

5. Construction inspection functions of sections 601.9 through 601.12 and sections 601.14.2, articles 10 and 25; and sections 2607.3, 2610.2.2, 2611.2.1 and 2611.2.2, 3018.0 and 3020.0 shall be enforced exclusively by the fire protection subcode official.

Recodify existing 5.-6. as 6.-7. (No change in text.)

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

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1.-3. (No change.)

4. Plan review and construction inspection functions for structures submitted under article 7 shall be reserved to the respective subcode officials as delineated above.

Recodify existing 6. as 5. (No change in text.)

(f) Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:

1. Articles 12 and 14 and sections M-301 through M-311, M-900, M-901.3, M-903.1, M-903.3, M-903.4, M-906, and M-908: Plan review functions shall be enforced jointly by the building and fire protection subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2. (No change.)

3. Articles 6, 7, 8, and 13 and sections M-901.1, M-901.2, M-901.4 through M-901.9, M-902, M-903.2, M-904, M-905, M-907, M-909, and M-910: Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Article 11 and section M-312: Plan review functions shall be enforced jointly by the building and fire protection subcode officials; construction inspection functions shall be enforced exclusively by the fire protection subcode official.

5.-7. (No change.)

5:23-3.5 Posting structures

(a) Posted use and occupancy: Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile or storage use, (use groups B, F, H, M, and S) as defined in article 2 of the building subcode shall be posted on all floors by the owner with a suitably designed placard in a form designated by the building subcode official, which shall be securely fastened to the structure in a readily visible place, stating the use group and the live load and occupancy load.

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

(d) Periodic inspections: The building subcode official or fire protection subcode official may periodically inspect all existing buildings and structures, except one and two-family dwellings, for compliance with the regulations in respect to posting; or they may accept the report of such inspection from an authorized licensed professional engineer or architect; and such inspection and report shall specify any violation of the requirements of the regulations in respect to the posting of floor load, occupancy load and use group of the building.

(e) (No change.)

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 903.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as interior floor finish material not in conformance with section 903.3 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648;

2.-4. (No change.)

5:23-3.10 Enforcing agency classification

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

(c) Enforcing agencies shall be permitted to perform plan review activities in accordance with the agency classification for the use groups listed in the following schedule (keyed to section 301.0 of the building subcode):

1. Class 3 agencies:

i.-iv. (No change.)

v. Use group R-3 as permitted in the building subcode and including accessory private garages (section 608.0), radio and television antennae (section 622.0) and swimming pools (section 623.0).

2. Class 2 agencies:

i. through viii. (No change.)

ix. Use group F-1 less than 22,800 square feet, six story, 75 feet high;

x. Use group F-2 less than 34,200 square feet, six story, 75 feet high;

xi. Use group H (paint spray booths, section 618.9 only);

Recodify existing xi.-xix. as xii.-xx. (No change in text.)

3. (No change.)

(d) (No change.)

(e) The Department shall issue a roster of enforcing agencies and their classification upon request. Copies may be obtained by contacting the Licensing Section, Bureau of Technical Services, CN 816, Trenton, New Jersey 08625-0816.

5:23-3.11 Enforcement activities reserved to the Department

(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1.-4. (No change.)

Recodify existing 6. and 7. as 5. and 6. (No change in text.)

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

5:23-3.11A Enforcement activities reserved to other State agencies

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

(c) The Department of Education shall be the sole plan review agency, except as provided in N.J.S.A. 52:27D-130 and (d) below, for the following structures:

1. Public schools;

2. Private schools for the handicapped; and

3. Schools for the handicapped operated by the Department of Human Services.

(d) In lieu of obtaining construction code plan review approval from the State Department of Education, a school district, upon notice to the State Department of Education, may secure construction code plan review approval from any municipal code enforcing agency, pursuant to P.L. 1990, c.23.

1. The municipal code enforcing agency providing construction code plan approval must agree to perform the review and must be appropriately classified for the proposed project in accordance with this chapter.

2. When a review for educational adequacy is necessary, review and approval shall be obtained from the State Department of Education prior to obtaining a construction code plan review, whether this review is performed by the State Department of Education or by a municipal code enforcing agency.

3. The municipal code enforcing agency performing the construction code plan review may require the payment of any municipal plan review fees.

4. No construction permit shall be issued for a public school facility unless and until the final plans and specifications have been approved by the State Department of Education or an appropriately classified municipal code enforcing agency.

5. The municipal code enforcing agency within the jurisdiction of which the facility is located shall be responsible for construction permit issuance, construction inspection and certificate of occupancy issuance.

6. Amendments to approved plans and specifications for reasons other than educational adequacy shall be submitted for review and approval to the State Department of Education or the municipal code enforcing agency, whichever originally approved the plans.

7. Release of the plans by the State Department of Education or the municipal code enforcing agency, as the case may be, shall not preclude the enforcing agency doing the inspection from requiring subsequent correction of any errors in the plans or from issuing a stop-work order in the event of a violation of the code. In any such case, the enforcing agency doing the inspection shall notify the agency that approved the plans and the Department of Community Affairs.

(e) The State Department of Education, or the municipal code enforcing agency providing construction code plan approval, shall be responsible for enforcing the following Uniform Construction Code enhancements in public school buildings:

1.-8. (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 National Building Code/1990," 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 (b) below.

i. (No change.)

ii. "The BOCA National Building Code/1990," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode".

2. Any references to the mechanical code, plumbing code, CABO One and Two Family Dwelling Code, or NFiPA 70 (including reference to Article 27) listed in Appendix A shall be considered a reference to the appropriate adopted mechanical plumbing, one and two family dwelling, or electrical subcode in N.J.A.C. 5:23-3.

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

1. (No change.)

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

i. From the definition of the term "addition", delete the reference "see Section 103.3";

ii. From the definition of the term "alteration" delete the reference "see Section 103.3";

Recodify existing i.-ix. as iii.-xi. (No change in text.)

xii. The definition of the term "dwellings-boarding house" is deleted. Substitute in lieu thereof, the definition of the term "boarding house" found in N.J.S.A. 55:13B-3;

xiii. The term and definition of "exterior envelope" is deleted.

Recodify existing xii. as xiv. (No change in text.)

xv. The term and definition of "mobile unit" is deleted. Substitute in lieu thereof the term and definition of "manufactured home" found in N.J.A.C. 55:23-1.4;

Recodify existing xiv. as xvi. (No change in text.)

xvii. From the definition of the term "permit", delete the reference "see Section 112.0";

Recodify existing xv.-xvi. as xviii.-xix. (No change in text.)

xx. From the definition of the term "professional engineer or architect", delete the reference "see Section 108.0";

Recodify existing xvii.-xix. as xxi.-xxiii. (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 "not more than three stories in height" on line 2;

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

i. (No change.)

ii. Section 506.5 is deleted in its entirety.

Recodify existing ii.-iii. as iii.-iv. (No change in text.)

v. Section 511.3 is amended to read as follows: "The construction official is hereby authorized to cancel such special approval and to order the demolition of any such construction when any permit conditions have been violated."

Recodify existing v.-vi. as vi.-vii. (No change in text.)

viii. Section 514.5 is amended to delete the term "authorities" and substitute in lieu thereof "authorities having jurisdiction."

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

i. Section 600.2 is amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof "construction official";

ii. Section 602.2 "Maintenance and Inspection" is deleted in its entirety;

iii. Section 620.0 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

iv. Sections 620.1 and 620.2 are deleted in their entirety;

v. Sections 620.3 and 620.3.1 are amended to delete the words "mobile units," "unit" and "units" and substitute in lieu thereof "manufactured homes," "home" and "homes";

vi. Section 621.5 is amended to add the phrase "to comply with the requirements of the electrical subcode" after the word "grounded";

vii. Section 623.3 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

viii. Section 623.6 is amended to end with the phrase "in accordance with the plumbing subcode";

ix. Section 623.6.1 is deleted;

x. Section 623.6.2 is amended to end with the phrase "in accordance with the plumbing subcode";

xi. Section 623.9.3 is amended to delete the phrase "governing body" and substitute in lieu thereof "construction official";

xii. Section 624.1.1 is deleted in its entirety and the following language is substituted in lieu thereof:

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

xiii. Section 624.6 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official."

6. (No change.)

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

i.-ii. (No change.)

iii. Section 803.7, Exception, is amended to delete the phrase "Section 512.0" and substitute in lieu thereof "the Barrier-Free Subcode".

Recodify existing iii. as iv. (No change in text.)

v. Sections 813.4, 813.4.1.2 and 813.4.2 are amended to delete the phrase "15-pounds (73N)" and substitute in lieu thereof "8-pounds (39N)";

vi. Section 816.3 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";

vii. Section 816.4 is amended to delete the second sentence and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode.";

viii. Section 816.5 is amended to delete the third sentence and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode."

8. The following amendments are made to Article 9 of the building subcode, entitled "Fireresistive Construction."

i. Sections 903.4.3 and 922.8.2 are amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official."

9. The following amendments are made to Article 10 of the building subcode, entitled "Fire Protection Systems":

i. Section 1000.3 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official";

ii. Sections 1000.7 and 1000.8 are amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official";

iii. Section 1001.1 is amended to replace the term "department" with the phrase "enforcement agency responsible for plan review", and, in the note, to replace the term "Since" with the term "If";

iv. Section 1001.2 is amended to replace the term "department" with the phrase "enforcement agency responsible for plan review";

v. Section 1014.3 is amended to delete the term "fire department" on line 2, and substitute in lieu thereof the phrase "fire protection subcode official";

vi. Section 1015.1 is amended to delete the phrase "administrative authority of this jurisdiction" and substitute in lieu thereof "fire protection subcode official";

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

viii. Section 1016.7.4 is amended to delete the term "code official" on line 2 and substitute in lieu thereof, "fire protection subcode official";

Recodify existing xiii. and xiv. as ix. and x. (No change in text.)

xi. Section 1019.4.4 is amended to delete the phrase "fire department" on lines 6 and 7 and substitute in lieu thereof "fire protection subcode official."

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

i. Section 1300.2 is amended to delete the term "approved rules" and substitute in lieu thereof "regulations";

ii. Section 1302.1 is amended to replace the phrase "approved rules" with the word "regulations" and to replace the phrase "Section 110.0" with the phrase, "the regulations";

iii. Section 1303.1 is amended to delete the phrase "and the approved procedures" on lines 7 and 8;

iv. Section 1305.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "the regulations";

v. Section 1308.0 is deleted in its entirety. In addition, any references to section 1308.0 are deleted and in lieu thereof shall be considered a reference to the regulations.

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

i. Section 2101.6.7 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

ii. Section 2101.6.9 is deleted in its entirety;

iii. Section 2101.6.10 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 2308.1 is amended to delete the phrase "The repair . . . for new roofing."

13. (No change.)

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 otherwise provided by statute" in the first line;

Recodify existing iv.-vi. as ii-iv. (No change in text.)

v. Section 2606.3 is amended to delete the phrase "ANSI A117.1 listed in Appendix A" and substitute in lieu thereof "the Barrier-Free subcode";

vi. Section 2610.2.2 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official".

15.-17. (No change.)

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

i. (No change.)

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 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) (No change.)

iii. (No change.)

19. (No change.)

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

i. (No change.)

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

i. (No change.)

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

(1) National Property Maintenance Code;

(2) (No change.)

(3) National Private Sewage Disposal Code;

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

Recodify existing (2) as (1) (No change in text.)

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/1990", including all subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.

i. (No change.)

2. "The National Standard Plumbing Code/1990", including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode".

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

1. Page v: Delete the note referring to local changes under the heading Introductory Note.

2. (No change.)

3. Chapter 2 of the plumbing subcode, entitled "General Regulations," is amended as follows:

i.-iii. (No change.)

Recodify existing v.-ix. as iv.-viii. (No change in text.)

4. Chapter 3 of the Plumbing Subcode, entitled "Materials," is amended as follows:

i.-vi. (No change.)

vii. Sections 3.12.1, 3.12.2, 3.12.3, 3.12.4, and 3.12.5 are deleted in their entirety.

5. Chapter 4 of the plumbing subcode entitled "Joints and Connections" is amended as follows:

Recodify existing ii. as i. (No change in text.)

Recodify existing iv. as ii. (No change in text.)

6.-7. (No change.)

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

i-iv. (No change.)

v. Figure 7.4.5. on page 7-3 is amended to delete the word "Code" and substitute in lieu thereof "Subcode" in the block at bottom.

9. (No change.)

10. Chapter 10 of the plumbing subcode, entitled "Water Supply and Distribution," is amended as follows:

i. Section 10.2 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.

Recodify existing i.-vi. as ii.-vii. (No change in text.)

viii. (No change.)

11.-13. (No change.)

14. Chapter 14 of the plumbing subcode, entitled "Medical Care Facility Plumbing Equipment," is amended as follows:

i. Section 14.21 is amended to delete the words "Administrative Authority" and in lieu thereof substitute "Authority having jurisdiction."

Recodify existing i. as ii. (No change in text.)

15.-16. (No change.)

17. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards," is amended as follows:

i. (No change.)

ii. Section 18.2.1 is amended to delete the last sentence beginning "Trailer Home Park".

iii. Section 18.2.2 is amended to delete the words "or sewerage disposal" on line 1.

Recodify existing vi. as iv. (No change in text.)

v. Section 18.8.1.2 is deleted.

vi. Section 18.8.3 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

vii. Section 18.8.4 is amended to add the phrase "For dependent trailers" after the word "park" on line 1.

18. Appendix D, entitled "Water Conservation," is amended as follows:

i. Item D.2 is amended to insert the numbers 3.5 and 4.0 respectively in the blanks provided.

ii. Item D.4 is amended to insert the number 3 in the blank provided and to add a note after line 4 to read "Note: See Energy subcode for public lavatories flow rate value."

iii. Item D.5 is amended to insert the number 3 in the blank provided.

iv. Item D.6 is amended to insert the number 3 in the blank provided.

v. Item D.7 entitled "Water Conservation—Barrier Free Lavatory Faucets" is amended to delete the text and substitute in lieu thereof the words "See the State Barrier Free Subcode N.J.A.C. 5:23-7."

19. Appendix E of the plumbing subcode, entitled "Special Design Plumbing Systems," is amended as follows:

i. (No change.)

ii. Section E.4.2 is amended to delete the term "Administrative Authority" and substitute in lieu thereof "Authority Having Jurisdiction."

5:23-3.16 Electrical subcode

(a) (No change.)

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

1.-3. (No change.)

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 "Mobile Homes and".

(1) (No change.)

(2) Part B, entitled "Mobile Homes", comprising sections 550-5 through 550-15, is deleted in its entirety with the exception of section 550-5, which shall be retained.

(A) Exception—Part B is retained in its entirety in the case of mobile homes undergoing repair or alteration work.

ii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks", delete from the title the words "Recreational Vehicles and".

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

(2) Parts B, C, D, E and F, comprising sections 551-10 through 551-60, are deleted in their entirety, with the exception of Figure 551-46(c), which shall be retained.

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 National Building Code/1990 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.14):

(1) Sections 513.0 and 514.0 of article 5—General Building Limitations;

(2) through (6) (No change.)

(7) Sections 2301.0 and 2302.0 of Article 23—Roofs and Roof Coverings;

(8)-(9) (No change.)

(10) Sections 2606.0 through 2611.0 of Article 26—Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance;

(11) (No change.)

ii. (No change.)

iii. BOCA National Mechanical Code/1990 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.20):

(1) Section 312.0 of Article 3—Air Distribution Systems;

Recodify existing (1) and (2) as (2) and (3). (No change in text.)

(4) Article 9—Flammable and Combustible Liquid Storage and Piping Systems.

Recodify existing (3) as (5). (No change in text.)

2. (No change.)

(b) (No change.)

5:23-3.18 Energy Subcode

(a) Rules concerning the Energy Subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the BOCA National Energy Conservation Code/1990, including all subsequent revisions and amendments thereto, as well as the Illuminating Engineering Society's standard known as LEM-1, 1982, "IES Recommended Procedure for Lighting Power Limit Determination," including all subsequent revisions and amendments thereto.

i. Copies of the BOCA National Energy Conservation Code/1990 may be obtained from the sponsor at BOCA, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

ii. Copies of LEM-1, 1982, "IES Recommended Procedure for Lighting Power Determination," may be obtained from the sponsor at IES, 345 East 47th Street, New York, New York 10017.

iii. The model code and standard listed above, including (where appropriate) all subsequent revisions and amendments thereto, may be known and cited as the "energy subcode."

2. Any reference to the building code, mechanical code, or plumbing code listed in Appendix A shall be considered a reference to the appropriate adopted building, mechanical, or plumbing subcode in N.J.A.C. 5:23-3.

(b) The following chapters or articles of the Energy Subcode are amended as follows:

1. The following amendments are made to Article 1 of the Energy Subcode entitled "Scope and Application":

i. Section E-100.1 is deleted in its entirety.

ii. Section E-100.2 is amended to delete Exception 4.

2. Article 2 of the Energy Subcode, entitled "Definitions," Section E-201—General Definitions, is amended to add the following definitions:

i.-x. (No change.)

Recodify existing xii. as xi. (No change in text.)

Recodify existing xiv.-xxix. as xii.-xxvii. (No change in text.)

3.-4. (No change.)

5. The following amendments are made to Article 5 of the Energy Subcode entitled "Plumbing Systems":

Recodify existing ii. as i. (No change in text.)

6.-8. (No change.)

(c) (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 National Mechanical Code/1990," 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 (b) below.

i. Copies of this code may be obtained from the sponsor at: BOCA International, 4051 Flossmoor Road, Country Club Hills, Illinois 60478-5795.

ii. The "BOCA National Mechanical Code/1990," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

2. (No change.)

(b) The following articles, sections or pages of the BOCA National Mechanical Code/1990 are amended as follows:

1. (No change.)

2. Article 2 of the Mechanical subcode, entitled "Definitions," is amended as follows:

i.-ii. (No change.)

iii. The definition and term "approved" is amended to delete the words "code official or other."

iv.-ix. (No change.)

3.-4. (No change.)

5. Article 9 of the mechanical subcode, entitled "Flammable and Combustible Liquid Storage and Piping Systems," is amended as follows:

i. Section M-900.1 is amended to add the words "For those systems that are subject to the Department of Environmental Protection's Underground Storage Tank Systems rules, N.J.A.C. 7:14B, the requirements of this article that conflict with DEP rules shall be inapplicable."

Recodify existing 5.-7. as 6.-8. (No change in text.)

9. Article 20 of the mechanical subcode, entitled "Boilers and Pressure Vessels, Maintenance and Inspection," is deleted in its entirety, with the exception of section M-2000.2.

Recodify existing 9. as 10. (No change in text.)

5:23-4A.8 Approvals of building systems and compliance assurance programs

(a) Approved evaluation agencies shall be permitted to approve building systems and compliance assurance programs for the following types of industrialized/modular buildings and building components, including, without limitation, the factory built portions of the buildings of the Use groups listed in the Class 3 agency schedule set forth at N.J.A.C. 5:23-3.10(c)1:

1. through 5. (No change.)

6. Factory built portions of buildings of multiple single-family dwellings of Use group R-3 of types 5A or 5B construction not exceeding 4,800 square feet per floor;

7. through 10. (No change.)

(b) through (d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium and Cooperative Conversion Mobile Home Park Retirement

Adopted Amendments: N.J.A.C. 5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10 and 1.11

Proposed: August 6, 1990 at 22 N.J.R. 2214(a).

Adopted: September 18, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: September 20, 1990 as R.1990 d.508, **without change.**

Authority: N.J.S.A. 2A:18-61.12.

Effective Date: October 15, 1990.

Expiration Date: July 10, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 24
CONDOMINIUM, FEE SIMPLE AND COOPERATIVE CONVERSION AND MOBILE HOME PARK RETIREMENT

SUBCHAPTER 1. GENERAL PROVISIONS

5:24-1.1 Introduction

P.L. 1975, c.311, which amended and supplemented P.L. 1974, c.49 (N.J.S.A. 2A:18-61.1 through 61.12), became effective on February 19, 1976. P.L. 1981, c.8, which amended P.L. 1974, c. 49 and P.L.

1975, c.311 so as to extend certain protections to owners of mobile homes in mobile home parks being permanently retired from the rental market, became effective January 26, 1981. The rules contained in this subchapter have been adopted to enable the Department of Community Affairs (DCA) to implement these laws and to assist owners and tenants of properties affected by them in complying with, and realizing the protection provided by, their requirements.

5:24-1.2 Procedures; definitions

(a) When an owner seeks to convert a building from the rental market to a condominium or a cooperative or fee simple ownership of two or more dwelling units, or to convert a mobile home park from the rental market to a condominium or cooperative or fee simple ownership of two or more units or park sites, or to retire a mobile home park permanently from the rental market, there are several procedures required to be followed pursuant to N.J.S.A. 2A:18-61.6 through 61.12.

(b) The following terms used in the statutes and these rules are defined as follows:

1.-5. (No change.)

6. "Comparable housing or park site" means housing that is:

i. Decent, safe, sanitary, and in compliance with all local and State housing codes;

ii. Open to all persons regardless of race, creed, national origin, ancestry, marital status or sex; and

iii. Provided with facilities equivalent to that provided by the landlord in the dwelling unit or park site in which the tenant or mobile home owner then resides in regard to each of the following:

(1) Apartment size, including number of rooms, or park site size;

(2) Rent range;

(3) Apartment's major kitchen and bathroom facilities; and

(4) Special facilities necessary for the handicapped or infirm;

iv. Located in an area not less desirable than the area in which the tenant or mobile home owner then resides in regard to each of the following:

(1) Accessibility to the tenant or mobile home owner's place of employment;

(2) Accessibility of community and commercial facilities; and

(3) Environmental quality and conditions; and

v. In accordance with additional reasonable criteria that the tenant or mobile home owner has requested in writing at the time of making any request under P.L. 1975, c.311, as amended.

5:24-1.3 Documents required; conversion

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

5:24-1.6 Rights of tenants and mobile home owners in occupancy

(a) Tenants in occupancy prior to the recording of the master deed, deed establishing a fee simple lot or deed transferring the property to a cooperative corporation or association who have received the three year notice of eviction on the grounds of conversion, or mobile home owners who have received the 18 month notice of eviction on the grounds of permanent retirement of the mobile home park from the rental market, have the right, for 18 full months after the receipt of such notice, to request of the landlord, and to be offered by the landlord, personally or through an agent, a reasonable opportunity to examine and rent "comparable housing," as defined in N.J.A.C. 5:24-1.2.

(b) In order to be deemed to have offered a tenant or a mobile home owner a reasonable opportunity to examine and rent comparable housing, a landlord, or a person clearly authorized by a letter to the tenant or mobile home owner to be the landlord's agent, must offer a comparable rental unit or mobile home park site fulfilling the definition of "comparable housing" set forth in N.J.A.C. 5:24-1.2. An offer of comparable housing must include the following elements:

1. The offer must be made with reasonable notice in order to give the tenant or mobile home owner a fair opportunity to examine and rent the unit or mobile home park site. Reasonable notice must be given to the tenant or mobile home owner by personal service or certified mail no less than 72 hours in advance, exclusive of legal holidays, of the opportunity to examine comparable housing;

2. If the landlord of the proposed comparable unit or mobile home park site should reject the application of any tenant or mobile home owner for such comparable housing, the offer shall not be construed as an offer of comparable housing as required in these rules; and

3. In no case shall a comparable rental unit or mobile home park site be deemed to have been offered if it was not available to be rented to the tenant or mobile home owner.

5:24-1.7 Evictions

(a) In order to evict for conversion from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites at the end of the three year notice period, or in order to evict for permanent retirement of a mobile home park from the rental market and the end of the 18 month notice period, the landlord must prove in court that the tenant or mobile home owner was offered comparable housing as requested and as defined in N.J.A.C. 5:24-1.2 and reasonable opportunity to examine and rent such housing, as described in N.J.A.C. 5:24-1.6(b).

(b) The court has authority under P.L. 1975, c.311, as amended, to authorize one-year stays of eviction with reasonable rent increases until the court is satisfied that the tenant or mobile home owner has been offered comparable housing and a reasonable opportunity to examine and rent such housing.

(c) If, after at least one one-year stay has been authorized, the landlord provides the tenant or mobile home owner with a "hardship relocation compensation," which shall consist of a waiver of payment of five months' rent, and has demonstrated this to the court, then the court cannot authorize any further stays. A warrant for possession could then issue at the end of the one-year stay.

(d) If the landlord does not provide the relocation compensation of five months' rent and fails, within one year of a prior stay, to allege to the court that the tenant was offered a reasonable opportunity to examine and rent comparable housing, the court shall automatically renew the one-year stay.

(e) The court can grant up to five one-year stays if evidence is not provided to the court of a reasonable opportunity to examine and rent comparable housing or of the payment of a hardship relocation compensation of waiver of payment of five months' rent.

5:24-1.8 Moving expense compensation

Any tenant whose tenancy began before the conversion, and is not evicted on grounds other than that of a conversion, and any mobile home owner who is not being evicted on grounds other than permanent retirement of the mobile home park from the rental market, shall receive from the landlord a moving expense compensation of a waiver of payment of one month's rent. No warrant of possession can be given until payment of one month's waiver has been proved. Even if tenants or mobile home owners leave without eviction proceedings, they are entitled to the waiver of payment of one month's rent. Nothing in this section in any way waives the rights of other parties under the security deposit law.

5:24-1.10 Landlord's liability

(a) The landlord, whether the owner of the building or of the unit, can be liable to a former tenant in a civil action for triple damages plus attorney's fees and court costs for violating the requirements of N.J.A.C. 5:24-1.9.

(b) This penalty of triple damages plus attorney's fees and court costs is also applicable where a tenant vacates the premises after being given a notice alleging that the landlord seeks to personally occupy the premises under paragraph L of N.J.S.A. 2A:18-61.1, and the landlord thereafter arbitrarily fails to execute the contract for sale or take personal occupancy, but instead permits personal occupancy by another tenant.

(c) This penalty of triple damages plus attorney's fees and court costs is also applicable where a tenant or mobile home owner vacates the premises after being given a notice alleging that the landlord seeks to permanently board up or demolish the premises or retire the premises from rental use under subparagraph g(1) or paragraph h of N.J.S.A. 2A:18-16.1 and the landlord thereafter permits personal occupancy of the premises by another tenant or mobile home owner within five years of such vacancy.

(d) A tenant must sue in a civil court action to recover any such damages.

5:24-1.11 Copies of this subchapter required to be furnished to certain tenants

(a) Copies of this subchapter shall be provided to all tenants of buildings, and all mobile home owners in mobile home parks, either about to be, or being, converted to a condominium or cooperative or fee simple ownership of two or more units or park sites as part of the 60-day notice of intent to convert and the full plan of conversion. The mobile home owner or tenant's receipt of a copy of these rules shall be interpreted as being an integral and procedurally necessary part of the "full plan of conversion" described in N.J.A.C. 5:24-1.5.

(b) Copies of this subchapter shall be provided to all mobile home owners in mobile home parks being permanently retired from the rental market at or prior to the time at which eviction notices are served.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Transfer of Ownership Interests

Adopted Amendments: N.J.A.C. 5:80-5.1, 5.2, 5.3, 5.8, 5.9 and 5.10

Proposed: July 2, 1990 at 22 N.J.R. 1971(a).

Adopted: September 15, 1990 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

Filed: September 17, 1990 as R.1990 d.504, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: October 15, 1990.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

Comments from two individuals/entities were received by the Agency. The substance of the comments with the Agency responses are as follows:

COMMENT: A housing sponsor of one of the Agency financed projects requested an addition whereby no fees would be imposed for syndicated projects when the ownership of the project reverts to the original nonprofit sponsor, subsequent to a syndication, and there is no consideration other than the return of the housing project. The Sponsor goes on to explain that the limited partnership when acquiring the project, gave promissory notes to the original nonprofit which will be worth $2,200,000 in 1999, the year in which the partnership intends to convey the project back to the nonprofit sponsor. They plan to reconvey the project in exchange for the forgiveness of the promissory notes and the assumption of the Agency mortgage.

RESPONSE: The Agency does not believe the above-described transaction merits an exemption from the fees. Although no cash will change hands, the forgiveness of a $2,200,000 debt is clearly consideration for the acquisition of the project by the nonprofit sponsor. The assumption of the Agency's mortgage is additional consideration for acquisition of the project. The combination of the $2,200,000 debt forgiveness plus the assumption of the outstanding mortgage balance would constitute the purchase price, as defined in the regulation. As such a transaction is contemplated by the regulation, the fees and payments required under the regulation are applicable and should not be waived, as requested.

COMMENT: A managing agent for several Agency projects provided the following comments:

1. The commenter suggested that changes be made to the section dealing with return on equity limitations. The regulation provides that, upon a transfer, the buyer shall assume the same rate of return on equity that the seller had. For the Agency's pre-January 17, 1984 projects, the maximum rate of return is eight percent. As most of the Agency's projects were financed prior to January 17, 1984, most transfers would be subject to the eight percent limitation. The commenter contends that such limitation is too restrictive and suggests increasing the rate of return.

RESPONSE: Since most sponsors of projects financed prior to January 17, 1984 were formed under the limited dividend associations law (N.J.S.A. 55:16-1 et seq.), their return on equity is limited to eight percent by that law and the Agency has no authority to modify those limitations for such sponsors. For other sponsors, Agency staff does not believe that an increase in the rate of return upon sale is warranted. Sponsors of projects, who may now be considering the sale of those projects, obtained financing from the Agency with full knowledge of the return on equity limitations and other conditions for receiving Agency financing. Those sponsors, weighing the benefit of Agency financing (for example, lower interest rate, less cash investment, receipt of subsidies) against the limitations, decided to take the risk involved with any investment venture. Those sponsors also agreed to provide low-income housing and to be subject to the Agency's requirements for the term of the mortgage. The Agency, in consideration of the benefits conferred upon the original owner, is entitled to insist that a buyer, assuming the Agency mortgage, be subject to the same terms and conditions agreed upon by the original sponsor.

The commenter further contends that limitations on returns upon sale applicable to the seller are also too restrictive. However, such limitations are imposed by the Agency's statute at N.J.S.A. 55:14K-7a(6). The Agency has no authority to modify such restrictions.

2. The commenter contends that the "increased fees" under the section, Required payments and repayments, would discourage buyers.

RESPONSE: The Agency does not agree with the contention that the fees have been increased. This section was specifically amended with the purpose of reducing fees. This has been accomplished by eliminating the seller's fee of one-half of one percent of the purchase price and the elimination of the seller's fee of 10 percent (for 236 projects) or 15 percent (for other projects) of the cash proceeds.

In place of the eliminated fees, the Agency now requires a 3.25 percent payment from the purchaser to be paid into a Portfolio Reserve Account (PRA). These payments operate as an insurance premium, since the PRA is a fund which is used to assist projects experiencing financial difficulties. In addition, as in any transaction, the fees and other expenses to be incurred by the seller are factored into the purchase price and are ultimately paid by the buyer. With the elimination of seller's fees, the purchase price to buyers should be correspondingly less. As the current fee structure provides buyers with a reduced risk through participation in the PRA and should reduce the purchase price through the reduction of seller's fees, the Agency does not believe that the payments section of the regulation will discourage buyers.

3. The regulation includes a processing fee for sellers to reimburse the Agency for its administrative cost in processing and approving a transfer. The commenter contends that since the amount of the fee is not specifically set forth in the regulation, that it is arbitrary.

RESPONSE: The Agency does not agree. The fee to sellers is consistent with New Jersey law which permits administrative agencies to charge fees which reimburse the Agency for its administrative costs in processing applications. It is impossible to provide a specific amount in the regulation as every transfer will be different. The fee will vary with the nature of the transfer and the extent of staff time and other administrative expenses incurred by the Agency in reviewing and processing the transfer.

4. The commenter contends that the conditions applicable to permitted prepayments are too restrictive.

RESPONSE: The conditions referred to by the commenter include a continuation of the statutory and regulatory controls of the Agency concerning tenant income eligibility, tenant selection, rent increases, certification/recertification of income and affirmative fair housing marketing, until the expiration of the original mortgage loan.

The Agency believes these conditions are consistent with its statutory objective to provide low and moderate income housing. When the Agency undertook the financing of such projects, it provided long term mortgage loans, in part to help ensure the financial feasibility of the project and in part to guarantee that the project would remain affordable to low and moderate income tenants. To permit the removal of the Agency's statutory and regulatory controls would defeat the very purposes for which the Agency was created by the Legislature, (that is, developing and maintaining affordable housing). In addition, as was explained in the Agency response to the return on equity issue, sponsors obtained financing from the Agency with full knowledge that prepayment was not permitted without Agency approval.

5. Another condition for prepayment requires the continuation of fees and charges by the Agency. The commenter contends that such fees should be eliminated as the Agency would still continue to receive a fee as contract administrator for Federal subsidies to the project.

RESPONSE: The Agency does not agree. The fee received as contract administrator is paid for the Agency's services for administering Federal

subsidies to the project. The Agency's role in assuring that the statutory and regulatory controls upon the project are being met are separate and apart from its role as contract administrator. Accordingly, the fees and charges imposed by the Agency upon prepayment are required for the Agency's role in assuring compliance with statutory and regulatory requirements.

Full text of the adoption follows.

5:80-5.1 Definitions

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

...

"Conversion" means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.

"Portfolio Reserve Account" means that fund established pursuant to N.J.A.C. 5:80-5.9(b) intended primarily for financial support for any housing project financed by the agency.

...

5:80-5.2 General policy

(a) (No change.)

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or a limited partner or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

(c) Changes in ownership processed under these rules shall not result in a modification of the statutory, regulatory or contractual requirements governing the housing sponsor and housing project except as may be provided in cases of prepayment pursuant to N.J.A.C. 5:80-5.10.

(d) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the financial sufficiency, organizational capabilities, background and previous housing experience which will help ensure that the buyer will be capable of operating the project.

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16-1 et seq.

5:80-5.3 Applicability

(a) The regulations in this subchapter are applicable in their entirety to all proposed changes or transfers of ownership interests except the following:

1. Changes or transfers which are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80-6). The conversion regulation shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations and N.J.A.C. 5:80-6 as it applies to such conversion, the provisions N.J.A.C. 5:80-6 shall control;

2. Changes or transfers which represent the first sale of partnership or shareholder interests in order to provide syndication proceeds on nonprofit conversions provided such sale occurs within nine months of the conversion closing;

3. Changes or transfers for projects which had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the Agency's recognition of completion of construction or rehabilitation of the project, for projects receiving both construction and permanent financing or within three months following the mortgage closing for projects receiving permanent financing only.

(b) Changes or transfers which fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80-5.9(a)3 shall apply except that in no event shall the fee be less than $1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

5:80-5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, or paid in full in the case of permitted prepayments, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

i. Any amount of the purchase price which is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d);

ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80-5.4(e); and

iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department which are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16-1 et seq., such excess shall be distributed pursuant to said Act. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

5:80-5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.

2. The buyer shall submit with its request for review, a nonrefundable fee of $5,000 which will be applied at closing toward any payment or repayments due.

3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.

4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency which is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project which cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve

the housing units at rents which are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that the statutory and regulatory controls at N.J.S.A. 55:14K-1 et seq. and this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income and affirmative fair housing marketing shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay fees and charges, as determined by the Agency, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency. In addition, to guarantee the obligations under the deed restriction or other appropriate agreement, the Sponsor shall execute and deliver a deed granting the Agency title to the project, which deed shall be held in escrow by the Agency. The Agency shall have the right to release the deed from escrow and file it, upon the occurrence of an event of default under the deed restriction or other agreement.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.

3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project by the Agency or other State agency must be prepaid.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases which would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;

2. Jeopardize the continuing tax exempt status of the bonds; or

3. Reduce or terminate subsidies to the project such as the United States Department of Housing and Urban Development Section 8 or Section 236.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K-1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16-1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi-Family Production Program (JUMPP).

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules
Waterfront Development
Adopted Concurrent Amendment: N.J.A.C. 7:7-2.3

Proposed: August 6, 1990 at 22 N.J.R. 2361(a).
Adopted: September 14, 1990 by Judith A. Yaskin, Commissioner Department of Environmental Protection.
Filed: September 14, 1990 as R.1990 d.503, **without change.**
Authority: N.J.S.A. 12:5-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:9A-1 et seq., and 13:19-1 et seq.

DEP Docket Number: 025-90-07.
Effective Date: September 14, 1990.
Expiration Date: May 12, 1994.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by publication of notices in the Asbury Park Press, the Newark Star-Ledger and the Atlantic City Press. Forty-two written comments were received during the comment period. A public hearing was held on August 29, 1990, at which 20 commenters presented oral comments and/or submitted written comments.

COMMENT: (In General): According to the Summary, this rule is supposed to help "navigation and commerce", help tourism and protect the shellfish industry. The rule doesn't explain how it will do this and provides no clear criteria for the denial of permits.

RESPONSE: As set forth in the summary, this rule will promote those interests by preventing the ill effects attendant upon irresponsible development along the waterfront. The criteria for development compatible with these interests may be found in N.J.A.C. 7:7-2.3(e)3ii and in N.J.A.C. 7:7E.

COMMENT: (In General): Boat registrations are down 14,000 a year—local zoning should have a water dependent use zone to stem conversions of marinas to residences.

RESPONSE: Although this rule is intended to regulate and foster commercial development along the waterfront, local zoning is beyond the scope of this rule.

COMMENT: (In General): Encouraging waterfront development outside the shore in Camden and Hudson Counties and prohibiting it at the shore is a double standard.

RESPONSE: Development at the shore is not prohibited but is regulated according to the same standards as waterfront development throughout the State (see N.J.A.C. 7:7E). Because commercial needs vary from site to site, patterns of development pursuant to this rule will vary as well.

COMMENT: (In General): Zoning—especially concerning 750 square foot extensions—should be left with local governments.

RESPONSE: Zoning has always been and remains the province of the local authority. This rule is promulgated pursuant to the Waterfront Development Act (N.J.S.A. 12:5-3), which requires the Department's approval for all developments along the waterfront.

COMMENT: (In General): The Governor and the Commissioner should be congratulated for acting quickly. There is an emergency at the shore. Unbridled development has already had deleterious effects on marine life, water quality, traffic, population distribution and overall quality of life. We must begin to act at the State level to close CAFRA loopholes, create a comprehensive master plan, set clear standards and empower local governments by supporting S-2821.

RESPONSE: The Department acknowledges the support of this commenter. S-2821 is beyond the scope of this rule.

COMMENT: (In General): The New Jersey shore is our State's foremost natural resource. Protecting our barrier islands and coastline, enhancing recreation and conservation areas, and implementing much needed dune and flood management projects are essential to improving the quality of life for all citizens of New Jersey. Overdevelopment affects stormwater runoff, groundwater supply, salt water incursion, congestion, and air pollution.

We strongly support the Waterfront Development Rule. The sad part is that it should have been done years ago, before the developers ravaged and raped our coastline as a result of the Coastal Area Facilities Review

Act's (CAFRA's) rule that only more than 24 residential units be reviewed (N.J.S.A. 13:19-4). The powers that be intend to continue their degradation of the beachfront by building on the dune area. I strongly support legislation to close the 24-unit loophole.

RESPONSE: The Department acknowledges the support of these commenters. CAFRA legislation is beyond the scope of this rule proposal.

COMMENT: (In General): Any revision of CAFRA should deny FEMA (Federal Emergency Management Agency) insurance to any new construction in the Coastal Zone; the cost of infrastructure reconstruction following storms and floods should be billed to the property owners; there should be no public compensation for property lost by coastal shifting; a 20 foot wide strip upland of the mean high water mark should be dedicated to public access; and all dune systems should be preserved and required to be maintained. These principles should also be incorporated into revised CAFRA rules. We spend millions of tax dollars shoring-up beaches on barrier islands to guarantee the shore-front property owner a personal view of the ocean.

RESPONSE: Maintenance of dune systems and restrictions on developments in areas likely to be damaged by storms are considerations in the Coastal Policies (N.J.A.C. 7:7E) governing decisions on Waterfront Development Permits. FEMA Insurance, Assessments for Municipal Improvements, Inverse Condemnation Proceedings, the Public Trust Doctrine, and CAFRA are beyond the scope of this rule proposal.

COMMENT: (In General): Wetlands buffers must apply to all regulated coastal wetlands of exceptional value. The exemption for single family homes and duplexes (N.J.A.C. 7:7E-3.26) will undermine this rule.

RESPONSE: This rule is primarily intended to regulate commerce and navigation. Because the impact of a wetlands buffer for a single-family residence or duplex is largely environmental, it is not an appropriate requirement to be incorporated into this rule.

COMMENT: (In General): Please get the Legislature to pass statutes more stringent than the rules preventing building 1000 feet from the water. Please ban all new development in Cape May County to preserve what remains of the wild beauty that was ours.

RESPONSE: The New Jersey Supreme Court has overturned the portion of the Waterfront Development Rule requiring a permit for—not prohibiting—building within 1000 feet of the mean high water line, and the Department can neither compel legislation nor ban new developments in Cape May County.

COMMENT: (In General): This amendment is more restrictive than the rule that was overturned by the Supreme Court: regulation no longer stops at the first use from the coast, the 500 feet is measured from tidal and not navigable waterways, the amount of expansion allowed without a permit has been arbitrarily reduced from 1500 to 750 square feet, and the requirement of a permit for any extension of the footprint toward the water has been added.

RESPONSE: This amendment incorporates many changes from the 1988 amendment, including the reduction of the waterfront areas from an area bounded by a line 1000 feet from the most inland dune, beach, wetlands or mean high water line to an area bounded by a line 500 feet from the most inland beach, dune, or mean high water line. Moreover, this amendment relaxes permit requirements beyond the area 500 feet from the mean high water line. The 1988 amendment was concerned with tidal rather than navigable waters, and that is not changed in this amendment. Tidal waters are precisely defined as any waters which ebb and flow in a tidal pattern. The term "navigable waters" is defined differently, depending on its context. For the purposes of this rule, tidal waters and navigable waters are to be considered synonymous.

Because the Supreme Court has found that the focus of the rule should be regulation of commerce and navigation rather than of the environment, the Department must scrutinize all uses within the waterfront area, and because the impact increases with proximity to the mean high water line, all extensions of existing footprints in that direction must be subject to the permit process.

The figure of 750 square feet is a generous view of a modest expansion. As noted by several commenters, because the average residential use along the waterfront in the barrier islands ranges between 700 and 900 square feet, this provision would allow the typical homeowner to double his living area without a permit.

COMMENT: (In General): A Statewide coastal zone funding mechanism should be established for land acquisition of environmentally sensitive coastal zone areas. When an application is legally and properly denied, the land acquisition funding mechanism should be utilized to compensate property owners. The doctrine of fairness must be adhered to. If DEP wants the land, it should buy it.

RESPONSE: Such a program is within the sole purview of the Legislature and is beyond the scope of this rule proposal.

COMMENT: (In General): DEP promulgated the emergency rule without public impact. Rules should not be drafted without participation by interest groups.

RESPONSE: The very nature of an emergency precludes input from interest groups or the public at large. The time required for coordinating and considering such commentary would prevent the emergency from being expeditiously handled. For that reason, emergency rules are limited in duration and, if they are to endure, must be replaced by rules that have, by virtue of their conformity with the requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), afforded ample opportunity for public comment. In this case, a public hearing was held on August 29, and written comments were accepted by the Department until September 10.

COMMENT: (In General): What can homeowners do to make their feelings known or to prevent this plan?

RESPONSE: The Administrative Procedure Act provides for the public to be heard in connection with the adoption of all rule proposals through a submission of written comments during at least a 30-day period beginning on the date of publication of the rule in the New Jersey Register. This adoption notice includes the Department's response to those comments.

COMMENT: (In General): The DEP should hold another hearing in Cape May or Ocean County at night or at least two more hearings in the coastal zone on the weekend, so that more affected individuals may be heard.

RESPONSE: A public hearing is not required by the Administrative Procedure Act or the Waterfront Development Act, but was scheduled as an additional forum for commenters. The site for the public hearing is chosen for its central location and its capacity in relation to the number of anticipated attendees. The time of the hearing is dependent upon the availability of the site.

Attendance at a public hearing may be inconvenient for a variety of reasons. However, a period of time, in this case lasting over 45 days, is always allotted for receipt of written comments concerning a proposed rule or amendment. All those comments received within that period have been considered and addressed in this document.

COMMENT: (In General): For 20 years Trenton bureaucrats have been trying legislatively to take over all zoning, construction and reconstruction on New Jersey barrier islands and to create a centralized land use authority contrary to the long-standing New Jersey tradition of home rule. This rule is an echo of the failed legislation of 1981 (A-1825) and 1988 (ACS-122), which would have jeopardized the right of the people of coastal communities to rebuild their homes. Now the administration feels it can do by fiat what could not be done by elected officials. The Legislature should determine policy, not the DEP. Perhaps South Jersey officials should consider secession.

RESPONSE: This rule amendment does not turn over to the State control of land use on barrier islands, which is still governed by the municipality, but rather ensures that certain State interests, as set forth by the Legislature through the Waterfront Development Act (N.J.S.A. 12:5-3), are protected. This Act requires that "[a]ll plans for the development of any waterfront . . . shall be first submitted to the Department of Environmental Protection." In addition to conformity with that Act, adoption of this rule is also governed by the Administrative Procedure Act.

Unlike ACS-122 and A-1825 (which specifically proposed to prohibit rebuilding of a structure damaged to the extent of more than 50 percent of its value), this rule amendment is not promulgated primarily for environmental purposes and does not share the same focus.

The question of secession is beyond the scope of this rule proposal.

COMMENT: (In General): What productive use is there of the funds, time and effort required to secure permits to build. It would be better for the State of New Jersey to demand a $10,000 fee for anyone who builds on a waterfront lot.

RESPONSE: The purpose of the permit program is to ensure that the objectives of the Waterfront Development Act are achieved through responsible development, and that purpose is served through scrutiny of permit applications by the Division of Coastal Resources. N.J.A.C. 7:7E includes criteria for all construction permits, while N.J.A.C. 7:7-2.3(e)ii contains criteria specific to certain applications under this permit program.

COMMENT: (In General) The review process should be conducted in a timely fashion and concluded within a timeframe of up to 90 days.

RESPONSE: N.J.S.A. 13:1D-31 requires that, with limited exceptions, all decisions on construction permits be made within 90 days. N.J.S.A. 13:1D-29 defines permits sought pursuant to this rule amendment as construction permits to which the 90-day limit applies.

COMMENT: (In General): Restrictions by the Department should apply when there are obvious conflicts between construction and the environment. Size, setbacks, height restrictions and stormwater management techniques should be among these factors but not limited to them.

RESPONSE: This rule is intended to regulate commerce and navigation along the waterfront. Therefore, conflict between environmental and construction considerations would not be the primary considerations in reviewing permit applications. To the extent that the factors with which this commenter is concerned interact with those criteria listed in N.J.A.C. 7:7-2.3(e)3ii or which otherwise have an impact on commerce and navigation, they will, of course, be considered.

COMMENT: (In General): This rule is unnecessary because the Legislature has already acted to address the problem of non-point source pollution which is the greatest threat to coastal area water quality. The opening of more shellfish beds shows that water quality is improving. Moreover, water quality problems are caused by existing development, and the DEP is not performing its duties pursuant to the Sewerage Infrastructure Act or the Marina Sewerage Treatment Act, nor has it asserted authority under NJPDES for the residential stormwater outfalls. There is no emergency requiring DEP to act—the emergency was created by the State and the DEP, not by homeowners.

RESPONSE: To the extent that water quality, of which stormwater runoff and non-point source pollution are important factors, will affect these concerns, it will be considered as part of the permit process, but not as the primary focus on this rule. The emergency this rule is intended to address is the threat to navigation and commerce, including commercial fishing and shellfishing and tourism directly occasioned by unplanned and unbridled development along the waterfront. The Sewerage Infrastructure Act, the Marina Sewerage Treatment Act, and NJPDES permit processes are beyond the scope of this rule.

COMMENT: (In General): The DEP's desire to regulate overdevelopment is both desirable and understandable, but to include single-family homes in regulations designed to limit large developers is simply punitive.

RESPONSE: Because individual homes can have an impact on commerce and navigation in the coastal area, the Waterfront Development Act's requirement that all plans for development be first submitted to the Department for approval prohibits an exemption for single-family homes. The Department is sensitive to the relative difficulty the application process may occasion for the individual homeowner and is giving its attention to these applications accordingly.

COMMENT: (On N.J.A.C. 7:7-2.3(a)2): What is the definition of the most inland oceanfront dune? Could this be construed to include areas as far west as Long Beach Boulevard despite the fact that there are existing homes and businesses between the boulevard and the beach? Could an overwash area be liberally construed as the most inland dune?

RESPONSE: A dune is a wind or wave deposited formation of vegetated or drifting sand whose most seaward edge constitutes the inland edge of the beach. The limit of the overwash area is considered to be the inland limit of sediment transported and, as such, is part of the beach. Thus a dune could not be found upland of the homes and businesses east of Long Beach Boulevard, no matter where waves might reach during a storm.

COMMENT: (On N.J.A.C. 7:7-2.3(a)2): Although there is a need for obtaining permits to keep people off the dunes, strict control over the second and third buildings from the water is unwarranted.

Although these restrictions do not prevent building or expansion beyond 750 feet, the time and uncertainty involved is discouraging. This is an undue burden on homeowners.

RESPONSE: Although the degree of removal from the mean high water line is a consideration that may affect some permits, mere interposition of another development cannot be said to insulate the waterfront interest of commerce and navigation from such a development's effects. Public access, erosion control, runoff, and silting are just a few factors which are affected by any development within a waterfront as narrow as 500 feet.

COMMENT: (On N.J.A.C. 7:7-2.3(a)2): Five hundred feet is arbitrary—this zone should be more flexible.

RESPONSE: The distance of 500 feet is that distance which has been determined to be readily reachable from the waterway and is thus accessible to navigation and commercial waterfront interests.

COMMENT: (On N.J.A.C. 7:7-2.3(a)2): The mean high water line has to be clarified. What methods can be used to determine it?

RESPONSE: For the purpose of a land use rule like the Waterfront Development rule, the mean high water line must be determined which, using the survey method, uses a National Oceanic and Atmospheric Administration benchmark and is based on local data. The biological high water mark would not provide a useful guideline for the purposes of this rule.

COMMENT: (On N.J.A.C. 7:7-2.3(d)): The Emergency amendment requires permits for the excavation and filling of any land in the affected coastal zone. Could this be considered as a requirement for a municipality to apply for a DEP permit for the repair of water lines, sewer lines, storm drains, or local streets? Could it be construed that permits might be required for removal of accumulated drifting sand from municipal streets?

RESPONSE: A municipality will be required to obtain a permit for excavation and filling within the waterfront area. Removing a pile of sand from a paved street is not excavation.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): Although State coordination of land use planning is necessary to ensure clean near-shore water and to prevent the quality of life deterioration from overly dense development, permits should not be required for rebuilding. It would be understandable if the Department said no one could build from this point on because of the prohibition against rebuilding. Houses standing at the time the rule is promulgated should be immune. Not being able to rebuild after a hurricane would make the land useless and the value of the land cannot be covered by insurance. Banks and insurance companies will be reluctant to provide residents with loans or insurance because all equity will be lost with no way of rebuilding, despite expensive flood insurance. No one should suffer because his house was built after 1981. What is the rationale for choosing that date? The threat that this kind of rule will be made permanent adversely affects even the value of homes built prior to January 1, 1981. No one in his right mind would buy property at the shore anywhere in New Jersey. People will want to move out of New Jersey. Enabling Trenton bureaucrats to decide whether or not homes can be rebuilt gives them the power to confiscate property without compensation.

RESPONSE: Requiring a permit for construction does not prevent building or rebuilding, but rather ensures that all development work is performed in a manner that is best suited to maintain the safety and integrity of the building itself as well as that of the immediate waterfront area. Reconstruction of homes built prior to 1981 is governed by statute; thus, promulgation of this rule amendment should have no effect on the valuation or resale value of older homes. Moreover, confiscation of property without compensation is prohibited by the Constitutions of both the United States and the State of New Jersey—no rule could permit it.

Because it is the value of the home that is protected by insurance and not its existence, any effect that this rule might have on mortgages or homeowners' insurance or home equity loans is at most speculative and de minimis. Insurance, for which premiums are paid, is to protect against economic loss, which is achieved by awards of money.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): The new regulations regarding coastal development are an infringement on rights regarding private property. The State of New Jersey has no right to deny any resident of waterfront property the right to rebuild his home.

RESPONSE: The right of the government to regulate land use is well established and is not prohibited by either the United States or the New Jersey Constitution. Moreover, this rule amendment has been carefully crafted in accordance with the guidelines set down by the New Jersey Supreme Court on June 20, 1990 in *Last Chance Development Partnership et al. v. Thomas H. Kean et al.* (A-102).

Moreover, this rule does not deny the right to rebuild.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): The language requiring a State permit for any "construction, reconstruction, alteration, expansion or enlargement of any structure" located within 500 feet of the mean high water line or dune will hurt small real estate businesses, carpenters and other small business on Long Beach Island.

RESPONSE: This rule does not require a permit for construction, reconstruction, expansion or enlargement of single-family residences which are within 500 feet of a dune if not within 500 feet of the mean high water line. While a certain amount of economic dislocation may occur over the short term, the end result of a rule designed to protect navigation and to foster commerce along the waterfront will have a long term positive effect on the economy of Long Beach Island. By ensuring compatibility of land uses, responsible development, and protection of such industries as navigation and tourism, which are an important part

of Long Beach Island's economy, this rule amendment is anticipated to benefit the Island's existing businesses and to encourage the establishment of others in the future.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): The proposed restrictions on rebuilding homes within 500 feet of the mean high water line which are destroyed by storms should not be adopted because the existing owners of waterfront property are as concerned (or more so) with the environment as any citizen of the State, as is evident by how waterfront property owners maintain their properties and keep them free of debris. If these regulations are adopted and rebuilding is prohibited, who would be responsible for cleanup after a major storm? It would be accomplished more effectively by property owners assisted by their insurance carriers.

RESPONSE: Storms and the existence or lack of insurance do not affect the responsibilities of property owners under local property maintenance codes. Moreover, this rule amendment should not affect insurance and it does not prohibit rebuilding.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): This rule proposal does not relate to commerce and navigation, but is an attempt to adopt the October 1, 1981 New Jersey Shore Protection Master Plan, which attempts to guide the pattern of rebuilding. This rule proposal sets up a "rebuttable presumption" for rebuilding which is designed to implement a plan to vacate the barrier islands. If this is a backdoor approach to preserving open space, it should say so.

RESPONSE: This rule amendment implements the directive of the Waterfront Development Act to consider all developments along the waterfront. The criteria used, several of which are enunciated in N.J.A.C. 7:7-2.3(e)3ii, are intended to ensure responsible regulation of commerce and navigation.

This rule amendment is not designed to vacate the barrier islands or to preserve open space, nor does it prohibit or even rebuttably presume to prohibit rebuilding. By exempting reconstruction or renovation only those structures in existence prior to January 1, 1981, the Legislature, by its 1980 amendment of the Waterfront Development Act, has indicated that plans for reconstruction or renovation of structures constructed after that date must be submitted to the Department for approval.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): If the State wanted to protect people from environmental hazards it should prohibit construction in the "Cancer Alley"—that is, Sayreville—area of North Jersey or is the prohibition of rebuilding intended to take the minds of the public off the real sources of pollution—the storm water and sanitary sewage run-off from New York, storm water run-off from shore municipalities, all of whom ignore the law that requires treatment of storm water, six of the New Jersey municipalities still dumping raw sewage into the ocean who have petitioned the Legislature to continue another year, and four million gallons of wastewater daily piped into the ocean by Ciba-Geigy. The highest standards of ethics should prevail in government.

RESPONSE: There is no prohibition of rebuilding in this rule.

The fact that there are areas of State concern, many of them quite serious, in addition to the waterfront does not render the waterfront any less vital to every aspect of life to this State, from economic to the aesthetic. To abandon this resource because there are other problems to address would be irresponsible. This rule amendment was proposed and is herein adopted in good faith to protect this asset and not for any other purpose.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): If there is any rationale to prevent rebuilding in flood-prone areas, the prohibition should be enacted by the Federal Government through its flood insurance program and should certainly include all of the flood plain areas throughout the United States, many of them much more flood prone than the New Jersey shore. There is no rebuttable presumption to rebuild for property owners in Saddle River, Lodi or Wayne, in midwestern communities along the Mississippi or hundreds of towns along the Susquehanna River.

RESPONSE: Flooding is controlled and flood plain regulations are promulgated in this State pursuant to the Flood Hazard Control Act (N.J.S.A. 58:16-50 et seq.), as well as through various Federal programs. The purpose of the Water Front Development Rules is to regulate commerce and navigation along the waterfront. While flooding may well be a factor considered as part of the permit process, this is not primarily a flood control program.

Moreover, this rule does not prevent but, rather, regulates rebuilding.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3): The new regulations do not appear to be consistent with the Federal policy of providing flood insurance for shoreline property owners.

RESPONSE: This rule amendment does not affect, nor is it affected by, federal flood insurance. Insurance of any kind is designed to reimburse the insured for monetary loss by means of a monetary award. Whether that award is used to rebuild a prior structure or to pay off a loan or mortgage would be beyond the scope of this rule amendment.

COMMENT: (On N.J.A.C. 7:7-2.3(d)3). This issue is not rebuilding but who pays for rebuilding. Federal flood insurance paid for with tax dollars has made rebuilding a way of life by providing the property owner with a low risk mentality, despite a rising sea level and an increasing threat of destructive hurricanes. All New Jersey officials should campaign for the abolition of Federal flood insurance on high-risk development.

RESPONSE: This rule amendment does not prevent but, rather, regulates rebuilding.

The continuation of Federal flood insurance is beyond the scope of this rule amendment.

COMMENT: (On N.J.A.C. 7:7-2.3(d)5): Requiring a permit to bring the footprint closer to the mean high water line could prevent an upland homeowner from expanding, while an adjacent homeowner already closer to the waterfront could expand upland without review.

RESPONSE: Because regulation of the waterfront is the object of this rule, the closer project is to the mean high water line, the more severe the impact on commerce and on navigation in particular is likely to be. Thus, the Department must scrutinize any development of this nature.

COMMENT: (On N.J.A.C. 7:7-2.3(d)8): If part of a lot is more than 500 feet from the mean high water line, is that part regulated?

RESPONSE: For the purposes of this paragraph, which governs reconstruction of single family homes, that part of the lot is not regulated.

COMMENT: (On N.J.A.C. 7:7-2.3(d)9): The area covered by this paragraph needs to be clarified.

RESPONSE: This is the area beyond that land area outshore of the boundary line 500 feet from the mean high water line but still within 500 feet of the most inland beach or dune.

COMMENT: (On N.J.A.C. 7:7-2.3(d)10): Projects underway or with all local approvals required prior to July 17, 1990 should be grandfathered.

RESPONSE: The purpose of a grandfather clause is to prevent the working of an injustice by compelling people to undo work which was legally performed at the time of its performance. While projects that have been commenced prior to the effective date of this emergency rule (July 17, 1990) will not be required to be torn down and submitted to the permit process, projects with local approval only are ripe for the submission of an application for a permit and will suffer no harm from reliance on prior rules.

COMMENT: (On N.J.A.C. 7:7-2.3(d)10): Single family dwellings in existing subdivisions should be exempt.

RESPONSE: To "grandfather" these projects would be to remove some projects from the permitting process before they are even ready to enter the application stage. There is no injustice here to be prevented.

COMMENT: (On N.J.A.C. 7:7-2.3(e)3): The requirements for obtaining an exemption unfairly shift the burden to the homeowner.

RESPONSE: The Supreme Court requires that the Department, in order to require a permit for a particular project beyond 500 feet from the mean high water line, make a showing that the proposed development in relation with surrounding land will directly affect the waterfront or the waterway. It is clearly impossible to make such a showing without knowing what the project is intended and what its relationship with surrounding land is anticipated to be. Only the property owner or developer can supply this information, which will have already been supplied to local authorities for planning and/or zoning approvals.

Full text of the adoption follows.

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowlands Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:19-4), the regulated waterfront area shall consist of any tidal waterway and all lands lying thereunder up to the mean high water line and also extend inland to include an adjacent upland area to a boundary 500 feet inland of the mean high water line, the most inland oceanfront beach, or most inland oceanfront dune, as these

terms are defined in N.J.A.C. 7:7E, measuring from that feature which results in the greatest regulated waterfront area.

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall consist of any tidal waterway and all the lands lying thereunder up to the mean high water line and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line exisitng on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

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

(d) A permit shall be required for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1.-2. (No change.)

3. In the area defined at (a)2 above, reconstruction of any building existing prior to January 1, 1981 not resulting in an increase in size of more than 750 square feet over that of the building as it existed prior to January 1, 1981, provided the reconstruction does not bring the footprint of the building any closer to the mean high water line, most inland oceanfront beach, or most inland oceanfront dune;

4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after July 17, 1990 such that the total area of all phases of expansion or enlargement is 750 square feet or less, provided the expansion does not bring the footprint of the structure any closer to the mean high water line, most inland oceanfront beach, or most inland oceanfront dune; provided, however, the construction or the reconstruction of a bulkhead or other shore protection structure shall not be included in the calculation of expansion or enlargement area;

5.-7. (No change.)

8. In the area defined at (a)2 above, development not within 500 feet of the mean high water line consisting of the construction, reconstruction, or expansion or enlargement of one single-family residential dwelling unit.

9. In the area defined in (a)2 above, any development which is not within 500 feet of the mean high water line and that has received a Division determination pursuant to (e)3 below that it does not directly affect commerce and navigation along the waterfront or on the waterways.

10. This subchapter shall not apply to any development or activity in the upland area defined in (a)3 above and in man-made waterways and lagoons for which on-site construction, including its site preparation, was in progress on or prior to September 26, 1980 or to any development or activity in the upland area defined in (a)2 above for which all necessary municipal approvals or permits were received prior to October 3, 1988, or for which lawful on-site construction, excluding site preparation, was in progress on or prior to July 17, 1990. For the purpose of this section, "construction, excluding site preparation" encompasses improvements which include, but are not limited to, paved roads, curbs, pilings, water lines, sewer lines, and storm drains. In order for such improvements to be considered "in progress" on or before July 17, 1990, materials must have been brought to the site and partially installed on or before that date. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures.

i. Any interruption in the process of construction and completion of the facility in excess of one year may be cause for denial of an exemption request under this paragraph, or where previously exempted, it may be cause for revocation of such exemption under this paragraph, by the Division.

ii. A finding that a proposed facility is exempt under this paragraph from the requirements of this subchapter shall apply only to the facility as conceived and designed prior to September 26, 1980, for the area defined in (a)3 above, and prior to July 17, 1990 for the area defined in (a)2 above. Any modification which expands or substantially changes the exempted facility and which would not be classified as a minor modification under N.J.A.C. 7:7-4.10 shall require a permit.

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed facility does not require a permit under (d) above, provided that no development proposed in the area described in (a)2 above shall be considered exempt because it does not affect commerce or navigation along the waterfront or on the waterways pursuant to (d)9 above and e(3) below unless such a determination is first obtained from the Division.

1. The requesting party shall provide the Division with two copies of a map depicting the project site in a scale of not less than 1:2, 400 (one inch equals 200 feet) and a project description. When the applicability determination request is based on a proposed facility's location in accordance with paragraphs (a)2 and 3 above, the map shall depict that property line as it is depicted on the official local tax map as of September 26, 1980, for the area defined in (a)3 above, and July 17, 1990, for the area defined in (a)2 above, shall delineate the mean high water line, andd shall graphically depict the proposed project.

2. (No change.)

3. When the request for a determination that the project is not subject to the requirements of this subchapter is based on a proposed lack of direct effect upon commerce or navigation along the waterfront or upon the waterways of a development proposed for that portion of the area described in (a)2 above which is not within 500 feet of the mean high water line, the map shall be accompanied by an impact statement which includes the following:

i. Project description including:

(1) Location of the project;

(2) Size, in terms of both overall area and footprint;

(3) Proposed use of the project; and

(4) A listing of all adjacent developed properties with their uses and the distance of each from the proposed project; and

ii. Information adequate to demonstrate the following:

(1) Erosion control sufficient to maintain current coastal or bottom configuration;

(2) Lack of interference with public access to currently established commercial and recreational uses including tourism; and

(3) Compatability with current commercial uses, including tourism, within the waterfront area as defined in (a) above.

4. Nothing in this rule shall be construed to prevent filing of a completed application for a waterfront development permit at the option of the applicant instead of a request for a determination that the project is not subject to the requirements of this subchapter for that area of the waterfront defined in (a)2 that is beyond 500 feet from the mean high water line.

5. Any person who believes that a proposed development or activity is exempt from the requirements of this subchapter due to lawful onsite construction pursuant to (d)10 above may request in writing a determination of exemption from the Division.

i. Exemptions shall be sought and considered upon submission of information sufficient for the Division to determine that the physical work specified in (d)10 above necessary to begin the construction of the proposed facility was actually performed prior to September 26, 1980 for the area defined in (a)1 and (a)3 above and prior to July 17, 1990 for the area defined in (a)2 above, or that all required local permits have been obtained prior to October 3, 1988 for the area defined in (a)2 above.

(f) A permit is required for the additional filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend

beyond the landward boundary of the waterfront area defined in (a) above.

1. (No change.)

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

iii. (No change.)

6.-12. (No change.)

(f)-(h) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Administrative Correction
Hazardous Waste Criteria, Identification and Listing
Discarded Commercial Products, Off-Specification Species, Containers, and Spill Residues Thereof
N.J.A.C. 7:26-8.15

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:26-8.15(a)6. The product listed in that paragraph as "U359 Ethoxyethanal" was proposed and adopted as "U359 2-Ethoxyethanol" (see 19 N.J.R. 1278(a) and 2165(a)). The product was incorrectly listed in the 11-16-87 update to the New Jersey Administrative Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous waste if and when they are a solid waste as defined at N.J.A.C. 7:26-1.6:

1.5. (No change.)

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

...

U359 [Ethoxyethanal] **2-Ethoxyethanol**

...

7. (No change.)

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Administrative Correction
Hazardous Waste Management
Surface Impoundments
N.J.A.C. 7:26-10.6

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:26-10.6(e)5ii. As amended effective December 7, 1987, the word "or" at the end of subparagraph (e)5ii was changed to "and" (see 19 N.J.R. 1482(a) and 2278(a)). This change was erroneously not reflected in the New Jersey Administrative Code update of 12-21-87. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

7:26-10.6 Surface impoundments

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

(e) Operational and maintenance standards for surface impoundments include the following:

1.-4. (No change.)

5. Ignitable or reactive waste shall not be placed in a surface impoundment unless either:

i. (No change.)

ii. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; [or] **and**

(c)

DIVISION OF ENVIRONMENTAL QUALITY
COMMISSION ON RADIATION PROTECTION

Radiologic Technologist Fees
Adopted Amendment: N.J.A.C. 7:28-19.12

Proposed: July 2, 1990 at 22 N.J.R. 1975(b).

Adopted: September 19, 1990 by the Commission on Radiation Protection, Max M. Weiss, Chairman.

Filed: September 24, 1990 as R.1990 d.511, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:2D-24 et seq., specifically, N.J.S.A. 26:2D-29 and N.J.S.A. 26:2D-33(a).

DEP Docket Number: 022-90-06.

Effective Date: October 15, 1990.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

The Commission on Radiation Protection ("CORP") is adopting an amendment to N.J.A.C. 7:28-19.12. The adopted amendment will increase the fees charged for the Radiologic Technologist license issued by the CORP's Radiologic Technology Board of Examiners ("Board") pursuant to the Radiologic Technologist Act ("the Act"), N.J.S.A. 26:2D-24 et seq. The increased fees will enable the Radiologic Technologist Certification program ("program") in the Department of Environmental Protection ("Department") to continue to offer support services to the Board and, thereby, will allow the Board to continue to meet its licensing obligations under the Act.

The proposed amendment was published in the New Jersey Register at 22 N.J.R. 1975(b). The secondary notice requirement was achieved by publishing a notice in the Newark Star Ledger, the Camden Courier Post, and the Trenton Times, three newspapers of general circulation, and by direct mail to six interested groups. The public comment period extended until August 1, 1990, during which time six written comments were received. A public hearing on the proposed amendment was held at the New Jersey State Department of Personnel facility in Princeton, New Jersey on July 17, 1990. Three persons presented comments.

COMMISSION NOTE: In the Economic Impact statement contained in the preamble of the rule proposal, the CORP indicated that $463,360 of the $474,940 in anticipated fee revenue would be used to fund the six existing positions in the Radiologic Technologist Certification program. A reference to the use of the balance of the funds, $11,580 was inadvertently deleted from the proposal's Economic Impact statement. The $11,580 sum will be used to conduct research activities and to conduct surveys and public educational lectures. Additionally, as a point of clarification, the $463,360 sum will be used to fund not only the salaries and fringe benefits associated with the six existing positions but also the program costs and indirect costs outlined in the Economic Impact statement.

COMMENT: Six commenters stated that the proposed fees are exorbitant.

RESPONSE: Due to State budget cuts necessitated by the current financial crisis, the program has received no State funding for the current fiscal year. In the absence of State funding, the revenue produced by the current fee schedule is not sufficient to fund the program's annual expenses. The result is a severe budget shortfall. It should be noted that, in past years, the presence of State funding has allowed Radiologic Technologist fees to remain static, even though program expenses have exceeded fee generated revenue. In fact, since the license fee was created in 1969, it has only been increased once, by $10.00, in 1987.

Since it is not possible to predict the duration of the current financial crisis, the Department is not in a position to determine when the program will again experience a significant influx of State funds. Accordingly, it is now necessary that the program become completely fee supported if it is to continue to offer its current level of administrative and technical support services to the Board. These services include the development and revision of educational curricula for all categories of radiologic

technology, the coordination and performance of educational programs and the performance of inspection and enforcement activities. These services are crucial to the Board and must be performed if the Board is to fulfill its statutory licensing mission.

The proposed fee schedule has been carefully planned by the CORP and the Department and reflects the reasonable costs incurred and to be incurred by the program in performing its services to the Board. When adopted, the fee increases will enable the program to continue to provide the Board with the crucial services referenced above. This will enable the Board to continue to meet its educational and licensing mandates. The fee increase will, therefore, serve to reduce the number of unlicensed radiologic technologists and, as such, will reduce the risks to the public associated with unnecessary exposure to ionizing radiation.

COMMENT: One commenter suggests that it would be helpful to know, on an annual basis, the amount of revenue collected by the program and the number of examination applications, license renewals, and initial license applications processed by the Department. This commenter opined that since operating costs were discussed in the rule proposal, this information would have been beneficial in assessing the rule proposal.

RESPONSE: In the Economic Impact statement contained in the rule proposal, the CORP indicated that current fee generated income collected by the program is $177,800. Further review of the Department's records indicates that this figure should be revised slightly upwards for the Fiscal Year 1989 to $191,630. This revenue was generated as follows: 755 examination applications x $30.00 = $22,650; 966 initial license applications x $30.00 = $28,980 and 14,000 radiologic technologist bi-annual license renewals x $20.00 = $280,000, half of which was credited to Fiscal Year 1989.

In Fiscal Year 1989, the total cost for the Program was $439,200. Thus, only 44 percent of the program's operational cost was funded by fee generated revenues. The balance of the program's costs was funded by State funds, which, as previously indicated, are no longer available.

COMMENT: One commenter suggests that the Technologist Certification Program and the program for the registration and inspection of x-ray equipment should be funded separately.

RESPONSE: The Technologist Certification program and the x-ray machine registration program are, in fact, separate. The two programs maintain separate fee schedules and separate budgets. All of the fees collected through the implementation of proposed N.J.A.C. 7:28-19.12 will be dedicated to defraying the annual operating cost of the Program. As indicated in a previous response, the program provides administrative and technical support to the Board in the execution of its statutory duties. The revenue generated by the proposed fees will be used solely to support these activities.

COMMENT: One commenter indicates that, although the proposed license renewal fee increase is excessive, it might be justified if the license was issued for a two-year period.

RESPONSE: The Act, specifically N.J.S.A. 26:2D-33a, provides that a Radiologic Technologist's license is renewable for a two-year period upon payment of the requisite fee. The proposed $50.00 renewal fee is, therefore, for a two-year license.

COMMENT: One commenter finds the proposed increase of the renewal fee exorbitant and suggests that the CORP gradually increase the fee over the next several years.

RESPONSE: The budget cuts experienced by the program have resulted in a severe budget shortfall, which must be immediately remedied through an increase in fees. It is, therefore, not possible to implement the increased fees on a gradual basis. The program is currently operating with minimum staff and is incurring the minimum expense necessary to fulfill its obligations. Immediate implementation of the increased fees is necessary to fund the six existing program positions. These six positions are critical to the program and must be filled if the Board is to fulfill its educational and licensing duties.

COMMENT: One commenter suggests that the CORP promulgate an accreditation fee schedule for educational radiography programs similar to the fee schedule of the Joint Review Committee on Education in Radiologic Technology. It is the commenter's view that such a fee would enable the CORP to reduce the proposed license fees.

RESPONSE: In order for the CORP to reduce the $50.00 license renewal fee, revenues would have to be generated to replace the money lost as a result of the fee reduction. For every 10-dollar reduction in the proposed renewal fee, the program would lose approximately $150,000 in revenues. If the required additional revenue were to be generated through an accreditation fee on each of the 30 educational programs in the State, an approximate fee of $5,000 per program would have to be assessed. The CORP believes that such a fee would place an unreasonable burden on educational institutions offering the medical diagnostic radiography and radiation therapy programs and would, therefore, be inappropriate.

COMMENT: One commenter states that there are two distinct groups that are governed by the Board: medical diagnostic radiographers and dental technologists. The commenter stated further that medical diagnostic radiographers spend almost 100 percent of their time using ionizing radiation, while a dental assistant uses ionizing radiation in the performance of his or her duties less than 10 percent of the time. The commenter, additionally, cited a survey published in an unidentified edition of the Dental Assistants Journal, which indicates that the average salary for a dental assistant in New Jersey is approximately $8.00 an hour or $16,640 annually. Given the salary figures and the dental assistant's limited use of x-ray technology, the commenter calculated that the dental assistant will pay, upon adoption of the increased fees, 0.3 percent of his or her salary to maintain a license that he or she uses 10 percent of the time. Due to these factors, the commenter suggests that the CORP adjust the fee schedule for dental technologists.

RESPONSE: While the CORP acknowledges that not all radiologic technologists utilize x-ray technology with the same frequency and that, therefore, there may be some disproportionate benefit to holding a radiologic technologist license on an individual basis, technologists using x-ray procedures on an infrequent basis still expose members of the public to potential harm from ionizing radiation. The purpose of the Radiologic Technologists Certification program is to protect the public health from the risks posed by all radiographic procedures involving the use of ionizing radiation. The risk to the public health posed by the unlicensed technologist exists notwithstanding the frequency with which a particular technologist uses x-ray equipment. The increased fee will enable the Department and the CORP to reduce the risks to the public posed by such radiologic technologists. It should also be noted that the proposed $50.00 license renewal fee covers a two-year period. The commenter's statement appears to assume that the $50.00 renewal fee is for a one-year license. Using the figures cited by the commenter, only 0.15 percent of the annual salary would be needed to maintain the license over the two-year life of the license. This calculates to be approximately one cent per hour. The Department and CORP believe that this is a small sum to pay to protect the public from unnecessary exposure to ionizing radiation.

COMMENT: Two commenters suggest that the CORP impose the increased fees upon those who own and maintain for profit ionizing radiation-producing machines.

RESPONSE: N.J.S.A. 26:2D-29a provides that the license applicant shall pay to the Department a nonrefundable license fee which shall be established by rule of the CORP. The statute regulates individual technologists, not equipment. The fees for ionizing radiation-producing machines are found in N.J.A.C. 7:28-3.12. The Department is, therefore, unable to charge the Radiologic Technologists license fee to any entity other than the individual applicant. The issue of whether a technologist should be reimbursed by his or her employer for license fees must be resolved by the employee and the employer privately.

COMMENT: One commenter stated that the proposal will add to the spiraling costs of dental care in the State.

RESPONSE: Although the fees associated with dental radiologic technologist licensing will be increased, the Department foresees no significant increase in dental care cost as a result of the proposed fees. As stated in an earlier response, if the current average salary of a dental assistant is approximately $8.00 an hour or $16,640.00 annually, the cost to the technologist resultant from the proposed $50.00 renewal fee will be one cent per hour. This equates to 40 cents per work week over the two-year life of the license. The increased costs to the dental community will, therefore, be negligible. In the event that a slight increase in dental care cost does result, it would be outweighed by the radiation safety benefits of licensing. The Department believes that every patient deserves to have his or her x-ray examination performed by a licensed and competent radiologic technologist.

COMMENT: One commenter stated that the dental profession in New Jersey is experiencing a critical shortage of dental auxiliaries which is affecting the delivery of quality dental care. The commenter suggests that the increased radiologic technology fees may deter potential candidates from choosing a career as a dental assistant.

RESPONSE: The CORP is aware of the current shortage of medical/dental imaging technologists in New Jersey. Student enrollment, however, has increased in recent years. In Fiscal Year 1989, a total of 534 dental radiologic technology graduates took the New Jersey licensing examination. Additionally, 594 initial dental radiologic technologist licenses were

issued. The CORP does not expect either the number of graduates or licensed technologists to decrease as a direct result of the proposed fees.

Full text of the adopted amendment follows.

7:28-19.12 Fees

(a) Any person who submits an application for a license or license renewal to the Department shall include as an integral part of said application a service fee as follows:

1. Application Fee: $40.00
2. Examination Fee: $60.00
3. Renewal Fee: $50.00
4. Replacement License: $20.00

(b) The fees accompanying the application or license renewal shall be in the form of a certified check or money order made payable to the State of New Jersey.

1. The fees submitted to the Department are not refundable.
2. The fees accompanying the initial application or renewal shall be mailed to:

State of New Jersey
Department of Environmental Protection
Bureau of Revenue
CN 402
Trenton, New Jersey 08625

(a)

DIVISION OF PARKS AND FORESTRY

Wild and Scenic Rivers System

Readoption: N.J.A.C. 7:38

Proposed: May 7, 1990 at 22 N.J.R. 1317(a).
Adopted: September 14, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: September 18, 1990 as R.1990 d.505, **without change.**
Authority: N.J.S.A. 13:1D-3, 13:1D-9, and 13:8-45 et seq., particularly 13:8-52.
DEP Docket Number: 010-90-03.
Effective Date: September 18, 1990.
Expiration Date: September 18, 1995.

Summary of Public Comments and Agency Responses:

A public hearing concerning these rules was held on June 11, 1990 to provide interested persons an opportunity to present testimony. Notice of the public hearing was published in the Asbury Park Press, Trenton Times, Courier-Post, and Newark Star Ledger. No one attended the hearing. One written comment was received during the public comment period which expired on July 6, 1990.

COMMENT: N.J.A.C. 7:38-14(a)2 prohibits mining or extraction of minerals, sand or gravel in designated scenic river areas. This prohibition is a condemnation of the mining rights for the land within a designated scenic river area. If the prohibition is not removed from N.J.A.C. 7:38-14(a), the owners of mineral rights within designated scenic river areas should be compensated for the taking of those rights.

RESPONSE: The Department does not agree. The prohibition of mining or extraction of minerals, sand or gravel in designated scenic river areas is consistent with the intent and purpose of the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq. The Act provides for the designation, acquisition, preservation and protection of those rivers and adjacent land areas possessing outstanding scenic, recreational, geologic, fish and wildlife, flood, historic, cultural or similar values. While the prohibition in N.J.A.C. 7:38-14(a)2 is consistent with the intent of the Act, N.J.A.C. 7:38-1.9 does allow certain exceptions for lawful pre-existing non-conforming and prohibited uses within designated river areas. Consequently, any person who believes that they have been denied fair use of their land may apply for an exception to the rules concerning designated river areas under N.J.A.C. 7:38-1.9.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:2.

HEALTH

(b)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction

Hospital Rate Setting

Computation of Reasonable Direct Patient Care Costs

N.J.A.C. 8:31B, Appendix VI

Take notice that the Department of Health has discovered an error in the text of N.J.A.C. 8:31B, Appendix VI. As proposed and adopted at 22 N.J.R. 1480(a) and 3004(a), respectively, references to DRG 383 and to Outpatient Dialysis should have been deleted, as the proposal Summary discussion of the proposed amendment to N.J.A.C. 8:31B-3.38 indicated. The text of Appendix VI was erroneously not changed in keeping with this rule amendment. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected appendix follows (deletions indicated in brackets [thus]):

APPENDIX VI

COMPUTATION OF REASONABLE DIRECT PATIENT CARE COSTS

	I NUMBER OF PATIENTS (from Uniform Bill-Patient Summaries or medical discharge abstracts for Inpatients and Financial Elements Report for Outpatients)	II REASONABLE DIRECT PATIENT CARE COSTS/ CASE (from Schedule of Rates)	III REASONABLE DIRECT PATIENT CARE COSTS (Col. I X Col. II)	IV CHARGES OR GROSS REVENUE RELATED TO PATIENT CARE (from Uniform Bill-Patient Summaries or Medical Discharge abstracts for Inpatients and Financial Elements Report for Outpatients)
A. SCHEDULE OF RATES PATIENTS				
DRG 1				
DRG 2				
.				
.				
.				
[DRG 383]				
Clinic				
Emergency Service				
Home Health				
[Outpatient Dialysis]				
Ambulatory Surgery				
Same Day Psychiatry				
Total-Schedule of Rates	///////////////	///////////////		

B. Direct Costs to Gross Revenue of Schedule of Rates (Total III÷Total IV)

C. Total Gross Revenue Related to Patient Care (from Financial Elements Report) ________
  Less Medical Denials (from Financial Elements Report) (________)
  Less Administrative Adjustments (from Financial Elements Report) (________)
  Subtotal ________

D. Reasonable Direct Patient Care Costs (B X Subtotal C) ________

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Long-Term Care Licensing Standards

Adopted Amendments: N.J.A.C. 8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1 and 41.3.

Proposed: June 18, 1990 at 22 N.J.R. 1889(a).

Adopted: September 20, 1990, by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: September 21, 1990 as R.1990 d.513, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: October 15, 1990.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on June 18, 1990. During the comment period, which ended on July 18, 1990, four letters of comment were received. One letter of comment was from the New Jersey Association of Health Care Facilities, one was from the Community Health Law Project, and two were from long-term care facilities.

COMMENT: A letter was received from the Community Law Project, Legal Assistance for Medicare Patients (LAMP program), requesting the addition of information about the LAMP program to N.J.A.C. 8:39-4.1, Patient rights. The LAMP program provides information about Medicare benefits to New Jersey patients and families and assistance to Medicare beneficiaries in obtaining the benefits to which they are entitled.

RESPONSE: No amendment to subchapter 4, Patient rights, has been included among the group of amendments constituting the present proposal. The recommendation to add information from the LAMP program, therefore, cannot be considered during this period of comment on the proposal. Any further amendments to the long-term care standards for licensure, including the amendment suggested by LAMP, will need to be considered by the Department, discussed with the Nursing Home Advisory Group, then proposed to the Health Care Administration for adoption at some future time.

COMMENT: One commenter wrote that 24 hours is "not realistic" as a timeframe for notification of the physician if a physician's order is not executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service. Forty-eight hours and/or extension for weekends was recommended. The commenter also asked whether an answering service/machine would be considered notification of a physician.

RESPONSE: Part of the current standard at N.J.A.C. 8:39-23.2(b) has been recodified as subsection (b) under N.J.A.C. 8:39-11.2(c), but the proposed amendment does not include any change in the text of the standard. Substantive change in the standard, therefore, cannot be made during the comment period on these amendments. Such change would need to be made as a result of a future proposal, as explained in the above response concerning an addition to N.J.A.C. 8:43-4.1.

Recorded messages left on an answering machine or with an answering service could be considered as notification of a physician if the Medical Director or designee is contacted and informed that a message was left on the physician's answering machine or with the physician's answering service, and the notification is documented in the patient's medical record.

COMMENT: Three letters of comment were received, one from the New Jersey Association of Health Care Facilities, and two from long-term care facilities, concerning the amendment to N.J.A.C. 8:43-19.7(e). The proposed amendment would change the range of hot water temperature from the current requirement of 90 to 110 degrees Fahrenheit to 100 to 110 degrees Fahrenheit. Letters of comment indicated that this range was "impossible to maintain," "the range is narrow," and that there would be "no danger to anyone in leaving the regulation as it has been." One commenter stated that the director of nurses in his facility "reveals that there are patients who cannot tolerate water at 100 degrees Fahrenheit."

RESPONSE: The intent of the proposed amendment is to provide for the comfort of long-term care patients by ensuring an appropriate temperature for water which is used for patient bathing and/or showering, while at the same time ensuring a safe upper limit for water temperature. Furthermore, the Department has received comments from a hospital infection control practitioner indicating that temperatures in the 90-degree range may favor the growth of organisms which cause Legionnaires' disease. However, after futher review of the amendment, the Department has agreed that a range of 95 to 110 degrees Fahrenheit would continue to improve patient comfort and safety and would also provide a wider range of water temperatures for facilities to maintain. The amendment has been changed accordingly. The language indicating that in no case "shall the temperature of running water in patient care areas exceed 110 degrees Fahrenheit" was deleted, in recognition of the need to provide flexibility in the enforcement process due to the difficulty faced by providers in accurately measuring water temperatures at all times.

COMMENT: One letter of comment was received concerning the amendment proposed at N.J.A.C. 8:39-35.2, requiring that entries into the medical record be legible as well as dated and signed in ink. The commenter expressed concern with the definition of the word "legible," stating that staff might understand an entry in the record, but that a surveyor or layperson might not consider the entry legible.

RESPONSE: Medical records should be capable of being read or deciphered by any staff person who must rely upon another individual's entries to make clinical or patient care decisions. While this may be a subjective judgement, surveyors will approach this as the "reasonable person" and will be principally concerned with gross violations of this standard.

COMMENT: Two comments were received regarding the proposed amendment to N.J.A.C. 8:39-37.3, which expands the standard to require that physician's orders for speech therapy, occupational therapy and audiology evaluations be executed within 48 hours, in addition to the current requirement for physical therapy evaluation orders to be executed within 48 hours. Commenters expressed concern that it is "unrealistic to expect an evaluation of the listed therapies within forty-eight hours. An appointment will be executed within forty-eight hours . . . a realistic timeframe of five days to receive an evaluation is more appropriate, since the therapies do not address 'life threatening situations'."

RESPONSE: The Department and the advisory committee developed the proposed amendment in order to provide consistency in requirements for the timely execution of evaluation orders for each kind of therapy. There was no intent to change the timeframe which had already been included in the current rules. There have been no other requests to date to amend the timeframe for execution of physical therapy evaluation orders. The commenters do not provide adequate rationale for a change in the timeframe for execution of evaluation orders for any of the therapies at this time. The amendment, therefore, remains as written.

COMMENT: One letter of comment was received concerning the proposed amendment at N.J.A.C. 8:39-41.3(p). The commenter indicated that the "regulation is incomplete," since there is a waiver provision (in the law) for an extension of an additional year. The commenter also stated that he would "take issue in regard to the financial impact," that it "will cost approximately $1,000,000 to install air conditioning," and that the temperature rarely exceeds 82 degrees in his facility and patients "wear sweaters or jackets in spite of these temperatures."

RESPONSE: The proposed amendment is intended to reflect the law which is already in effect; the law will not be changed as a result of amendments to LTC licensure regulations. Waivers may be granted by the Commissioner of Health, on the basis of individual circumstances and requests from long-term care facilities. The waiver provision shall not be affected as a result of this amendment. Therefore, no changes have been made to the amendment. Any economic impact on long-term care facilities will result not from the amendment but from the law itself, and there will be no additional economic impact as a result of the proposed amendment.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

8:39-8.1 Advisory policies and procedures for patient activities

(a) (No change.)

(b) There should be a formal, continuously implemented mechanism for activities program planning, implementation, and evaluation.

8:39-8.2 Advisory staff qualifications for patient activities

(a) (No change.)

(b) The director of patient activities should hold current certification from the National Certification Council for Activity Professionals or the National Council of Therapeutic Recreation Certification.

8:39-8.4 Advisory patient services for patient activities

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

(e) (No change in text.)

(f) Patient activities programs should be developed and modified on the basis of input from patients, as well as staff, family, and others.

8:39-9.2 Mandatory policies and procedures for administration

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

(d) The following documents shall be submitted to the New Jersey State Department of Health:

1. An annual financial report or a Medicaid cost report; and

2. Statistical data, such as patient census and facility characteristics, in a format provided by the Department.

(e)-(h) (No change.)

8:39-11.2 Mandatory policies and procedures for patient assessment and care plans

(a) (No change.)

(b) Each physician order shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service, as appropriate. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours, or as specified by the physician.

Recodify (b) through (j) as (c) through (k) (No change in text.)

8:39-13.1 Mandatory communication policies and procedures

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

(e) The facility shall notify the attending physician promptly of substantial changes in the patient's medical condition.

8:39-18.4 Advisory patient dietary services

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

(f) A menu committee composed of patients should participate in meal planning.

(g) The facility should sponsor a guest meal program.

8:39-19.3 Mandatory waste removal policies and procedures

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

(c) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(d) The facility shall comply with the provisions of 42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

(e) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not regulated medical waste.

(f) All solid waste that is not regulated medical waste, including vacutainers, shall be disposed of in a sanitary landfill approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:39-19.7 Mandatory space and environment for water supply

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

(e) Hot (*[100]* *95* to 110 degrees Fahrenheit) and cold running water shall be provided. *[At no time shall the temperature of running water in patient care areas exceed 110 degrees Fahrenheit.]*

8:39-19.8 Mandatory space and environment for sanitation and waste management

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

(g) Solid waste which is not regulated medical waste shall be stored within the containers provided for it outside the facility or in a separate room that is maintained in a clean and sanitary condition. Waste shall be collected from the storage room regularly to prevent nuisances such as odors, flies, or rodents, and so that the waste shall not overflow or accumulate beyond the capacity of the storage containers.

Recodify (i)-(j) as (h)-(i) (No change in text.)

8:39-23.2 Mandatory policies and procedures for medical services

(a) (No change.)

(b) Each physician order shall be properly entered into the patient's medical record.

(c)-(e) (No change.)

8:39-24.1 Advisory structural organization for medical services

(a) (No change.)

(b) (No change in text.)

8:39-27.1 Mandatory restraint policies and procedures

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

(c) The family or guardian shall be notified when a physician initiates an order that the patient be physically or chemically restrained.

8:39-27.5 Mandatory patient services for personal care

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

(g) Each patient shall receive at least one bath (tub or shower) per week unless contraindicated.

(h)-(n) (No change.)

8:39-28.1 Advisory policies and procedures for patient care

(a) (No change in text.)

(b) The facility should develop and implement a restraint-free policy for all residents.

8:39-28.2 Advisory patient care services

There should be patient programs provided on at least a quarterly basis, open to families, for the maintenance of physical and mental well-being, the prevention of deterioration, and the teaching of self-care.

8:39-29.4 Mandatory pharmacy control policies and procedures

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

(h) The pharmacist consultant or director of pharmaceutical services and either a registered professional nurse or a licensed practical nurse shall witness all drug destruction in the facility.

(i)-(j) (No change.)

8:39-32.1 Policies and procedures

There should be a smoke-free policy in all areas of the facility, except that, at the facility's option, controlled smoking by patients may be permitted in an enclosed designated area with adequate outside ventilation.

8:39-35.2 Mandatory policies and procedures for medical records

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

(e) Each entry into the patient's medical record shall be legible and dated and signed in ink with name and title.

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

8:39-37.3 Mandatory rehabilitation staffing amounts and availability

Speech-language pathology evaluation, physical therapy evaluation, occupational therapy evaluation, and audiology evaluation shall take place within 48 hours of the original physician order, excluding weekends, in all facilities with more than 60 beds.

8:39-38.1 Advisory rehabilitation staff qualifications

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

(c) If the facility has 60 or fewer beds, it, nevertheless, should provide:

1. (No change.)

2. Speech-language pathology evaluation, physical therapy evaluation, occupational therapy evaluation, and audiology evaluation within 48 hours of the original physician order, excluding weekends;

3. (No change.)

8:39-41.3 Mandatory fire and emergency preparedness

(a)-(n) (No change.)

(o) The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 82 degrees Fahrenheit or higher for a continuous period of four hours or longer.

1.-2. (No change.)

3. In implementing a heat emergency action plan, a facility shall not prevent a patient from having a room temperature in his or her patient room in excess of 82 degrees Fahrenheit if the patient and the patient's roommate, if applicable, so desire, and if the patient's physician approves.

4. A heat emergency plan need not be implemented if the patient care areas are not affected by an indoor temperature in excess of 82 degrees Fahrenheit.

5. (No change.)

(p) The facility shall provide for and operate adequate ventilation in all areas used by patients. By September 1, 1991, all areas of the facility used by patients shall be equipped with air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit.

(a)

COMMUNITY HEALTH SERVICES

Local Health Development Services: Limited Purpose Laboratory

Adopted New Rules: N.J.A.C. 8:44-3

Proposed: May 7, 1990 at 22 N.J.R. 1323(a).

Adopted: September 10, 1990, by the Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Filed: September 21, 1990 as R.1990 d.512, **with substantial technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: October 15, 1990.

Expiration Date: November 2, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed new rules was held on June 11, 1990 at which four persons testified:

Herbert W. Roeschke, New Jersey Health Officers Association;
Miriam Cohen, New Jersey Association of Public Health Nurse Administrators;
Alvin M. Salton, New Jersey Association of Bioanalysts; and
Katherine S. Pinneo, Family Planning Association of New Jersey.

Written comments were submitted by eight persons:

Charles Kauffman, Ocean County Health Department;
Richard D. Manney, Hudson County Health Officers Association;
William P. Siemers, New Jersey Society for Clinical Laboratory Management;
Michael B. Grossman, D.O., New Jersey Board of Medical Examiners;
Thomas F.X. Nugent, Straight and Narrow Inc.;
Katherine S. Pinneo, Family Planning Association of New Jersey;
Max Schubert, Parsippany Board of Health; and
Mark J. Ringenary.

Comments from the following three persons were received after the closing date, but were considered by the Department:

Marvin Lessig, M.D., New Jersey Pathology Society;
Marjorie B. Krug, Middlesex County Healthy Heart Coalition; and
Eugene V. DeFelice, Hoffmann-La Roche, Inc.

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Department of Health.

COMMENT: Ten commenters supported the adoption of the proposed rules. One commenter opposed it as discriminating against licensed independent community-based laboratories.

RESPONSE: The Department appreciates the support for the proposed rules. The Department feels that the rules would not discriminate against any laboratories or other agencies, but rather would broaden access to important public health screening programs.

N.J.A.C. 8:44-3.1

COMMENT: One commenter opposed allowing the Commissioner to add additional tests to the list of approved procedures and also opposed the list of approved tests, claiming that the list is in conflict with the Federal CLIA 88 statute (P.L. 100-578, 42 U.S.C. 201, 263a).

RESPONSE: In accordance with N.J.A.C. 8:44-3.1(a)8, the Commissioner would be empowered to add additional tests **only** "in response to technological developments in disease control . . . consistent with the principle that limited purpose laboratories may perform simple screening tests, until such time as the proposed procedures can be considered by the regulatory process." This provision would allow the addition of tests in situations where the Department feels it is important to make such screening available immediately, and such additions would be subject to subsequent regulatory review.

The regulations to implement the Federal CLIA 88 statute have not been approved and the Department has been informed by Federal officials that the final form of the regulations could very well be different from the initial proposal. When the Federal regulations are available in final form, they will be reviewed by the Department and N.J.A.C. 8:44 will be amended via the rulemaking process, to conform to the Federal regulations.

COMMENT: One commenter opposed the inclusion of erythrocyte protoporphyrin tests in the list of approved tests because of the technical difficulty of performing this test.

RESPONSE: Erythrocyte protoporphyrin testing, like all other approved tests, would be for screening purposes only and confirmatory testing for abnormal results would be required.

COMMENT: One commenter opposed including immunoassay pregnancy tests in the list of approved tests, stating that this test is diagnostic and that there is potential for serious consequences if it were misinterpreted.

RESPONSE: Misinterpretation of a pregnancy testing can certainly have serious consequences, but consumers can purchase pregnancy tests for home use without a prescription, and testing in limited purpose laboratories would be for screening purposes only and positive tests (or in this case, unexpectedly negative tests) would require confirmatory testing.

COMMENT: One commenter opposed requiring confirmatory testing for urine drug screening tests, arguing that it is sometimes necessary in drug-free treatment programs to take action based on screening test results. Another commenter argued that portable on-site drug testing should be exempt from the New Jersey Clinical Laboratory Improvement Act and that requiring confirmatory testing in drug screening situations is inappropriate.

RESPONSE: The Department points out that only drug screening tests would be permitted under these rules. The Department continues to believe that confirmatory testing for urine drug screening is continued to be needed in some situations, as specified in N.J.A.C. 8:44-3.1(a)6. However, the Department believes that allowing an exemption for the purposes specified in N.J.A.C. 8:44-3.1(a)6 is a sufficient benefit to substance abuse treatment programs to warrant this provision.

COMMENT: One commenter argued that the language requiring protocols to insure review of abnormal test results by laboratory personnel is not specific enough.

RESPONSE: All of the agencies that would be authorized to operate limited purpose laboratories are public health agencies funded by or subject to regulation by the Department of Health. Department programs would have significant interest in assuring that appropriate protocols are established and followed. Therefore, additional specification in these rules is not necessary.

N.J.A.C. 8:44-3.2

COMMENT: One commenter inquired whether there would be a licensure fee or a fee for proficiency testing for limited purpose laboratories.

RESPONSE: It is not currently envisioned that there would be a licensure fee or a fee for proficiency testing for agencies operating limited purpose laboratories. The Department also considered the extent to which additional fees and penalties would be required. Limited purpose laboratories would be exempt from the New Jersey Clinical Laboratory Improvement Act of 1975 only to the extent that they complied with the adopted new rules, and in that case, the Department plans no other fees or penalties. If violations of the adopted new rules were to occur, then an agency's screening activity would no longer be exempt from Clinical Laboratory Improvement Act requirements. In that case, the rules at N.J.A.C. 8:45, including whether an agency would be required to pay licensure and inspection fees, would apply or the agency would have to stop testing.

N.J.A.C. 8:44-3.3

COMMENT: One commenter opposed the requirements for the director of a limited purpose laboratory, claiming that they are in conflict with existing law.

RESPONSE: While the Clinical Laboratory Improvement Act of 1975 (N.J.S.A. 45:9-42.26 et seq.) contains requirements for the director of a limited purpose laboratory, it also authorizes the Public Health Council to specifically exempt by regulation classes of clinical laboratories from the provisions of the Act. The Council has elected to do so, as provided by these rules.

COMMENT: One commenter supported allowing licensed registered nurses to function as laboratory directors, while another commenter opposed allowing nurses, on the grounds that they are not trained properly for this function.

RESPONSE: The Department feels that licensed registered nurses are adequately prepared to function as directors of limited purpose laboratories, as such laboratories are defined in N.J.A.C. 8:44-3.1.

COMMENT: Two commenters suggested that Medical Technologists be added to the list of professionals allowed to serve as limited purpose laboratory directors.

RESPONSE: Although the Department feels that health practitioners, rather than laboratory professionals, can serve as limited purpose laboratory directors, it is not prepared to support inclusion of Medical Technologists at this time.

N.J.A.C. 8:44-3.4

COMMENT: Two commenters opposed some groups in the list of professionals allowed to serve as supervisors of limited purpose laboratories on the grounds that these persons are not qualified for this function, and one of the commenters also recommended allowing medical technologists to serve as supervisors.

RESPONSE: The Department feels that the professional groups that would be permitted to serve as limited purpose laboratory supervisors are adequately prepared to perform that function. The rule lists the type of personnel qualified to serve as supervisors preceded by the phrase "including, but not limited to." Medical technologists would, in most cases, be approved to function as supervisors.

COMMENT: One commenter opposed allowing non-professionals trained by experienced laboratory trainers and/or manufacturer's representatives to perform screening procedures in limited purpose laboratories.

RESPONSE: The tests proposed to be performed by limited purpose laboratories are very limited in number and are simple to perform. The Department feels that non-professionals (as well as health practitioners) can be adequately trained to performed these tests properly.

N.J.A.C. 8:44-3.5

COMMENT: One commenter asked whether proficiency testing procedures would be the same as those that will be required under Federal regulation.

RESPONSE: The anticipated Federal regulation regarding proficiency testing is currently under consideration and the Department has been informed by Federal officials that the final form of the regulation could very well be different from the initial proposal. Therefore, the Department cannot determine whether these rules differ from the Federal regulation.

COMMENT: One commenter opposed requiring that cholesterol screening be done as part of the cardiovascular disease part of the program, arguing that this requirement is included in the Minimum Standards of Performance for Local Boards of Health.

RESPONSE: Cholesterol screening could be performed by agencies operating limited purpose laboratories, other than local health departments, and thus this requirement is not redundant.

COMMENT: One commenter suggested inserting the word "only" at N.J.A.C. 8:44-3.5(e), as follows: "Cholesterol screening shall be done only as a part of a cardiovascular disease prevention program," to clarify that

the intent of the rule is not to require that all cardiovascular disease prevention programs offer cholesterol testing, but rather to require that cholesterol testing not be done without other components of cardiovascular disease prevention.

RESPONSE: The Department accepts this suggestion and will add the word "only" to clarify the intent of the rule.

COMMENT: One commenter sought clarification as to the definition of a cardiovascular disease prevention program.

RESPONSE: A cardiovascular disease prevention program, for the purposes of this subchapter, would be required to offer education, counseling, referral, and follow-up, but would not have to be a formal program separate from other services.

N.J.A.C. 8:44-3.7

COMMENT: One commenter stated that screening test results are, by definition, not quantitative results, and that requiring maintenance of work records is therefore inappropriate.

RESPONSE: Screening test results can be quantitative, and thus maintenance of work records is appropriate. Abnormal screening test results would be required to be followed with confirmatory testing.

N.J.A.C. 8:44-3.10

COMMENT: One commenter argued that the qualifications for persons who may collect blood or material for approved screening tests are not specific enough.

RESPONSE: The director of a limited purpose laboratory would be responsible for approving protocols for the collection of specimens and determining that personnel performing collection procedures were adequately trained, under N.J.A.C. 8:44-3.4(b).

N.J.A.C. 8:44-3.13

COMMENT: One commenter supported allowing individuals to request that screening tests be performed and to directly receive results. One commenter opposed allowing individuals to request tests, on the grounds that that would be in violation of State and Federal law and regulation. This commenter also opposed allowing non-physicians to present laboratory results to individuals. Another commenter opposed allowing patients to order tests as being detrimental to the public's health, safety and welfare and also proposed that only physicians be authorized to present results to patients.

RESPONSE: The Department feels that, in the case of limited purpose laboratory testing, individuals would not be determining which tests that they needed, but rather only whether or not they, as clients of a public health agency, desired to have the screening test(s) which are offered by that agency. Therefore, the Department supports allowing individuals to request tests offered by limited purpose laboratories.

The Department also feels that the health professionals who would be authorized to present test results to individuals at limited purpose laboratories are adequately trained to do so for this very limited number of tests in public health agencies, under the direction of the laboratory director.

N.J.A.C. 8:44-3.15

COMMENT: One commenter expressed concern about how oversight of quality control would be established.

RESPONSE: Oversight of quality control would indeed be limited, but limited purpose laboratories would only be operating in public health agencies funded by, or subject to, regulation by the Department of Health. Department programs encouraging limited purpose laboratory testing will take responsibility for oversight of quality control.

Summary of Agency-Initiated Changes:

The Department has added the words "or service" to the definition of a limited purpose laboratory ("Limited purpose laboratory" means a laboratory or service operated by an agency . . .) in N.J.A.C. 8:44-3.1(a), to clearly indicate that an agency performing a service that would not otherwise make it subject to the New Jersey Clinical Laboratory Improvement Act of 1975 is not intended to be brought under the purview of that act. The Department's proposed rules do not exempt confirmatory testing from the provisions of that act.

The Department also has replaced the words "license" and "licensed" with "approval" and "approved" in N.J.A.C. 8:44-3.2(b) and (c), to clarify that the Department does not intend to issue licenses to these agencies, but will still monitor their activities.

The Department has also corrected a citation at N.J.A.C. 8:44-3.5(b), to refer to the proficiency testing provisions of N.J.A.C. 8:44-2.5(b).

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 3. LIMITED PURPOSE LABORATORY

8:44-3.1 Limited purpose laboratory; definition and minimum protocols

(a) "Limited purpose laboratory" means a laboratory ***or service*** operated by an agency funded through the Department of Health or operated by a local health department which is approved by the Department of Health to conduct, in accordance with the protocols required in (b) below, any of the following procedures for non-diagnostic purposes for the agency's clients:

1. Capillary blood screening for cholesterol and blood sugar;
2. Capillary blood screening for hematocrit or hemoglobin levels in Department of Health approved clinics;
3. Erythrocyte protoporphyrin tests;
4. Urine dipstick screening in Department of Health approved clinics;
5. Immunoassay pregnancy tests;
6. Urine drug tests by licensed substance abuse facilities on enrolled patients or applicants for services for the purposes of making a preliminary determination of program eligibility or providing an adjunctive source of information for counseling, but not for the purposes of making a final determination of program eligibility or for performing count-ordered testing;
7. Fecal occult blood testing;
8. In response to technological developments in disease control, the Commissioner of Health is empowered to amend the above list of procedures consistent with the principle that limited purpose laboratories may perform simple screening tests, until such time as the proposed procedures can be considered by the regulatory process.

(b) A limited purpose laboratory shall establish the following protocols at a minimum:

1. Follow-up protocols for approved screening procedures which shall include a formal relationship with a licensed clinical laboratory;
2. A protocol for the review of test results by laboratory personnel; and
3. Protocols to ensure that individuals with abnormal results are referred to an appropriate source of medical care for confirmatory testing and to determine whether such individuals have in fact sought appropriate medical care within a reasonable period of time, depending on the result.

8:44-3.2 Applicability of regulations

(a) Notwithstanding any other regulations governing the operation of clinical laboratories, which include, but are not limited to, inspection visits, proficiency testing, licensure fees and penalties, a limited purpose laboratory shall be required to comply only with the provisions in this subchapter.

(b) If a limited purpose laboratory is operated at multiple sites by the same trained personnel in the employ of the *[licensed]* ***approved*** agency, a single agency *[license]* ***approval*** shall be required.

(c) If a limited purpose laboratory is operated at multiple sites by different personnel, each site shall require a separate *[license]* ***approval***.

8:44-3.3 Director

(a) A limited purpose laboratory shall be under the direction of the medical director, supervising physician, or licensed health officer of the sponsoring agency, a licensed registered nurse, or the director of a licensed clinical laboratory.

(b) Commensurate with the workload of the limited purpose laboratory, the director shall, depending on the number and kinds of tests being performed, direct and supervise the technical performance of the staff and shall be readily available for personal or telephone consultation by staff.

(c) The director shall be responsible for the proper performance of all testing procedures.

(d) The director shall arrange for a qualified substitute director, prior to the director's absence.

8:44-3.4 Supervision

(a) A limited purpose laboratory shall be supervised by qualified personnel including, but not limited to, a physician, registered nurse, health educator, health officer or registered dietitian, approved by the laboratory director, who, under the general direction of the director, supervise technical personnel and the report of findings, and in the absence of the director, are held responsible for the proper performance of all laboratory procedures. Depending upon the size and functions of the limited purpose laboratory, the director may also serve as the supervisor.

(b) Screening procedures authorized to be performed by a limited purpose laboratory shall be performed by personnel, such as registered nurses, technicians or non-professionals, trained by experienced laboratory trainers and/or manufacturer representatives to follow protocols approved by the director.

8:44-3.5 Screening tests performed

(a) A limited purpose laboratory shall perform only those tests and procedures which are expressly approved by the State Department of Health pursuant to N.J.A.C. 8:44-3.1(a).

(b) A limited purpose laboratory shall submit to State Health Department approved proficiency testing procedures for services performed at all sites pursuant to N.J.A.C. *[8:45]* ***8:44-2.5(b)***.

(c) A limited purpose laboratory shall not promote or market any products or other services, including products such as foods or drugs purported to be beneficial for the condition being tested, unless approved for specific program purposes by the Commissioner of Health, such as in substance abuse treatment programs or in WIC agencies.

(d) A limited purpose laboratory or sponsoring organization may promote the testing services offered by the limited purpose laboratory by advertising, community outreach programs and any other means of public notice.

(e) Cholesterol screening shall be done ***only*** as part of a cardiovascular disease prevention program.

8:44-3.6 Management of a limited purpose laboratory

[(a)] A limited purpose laboratory shall maintain records and facilities which are adequate and appropriate for the services offered. There will be documentation of appropriate training for staff involved in the implementation of these procedures and methods. The training shall include the latest published Centers for Disease Control universal precautions related to the handling of body fluids (available from the Centers for Disease Control, Atlanta, Georgia 30333).

8:44-3.7 Workrecords

Workrecords of quantitative tests shall be maintained and such records shall indicate final results together with all corresponding instrument readings and calculations. Where instrumentation produces tracings or print-outs of results, these tracings or print-outs shall be retained and may serve as the workrecord.

8:44-3.8 Procedure manual

A compilation shall be kept of all automated and manual methods for tests which are performed or offered by the limited purpose laboratory. Each procedure shall be reviewed and dated by the supervisor at least annually. For those tests which are normally performed on automated test equipment, provision shall be made and documented for performing such tests by alternate methods, or for storing the test specimens, in the event this equipment becomes inoperable.

8:44-3.9 Facilities

Space and facilities shall be adequate to properly perform the services which are offered by the limited purpose laboratory.

8:44-3.10 Collection of specimens

Qualified personnel of the limited purpose laboratory may collect blood or material for screening procedures from an individual patient, under the direction of the director.

8:44-3.11 Disposable equipment

Syringes, needles, lancets, or other bloodletting devices capable *[to]* ***of*** transmitting infection from one person to another shall not be reused. Disposable syringes, needles and other disposable items shall be destroyed immediately after use as stipulated in N.J.S.A. 2A:170-25.17.

8:44-3.12 Records of specimens

(a) A limited purpose laboratory shall maintain a record indicating the daily accession of specimens, each of which is numbered or otherwise appropriately identified. Records shall contain the following information:

1. The number or other identification of the specimen;
2. The name and other identification of the person from whom the specimen was taken;
3. The date the specimen was collected;
4. The type of test performed;
5. The date that test was performed; and
6. The results of the test or cross-reference to results and the date of reporting.

8:44-3.13 Examinations and reports

(a) A limited purpose laboratory may examine specimens at the request of an individual patient or that person's guardian, except for urine drug testing, which may also be authorized by clinical staff of licensed substance abuse facilities.

(b) The results of screening procedures performed by a limited purpose laboratory shall be presented to the patient by a clinical laboratory technologist, a registered nurse, a registered dietician, or a health educator qualified pursuant to N.J.A.C. 8:52-1.8(a) and (b), nutritionist with a B.S. degree, substance abuse counselor employed by a licensed drug treatment program or other persons deemed appropriate by and under the direction of the director. Pertinent "reference" ranges as determined by the limited purpose laboratory shall be available. A basis for the listed "reference" range shall be maintained in the limited purpose laboratory.

(c) The original or true duplicate of the results shall be sent promptly to the physician, if any, who is designated by the individual patient to receive a report or to a designated source, if any, for medical review.

8:44-3.14 Report records

True duplicate copies or a suitable record of test reports shall be filed in the limited purpose laboratory in a manner which permits ready identification and accessibility. All reports shall be preserved for a period of at least two years after the date of submittal of the report.

8:44-3.15 Quality control

(a) Quality controls imposed and practiced by the limited purpose laboratory shall provide for and include written records to assure the following:

1. Preventive maintenance, periodic inspection, and testing for proper operation of equipment and instruments as may be appropriate based on the frequency of the testing sessions and on the number of tests performed; validation of methods; evaluation of reagents and volumetric equipment; surveillance of results; and remedial action to be taken in response to detected defects;

2. Adequacy of facilities, equipment, instruments and methods for performance of the procedures for which licensure is approved; proper lighting for accuracy and precision; convenient location of essential utilities; monitoring of temperature-controlled spaces and equipment, including sterilizers and refrigerators, to assure proper performance; evaluation of analytical measuring devices with respect to all critical operating characteristics. Records shall reflect actual readings obtained both before and after any adjustments have been made;

3. Labeling of all reagents and solutions to indicate identity, and when significant, titer, strength or concentration, recommended storage requirements, preparation or expiration date, and other pertinent information. Materials of substandard reactivity and deteriorated materials shall not be used. All outdated material shall be discarded immediately;

4. The availability at all times, in the immediate bench area of personnel engaged in examining specimens and performing related procedures, of current laboratory manuals or other complete written descriptions and instructions relating to:

i. The analytical methods used by those personnel, properly designated and dated to reflect the most recent supervisory reviews;
ii. Reagents;
iii. Control and calibration procedures; and
iv. Pertinent current literature references;
5. Written approval by the director or supervisor of all changes in laboratory procedures;
6. Maintenance and availability to laboratory personnel and to the Department of Health records reflecting dates and, where appropriate, the nature of inspection, validation, remedial action, monitoring, evaluation and changes and dates of changes in laboratory procedures; and
7. Acceptance by the limited purpose laboratory of only specimens which have been properly collected, labeled, processed, stored and transported in such a manner as to assure identity and the stability of the specimen with respect to the requested tests; or, if a specimen's stability has not been assured, the report shall clearly state that the results may be invalid due to an unsatisfactory sample.
(b) Provision shall be made for an acceptable quality control program covering all the types of analyses performed by the limited purpose laboratory for verification and assessment of accuracy, measurement of precision, and detection of error.

LAW AND PUBLIC SAFETY

(a)

OFFICE OF THE ATTORNEY GENERAL

Legislative Agents
Fees

Adopted Amendment: N.J.A.C. 13:1A-2.11

Proposed: June 18, 1990 at 22 N.J.R. 1810(a).
Adopted: September 10, 1990 by Attorney General Robert J. Del Tufo.
Filed: September 18, 1990 as R.1990 d.506, **without change.**
Authority: N.J.S.A. 52:13C-23j.
Effective Date: October 15, 1990.
Expiration Date: October 15, 1995.

Summary of Public Comments and Agency Responses:
The Department received seven letters of comment from:
The New Jersey State Chamber of Commerce
Berry Associates, Inc.
New Jersey Retired Educators Association
New Jersey Business and Industry Association
New Jersey Education Association
Fuel Merchants Association of New Jersey
Katz Martin and Company

COMMENT: Two commenters indicated concern with the fact that the rule is effective on July 1, 1990 but that the public comment period did not end until July 18, 1990 thus not allowing consideration to be given to the comments.
RESPONSE: The new $100.00 fee will not be implemented until the rule has been adopted. This allows for consideration of the public comments.
COMMENT: One commenter stated that the fee bears no relation to the amount of lobbying undertaken by a legislative agent and proposed that the fees should be based proportionately on the total annual hours attributable to lobbying activity.
RESPONSE: The Department believes that such a fee structure would become complex to administer, for the Department and for legislative agents, and that a flat fee is the best alternative. Additionally, the statute does not require that the total annual hours attributable to lobbying activities be reported.
COMMENT: Two commenters believe that the proposed fee exceeds the costs needed by the State to carry out its responsibilities under the act.
RESPONSE: As indicated in the rule proposal, this is the first increase in the fee since 1971. Since 1974, the number of legislative agents registered has increased dramatically. In 1974, only 188 agents were registered compared to over 600 in 1990. The significant increase in the number of registered agents over the years has resulted in a concomitant increase in the workload of the Office of the Attorney General. The existing fee established in 1971 does not cover the costs of the 1990 workload with regard to the registration of legislative agents.
COMMENT: Two commenters stated their belief that the fee increase could be interpreted as an attempt by government to restrict freedom of expression and to limit access to the legislative process and to administrative agencies. One of these commenters indicated that the additional charges do little to facilitate legislative agents' and their clients' ability to exercise their right of address to the Legislature and Governor.
RESPONSE: The Department does not believe that the fee increase will hinder the ability of legislative agents or their clients to communicate with the legislative and executive branches of government. The fee increase will enable the Office of the Attorney General to take appropriate action to be sure that the right of the people of the State to freely express to the Legislature their opinions on legislation and current issues is maintained.

Full text of the adoption follows.

13:1A-2.11 Fees
(a) Effective July 1, 1990 and each July 1 thereafter, a legislative agent, whose activities during any part of the fiscal year commencing on that date are subject to the Act, shall pay an annual fee of $100.00.
(b) Payment of this fee shall be by check or money order made payable to "State of New Jersey, Office of the Attorney General" and shall accompany the notice of representation or quarterly report, as the case may be.
(c) No fee shall be required if an organization qualifies under section 9(b) of chapter 30 of the laws of 1966, as amended (N.J.S.A. 54:32B-9(b)).

(b)

DIVISION OF MOTOR VEHICLES

Licensing Service

Adopted Amendments: N.J.A.C. 13:21-1.3, 1.4 and 1.5

Proposed: July 16, 1990 at 22 N.J.R. 2134(a).
Adopted: September 19, 1990 by Col. Clinton L. Pagano, Director, Division of Motor Vehicles.
Filed: September 24, 1990 as R.1990 d.514, **without change.**
Authority: N.J.S.A. 39:2-3, 39:3-4, 39:3-10 and 39:3-13 et seq.; 42 U.S.C. §405(c)(2)(C).
Effective Date: October 15, 1990.
Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:21-1.3 Mandatory disclosure of social security number
(a) An applicant for any learner permit, examination permit, driver license, commercial driver license or any endorsement thereto, or registration shall disclose his or her social security number(s) upon the application form furnished by the Director.
(b) A learner permit, examination permit, driver license, commercial driver license or any endorsement thereto, or registration shall not be issued unless the applicant therefore discloses his or her social security number(s) upon the application form.
(c) (No change.)

13:21-1.4 Restricted use of social security numbers
(a) The Division of Motor Vehicles shall, in the administration of the driver license and motor vehicle registration laws of this State, including any New Jersey commercial driver license act and the regulations adopted thereunder, utilize social security numbers for the purpose of establishing the identification of individuals affected by such laws.

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

(d) The Division of Motor Vehicles shall utilize social security numbers as an identifier in the administration and enforcement of the "Driver License Compact" (N.J.S.A. 39:5D-1 et seq.) and the licensing provisions of Title 39 for the purpose of determining through the National Driver Register whether a driver license applicant has had his or her driver license suspended in any other State.

(e) The social security number shall be provided to and used in communications with the Commercial Driver License Information System, the National Driver Register and the driver licensing authorities of other states and jurisdictions, including the District of Columbia, Canadian provinces and the Republic of Mexico. It shall be used in reporting motor vehicle and other violations, driver license suspensions, revocations, disqualifications or out-of-service orders. The social security number may be displayed on the commercial driver license and examination permits and shall be used in carrying out the purposes and provisions of the Federal Commercial Motor Vehicle Safety Act of 1986 and the regulations adopted thereunder and any New Jersey commercial driver license act and the regulations adopted thereunder.

(f) (No change in text.)

(g) The Division of Motor Vehicles shall inform an individual required to disclose a social security number that disclosure is mandatory under N.J.A.C. 13:21-1.3 and shall inform the individual of the uses that will be made of that number under this section.

13:21-1.5 Public record exception: disclosure prohibited

(a) Social security numbers recorded on applications for driver licenses (including commercial driver licenses), motor vehicle registrations, and other documents set forth in N.J.A.C. 13:21-1.3, are not public records and are not accessible for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

(b) Social security numbers shall not be disclosed by the Division of Motor Vehicles in any manner or any circumstance other than those specified in N.J.A.C. 13:21-1.4. Social security numbers shall not be disclosed on driver licenses, driver license abstracts or motor vehicle registration abstracts prepared by the Division, except as provided in N.J.A.C. 13:21-1.4(e).

(a)

VIOLENT CRIMES COMPENSATION BOARD

Attorney's Fees

Adopted Amendment: N.J.A.C. 13:75-1.12

Proposed: August 6, 1990 at 22 N.J.R. 2260(a).

Adopted: September 6, 1990 by the Violent Crimes Compensation Board, Jacob C. Topork, Chairman.

Filed: September 13, 1990 as R.1990 d.501, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: October 15, 1990.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.12 Attorney's fees

(a) Attorney's fees shall be approved by the Board. Whenever an award is made, the claimant's attorney shall receive an hourly fee as outlined in (b) below, which fee shall not exceed 15 percent of the amount awarded as compensation. An attorney shall not ask for, contract for, or receive from the claimant any sum other than the fee set by the Board.

(b) Where an Order of Denial is entered by the Board, the Board shall make no award of a legal fee to the attorney for the claimant. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d), and a subsequent Order of Denial is entered, the Board shall make no award of a legal fee.

(c) For all claim applications filed prior to July 1, 1990, attorney's fees shall be computed on an hourly basis and shall not exceed a maximum of $50.00 per hour.

1. For all claim applications filed on or after July 1, 1990, attorney's fees shall be computed on an hourly basis at the rate of $75.00 per hour. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d) which results in an Order of Payment, the Board shall award a fee of $300.00 for said appearance notwithstanding the amount of time spent in attending said hearing.

2. The Board shall require an affidavit of service where attorney's fees exceed $500.00. Said affidavit must include an hourly accounting of work completed by the attorney in direct relation to the claim before the Board.

(d) (No change.)

TRANSPORTATION

(b)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT
BUREAU OF MAINTENANCE

Roadside and Drainage Maintenance
Responsibility for Maintenance; Litter

Adopted Amendment: N.J.A.C. 16:38-1.1
Adopted New Rule: N.J.A.C. 16:38-1.5

Proposed: August 6, 1990 at 22 N.J.R. 2246(a).

Adopted: September 6, 1990 by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: September 12, 1990 as R.1990 d.499, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:7 et seq.

Effective Date: October 15, 1990.

Expiration Date: October 15, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:38-1.1 Sidewalks and driveways

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

(d) Snow removal: Owners of the real property abutting a highway, road, street or thoroughfare under State jurisdiction shall be entirely responsible for the clearing of snow and ice from all abutting sidewalks and abutting driveway cuts, openings or aprons, whether or not they are located on public or private property. No costs incurred directly or indirectly by abutting property owners or their tenants, in snow or ice clearing, shall be reimbursed by the State or any public entity for any reason, including, but not limited to, where snow or ice has been placed upon such areas as a result of the State or State contractor's snow or ice clearing operations.

16:38-1.5 Litter

Abutting property owners shall be responsible for maintaining the area fronting their property from the curb to the sidewalk in a litter-free condition.

(a)

DIVISION OF PROCUREMENT
BUREAU OF CONSTRUCTION SERVICES

Construction Services

Distribution or Sale of Construction Plans and Supplementary Specifications; Deferred Payments to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects

Adopted Amendments: N.J.A.C. 16:44-3.1 through 3.5, 7.2 and 7.3

Proposed: August 6, 1990 at 22 N.J.R. 2247(a).

Adopted: September 6, 1990 by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: September 12, 1990 as R.1990 d.500, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1 and 14:15-2.

Effective Date: October 15, 1990.

Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:44-3.1 Defintitions

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

...

"Supplementary specifications" means amendments or revisions updating the current New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction.

16:44-3.2 Requirements

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

(d) A charge shall be made for each set of black line plans and supplemental specifications pursuant to requests from outside of the NJDOT in accordance with the following, except as otherwise authorized herein:

1. (No change.)
2. For the key sheets, supplementary specifications and any other pertinent documents in instances where the advertised work does not require construction plans: $10.00.
3. Supplementary specifications unaccompanied by construction plans: $5.00.
4. For individual sheets of a set of plans, a charge of $1.00 per sheet will be imposed but the total charge for request for individual sheets will not exceed the scheduled price for a complete set of black line prints as set forth in (d)1 above.
5. If copies of the supplementary specifications are not available subsequent to the award of the contract, photocopies shall be made at first to tenth page, $.50 per page; eleventh to twentieth page, $.25 per page; and all pages over 20, $.10 per page.

(e) Requests from outside the NJDOT for distribution of plans, or for any portion thereof, or for any individual sheet or sheets therefrom, shall be honored during the advertised period. However, distribution under such requests will only be made after one of the following:

1. The Department cashier has furnished a receipt indicating that the proper remittance has been submitted; or

2.-3. (No change.)

16:44-3.3 Requisitioning of plans

Requests for plans should be sent to the Bureau of Construction Services, Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625.

16:44-3.4 Non-departmental distribution and sale

(a) The Bureau of Construction Services shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1.-6. (No change.)

16:44-3.5 Department distribution

(a) The division or bureau of origination shall provide construction plans and specifications on each advertised project to the various Design Offices in the state to enable the contracting organizations to make a review of these plans and specifications. The four Design Field Offices are located in:

1.-2. (No change.)

3. Mt. Laurel;
4. Freehold.

16:44-7.2 Partial payments to contractors

(a) (No change.)

(b) Contracts may also provide for partial payments to contractors at least once each month or from time to time as the work progresses on all materials placed along or upon the site which are suitable for the use and execution of the contract, provided the contractor furnishes releases of liens for all materials furnished at the time each estimate of work is submitted for payment, but the amount of the partial payment may not exceed 85 percent of the bid price for the pay item into which the materials are to be incorporated.

16:44-7.3 Per centum withheld pending completion of contract

Five per centum of the amount due on partial payments on the first 50 percent of the total adjusted contract price will be deducted and retained by the Department pending substantial completion. On the remaining 50 percent of the total adjusted contract price, no percentage of the partial payments will be withheld as retainages.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Supplemental Annuity Collective Trust

Adopted New Rules: N.J.A.C. 17:8

Proposed: June 18, 1990 at 22 N.J.R. 1900(a).

Adopted: September 20, 1990 by the Supplemental Annuity Collective Trust Council, Patricia Chiacchio, Acting Secretary.

Filed: September 24, 1990 as R.1990 d.515, **without change.**

Authority: N.J.S.A. 52:18A-111 et seq., specifically 52:18A-111.

Effective Date: October 15, 1990.

Expiration Date: October 15, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:8 expired on June 27, 1990. The rules proposed for readoption are herein adopted as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the rules proposed for readoption, adopted as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 17:8.

Full text of the adopted amendments to the rules proposed for readoption, adopted as new rules, follows.

17:8-1.4 Variable annuity; general description

(a) (No change.)

(b) Three accounts are maintained in order to account properly for the accumulation of the contributions received, the annuity payments to be made, and the gains and losses and earnings of the investment portfolio.

1.-2. (No change.)

3. An income distribution summary is maintained to record the changes in the value of the assets in the Variable Division.

17:8-1.5 Variable Accumulation Account
(a)-(b) (No change.)
(c) Participant's contributions shall be converted into equity units quarterly on the basis of the value per equity unit at the end of the quarter during which the contributions are made.
(d) (No change in text.)
(e) In the event of termination of an accumulation account due to retirement prior to the end of a quarter, contributions since the first of the quarter shall be converted into equity units on the basis of the value per equity unit as of the end of the month of termination.
Recodify (g)-(h) as (f)-(g) (No change in text.)

17:8-1.6 Variable Benefit Account
(a)-(i) (No change.)
(j) The number of equity units in force will be reviewed at least once in every three-year period and, if necessary, adjusted to equal the total present value in equity units of all annuities in force on the basis of actuarial valuation. The mortality gain or loss for the period shall be allocated to the Income Distribution Summary and the apportioned to the Variable Accumulation Account and the Variable Benefit Account as herein provided.

17:8-1.7 Income Distribution Summary
(a) The Income Distribution Summary shall be the account to which the investment income and gains or losses of the Variable Division shall be credited or charged. Such gains or losses shall reflect appreciation and depreciation in the market value of investments.
(b) (No change.)

17:8-2.1 Enrollment; exceptions
Enrollment is to be effective only at the beginning of a calendar quarter except 10-month employees of boards of education may enroll as of September 1. In each case, an employee must be enrolled in a State-administered retirement system prior to enrolling in the Supplemental Annuity Collective Trust.

17:8-2.2 Enrollment applications
Each employee participating in the regular and tax-sheltered programs shall file a Supplemental Annuity Collective Trust enrollment application on the prescribed form, which shall be completed and certified by the employer.

17:8-2.3 Salary reduction; exceptions
As a condition of enrollment in the tax-sheltered annuity plan, salary reduction agreements on the approved form shall be entered into by the eligible employee and the employer. Such agreements shall commence only at the beginning of a calendar quarter, except 10-month employees of boards of education may enroll as of September 1. In each case, an employee must be enrolled in a State-administered retirement system prior to enrolling in the Supplemental Annuity Collective Trust.

17:8-2.4 Contributions; limitations
(a)-(b) (No change.)
(c) In the event an employee is eligible to participate in both the regular supplemental annuity plan and the tax-sheltered annuity plan, the combined contributions may not exceed 10 percent of base salary.

17:8-2.5 Salary reduction; limitations
(a) The rate of salary reduction shall be stated as a percentage of base salary from one percent to 10 percent; no fractional percentages are permitted.
(b) (No change.)

17:8-2.7 Salary reduction change; tax-sheltered supplemental annuity
(a) (No change.)
(b) Changes in the rate of contribution may be made thereafter as of the start of a calendar quarter and will remain in force for one year without modification.
(c) If contributions are suspended, the participant is eligible to resume reductions six months following the effective date of the suspension.
(d) Notice of the change shall be filed with the trust at least 30 days prior to calendar quarter.
(e) Salary reductions and modifications shall become effective upon certification from the Division of Pensions.

17:8-2.8 Lump-sum contribution; limitation
(a) Participants who are contributing through payroll deductions to the regular supplemental annuity collective plan, not the tax-sheltered annuity plan may make lump-sum contributions in the third month of any calendar quarter in dollar amounts of $50.00 or more. No participant may contribute in excess of 10 percent of base salary by lump-sum and payroll deductions combined in any fiscal year.
(b) (No change.)

17:8-2.9 (Reserved)

17:8-2.12 Redeposit and reinstatement
If a participant's withdrawal or retirement from the Supplemental Annuity Collective Trust has been processed and a check has been issued to him or her covering the value of his or her account in the Supplemental Annuity Collective Trust and he or she subsequently cancels his or her withdrawal or retirement application from the basic retirement system, his or her supplemental annuity account may be reinstated by the redeposit of the funds withdrawn within 15 days after such cancellation. In this event, the amount redeposited shall be converted into equity units on the basis of the value of an equity unit as of the end of the month or redeposit. If a timely redeposit is not made, the employee may reenroll as a new participant at the beginning of any calendar quarter.

17:8-2.13 Beneficiary designation
(a) If the basic retirement system provides for return of accumulated deductions upon the death of the member, the primary and contingent beneficiaries of active participants shall be the same for the trust, unless a separate designation of beneficiary on a form prescribed for the program is filed with the trust. The original nomination of beneficiaries on file with the Supplemental Annuity Collective Trust will remain effective unless a subsequent designation of beneficiary form is filed with the Supplemental Annuity Collective Trust.
(b) In those retirement systems which do not provide for the return of accumulated deductions upon the death of a member, the participant may designate a primary and contingent beneficiary in the Supplemental Annuity Collective Trust on prescribed forms, or, in the absence of such designation, his or her estate shall be so designated.

17:8-2.15 Approved annuity
A participant shall have the right to withdraw, cancel or change the Supplemental Annuity Collective Trust application for retirement at any time before his or her annuity becomes due and is paid; thereafter, the annuity shall stand as approved.

17:8-3.1 Retirement options
(a) At retirement a participant shall be paid a variable life annuity unless he or she files a written application prior to retirement requesting:
1. A lump-sum settlement; or
2. The actuarial equivalent as a lesser annuity for life with the provision that:
i.-ii. (No change.)
iii. Upon his or her death, the same variable annuity shall be continued throughout the life of and paid to a natural person as he or she shall nominate by written designation duly acknowledged and filed with the Trust at the time of his or her retirement.
iv.-v. (No change.)
3. (No change.)
(b) At retirement a participant may select only a single retirement option for the settlement of his or her account. If a participant has both a tax-sheltered and a regular supplemental annuity collective trust, such retirement option shall be for the settlement of the combined accounts.

17:8-3.3 Withdrawal of retirement; effective date and form
(a) Withdrawal or retirement from the Supplemental Annuity Collective Trust is contingent upon the participant's completion of the appropriate forms required by the basic retirement system. In ad-

dition, if a retirement option is selected, the appropriate Supplemental Annuity Collective Trust forms shall be filed prior to retirement.

(b) The retirement value of the participant's account shall be determined as of the close of the month in which the retirement becomes effective.

(c) The withdrawal value of the participant's account shall be determined as of the close of the month in which the participant ceases to be a member of a State-administered retirement system.

(d) In the event that an eligible participant elects a lump sum payment of his or her account and the determination of the unit value is delayed past the normal valuation date, the participant may request, in writing, that an amount up to 90 percent of his or her computed equity may be paid initially and the balance paid, once the unit value has been established. Partial payment is contingent upon the receipt of the necessary Supplemental Annuity Collective Trust settlement forms and all information necessary for retirement from the State-administered retirement system.

(e) (No change in text.)

17:8-3.6 Termination; transfer to suspense

If a participant's account in his or her basic retirement system is terminated and later placed in suspense, the value of his or her account in the Supplemental Annuity Collective Trust shall be determined as of the close of the month in which his or her account in the basic retirement system was terminated and he or she shall no longer participate in earnings or losses.

17:8-3.7 Separate pension accounts; transfer to trust

Participants' contributions received by the various pension systems are directly deposited to the Trust as received. Contributions are separately recorded and accounted for by pension system and Supplemental Annuity type (regular supplemental annuity contributions and tax-sheltered supplemental annuity contributions).

17:8-4.1 Qualified voluntary employee contribution account

(a) (No change.)

(b) An individual account shall be maintained for each participant.

(c) At the retirement of a participant, the number of equity units in the participant's account as of the date of retirement shall be transferred, determined, and payable, all in accordance with the provision of N.J.A.C. 17:8-1.6.

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

17:8-4.2 Participant contributions

Due to the Income Tax Reform Act of 1986, qualified voluntary employee contributions were discontinued as of January 1, 1987. The balance of a participant's account continues to be maintained and participates in the gains and losses of the fund until the participant qualifies for distribution.

17:8-4.3 (Reserved)

17:8-4.4 Tax information

For tax reporting purposes, any amount attributable to the participant's qualified voluntary employee contributions shall be reported separately from other amounts distributed from the Trust.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Teacher Preparation and Certification

Readoption with Amendments: N.J.A.C. 6:11

Adopted Repeals: N.J.A.C. 6:3-1.11 and 1.12

Adopted Amendment: N.J.A.C. 6:3-1.24

Proposed: June 18, 1990 at 22 N.J.R. 1873(a).

Adopted: September 5, 1990 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: September 21, 1990 as R.1990 d.510, **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. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Effective Date: September 21, 1990, Readoption;
October 15, 1990, Repeals and Amendments.

Expiration Date: September 21, 1995, N.J.A.C. 6:11;
July 8, 1993, N.J.A.C. 6:3.

Summary of Public Comments and Agency Responses:

Teaching Experience of Superintendents

COMMENT: Seven individuals commented in support of proposed requirements for the certification of superintendents, and 11 persons expressed opposition. An additional nine individuals urged reinstatement of rules requiring administrators to possess three years of education experience.

RESPONSE: The issues raised by commenters were discussed at great length during the State Board of Education's two-year review of requirements for the Administrator Certificate as they apply to the endorsement for school principals. Responses to these issues are contained in the following public documents:

—Teaching Experience and the Certification of School Principals (PTM 700.35);

—A Principal Residency (PTM 700.36);

—Administrator Certification: Responses to Public Comment (September 1987);

—Administrator Certification: Responses to Public Comment (February 1988);

—Administrator Certification: Responses to Public Comment (May 1988); and

—Administrator Certification: Responses to Public Comment (September 1988).

The rules at N.J.A.C. 6:11-9, adopted unanimously by the State Board, determined that the essential purpose of the Administrator Certificate is to guarantee administrative competencies. Numerous changes were incorporated in response to administrators' concerns, in particular the elimination of the requirement that administrative certification candidates have previously held teaching jobs. The new plan assures that each new administrator obtains structured training in aspects of teaching and schools that are important to his/her administrative functioning. Further, the rules charge local boards of education with establishing experience criteria, including criteria for prior teaching, for professional positions and with matching the backgrounds of individual candidates with the requirements of individual administrative positions.

These rules (N.J.A.C. 6:11-9) have the potential to improve administrator preparation and selection. The program is the result of an extended and carefully-considered public discussion. Therefore, it should be given an opportunity to fulfill its potential. The program will be evaluated rigorously with the assistance of a broad-based advisory committee in a way that is sensitive to the concerns expressed by some administrators and their associations. If modifications prove necessary, they will be proposed. Therefore, the Department of Education recommends that the State Board extend the new requirements to the certification of superintendents through adoption of the proposed rules.

Functions of Superintendents

COMMENT: Four individuals have expressed written concern that proposed N.J.A.C. 6:11-9.3(a) may be intended as a means of mandating unit control of school districts.

RESPONSE: The proposed rule is not intended as a unit-control mandate, nor would it have the effect of mandating unit control.

Instead, N.J.A.C. 6:11-9.3(a) is aimed exclusively at defining those job functions that superintendents are trained to perform and, therefore, that they are permitted to perform. One such function is the direct supervision of central office staff, including school business administrators.

The fact that superintendents are trained and permitted to supervise business administrators does not mean that local boards must assign them that responsibility. It is only because dual-control is an acceptable option that the Department seeks to clarify explicitly that superintendents are trained to supervise business administrators and are authorized to do so. It is recommended that N.J.A.C. 6:11-9.3(a) be adopted as proposed with the assurance that it is not intended as a unit-control mandate.

Certification of Vocational Teachers

One person testified in support of proposed rules for the certification of vocational teachers. In addition, seven individuals raised the following points:

COMMENT: The proposed rules appear not to provide for a traditional route to vocational teacher certification.

RESPONSE: Proposed N.J.A.C. 6:11-8.2(a)2ii would require each applicant for a standard certificate in the area of vocational certification to complete a State-approved district-training program pursuant to subchapter 5. Subchapter 5 provides that the 20-day preresidency and the 200 hours of formal instruction required in State-approved district training programs do not apply to persons who have completed an approved college teacher education program. Therefore, the rules provide vocational teacher candidates with the same traditional-route option that is available to all teacher candidates.

COMMENT: The proposed rules would denigrate the profession of vocational teaching by allowing the employment of persons who lack professional coursework.

RESPONSE: Under existing regulations, virtually all new vocational teachers are employed under emergency certification without having completed professional coursework. In fact, these regulations do not establish any firm entry requirements. Nor do they provide a coherent program that enables emergency teachers to complete their professional training within a defined period after they are hired. Nor do they require that special support be provided until such training is completed.

The proposed system would eliminate emergency certification. It would establish firm entry requirements, provide a coherent one-year training program and require that new vocational teachers be provided special support until they complete training. Therefore, the new system would contribute significantly to the professionalization of vocational teaching.

State Board of Examiners

Changes in rules governing the functioning of the State Board of Examiners are proposed unanimously by the practitioners who comprise the board. The following points were raised in testimony by one individual:

COMMENT: The membership of the State Board of Examiners should not include a school business administrator because the addition of this member dilutes the representation of teachers on the board.

RESPONSE: A school business administrator must be included on the State Board of Examiners pursuant to legislation adopted in 1988 (see N.J.S.A. 18A:6-38). The inclusion of this membership category is appropriate because business administrators are certified by the board. However, the broader point deserves consideration. The State Board of Examiners is now comprised of five district administrators (two superintendents, two principals and one business administrator) and only four teachers. These numbers may be disproportionate to the numbers of school professionals actually employed in the respective categories. The State Board must adopt the proposed rule, which accurately reflects the provisions of N.J.S.A. 18A:6-38. The Department of Education will pursue the issue of representation in order to determine whether any further actions are warranted, and report its findings by December 1, 1990, to the State Board of Education.

COMMENT: Existing provisions of N.J.A.C. 6:11-2.2 should not be deleted. These provisions provide a clarification of the respective roles of the State Board of Education and the State Board of Examiners.

RESPONSE: It is recommended that the State Board of Education retain the referenced provisions. The referenced provisions were retained upon adoption.

COMMENT: Proposed N.J.A.C. 6:11-2.2 would allow the State Board of Examiners to refuse the issuance of a certificate without criteria and without according the applicant due process.

RESPONSE: The proposed rule would allow the refusal of a certificate only where "the applicant has been found by a court or administrative agency of competent jurisdiction to have engaged in conduct which would have provided adequate grounds for the revocation of the certificate, if then held." In all cases, the applicant would be provided an opportunity to be heard (see N.J.A.C. 6:11-2.2). The statutory and regulatory grounds for revocation are "inefficiency, incapacity, conduct unbecoming a teacher or other just cause." By statute and regulation, the ultimate criterion for determining the adequacy of grounds in particular cases is the judgment of the State Board of Examiners. Therefore, the criteria and due process for refusal are identical to the process and criteria for revocation. Refusal procedures must be defined because it does not make sense to issue a certificate to an individual against whom the State Board of Examiners would then be obligated to initiate revocation procedures.

COMMENT: Proposed N.J.A.C. 6:11-3.1(a) states that regulated job duties must be performed by the holder of a certificate "or under his or her direct personal supervision."

RESPONSE: There are numerous instances in which uncertified persons are assigned to perform certified job duties under the direct, continuous supervision of a certified staff member—for example, college interns. There are instances where uncertified persons are hired and paid to assist certified staff members in the performance of regulated functions—for example, teachers' aides and administrative secretaries. The meaning of the proposed code language appears clearly established in existing practice.

COMMENT: Proposed N.J.A.C. 6:11-3.1(d) could be construed to supersede the notice provision of contracts by stating that the "contract . . . shall cease."

RESPONSE: The Department feels that the referenced language, which has been taken verbatim from the enabling statute, N.J.S.A. 18A:27-2, is clear.

COMMENT: Does the term "improperly certified" refer only to possession of the proper certificate or to the required endorsement as well?

RESPONSE: In order to be properly certified, staff members must possess all certificates and endorsements required by the State Board of Education for service in the relevant position.

COMMENT: The State Board of Examiners does not publish written records of its previous decisions. Therefore, such decisions are not available to the public, to parties in a revocation dispute, or to the board itself for purposes of rendering current judgments.

RESPONSE: The primary reason that the State Board of Examiners has never published its decisions is cost. The Board does not have its own budget, and the Department of Education has not had a reliable source of funds to support publication of findings. The State Board of Education has directed the Department of Education to explore ways of providing a reliable base of fiscal support for this purpose, and report its findings by December 1, 1990 to the State Board of Education.

COMMENT: Proposed N.J.A.C. 6:11-3.5 encourages local administrators to engage in "rumor mongering" by filing unsubstantiated charges against staff members. The rule would then place on the accused the burden of proving the absence of guilt.

RESPONSE: Both of these contentions are untrue. The referenced provision requires administrators to report only those instances in which staff members resign or retire as a result of alleged misdemeanors, crimes or other conduct that might warrant revocation of certification. An Order to Show Cause is issued only if the State Board of Examiners judges the allegations to be sufficiently substantiated. The purpose of the Order is to allow the staff member an opportunity to challenge these allegations. If the State Board of Examiners determines that a hearing is needed, such hearing is conducted before an administrative law judge who informs the final determination of the State Board of Examiners.

These procedures are well established and fair. Local administrators have always been able to file revocation charges and they have done so. The proposed rule responds to a significant problem which has emerged in which staff members have been allowed to resign specific positions in order to avoid revocation in cases where revocation may be warranted.

COMMENT: Proposed N.J.A.C. 6:11-3.6(c) allows the State Board of Examiners to initiate its own revocation and suspension cases against staff

members. This violates due process by allowing the Board to serve both as prosecutor and judge.

RESPONSE: There are occasions when the State Board of Examiners becomes aware (for example, through press reports) of potential grounds for revocation, (for example, conviction of child abuse). In such cases, revocation charges may not have been filed by a third party. Every legally-constituted entity has the authority and responsibility to enforce regulations under its jurisdiction. Statutes and regulations charge the State Board of Examiners with revoking certificates in cases of inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Proposed N.J.A.C. 6:11-3.6(c) states only that "nothing in the foregoing [rules] shall preclude the State Board of Examiners from issuing a Show Cause Order on its own initiative where said Board has reason to believe that grounds for revocation or suspension exist." This is a reasonable provision for enabling the board to exercise its statutory and regulatory responsibility.

COMMENT: Proposed N.J.A.C. 6:11-3.6(f) requires staff members whose certificates have been suspended to prove their rehabilitation for reinstatement of certification. It is impossible to prove that past behavior will not recur; therefore, the provision places an unfair burden of proof on the suspended certificate holder.

RESPONSE: The Department of Education is deleting, upon adoption, the following language from the proposal published in the June 18, 1990, New Jersey Register, (22 N.J.R. 1837(a)), N.J.A.C. 6:11-3.6(f):

[The State Board of Examiners may require satisfactory evidence that the reasons for the suspension have ceased to be a factor in the performance or conduct of the teacher. The decision for reinstatement or reissuance shall include reasons therefore, and any terms or conditions that the State Board of Examiners deem appropriate to impose as a condition of reinstatement or reissuance.]

Without this language, the proposed rule still allows the Board to impose any appropriate conditions for reinstatement at the time of suspension. However, assuming that any such conditions are satisfied, the suspended certificate would be reinstated at the end of the suspension period.

Proposed N.J.A.C. 6:11-3.6(g) requires persons whose certificates have been revoked to present evidence of rehabilitation for reinstatement. To impose this same condition on persons whose certificates have only been suspended would appear to be unfair. Unlike revocation, suspension should be for a defined period and the certificate should always be reinstated at the end of that period under conditions set forth at the time of suspension as long as there are no pertinent charges or cases pending.

COMMENT: Proposed N.J.A.C. 6:11-3.6(g) requires persons whose certificates have been revoked to present evidence that "he or she no longer poses a threat to children . . ." It is not clear that all revocations are the result of the certificate holder having posed a "threat to children."

RESPONSE: The Department agrees and has made the following change upon adoption.

[or other evidence that he or she no longer poses a threat to children who are entrusted to his or her care] **which warrants reinstatement of the revoked certificate. The Board shall not refuse to reinstate a revoked certificate without providing the petitioner an opportunity to be heard.**

Alternate Route to Certification

COMMENT: One person testified that a survey of alternate route teachers shows that the program is not working. Therefore, the alternate route should be eliminated.

RESPONSE: The survey is not a sound basis for decision making. The survey report misrepresents the requirements of the alternate route and the findings of other researchers. The study makes sweeping conclusions based on a narrow examination. Alternate route teachers who participated in the survey have contradicted the survey's assertions and conclusions.

The State Board of Education has directed the Department of Education to examine the need for a systematic study and evaluation of the alternate route and to report its findings and recommendations to the Board by December 1, 1990.

COMMENT: Another person testified that alternate route teachers should complete the required 200 hours of professional studies before taking complete charge of a classroom.

RESPONSE: The essence of the alternate route is that it permits individuals to complete professional studies in conjunction with initial employment. To require completion of professional studies as a prerequisite to employment would be to eliminate the alternate route.

Mentoring of Provisional Teachers

COMMENT: One person recommended the postponement of regulations requiring all new teachers to serve their first year of employment under provisional certification with the support of an experienced mentor teacher. This person contended that the program cannot go forward until a State-funded training program for mentors has been established along with guidelines for mentor selection and mentoring responsibilities.

RESPONSE: The identified issues represent areas of refinement that ought to be pursued aggressively as the new policy is implemented. However, successful implementation of the regulations is not dependent on these refinements. The mentor program currently exists in the alternate route and it can be extended in its current form to all new teachers in a beneficial manner.

The Department of Education will initiate an effort in collaboration with NJEA and other interested parties to produce a plan for the continuing development of a mentor teacher program. If it appears that any aspects of this plan should be incorporated in regulation, appropriate recommendations will be provided by April 1, 1991 to the State Board of Education.

Speech-Language Certification

COMMENT: Two individuals testified concerning the certification of speech-language practitioners. This testimony raises two issues concerning the issuance of the Speech-Language Specialist Endorsement, established in 1986 to replace the Speech Correctionist Endorsement, to persons who do not meet requirements. Many persons employed in the public schools still possess the Speech Correctionist Endorsement and argue that they should automatically be eligible for the newer endorsement. Also, holders of the clinical license contend that they should not have to meet any school related requirements.

RESPONSE: 1. **Clinical Practitioners**

New Jersey law requires practitioners in hospitals, clinics and other nonschool settings to hold licenses. These speech pathology licenses are issued by the Board of Audiology and Speech Language Pathology in the Department of Law and Public Safety. The clinical license requires a master's degree in speech pathology, a passing score on the NTE Speech Pathology test, and a 300-hour internship.

The law creating the clinical Speech-Language Pathologist license exempted school practitioners, citing the State Board of Examiners' authority to certify these individuals under rules prescribed by the State Board of Education. In 1986, on the recommendation of the State Board of Examiners, the State Board of Education adopted requirements for an educational Speech-Language Specialist endorsement that parallel those of the clinical license.

However, there are important differences in the requirements of the clinical and educational licenses. First, while both require a master's degree in speech pathology, the educational certificate requires study in three school-related topics. Second, while both require a 300-hour internship, the educational certificate requires that 100 hours involve work with school-age children.

The State Board's rules provide an "alternate route" for holders of the clinical license. These individuals are eligible for provisional certificates and they may meet education-related requirements in conjunction with employment. Therefore, the specialized education requirements do not prevent licensed clinicians from obtaining school employment.

However, some clinical license holders have argued that they should be awarded the standard Speech-Language Specialist Endorsement simply on the basis of the fact they hold clinical licenses. They contend that as licensed practitioners, they should not have to meet any school-related requirements.

This is a fundamental issue of the State Board's authority. State laws charge the Board with regulating the qualifications of all school staff in order to protect the interests of children. Certification is the means by which this charge is fulfilled. It is unreasonable to expect the Board merely to issue educational certificates without imposing any educational requirements.

The educational requirements of the Speech-Language Specialist Endorsement are not excessive, and the alternate route provides a convenient means by which clinical license-holders can meet these requirements. It is recommended that the State Board of Education reject the suggestion that educational requirements be waived for all clinical license holders.

2. **Educational Practitioners**

Prior to the creation of the Speech-Language Specialist Endorsement, the State Board of Education maintained a Speech Correctionist Endorsement. The Speech Correctionist Endorsement is no longer issued; however, many persons employed in the public schools still possess those that

were issued previously. Many of these persons have argued that they should automatically be eligible for the newer endorsement.

While the newer speech-language specialist endorsement requires a master's degree, the formerly-issued Speech Correctionist Endorsement required only 18 undergraduate credits. Nevertheless, many previously-certified speech correctionists have voluntarily acquired master's degrees in Speech Pathology. These masters-level speech correctionists argue that their degrees, combined with the educational requirements they met for their initial certificates, are equivalent to the requirements of the newer endorsement. Indeed, several have presented their cases individually to the State Board of Examiners and the vast majority have been granted the newer endorsement.

The Department recommends that new language be proposed which will permit individuals who hold the speech correctionist endorsement and a master's degree's in speech-language specialist endorsement upon completion of application and payment of fees.

Certification of Early Childhood Teachers

COMMENT: Three individuals urged the establishment of two distinct certificates for teachers of self-contained classrooms covering grades N-3 and 4-8 respectively.

RESPONSE: This issue was the subject of extensive public discussion during the past school year. Some groups expressed support for the idea of distinct certificates for grades N-8. While the State Board adopted an N-8 elementary certificate, Board members asked the Department to continue discussions with educators on both sides of the issue. An attempt to initiate such discussions last spring failed when some early childhood representatives refused to participate stating their preference to await completion of the administrative transition in the Department of Education. Efforts to initiate further discussion will be resumed in the fall and will be given high priority.

Athletic Trainer Certification

COMMENT: Two people provided testimony with respect to rules requiring the certification of athletic trainers who are employed by public schools.

RESPONSE: This proposal merits consideration since there is a clear public-interest and public-safety issue involved. Last year, the State Board asked the Department to examine the need for certification of coaches and to present findings and recommendations by 1991. The Department will expand its examination to include the certification of all athletic personnel, including athletic directors and trainers.

Bilingual and ESL Certification

COMMENT: One individual testified that new requirements for bilingual and English as a Second Language (ESL) teachers, adopted by the State Board in November 1989, represent a lowering of standards.

RESPONSE: The new requirements were adopted after two years of public discussion and their purpose was to raise standards, not to lower them. Under the combined regulations of the State Board of Education and Higher Education, bilingual and ESL teachers must complete 60 credits of liberal education and a 30-credit academic major. Prospective bilingual teachers must complete 36 credits of professional coursework while ESL teachers must complete 42 credits in this area. Bilingual certification applicants must pass an examination in the subjects they will teach, and both bilingual and ESL candidates must pass communication skills examinations.

The most significant upgrade of all is the elimination of emergency certification. Under this change, no person may be employed as a bilingual or ESL teacher unless he or she meets established requirements through a traditional program or an "alternate route." Previously, virtually all new bilingual and ESL teachers entered the schools through emergency certification. A primary reason for past staff shortages was the imposition of excessive specialized course requirements. The former system required prospective bilingual and ESL teachers to take ten or 15 specialized courses, such as "phonology," "psycholinguistics" and "cultural anthropology." Teachers argued convincingly that the courses did not improve their teaching ability, were costly and time-consuming to complete, and prevented them from earning standard certification, often until many years after their initial employment. Therefore, many perceived the reduction in specialized course requirements as also representing an increase in system quality.

Summary of Agency Changes upon Adoption:

At N.J.A.C. 6:3-1.24(a), the Department deleted language which appeared to require rather than allow school districts to deviate from their own criteria.

At N.J.A.C. 6:11-2.2, the Department retained language, which had been proposed for deletion, on clarification of the respective roles of the State Board of Education and the State Board of Examiners. This was done in response to a comment.

At N.J.A.C. 6:11-3.6(f), the Department deleted language that placed an unfair burden of proof to prove rehabilitation for the reinstatement of a suspended certificate holder.

At N.J.A.C. 6:11-3.6(g), the Department added language to provide clarity on revocation and suspension and providing an opportunity to be heard.

At N.J.A.C. 6:11-4.2, the Department added the word "a" to correct a grammatical error.

At N.J.A.C. 6:11-8.2(c), the Department added language to provide clarity on emergency certification. Specifically, a provision allowing the annual reissuance of the originally issued emergency certificate until September 1, 1997, was added. This brings these provisions into consistency with N.J.A.C. 6:11-8.1(b) and (c) and was an inadvertent omission from the original proposal.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:11.

Full text of the adopted repeal of Subchapter 9 may be found in the New Jersey Administrative Code at N.J.A.C. 6:11-9.

Full text of the adopted amendments follows:

6:3-1.11 (Reserved)

6:3-1.12 (Reserved)

6:3-1.24 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate State certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience*[, and shall be applied flexibly without having the force of legal requirements]*.

(b) (No change.)

(c) District boards of education shall assign to administrative positions those functions which are consistent with the individual qualifications of the position occupant, and shall support the establishment of structures for making instructional decisions that take administrator qualifications into account.

CHAPTER 11
TEACHER PREPARATION AND CERTIFICATION

SUBCHAPTER 1. DIVISION OF TEACHER PREPARATION AND CERTIFICATION

6:11-1.1 Functions

(a) The Division of Teacher Preparation and Certification is the unit of the State Department of Education that is responsible for:

1. Examining credentials and issuing certificates that qualify individuals to seek employment as teaching staff members in the public schools of the State of New Jersey;

2. Providing staff support to the State Board of Examiners;

3. Assisting in the development of policies that govern the certification of teaching staff members;

4. Coordinating, monitoring and evaluating those aspects of college academic programs and those training programs of district boards of education that lead to educational certificates, and recommending their periodic approval by the Commissioner of Education;

5. Coordinating, monitoring and evaluating the administration of tests and other assessments that are required for educational certification;
6. Maintaining reciprocal agreements with other states and territories concerning the certification of educational practitioners;
7. Maintaining and reporting data on the supply and quality of newly certified teaching staff members; and
8. Assisting district boards of education in the recruitment and employment of teaching staff members.

SUBCHAPTER 2. STATE BOARD OF EXAMINERS

6:11-2.1 Membership
(a) There shall be a State Board of Examiners, consisting of the Commissioner of Education, ex officio, and one assistant commissioner of education, two presidents of State colleges, one county superintendent, one superintendent of schools of a Type I district, one superintendent of a Type II district, one high school principal, one elementary school principal, one librarian employed by the State or by one of its political subdivisions, one school business administrator, and four teaching staff members other than a superintendent, principal or librarian, all of whom shall be appointed by the Commissioner with the approval of the State Board.
(b) The officers of the State Board of Examiners shall be the chairman and the secretary of the Board.
(c) The chairman of the State Board of Examiners shall have the power to appoint committees made up of less than a majority of the full Board to assist the Board in the conduct of its duties.

6:11-2.2 Duties
The State Board of Examiners shall grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by district boards of education, and such other certificates as it shall be authorized to issue by law, based upon certified scholastic records, documented experience or upon examinations***, and may revoke or suspend such certificates. It is the responsibility and authority of the State Board of Education upon recommendation of the Commissioner of Education to establish rules and regulations governing the issuance, revocation and suspension of certificates, including rules governing types of certificates, authorizations and certification requirements. All actions of the State Board of Examiners shall be taken in accord with rules prescribed by the State Board of Education.*** The Board may, subject to the procedures set forth in N.J.A.C. 6:11-3, refuse to issue a certificate where the applicant has been found by a court or administrative agency of competent jurisdiction, to have engaged in conduct which would have provided adequate grounds for the revocation of the certificate, if then held. The Board shall not refuse to issue a certificate without providing the applicant an opportunity to be heard pursuant to N.J.A.C. 6:11-3.15.

6:11-2.3 Certificates and endorsements
Consistent with N.J.S.A. 18A:6-38, the State Board of Examiners shall issue three educational certificates: the Instructional Certificate, the Administrative Certificate and the Educational Services Certificate. The Board may issue for each teaching, administrative or service position a special endorsement under the appropriate certificates.

SUBCHAPTER 3. BASIC CERTIFICATION POLICIES

6:11-3.1 Certificate required
(a) Pursuant to N.J.S.A. 18A:26-2, the requirement of certification applies to any person who is employed by a district board of education to perform duties that are regulated through certification rules pursuant to this chapter. Such duties shall be performed by the holder of the required certificate or under his or her direct and continuous personal supervision.
(b) The chief school administrator of the employing district board of education shall require each newly employed or reassigned teaching staff member to exhibit an appropriate certificate before the teaching staff member assumes responsibility for the performance of regulated duties.
(c) The chief school administrator shall annually exhibit to the county superintendent of schools the certificates of all newly assigned teaching staff members. The county superintendent of schools shall notify in writing the employing district board of education and the Commissioner of Education of any instance in which a teaching staff position is occupied by a person who has failed to exhibit an appropriate certificate.
(d) Pursuant to N.J.S.A. 18A:27-2, any contract or engagement of any teaching staff member shall cease and terminate whenever the employing district board of education shall ascertain by written notice received from the county or district superintendent of schools, or in any other manner, that such person is not, or has ceased to be, the holder of an appropriate certificate required by this title for such employment, notwithstanding that the term of such employment shall not then have expired.
(e) The Commissioner of Education may direct any district board of education that, properly notified, fails to terminate the contract of an uncertified or improperly certified teaching staff member to show cause why the amount of the teaching staff member's per diem salary should not be withheld from the district board of education's State financial aid for each day the teaching staff member remains employed. If such district board of education fails within 20 days to respond or to show adequate cause, either by exhibiting an appropriate certificate or by terminating the contract of the uncertified teaching staff member, the Commissioner of Education, in order to fulfill his or her responsibility for ensuring the certification of teaching staff members and the thorough and efficient education of students, may reduce State financial aid to such district board of education by the amount of the uncertified teaching staff member's per diem contract salary (N.J.S.A. 18A:58-16).

6:11-3.2 Fees
(a)-(b) (No change.)
(c) The State Board may establish from time to time a fee schedule for services related to the issuance of certificates which includes, but is not limited to, fees charged by district boards of education to provisional teachers to pay for their training. This fee schedule shall be in addition to any tuition and fees charged by institutions of higher education for courses and credits offered in connection with State-approved training programs.
(d) The State Department of Education may establish fees which candidates shall pay in order to obtain services which are offered but not required such as the inclusion of candidates' names or other personal information in publications of available candidates.

6:11-3.3 (No change in text.)

6:11-3.4 Grounds for revocation and suspension of certification
The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause. Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture (N.J.S.A. 2C:51-2) or disqualification statutes (N.J.S.A. 18A:6-7.1). The State Board of Examiners may revoke or suspend a certificate upon evidence that the applicant did not meet the qualifications for the certificate at the time of issuance. The Board may not revoke or suspend a certificate without providing the applicant an opportunity to be heard pursuant to N.J.A.C. 6:11-3.

6:11-3.5 District reporting responsibility
In cases in which teaching staff members accused of misdemeanors, crimes or conduct unbecoming which might warrant revocation or suspension, resign or retire from their positions, either before tenure proceedings have been brought or prior to the conclusion of such proceedings, it shall be the responsibility of the chief school administrator of that district to notify the State Board of Examiners of the alleged conduct pursuant to N.J.A.C. 6:11-3.6(a)2. Should the Board of Examiners issue an Order to Show Cause, it shall be the responsibility of the district which reported the conduct to cooperate with the Board of Examiners in ascertaining and presenting the facts underlying such allegations.

6:11-3.6 Procedures for revocation or suspension of certificates

(a) The procedure for issuance of an Order to Show Cause shall in all cases afford the individual notification of the charges and an opportunity to be heard with respect thereto. The following procedures are applicable to cases brought to the State Board of Examiners by reason of specific statutes and regulations:

1. Upon the decision of the Commissioner of Education, cases contested before the Commissioner of Education, resulting in loss of tenure or dismissal of a teacher or teaching staff member for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause, shall be forwarded to the State Board of Examiners for determination of possible revocation or suspension. The State Board of Examiners, after review of the record, shall determine by public vote whether or not the offense as proven is of such a nature as to warrant revocation or suspension consideration, or dismissal of the case. In such cases where the decision of the State Board of Examiners is to move for revocation or suspension of certification, the Secretary of the State Board of Examiners shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate holder, the board shall refer the case to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.). Where no answer is received to the allegations set forth in the Order to Show Cause, the State Board of Examiners shall proceed to a decision as to the revocation or suspension on the basis of the evidence before it.

2. Upon knowledge of any criminal conviction, the chief school administrator shall notify the county superintendent of schools directly of such a criminal conviction involving a certificate holder, as described in N.J.S.A. 2C:51-2a. The county superintendent of schools shall notify the Commissioner of Education of the criminal conviction of the certificate holder. The Secretary of the State Board of Examiners, upon being notified in writing by the Commissioner of Education of such a criminal conviction or guilty plea involving a certificate holder, whether such knowledge comes as a result of a notification by the county superintendent of schools or chief school administrator or otherwise, shall communicate with the court to obtain the judgment of conviction, copy of testimony and other evidence for presentation of the case before the State Board of Examiners. Where authorized by the State Board of Examiners, the Secretary of the Board shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate holder, the State Board of Examiners shall refer the case to the Office of Administrative Law for a hearing, in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.).

3. Upon the filing of a petition by any person for revocation or suspension of a certificate with the State Board of Examiners against a certificate holder pursuant to (a) above:

i. The petitioner shall furnish to the Secretary of the State Board of Examiners evidence of proof of service of petition to the other party or parties involved; and

ii. The petition shall be accompanied by a sworn statement that the affiant has firsthand knowledge supporting the charges set forth in the petition.

(b) The Secretary of the State Board of Examiners shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. Upon timely filing of an answer, the board shall determine whether the matter is a contested case. Each contested case shall be referred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.). Cases that are not contested shall be referred by the Secretary of the State Board of Examiners for determination of revocation or suspension of the certification.

(c) Nothing in the foregoing shall preclude the State Board of Examiners from issuing an Order to Show Cause on its own initiative where said Board has reason to believe that grounds for revocation or suspension exist.

(d) After the State Board of Examiners has acted upon the initial decision of the administrative law judge in accordance with N.J.S.A. 18A:6-38 where the decision of the board has resulted in revocation or suspension of a certificate, the Secretary of the State Board of Examiners shall notify the following:

1. The 50 states and territories and other such agencies which are part of the Interstate Certification Project;

2. The county superintendent of schools;

3. Appropriate governmental pension and annuity funds, or retirement services; and

4. The chief school administrator in the employing district.

(e) Certificates that have been revoked or suspended shall be surrendered to the Secretary of the State Board of Examiners within 15 days after receipt of revocation or suspension order.

(f) A suspended certificate may be reinstated at the end of the suspension period, provided that the certificate holder has met all conditions set forth by the State Board of Examiners and has no other pertinent charges or cases pending before the State Board of Examiners or the State of New Jersey. *[The State Board of Examiners may require satisfactory evidence that the reasons for the suspension have ceased to be a factor in the performance or conduct of the teacher. The decision for reinstatement or reissuance shall include reasons therefor, and any terms and conditions that the State Board of Examiners deems appropriate to impose as a condition of reinstatement or reissuance.]*

(g) Where an applicant for certification indicates that he or she previously held a certificate issued by the State Board of Examiners, which certificate was revoked, the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to the Board rehabilitation *[or other evidence that he or she no longer poses a threat to children that are entrusted in his or her care.]* ***which warrants reinstatement of the revoked certificate. The Board shall not refuse to reinstate a revoked certificate without providing the petitioner an opportunity to be heard.***

6:11-3.7 Appeal of decisions

Final decisions made by the State Board of Examiners shall be appealable to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

6:11-3.11 Minimum degree and age requirement

Applicants for teachers certificates must be at least 18 years old, have been graduated from an approved high school or have an equivalent education as determined by the State Board of Examiners and have received a baccalaureate degree from an accredited institution of higher education. The requirement of a baccalaureate degree shall not apply to applicants for the vocational endorsements in N.J.A.C. 6:11-8.1.

6:11-3.14 Replacement of lost certificates

Replacement of a lost certificate requires completion of the appropriate application form, a notarized statement of loss and payment of required fee.

6:11-3.15 Methods of appeal

(a) An applicant who has reason to believe that his or her application has not been given proper consideration by the Office of Teacher Certification has the right to appeal the decision.

(b) The appeal shall take the form of a written petition accompanied by a sworn statement stating evidence supporting the applicant's preparation to complete the certification requirement in question.

1. The applicant shall provide in writing evidence that substantiates the appeal.

(c) The State Board of Examiners shall review the information provided by the applicant and shall render a decision no later than

the second meeting after the information has been received by the Secretary. The decision shall be communicated in writing by the Secretary to the applicant.

6:11-3.16 Validation of college degrees and professional preparation

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

(c) Professional preparation required for New Jersey certificates will be accepted from;

1.-3. (No change.)

(d) (No change.)

6:11-3.19 Issuance of a certificate

(a) The appropriate certificate will be issued by the Division of Teacher Preparation and Certification upon completion of all requirements. The certificate should always be kept in the possession of the teacher.

(b) (No change.)

6:11-3.23 Notice of certification deficiency reguarding substitution of alternative educational background and/or experience

The Secretary of the State Board of Examiners (Secretary) shall notify all unsuccessful applicants for certification of the certification requirements lacking and of the procedures set forth in N.J.A.C. 6:11-3.24 for submitting evidence of alternative education and/or experience.

6:11-3.24 Substitution of alternative education and/or experience

(a) Any applicant lacking required preparation may provide the State Board of Examiners with evidence of alternative education and/or experience except that such education and/or experience may not be substituted for a passing score on the State certification test nor may the State Board of Examiners in any circumstances waive the test requirement.

(b) The applicant shall submit his or her request in writing to the secretary for review of substitution of alternative educational background and/or experience by the State Board of Examiners.

(c) The Secretary shall provide review procedures (see N.J.A.C. 6:11-3.25 through 3.30) to the applicant upon request.

(d) The applicant shall submit to the Secretary for review by the Board, 20 copies of information and documentation for consideration of substitution of alternative educational background and/or experience.

6:11-3.25 Review of alternative education and/or experience by State Board of Examiners

(a) The Secretary shall review information submitted by the applicant for sufficiency and transmit it to the State Board of Examiners for review no later than its second regular meeting after the information has been received by the Bureau.

(b) In reviewing the applicant's alternative education and/or experience, the Board of Examiners may request written commentary by appropriate members of the staff of the Department of Education, who shall have direct knowledge of and who shall be able to document the alternative education and/or experience of the applicant. Copies of any such commentary shall be supplied to the applicant.

6:11-3.26 Public discussion of alternative education and/or experience

(a) The Secretary shall give an applicant not less than 15 days' notice of the Board of Examiners' meeting at which his or her application for certification based on alternative education and/or experience will be considered.

(b) The applicant may be present at the meeting and may be accompanied by a representative of his or her choice who has direct knowledge of his or her experience.

(c) The applicant may be questioned by the Board of Examiners and shall be given an opportunity to be heard.

6:11-3.27 Rendering of decisions on applications for substitution

(a) The Board of Examiners shall render its decision on each application for substitution of educational background and/or experience no later than the first regular meeting after the information provided by the applicant was reviewed by the Board of Examiners.

(b) (No change in text.)

6:11-3.28 Appeal of decisions on applications for substitution

Decisions shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-1.

6:11-3.29 (No change in text.)

6:11-3.30 Procedure for provisional staff contesting of recommendations for standard certification

(a) When the Secretary of the State Board of Examiners receives any adverse recommendation concerning the standard certification of a provisional staff member, the Secretary shall notify the provisional staff member of the date upon which the State Board of Examiners will consider such recommendation. If the adverse recommendation has not already been contested by the provisional staff member pursuant to N.J.A.C. 6:11-9.5(b)6v or N.J.A.C. 6:11-5.5(e), the Secretary shall allow the provisional staff member an additional opportunity to provide the State Board of Examiners with written materials documenting the reasons why the provisional staff member believes standard certification should be awarded.

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

SUBCHAPTER 4. TYPES OF CERTIFICATES

6:11-4.1 Standard certificate

The standard certificate is a permanent certificate issued to candidates who have met all requirements for State certification.

6:11-4.2 Provisional certificate

The provisional certificate is a temporary one-year certificate issued to candidates who have met requirements for initial employment as part of *a* State-approved district training program or residency leading to standard certification.

6:11-4.3 Emergency certificate

(a) An emergency certificate is a substandard one-year certificate issued only in the field of educational services, teacher of the handicapped, teacher of the blind and partially sighted, and teacher of the deaf and hard of hearing.

(b) (No change.)

6:11-4.4 Certificate of eligibility

(a) A certificate of eligibility is a permanent certificate that may be issued to persons who meet academic degree and examination requirements for provisional employment. Holders of certificates of eligibility shall not assume responsibility for a job assignment until they have been issued provisional certificates.

(b) A certificate of eligibility with advanced standing is a permanent certificate issued to candidates for standard certificates who have completed certain requirements of a State-approved district training or residency program through advance completion of an approved college preparation program.

6:11-4.5 (No change in text.)

6:11-4.6 Paraprofessional approval

(a) School aides and/or classroom aides, assisting in the supervision of pupil activities under the direction of a principal, teacher or other designated certified professional personnel, shall be approved by the county superintendent of schools.

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

SUBCHAPTER 5. REQUIREMENTS FOR INSTRUCTIONAL CERTIFICATE

6:11-5.1 Requirements for the provisional certificate

(a) To be eligible for the provisional certificate in instructional fields, except as indicated in N.J.A.C. 6:11-8, the candidate shall:

1.-4. (No change.)

(b) Candidates who complete the requirements in (a)1 through 3 above shall be issued Certificates of Eligibility which will permit them to seek provisional employment in positions requiring instructional certification.

(c) (No change.)

6:11-5.2 Requirements for the standard certificate

(a) To be eligible for the standard certificate in instructional fields, except as indicated in N.J.A.C. 6:11-8, the candidate shall:

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

6:11-5.3 Requirements for State-approved district training programs
(a)-(e) (No change.)
(f) Each State-approved district training program shall provide essential knowledge and skills to provisional teachers through the following phases of training:
1. A full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom. This seminar/practicum shall provide formal instruction in the essential areas for professional study listed in (g) below. It should introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components of the experience shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).
2. A period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team (see (h) below) and shall be observed and formally evaluated at the end of 10 weeks by the appropriately certified members of the team. At the end of the 10-week period, the provisional teacher shall receive a formal written progress report from the chairperson of the Support Team.
3. (No change.)
(g) Approximately 200 hours of formal instruction in the following topics shall be provided in all three phases of the program combined. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).
Recodify existing i.-iii. as 1.-3. (No change in text.)
(h)-(i) (No change.)

6:11-5.5 Recommendation for certification of provisional teachers
(a)-(c) (No change.)
(d) The Support Team chairperson shall provide the provisional teacher with a copy of the provisional teacher's written evaluation report and certification recommendation before submitting it to the Division of Teacher Preparation and Certification.
(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded or a recommendation of insufficient granted. The chairperson shall forward all such documentation to the Division of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification. The provisional teacher may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.30.
(f) (No change.)

SUBCHAPTER 6. ENDORSEMENTS ON THE INSTRUCTIONAL CERTIFICATE

6:11-6.2 Endorsements and authorizations
(a) Teaching endorsements and authorizations are listed below:
1.-19. (No change.)
20. Science:
i. Biological science: This endorsement authorizes the holder to teach biological and general science in all public schools. Biological science includes: botany, anatomy and physiology, zoology, biology;
ii. Earth science: This endorsement authorizes the holder to teach earth and general science in all public schools. Earth science includes: astronomy, geology, meteorology, oceanography, physical geography and space science;
iii. Physical science: This endorsement authorizes the holder to teach physical and general science in all public schools. Physical Science includes: physics, chemistry, and earth and space sciences other than geography;
21. (No change.)
22. Special education:
i.-ii. (No change.)
iii. Teacher of the handicapped: This endorsement authorizes the holder to teach pupils classified as handicapped in all public schools;
23. (No change.)
24. Teacher of agricultural occupations: This endorsement authorizes the holder to teach agricultural occupations in all public schools.
25. (No change.)
26. Teacher of production, personal or service occupations: This endorsement authorizes the holder to teach vocational courses in the areas of his or her State-approved occupational experience in all public schools.
27. Teacher of skilled trades: This endorsement authorizes the holder to teach skilled trade courses in the area of his or her State-approved occupational experience in all public schools.
28. Teacher of technical occupations: This endorsement authorizes the holder to teach technical occupation courses in the area of his or her State-approved occupational experience in all public schools.
29. (No change.)
30. Vocational-technical part-time teacher: This endorsement authorizes the holder to teach on a part-time basis in any approved vocational-technical evening, apprentice, extension, industrial-in-plant training or short-term preemployment program.

SUBCHAPTER 7. STANDARDS FOR NEW JERSEY COLLEGE TEACHER PREPARATION PROGRAMS

6:11-7.1 Procedures for accreditation or approval
(a) The State Board of Education authorizes the use of Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education and Certification (NASDTEC), in the evaluation of teacher preparation programs in colleges and universities of the State. The 1983 edition of NASDTEC (future editions, subsequent amendments and supplements) is hereby authorized for use in the evaluation of teacher preparation programs, and is hereby adopted as a rule.
1. This document is available for review at the Bureau of Teacher Preparation and Certification, New Jersey State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.
2. This document may be purchased from NASDTEC, California State Department of Education, P.O. Box 2431, Sacramento, CA 95814.

6:11-7.3 Curriculum
(a) Each approved undergraduate teacher preparation program shall provide approximately 60 semester credit hours of general education including electives. General education courses shall be distributed among the arts, humanities, mathematics, science, technology and the social sciences. There must be some study in each area. The inclusion of technology as an aspect of general education is intended to allow for the inclusion of courses and topics (such as computer literacy, the history of technology and the sociological impact of technological advancement) which would contribute to the general technical literacy of students. The purpose of general education is to develop the prospective teacher as an educated person rather than to provide professional preparation. This component of the program shall exclude courses which are clearly professional or vocational in nature.
(b)-(c) (No change.)
(d) For purposes of certification, a central focus of the undergraduate teacher education program is the professional component. This component must meet appropriate standards and study requirements of the National Association of State Directors of Teacher

Education and Certification. In addition, each approved undergraduate teacher preparation program shall provide study in the essential behavioral/social science and professional education areas listed in N.J.A.C. 6:11-5.3(g)1. through 3. Approximately 30 credit hours of instruction shall be devoted to professional preparation; a minimum of nine credits must be devoted to study in the behavioral/social sciences, and may be included in the professional or liberal arts components of the program. The professional component of the undergraduate program shall provide students, normally beginning in the sophomore year, with practical experiences in an elementary or secondary school setting; these opportunities shall increase in intensity and duration as the student advances through the program and culminate with a student teaching experience.

(e) (No change.)

SUBCHAPTER 8. EXCEPTIONS FOR REQUIREMENTS FOR THE INSTRUCTIONAL CERTIFICATE

6:11-8.1 Vocational Education Certification Requirements Effective Until August 31, 1992

(a) The following requirements pertain to candidates who apply prior to September 1, 1992 for any of the following endorsements: Teacher of Agricultural Occupations, Teacher of Practical Nursing, Teacher of Production, Personal or Service Occupations, Teacher of Skilled Trades, and Teacher of Technical Occupations. However, commencing on September 1, 1992, these rules expire and the rules set forth in N.J.A.C. 6:11-8.2 will apply to candidates seeking any of the endorsements listed above.

(b) Persons who are employed under emergency certification on September 1, 1992 shall have until September 1, 1997 to obtain standard certification under requirements in effect prior to September 1, 1992. Such persons may remain employed on an emergency basis until such time as they acquire standard certification but no later than September 1, 1997. However, beginning September 1, 1992 these individuals may choose to meet the newer requirements listed in N.J.A.C. 6:11-8.2 below.

(c) Persons who are enrolled in approved college programs on September 1, 1992 shall have until September 1, 1997 to obtain standard certification by completing the college program in which they are enrolled. However, beginning September 1, 1992 these individuals may choose to meet the newer requirements listed in N.J.A.C. 6:11-8.2 below.

(a)-(c) recodified as (d)-(f) (No change in text.)

6:11-8.2 Vocational education certification requirements effective September 1, 1992

(a) The following requirements apply to applicants for the following endorsements: Teacher of Agricultural Occupations, Teacher of Practical Nursing, Teacher of Production, Personal or Service Occupations, Teacher of Skilled Trades, and Teacher of Technical Occupations.

1. Each candidate for the provisional certificate shall be required to:

i. Possess at least four years of successful work experience in the relevant trade or occupation as approved by the employing district pursuant to criteria and procedures established by the State Department of Education. Each approval shall be filed with the Office of Certification and Academic Credentials and the county office of education;

ii. Pass a State test of basic communication skills; and

iii. Obtain and accept an offer of employment in a position that requires the relevant vocational endorsement.

iv. The requirement in (a)1i above shall not apply to candidates who hold baccalaureate degrees in the subject to be taught. The requirement in (a)1ii above shall not apply to candidates who hold baccalaureate degrees.

v. The Secretary of the State Board of Examiners may authorize the employment of apparently qualified candidates for a period of 60 days while their credentials are being processed by the Office of Certification and Academic Credentials. This 60-day authorization shall not be renewed unless the Office of Certification and Academic Credentials fails to process the candidate's credentials within the 60-day period.

2. Each candidate for the standard certificate shall be required to:

i. Possess a provisional certificate pursuant to (a)1 above; and

ii. Complete a State-approved district training program pursuant to N.J.A.C. 6:11-5.3 through 5.5.

(b) The requirements listed in (a) above are effective September 1, 1992.

(c) The issuance of emergency certificates to vocational teachers will cease on September 1, 1992. ***However, emergency certificates issued prior to that date may be reissued annually until September 1, 1997.***

(d) Vocational-technical related subjects: a minimum of two years of approved occupational experience is required. Requirements (a)1 and 2 above do not apply to this endorsement.

(e) Vocational-technical part-time teacher:

1. This certificate is required for vocational teachers who teach on a part-time basis in any approved vocational-technical evening, apprentice, extension, industrial-in-plant training or short-term preemployment program in any of the fields of vocational education, such as agriculture, distributive education, home economics, trades and industries of technical education, and who do not possess a certificate valid for teaching in an all-day program.

2. The applicant must have demonstrated evidence of practical experience to fit him or her for the particular position he or she is to fill. The adequacy will be evaluated by the particular supervisor in whose field the teaching is to be done and will be approved by recommendation of the State Director of Vocational-Technical Teacher Training to the State Board of Examiners.

3. The part-time vocational certificate is valid for five years from the date of issuance. Issuance of a standard certificate after five years will be predicated upon presenting evidence of the completion of an approved in-service program in methods of teaching vocational-technical subjects and a certificate of success as a teacher signed by the administrator or supervisor under whom the teaching was done.

6:11-8.3 Special education

(a) State-approved alternative training programs are not authorized in fields of special education. Teachers in these fields may be employed on an emergency basis in accordance with N.J.A.C. 6:11-4.3. The emergency certificate is a one-year certificate which is renewable annually for an indefinite period. Candidates in the fields of special education may obtain an endorsement by completing an approved program at a college or university, or by meeting the following requirements as determined by an evaluation of transcripts or other official documents:

1. Handicapped: This endorsement authorizes teaching the physically limited, socially and emotionally maladjusted, mentally retarded (educable and trainable) children, or children with multiple handicaps. Candidates for this endorsement must complete eighteen semester-hour credits in the education of handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, practices and materials in teaching the handicapped, and resources and community agencies available in teaching the handicapped.

2. Blind or partially sighted: Candidates for this endorsement must complete eighteen semester-hour credits in education of the handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching blind or partially sighted children, including typewriting and Braille, resources and community agencies available for teaching the handicapped.

3. Deaf or hard of hearing: Candidates for this endorsement must complete eighteen semester-hour credits in the education of the handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching speech, speech reading, and language to the deaf or hard of hearing, resources and community agencies available in teaching the handicapped.

(b) The student teaching requirements in the fields of special education shall be waived for those candidates who:

1. Hold a valid standard New Jersey instructional certificate in another field; or

2. Present a baccalaureate degree, a valid regular certificate from another state, and evidence of at least one year of successful teaching experience in the other state; or

3. Have completed three years of successful classroom teaching experience in an approved or recognized school prior to the acceptance of public school employment in New Jersey; or

4. Have completed two consecutive years of successful teaching experience under an emergency certificate in a New Jersey public school district.

6:11-8.4 Bilingual/bicultural education

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

(f) Requirements (a) through (f) above are effective September 1, 1991.

6:11-8.5 English as a second language

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

(f) Requirements (a) through (f) above are effective September 1, 1991.

6:11-8.6 Driver education

(a) Candidates for the standard driver education endorsement shall possess another standard New Jersey instructional certificate, hold a valid New Jersey driver's license, possess three years of automobile driving experience, and complete a training program approved by the State Department of Education pursuant to N.J.A.C. 6:11-7.1.

(b) Pursuant to N.J.S.A. 18A:26-2, holders of a driving instructor license issued by the New Jersey Department of Motor Vehicles may be employed to provide behind-the-wheel driver education in public schools. Such persons shall not provide classroom instruction in driver education.

6:11-8.7 Military science

Applicants for standard military science endorsement shall possess 20 years of military service and a positive recommendation from the branch of the service in which they served. Holders of this endorsement shall obtain additional endorsements to the instructional certificate by meeting all requirements of N.J.A.C. 6:11-5.

SUBCHAPTER 9. REQUIREMENTS FOR ADMINISTRATIVE CERTIFICATION

6:11-9.1 (No change.)

6:11-9.2 (No change.)

6:11-9.3 Authorization

(a) School administrator: This endorsement is required for any position that involves services as a district-level administrative officer. Such positions shall include superintendent, assistant superintendent, executive superintendent and director. Holders of this endorsement are authorized to direct the formulation of district goals, plans, policies, and budgets, to recommend their approval by the district board of education, and to direct their district-wide implementation. Holders of this endorsement are authorized to recommend all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of school business administrators, for approval by the district board of education. Holders of this endorsement are authorized to direct district operations and programs, and to supervise and evaluate building administrators and central office staff, including school business administrators. They are also authorized to oversee the administration and supervision of school-level operations, staff and programs.

(b) Principal: This endorsement is required for any position that involves service as an administrative officer of a school or other comparable unit within a school or district. Such positions shall include assistant superintendent for curriculum and instruction, principal, assistant principal, vice-principal and director. Holders of this endorsement are authorized to direct the formulation of goals, plans, policies, budgets and personnel actions of the school or other comparable unit, to recommend them to the chief district administrator, and to direct their implementation in the school or other comparable unit. Holders of this endorsement also are authorized to direct and supervise all school operations and programs, to evaluate school staff, including teaching staff members pursuant to N.J.A.C. 6:3-1.19 and 1.21, and to direct the activities of school-level supervisors.

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

6:11-9.4 School administrator

(a) Each candidate for the provisional certificate as a school administrator shall be required to:

1. Hold a master's degree or its equivalent from an accredited institution in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. Study shall be completed, either within the master's program or in addition to it, in each of the following topics:

i. Leadership and human resource management;

ii. Communications;

iii. Quantitative decision-making;

iv. Finance; and

v. Law;

2. Pass a State written examination of knowledge that is acquired through study of the topics listed in (a)1i through v above, and that is most directly related to the functions of superintendents as defined in N.J.A.C. 6:11-9.3(a);

3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises that simulate the duties of superintendents, and authorize the release of the written results of this assessment to potential employers; and

4. Obtain an offer of employment in a position requiring the School Administrator endorsement in a district that has reviewed the candidate's assessment report.

(b) Each candidate for the standard certificate as school administrator shall be required to:

1. Possess a provisional certificate pursuant to (a) above; and

2. Complete a one-year State-approved district residency program while employed under provisional certification. The residency program shall:

i. Be conducted in accordance with a standard agreement issued by the State Department of Education and entered into by the Department, the employing school district, the candidate and the residency mentor;

ii. Be administered by a State-appointed mentor who is an experienced administrator who has completed a State-approved orientation and training program, and who shall supervise and verify completion of all required experiences and training by the candidate;

iii. Include a pre-residency training component that shall be completed before the candidate assumes full responsibility for the duties of his or her position. The pre-residency phase shall provide no fewer than 300 clock hours of structured exposures to important aspects of school administration. The State Department of Education shall, at the recommendation of the mentor and the employing district board of education, prescribe the content of each pre-residency. Such prescription shall be based upon the candidate's background experiences and shall be specified in the standard written agreement pursuant to (b)2i above. For candidates who lack practical teaching competency, the 300 hours of structured exposures to important aspects of school administration shall consist of teaching and teaching-related experiences. The pre-residency shall take place in a functioning district environment;

iv. Provide approximately 135 clock hours of training and instruction in the areas of district planning and policy formulation; board of education operations and relations; district financial, legal and business operations; management of district operations; school facilities; labor relations and collective bargaining; collegial management, participatory decision-making and professional governance; government and community relations; school law; supervision of districtwide programs of curriculum, instruction and student services; and the roles, supervision and evaluation of central office staff and school principals. Of the required 135 clock hours of formal instruction, 45 hours shall be completed during the pre-residency phase; and

v. Provide the mentor, candidate and school district with opportunities to propose modifications to the standard residency agreement for approval by the State Department of Education.

(c) Each candidate for the school administrator standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification. The first two evaluations shall be conducted mainly for diagnostic purposes. The final evaluation shall be the basis for issuance of the candidate's standard certificate. All evaluations shall be conducted in accord with State criteria and reported on State-developed forms. The mentor shall discuss each evaluation with the candidate, and the mentor and candidate shall sign each report as evidence of such discussion. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (d) below.

(d) Each mentor shall form an advisory panel of practicing educators and shall convene this panel on at least three occasions for purposes of reviewing the resident's progress and soliciting advice concerning the certification of the resident. The State Department of Education shall approve the composition of the advisory panel. The mentor may seek the informal input of the employing district board of education concerning the standard certification of the resident.

(e) The mentor shall meet with the resident superintendent at least once a week during the pre-residency phase and at least once a month during the residency. The mentor shall be available on a regular basis to provide assistance or advice upon request of the resident superintendent. The State Department of Education may require resident superintendents to pay fees to cover the cost of the training and mentoring services that will qualify them for certification and employment. The State Department of Education shall report annually to the State Board of Education all training fees charged to residents.

(f) Standard certification of school administrator certificate candidates shall be approved or disapproved pursuant to the following procedures:

1. Before the end of the residency year, the mentor shall submit to the Division of Teacher Preparation and Certification a comprehensive evaluation report on the candidate's performance using State-approval criteria and forms.

2. This final report shall include one of the following certification recommendations:

i. Approved: Recommends issuance of a standard certificate;

ii. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to an additional residency for one additional year; or

iii. Disapproved: Recommends that a standard certificate not be issued and that the candidate be prevented from continuing or reentering a residency.

3. Mentors act as agents of the State Board of Examiners in formulating their certification recommendations. Those recommendations shall not be subject to review or approval by local boards of education.

4. Candidates who receive a recommendation of "approved" shall be issued a standard certificate.

5. The mentor shall provide the candidate with a copy of the candidate's written evaluation report and recommendation before submitting it to the Division of Teacher Preparation and Certification.

6. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded or a recommendation of insufficient granted. The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.30.

(g) Candidates who receive a recommendation of "disapproved" or two or more recommendations of "insufficient" may petition to the State Board of Examiners for approval of additional opportunities to seek provisional employment in districts other than those in which they received unfavorable recommendations. The candidate shall be responsible for demonstrating why he or she would be likely to succeed if granted the requested opportunity. Disapproval of any candidate's request by the State Board of Examiners may be appealed to the Commissioner of Education.

(h) The requirements listed in (a) and (b) above are effective September 1, 1992. The requirements shall not apply to persons who earn the school administrator endorsement before that date.

(i) Persons who are enrolled in formal State-approved New Jersey college preparation programs prior to September 1, 1992 shall be permitted until September 1, 1997 to attain standard certification by completing the college program in which they are enrolled.

6:11-9.5 Principal

(a) Each candidate for the provisional certificate as a principal shall:

1. Hold a master's degree or its equivalent from an accredited institution in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. Study shall be completed, either within the master's program or in addition to it, in each of the following topics which represent those areas of management that are directly related to education and the principalship. Degree programs may provide study in other areas at the discretion of the sponsoring institution and its faculties;

i. Leadership and human resource management;

ii. Communications;

iii. Quantitative decision-making; and

iv. Finance and law.

2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communication, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiencies that are validated as being most directly relevant to education and the essential duties of school principals;

3. Undergo an assessment of performance, conducted by State-approved assessors through structured exercises which simulate the duties of school principals, and authorize the release of written results to employing districts and schools. In particular, there shall be a formal assessment of each candidate's ability to lead and supervise instruction and curriculum. The State Department of Education shall, with appropriate professional input, develop and validate the criteria, instruments and procedures for conducting such assessments; and

4. Obtain an offer of employment in a position requiring the principal endorsement in a school or district that has agreed formally to sponsor the residency.

(b) Each candidate for the standard certificate as a principal shall:

1. Possess a provisional certificate pursuant to (a) above;

2. Complete a State-approved residency program pursuant to (c) below while employed provisionally in a position requiring the principal endorsement.

(c) The principal residency is a training program conducted under the direction of a State-approved mentor and the sponsorship of the public school district or nonpublic school that employs the certificate candidate.

1. In order to enter a residency program, the certification candidate shall:

i. Possess a provisional certificate pursuant to (a) above; and

ii. Obtain an offer of employment in a position requiring the principal endorsement in a district or school which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

2.-5. (No change.)

6. Standard certification of residents' shall be approved or disapproved pursuant to the following procedures:

i. Before the end of the residency year, the mentor shall submit to the Division of Teacher Preparation and Certification a comprehensive evaluation report on the resident's performance using State-approved forms and criteria.

ii.-iv. (No change.)

v. If the resident principal disagrees with the mentor's recommendation, the resident principal may within 15 days of receipt of the evaluation report and certification recommendation submit to the mentor written materials documenting the reasons why the resident principal believes standard certification should be awarded or a recommendation of insufficient granted. The mentor shall foward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification.

(d) The requirements listed in (a) and (b) above shall not apply to persons who obtain New Jersey principal endorsements prior to October 1, 1988; and

(e) Persons who can document that they enrolled, before October 1, 1988, in a New Jersey college program approved by the Department for the preparation of principals, may elect to complete the program in which they are enrolled in lieu of requirement N.J.A.C. (a)1. above. However, such persons must meet all other requirements of N.J.A.C. 6:11-9.5.

6:11-9.6 (No change.)

6:11-9.7 School business administrator

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

(c) Each candidate for the standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification.

1.-2. (No change.)

3. The three evaluations required in this subsection shall be conducted using criteria and forms developed by the State Department of Education that will assess the candidate's ability to apply baccalaureate training (see (a) 1 i-iv above) and training acquired in the proposed residency (see (b) 2 i-v above) in performing essential duties listed in N.J.A.C. 6:11-9.3(d).

4.-5. (No change.)

(d) Standard certification of candidates shall be approved or disapproved pursuant to the following procedures:

1.-4. (No change.)

5. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded or a recommendation of insufficient granted. The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.30.

(e) (No change.)

(f) Board secretaries who lack certification but were assigned prior to September 1, 1991 to perform business administration functions as described in N.J.A.C. 6:11-9.3(d) shall be permitted to retain their positions in the districts in which they were employed prior to September 1, 1991 indefinitely. However, after September 1, 1991, they shall be required to meet certification pursuant to (a) through (d) above in order to seek employment in new positions in other districts.

(g)-(h) (No change.)

SUBCHAPTER 10. BASES FOR ISSUANCE OF EDUCATIONAL SERVICES CERTIFICATES

6:11-10.1 (No change in text.)

6:11-10.2 (No change in text.)

SUBCHAPTER 11. REQUIREMENTS FOR EDUCATIONAL SERVICES CERTIFICATION

6:11-11.1 Scope

(a) This subchapter is used by the Division of Teacher Preparation and Certification in the following ways:

1. In conjunction with the Standards for New Jersey College Teacher Education Programs, N.J.A.C. 6:11-7, to evaluate and approve educational services programs in New Jersey colleges.

2.-4. (No change.)

Existing N.J.A.C. 6:11-12.2 through 6:11-12.4 recodified as 6:11-11.2 through 6:11-11.4 (No change in text.)

6:11-11.5 Substance awareness coordinator

(a) (No change.)

(b) The requirements for the substance awareness coordinator endorsement are as follows:

1.-2. (No change.)

3. Satisfactory completion of a State-approved school district residency requirement lasting at least six months, but no more than one year. Candidates who meet the bachelor's degree requirement may be employed provisionally pursuant to N.J.A.C. 6:11-4.2 while they complete the residency requirement. The residency requirement shall not apply to persons who have served successfully as substance awareness coordinators under emergency certification for one or more years.

i.-ii. (No change.)

iii. The State-approved administrator or supervisor shall evaluate and verify the completion of all required experiences according to the terms and conditions of the residency agreement.

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

(3) If the candidate disagrees with the residency administrator or supervisor's recommendation, the candidate may within 15 days of receipt of the evaluation report and certification recommendation submit to the Division of Teacher Preparation and Certification written materials documenting the reasons why the candidate believes standard certification should be awarded.

4. Demonstration of knowledge of the preparation areas contained in (b)2 above through the achievement of a passing score on an examination as approved by the State Department of Education.

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

(e) The emergency certificate authorized under this section will cease on October 1, 1992, the effective date of the substance awareness coordinator endorsement.

6:11-11.6 (No change in text.)

6:11-11.7 (No change in text.)

6:11-11.8 (No change in text.)

6:11-11.9 Speech-language specialist

(a) Either the speech correctionist or the speech-language specialist endorsement is required to provide service as a speech-language specialist in all public schools. The speech-language specialist must possess the professional preparation and experience to:

1.-4. (No change.)

(b) Requirements for the speech-language specialist endorsement become operative September 1, 1988 and do not affect those individuals who already possess the speech-correctionist endorsement or whose official applications for that endorsement were received and validated by the Office of Certification prior to that date.

(c) (No change.)

6:11-11.10 (No change in text.)

6:11-11.11 (No change in text.)

6:11-11.12 School psychologist

(a) (No change.)

(b) The requirements are:

1.-2. (No change.)

3. An externship of 450 clock hours. The externship should be in a school clinic, a child guidance clinic or other clinic approved by the Commissioner of Education and supervised by a qualified school psychologist or by personnel approved by the Commissioner of Education. This externship experience shall include at least 100 clock hours in testing mentally retarded children (see N.J.A.C. 6:11-11.12(d)). Persons with experience endorsed by the Commissioner of Education as equivalent to the above externship may be exempt from the externship.

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

Recodify existing N.J.A.C. 6:11-12.15 through 12.17 as 6:11-11.13 through 11.15 (No change in text.)

Recodify existing N.J.A.C. 6:11-12.20 through 12.22 as 6:11-11.16 through 11.18 (No change in text.)

6:11-11.19 Policies governing issuance of endorsements in educational media

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

(c) Procedures for administering (a)1 and (b)1 above are:

1. Use the procedure explained below except that for the educational media specialist endorsement, the school librarian authorization will be extended to include the rights and privileges of an educational media specialist endorsement (N.J.A.C. 6:11-11.17).

2. The holder of a standard or permanent New Jersey teacher librarian endorsement may receive an extension of the authorization of this certificate to include the functions of the associate educational media specialist endorsement. This can be accomplished by the issuance of an extending authorization form to read as follows:

i. The authorization of the teacher librarian endorsement of (name) is hereby extended to include all of the rights and privileges of the associate educational media specialist certificate (N.J.A.C. 6:11-11.18).

6:11-11.20 (No change in text.)

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual
Reimbursement Methodology

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 10:65-2.1

Emergency Amendment Adopted: September 17, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): September 19, 1990.

Emergency Amendment Filed: September 20, 1990 as R.1990 d.509.

Authority: N.J.S.A. 30:4D-6b(16), 7, 7a, b and c; 30:4D-12.

Concurrent Proposal Number: PRN 1990-535.

Emergency Amendment Effective Date: September 20, 1990.
Emergency Amendment Operative Date: October 1, 1990.
Emergency Amendment Expiration Date: November 19, 1990.

Submit comments by November 14, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c), as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

There are three types of medical day care centers—those associated with a nursing facility, free-standing centers, and hospital-affiliated centers.

This proposed amendment is designed to revise the reimbursement methodology used to determine the medical day care per diem rate in order to achieve conformity with nursing facility licensure reform which takes place on October 1, 1990.

Currently the medical day care rate is based upon 55 percent of the Intermediate Care Facility (ICF) Level B rate. With the integration of the three nursing home levels of care into a single nursing facility level as of October 1, 1990, the current medical day care methodology will no longer be applicable. It has been determined by the Division that 43 percent of the nursing facility rate equates to 55 percent of ICFB rate. The manual is being revised accordingly to reflect this change.

This methodology applies to nursing facility (NF) based medical day care centers.

Free-standing medical day care centers are reimbursed based upon an average of the rates paid to nursing facility based medical day care centers or a percentage of NF rates that are in effect as of July 1 and January 1 of each year.

For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility based providers.

Social Impact

This proposed amendment impacts on Medicaid recipients who receive services in medical day care centers. These recipients will continue to receive services so long as there is a valid mechanism for reimbursing centers.

The proposed amendment impacts upon the three types of medical day care centers indicated in the summary above. The impact is more economic than social. These providers are currently reimbursed based upon a methodology that will be obsolete effective October 1, 1990. Therefore, this proposed amendment is necessary to describe the new reimbursement methodology.

Economic Impact

Medicaid recipients are not required to pay towards the cost of medical day care services.

There should be no additional costs incurred by the Medicaid program. Monies have already been appropriated for medical day care services. The change in reimbursement is designed to maintain expenditures at the current level.

The impact on medical day care providers will vary, depending upon the application of the new methodology. All providers in the same class will be reimbursed on the same basis as indicated in the proposal. For example, an NF based medical day care center will be reimbursed at 43 percent of that NF's per diem rate. Since individual NF rates vary, the actual rates paid to medical day care providers will vary.

The rates for both free-standing centers and hospital-affiliated centers are determined using rates paid to NF-based medical day care programs.

Regulatory Flexibility Analysis

This proposed amendment impacts upon medical day care centers that participate in the New Jersey Medicaid Program. Some of these providers may be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment does not differentiate based upon the size of the medical day care center. All providers are required to maintain documentation to indicate the costs incurred so that a rate can be established. This is a requirement of State law pursuant to N.J.S.A. 30:4D-12. This amendment does not impose any additional reporting, recordkeeping, or other administrative requirements. This proposed amendment describes the methodology that the Division will use to determine the rate of reimbursement.

The proposed amendment does not require providers to hire accountants to maintain and submit the necessary cost data although they may choose to do so.

There are no capital costs associated with those medical day care centers already participating in Medicaid. With respect to providers seeking to become Medicaid providers, the capital costs would depend on whether the provider was an existing center intending to serve Medicaid patients, or whether the provider was a newly created center.

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

10:65-2.1 General billing procedures

(a) (No change.)

(b) This subchapter contains basic information and instructions necessary for the proper completion and submission of a claim. Included are exhibits to be utilized by Medical Day Care Centers for use in submitting claims for covered items or services. All forms to be completed by the facility are available from Prudential Insurance Company.

1. (No change.)

2. Reimbursement: The center participating in the Medical Day Care Program [must] **shall** agree to accept the reimbursement rate established by the [Medicaid Program] **Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program.** In a [long-term care] **nursing** facility, the Medical Day Care per diem rate is [55 percent of the Intermediate Care Facility-Level B rate of that facility] **43 percent of that nursing facility's per diem rate.** In free-standing [facilities] **centers**, the medical day care per diem rate is based on an average of the rates paid to [long-term care] **nursing** facility medical day care providers **or a percentage of nursing facility rates** in effect as of July 1 and January 1 each year. **For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem**

rate paid to nursing facility-based providers. The reimbursement rates set for a Medicaid [participant] **recipient** in medical day care centers may not exceed charges for non-Medicaid [patients] **participants**. The per diem reimbursement shall cover cost of all services listed in N.J.A.C. 10:65-1.4 with the following exceptions:

i.-ii. (No change.)

3.-4. (No change.)

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PUBLIC NOTICES

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Availability of Grants
Bureau of Contract Administration

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7), the Department of Corrections hereby publishes notice of the availability of the following grant:

Name of grant program: Residential Community Release Programs.

Purpose for which the grant funds will be used: To provide cost reimbursement to agencies which contract with the Department of Corrections for residential pre-release programs for inmates.

Amount of money in the grant program:

1. Total appropriation: $6,900,000.
2. Allocated for ongoing programs: $5,552,533.
3. Cost of projected bedspace currently in negotiations: $977,835.
4. Balance: $369,632.
5. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for the grant program: Non-profit community based treatment centers.

Qualifications needed by an applicant to be considered for a grant: Non-profit corporations with suitable facilities that:

1. Meets D.C.A. licensing requirements for Class C or D rooming and boarding houses;
2. Conforms with local building codes and zoning ordinances; and
3. Meets local and state health and fire codes.

Procedure for eligible entities to apply for grant funds: Qualified applicants must complete and submit an application for contractual services for Residential Community Treatment Programs.

For inspection and application contact:

Dorothea A. Keller, Chief
Bureau of Contract Administration
CN-863
Trenton, NJ 08625
(609) 292-9366

Deadline by which applications must be submitted: Applications may be submitted at any time.

Date by which applicant shall be notified whether they will receive funds: Applicant will be notified after a careful review and evaluation of their program proposal, which usually takes approximately six weeks.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan
Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Blairstown Township, Warren County. The WMP identifies a proposed Lambert Road wastewater treatment facility. The Blair Academy Sewage Treatment Plant (STP) and the North Warren High School STP will be abandoned and incorporated into the sewer service area of the proposed Lambert Road wastewater treatment facility. The WMP also designates an on-site groundwater disposal area. The remainder of the Township will utilize individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that on September 7, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment adopts an updated Montgomery Township Wastewater Management Plan (WMP). This WMP updates the existing information and identifies several existing treatment facilities which were previously not identified. The WMP identifies two proposed wastewater treatment and recycling systems, serving the Attica Properties and Montgomery Commons commercial developments, which will convey wastewater to the Stage II sewage treatment plant (STP). Also identified is the proposed Oakmont Country Club wastewater effluent irrigation system. The Pike Brook STP sewer service area will be reduced to exclude the Oakmont Country Club development.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: It is unclear whether the expansion identified in the WMP for the Stage II STP include increased allocation for Rocky Hill Borough beyond the reserved 100,000 gallons per day (gpd) which the Borough presently has contracted for.

RESPONSE: The expansions of the Stage II STP identified in the WMP are not the items being presently proposed for amendment. The discussions of the expansions were adopted in the previous WMP adopted June 16, 1989.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that on September 11, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment adopts changes to the Roxbury Township Wastewater Management Plan (WMP) "Existing and Proposed Sewer Service Areas" map. Included among these changes are a redefinition of the Ajax Sewage Treatment Plant sewer service area, corrections of the areas presently sewered, and correction of terminology which is used on the map.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: Randolph Township would be deleted from the sewer service area of the Ajax Treatment Plant by adoption of the amendment.

RESPONSE: Randolph Township is not presently within the sewer service area of the Ajax Treatment Plant. The presently approved Roxbury Township WMP does not identify sewer service beyond Roxbury's municipal boundaries. In order for sewer service to be provided to Randolph Township an amendment to the Upper Raritan Water Quality Management Plan would be necessary.

COMMENT: No amendments to the WMP should be permitted until Randolph Township and Roxbury Township resolve their differences regarding the acquisition of gallonage by the Randolph Township Municipal Utilities Authority in the Ajax Treatment Plant.

RESPONSE: While the Department encourages Randolph and Roxbury to continue efforts toward achieving a mutually agreeable arrangement for sewer service to the Ajax Treatment Plant, that action is independent of the presently proposed amendment. Should Randolph and Roxbury Township resolve their differences and it is agreed that sewer service will be provided to Randolph Township, a future amendment may be requested to address the issue.

COMMENT: The effect of the amendment will be to reduce Randolph's expected allocation.

RESPONSE: The Upper Lamington River Drainage Basin Facilities Plan, of which Randolph was a party to, identified flow allotments to the Ajax Treatment Plant for the municipalities involved. This Facilities Plan was, however, never approved or utilized to obtain funding for the Ajax Treatment Plant. The Ajax Treatment Plant expansion was funded under the New Jersey Wastewater Treatment Financing Program. Randolph Township was not part of this project. The approved documentation does not identify any allocation to municipalities other than Roxbury Township. At present no formal contracts exist between Randolph Township and Roxbury Township. Various flow allocations may have been discussed in the past but none were ever formalized. As no formal flow allocations exist, this amendment does not make any changes to flow allocations.

COMMENT: The effect of the amendment is to increase Roxbury Township's gallonage allotment beyond its need for capacity.

RESPONSE: This amendment does not increase the flow allotment for Roxbury Township. The Ajax Treatment Plant is presently permitted at 1.686 million gallons per day. The amendment does not increase the permitted flow.

COMMENT: Roxbury does not have the right to utilize the flow allocation in the Lamington River Drainage Basin which may belong to a community such as Randolph Township. As such, Randolph Township Municipal Utilities Authority (RTMUA) objects to any diversion of wastewater for treatment at the Ajax Treatment Plant from areas outside the Lamington River drainage basin, unless the Department provides assurances that RTMUA will be permitted to construct their own sewage treatment plant with discharge to the Lamington River.

RESPONSE: At such time as an application for a new discharge is submitted, the total loading allocation of the waterbody would be evaluated. All discharges to the waterbody would be reevaluated and the permit limitations might be altered to provide an equitable distribution of any available assimilative capacity. The Department cannot guarantee any potential applicant that they will be permitted to discharge a certain flow quantity at any particular location without the appropriate water quality studies and modeling having been completed. At present, the approved Ajax Treatment Plant sewer service area extends beyond the Lamington River drainage basin.

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Action on Petition for Rulemaking Licensure of Certain Salaried Officers and Employees

N.J.A.C. 11:17A, 17B, 17C and 17D

Petitioner: New Jersey Land Title Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15.1 et seq.

Take notice that on June 4, 1990, the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Land Title Association through its Executive Director/Attorney John R. Weigel. The petition requests the Department to amend certain portions and to repeal certain other portions of the rules concerning Standards of Conduct for Insurance Producers and Limited Insurance Representatives, N.J.A.C. 11:17A, 17B, 17C and 17D, which rules were adopted January 2, 1990 (see 22 N.J.R. 30(b)). A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on July 5, 1990 and appeared in the August 6, 1990 New Jersey Register (see 22 N.J.R. 2366(a)).

The petition is directed at two matters as follows:

1. To the extent that the administrative rules are directed to title insurance underwriters (requiring the licensure of certain salaried officers and employees of those underwriters pursuant to N.J.A.C. 11:17A-1.3(e)) the rules are inconsistent with the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 et seq.; exceed the authority given to the Department by the New Jersey Insurance Producer Licensing Act; and are illegal.

2. The administrative rules mandate such an enormous increase in the number of title insurance personnel who must be licensed that the presently approved title insurance education courses simply cannot accommodate that greatly increased pool of licensees. The Department must adopt such transitional rules as are indicated by the circumstances.

With regard to the first matter, the petitioner requests that N.J.A.C. 11:17A-1.3(e) be repealed. The petitioner also urges that N.J.A.C. 11:17A-1.3(b) be repealed because it "erroneously infers that some categories of persons, other than 'insurance producers' are required to be licensed under the statute." The petitioner recommends that N.J.A.C. 11:17A-1.3 be rewritten in its entirety "to make it clear that licensure is required of 'insurance producers' ('insurance agents', 'insurance brokers' and 'insurance consultants') and no one else."

With regard to the second matter, the petitioner requests that the Commissioner of Insurance (Commissioner) amend the administrative rules to provide for a transitional rule which will fairly accommodate the large number of licensees within the existing title insurance pre-licensing education system.

In his initial response to the petition, the Commissioner (1) referred petitioner's first concern to the Department for further deliberations to be concluded no later than September 4, 1990 with the results to be mailed to petitioner and published in the New Jersey Register in accordance with N.J.A.C. 11:1-15.3(c); and (2) temporarily denied the relief requested in petitioner's second request noting that the Department would review the matter on or before September 30, 1990 to determine whether an extension of the compliance date beyond January 1, 1991 is appropriate.

Upon further consideration pursuant to law, the Department has decided to extend the time allowed for compliance with N.J.A.C. 11:17A-1.3(e) one year from January 1, 1991 to January 1, 1992. This will be accomplished by adoption of a proposed amendment to the regulation to be published in the New Jersey Register not later than November 19, 1990. The amendment will allow time for further deliberation and possible proposal by the Department of other amendments to the regulation. Any proposed amendments, as previously noted by the Department, must be consistent with the intent of the underlying statutory requirements at N.J.S.A. 17:22A-3.

The Department will shortly conclude further deliberations on this matter. Proposed amendments will appear in the New Jersey Register by the end of this year.

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY
Notice of Receipt of Petition for Rulemaking
N.J.A.C. 12:17-11.1

Petitioner: Anthony F. Mecca, Sr.

Take notice that Anthony F. Mecca, Sr. submitted to the Department of Labor a petition for rulemaking concerning N.J.A.C. 12:17-11.1, the Department's rule on offsetting unemployment insurance benefits by retirement and pension income. The petition was received by the Office of Regulatory Affairs on September 17, 1990.

The petitioner requests that N.J.A.C. 12:17-11.1(a) be amended (proposed amendment is in boldface) as follows:

(a) For weeks of unemployment beginning on or after January 1, 1981, the requirements of Section 1, of Chapter 13, P.L. 1980, shall apply only where such pension, retirement or retired pay, annuity, or other similar payment is under a plan maintained or contributed to by a base period or chargeable employer as determined under N.J.S.A. 43:21-1 et seq. **and has provided at least 10 percent of the individual's covered earnings during the base period.**

The petitioner believes that the current rule is unreasonable because it requires an offset of unemployment benefits by retirement and pension income when an employee has worked a minimal amount of time in a base year for a predecessor employer that is providing the retirement and pension income. The petitioner's proposed amendment would require an offset to occur only if the predecessor employer has provided at least 10 percent of the individual's covered earnings during the base period.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(b)

NEW JERSEY COMMISSION ON EMPLOYMENT AND TRAINING
Notice of Public Meetings on Workforce Readiness

Take notice that the New Jersey Commission on Employment and Training, in compliance with the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., hereby publishes notice of public meetings concerning New Jersey's workforce readiness system (all employment, occupational education, training and support systems). The meetings will be fact finding sessions to obtain the concerns of the employment, training and education community while establishing a viable leadership role for the commission. No formal action will be taken at the meetings. The sessions will be held from 9 A.M. to 12 noon according to the following schedule:

October 2, 1990	Meadowlands Chamber of Commerce 600 Washington Avenue Carlstadt, NJ
October 9, 1990	The Work Group 3720 Marlton Pike Pennsauken, NJ
October 16, 1990	Burlington County Voc/Tec School Woodlane Road Westampton, NJ

For further information contact the Commission at (609) 633-1359.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS
BUREAU OF EMPLOYMENT AND PERSONNEL SERVICES
Notice of Receipt of Petition for Rulemaking
Registered Consulting Firms
N.J.A.C. 13:45B

Petitioners: New Jersey Association of Personnel Consultants, by McCarter and English, Attorneys for Petitioner.

Authority: N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1.

Take notice that on September 5, 1990, petitioner filed a petition with the Division of Consumer Affairs requesting an amendment to N.J.A.C. 13:45B-6.1 (the fee schedule of the Bureau of Employment and Personnel Services) and a new rule regarding consulting firms. Petitioners stated the following as the purpose of the requested new rule:

"P.L. 1989, ch. 331 requires consulting firms to register with the Bureau of Employment and Personnel Services within 60 days of its enactment on January 12, 1990. However, regulations implementing the registration requirement for consulting firms have not yet been promulgated by the Division of Consumer Affairs."

The text suggested by petitioner for the amendment and new rule follows.

Amendment of N.J.A.C. 13:45B-6.1 Fee Schedule (additions indicated in boldface **thus**):

SUBCHAPTER 6. FEES

13:45B-6.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Job listing service and registration	$250.00
Prepaid computer job matching service annual registration	$250.00
Temporary help service firm annual registration, primary location	$250.00
Temporary help service firm, permit for operation of each other location	$10.00
Agent's annual license	$25.00
Agent's conditional license	$25.00
Transfer of agent's license	$10.00
Agent-registrants	$25.00
Fee for abstract of law	$5.00

In the event that a registered consulting firm also registers to provide temporary help services in the course of its business, it shall only be required to pay a single $250 annual registration fee to the Bureau of Employment and Personnel Services under this subchapter.

New rule proposal:

SUBCHAPTER 7. CONSULTING FIRMS

13:45B-7.1 Definitions

(a) "Consulting firm," as used in this subchapter, means any person that (1) identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and (2) is compensated for services solely by payments from the employer and is not, in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended. A consulting firm is not a private employment agency as defined and regulated in this chapter and in P.L. 1989, ch. 331.

(b) "Employer," as used in this subchapter, means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wages, or other compensation or benefits are to be paid.

(c) "Job seeker," as used in this subchapter, means any individual seeking employment.

13:45B-7.2 Registration

(a) Every consulting firm operating within this state shall register in writing annually with the Bureau of Employment and Personnel Services within the Division of Consumer Affairs. Consulting firms operating within this state as of the effective date of these regulations shall register within 60 days thereafter. Section 4(b) of P.L. 1989, ch. 331 shall not apply to causes of action arising prior to 60 days after the effective date of these regulations.

(b) A single registration form shall be submitted by each consulting firm for each annual registration period. The registration form shall be signed by an officer if the firm is a corporation, a partner if the firm is a partnership, or the proprietor if the firm is a sole proprietorship.

(c) The registration form for each consulting firm shall require the following and only the following information:

1. the consulting firm's name;
2. any fictitious or trade name used in the consulting firm's operation;
3. each location (by street and street number) used by the consulting firm for 90 or more calendar days for the conduct of its business during the years for which the registration is made; and
4. the names and residence addresses of the officers of the firm and of any person holding a beneficial interest or ownership in the firm.

(d) A registered consulting firm shall be permitted to provide temporary help services in the course of its business and at the same location, provided that the consulting firm in that event and only in that event shall be subject to the requirements of P.L. 1960, ch. 39 (N.J.S.A. 56:5-1 et seq.).

13:45B-7.3 Violations

(a) No registered consulting firm, or any of its officers, employers, or agents, shall:

1. Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representation concerning the services or products that the firm provides to job seekers.
2. Disseminate information to a job seeker knowing or recklessly disregarding information that:
   i. The job does not exist or the job seeker is not qualified for the job;
   ii. The job has been described or advertised by or on behalf of the consulting firm in a false, misleading, or deceptive manner;
   iii. The consulting firm has not confirmed the availability of the job at the time of dissemination of the information; or
   iv. The consulting firm has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.

(b) The requirements of Section 11 of P.L. 1989, ch. 331 shall not apply to consulting firms.

(c) A consulting firm's registration may be refused, revoked or suspended by the Director of the Division of Consumer Affairs only in accordance with section 23 of P.L. 1989, ch. 331. Any consulting firm failing to comply with the provisions of this subchapter or of section 23 of P.L. 1989, ch. 331 shall be subject to the provisions of sections 14 through 22 of P.L. 1989, ch. 331.

Petitioners' petition for rulemaking is on file at the offices of the Division of Consumer Affairs. In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the petition will be reviewed to determine what action should be taken in response to same. Thereafter, notice of such action will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Intention to Rulemake

Pharmacy Manual, Hospital and Special Hospital Manuals, Physicians' Manual, Manual for Dental Services, Podiatry Services, Independent Clinic Manual, Long Term Care Services Manual

Bundled Drug Services

Take notice that the Department of Human Services intends to proceed with rulemaking activity pursuant to the provisions of the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4, and Federal regulations requiring public notice of a change in reimbursement methodology (42 CFR 447.205).

The regulatory activity concerns bundled drug services. A bundled drug is one that is marketed or distributed by the manufacturer or distributor as a combined package, which includes not only the cost of the drug, but also ancillary services, such as case management and laboratory testing.

Both Medicaid recipients and Pharmaceutical Assistance to the Aged and Disabled (PAAD) beneficiaries will be affected by this policy.

In general, the rule will enable the Commissioner to deny payment for a bundled drug service. The rule will give the Commissioner the authority to waive the prohibition on payment for bundled drugs if the service is less than or equal to the total cost of the unbundled components if reimbursed separately.

The rule will also enable the Commissioner to waive the prohibition based upon medical necessity. If granted, the waiver would be issued on a global basis. This means that the waiver would be applied on a product-by-product basis, rather than a case-by-case patient specific basis.

Manufacturers or distributors will need to submit cost data to the Division if they wish to qualify under the waiver provision.

In the event payment is made for the bundled drug service, the rate would be determined by the Commissioner pursuant to N.J.S.A. 30:4D-7.7a, b and c.

It is estimated that the coverage of bundled drug services could cost from $12 to $27 million annually. The costs attributable to the Title XIX (Medicaid) program would be subject to Federal matching funds. The costs associated with the PAAD program would be wholly State funded.

Interested persons may submit comments on the provisions of this notice within 30 days directly to Henry W. Hardy, Esq., Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625. A copy of the proposed changes contained in this notice are available for public review at any of the 17 Medicaid District Offices or at the 21 county welfare agencies.

ATTORNEY GENERAL'S OPINIONS

(a)

ATTORNEY GENERAL

Formal Opinion No. 1(1990)

Authority of Director of Local Government Services to Disapprove a County Budget That Does Not Provide for an Appropriation to Meet Foreseen Obligations

August 28, 1990

Barry Skokowski, Sr.
Deputy Commissioner and Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street—CN 800
Trenton, New Jersey 08625

RE: FORMAL OPINION NO. 1 (1990):
Authority of Director of Local Government Services to Disapprove a County Budget That Does Not Provide for an Appropriation to Meet Foreseen Obligations.

Dear Mr. Skokowski:

You have asked if the Director of Local Government Services may approve a county budget where the county proposes funding certain court-ordered county jail improvements outside of the budget process through a "special emergency appropriation" pursuant to N.J.S.A. 40A:4-55.13. For the reasons that follow, you are advised that the Director may not approve a county budget under that provision where he determines that the budget does not provide for an appropriation to meet obligations known or foreseen at the time the budget was prepared.

Your inquiry arises out of the following circumstances: Essex County has been operating, we are informed, under a temporary budget approved in January 1990. The final budget submitted for the Director's approval does not provide for any appropriation to meet current fiscal year anticipated costs of certain court-ordered jail improvements. The court order, which was signed by the parties, including the County on January 2, 1990, and by the court on January 5, 1990, requires the County to make certain capital improvements to county jails and to provide for certain operating costs for counseling and other inmate services at those jails. Instead of including these costs in the proposed final budget, the County proposes to pay for them with a special emergency appropriation under N.J.S.A. 40A:4-55.13 to be financed by borrowing money through the issuance of three-year notes as provided for in N.J.S.A. 40A:4-55.16.

The Local Budget Law, N.J.S.A. 40A:4-1 et seq., regulates the budget-making process for all counties and municipalities in this State. It contains several provisions by which a county can provide for meeting emergency government needs. Fundamentally, N.J.S.A. 40A:4-46 provides in pertinent part that a county "may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof." Thus, under its express terms, an emergency must be unforeseen and it must occur after adoption of the final budget. Essex County has not sought to utilize this statutory provision as justification to fund its court-ordered obligations at issue here. Rather, the County argues that its obligations under the court order may be financed through a special emergency appropriation authorized pursuant to N.J.S.A. 40A:4-55.13. That statutory provision states in its entirety that:

> A local unit may by resolution make special emergency appropriations after the adoption of the budget, for costs arising from a public exigency caused by civil disturbances.

If this provision is applicable, the County would be able to borrow money to pay for its court-imposed obligations in the form of three-year notes. N.J.S.A. 40A:4-55.14 and 55.16. Hence, the issues presented in this case are whether the events which led to the obligations to be funded by a special emergency appropriation must occur after final budget approval or whether a special emergency appropriation can be used at any time during the fiscal year so long as it is used to fund the costs caused by a civil disturbance.[1]

It is well-established that the primary goal of all statutory construction is to give effect to the legislative intention. Alexander v. NJ Power & Light Co., 21 N.J. 373 (1956). Accordingly, each word of a statute is presumed to have been placed there by the Legislature for a reason. Albert F. Ruehl Co. v. Board of Trustees of Schools for Indus. Ed., 85 N.J. Super. 4, 13 (Law Div. 1964). Further, the particular words of a statute must be made responsive to the internal sense of the legislation as a whole. Wollen v. Fort Lee, 27 N.J. 408, 418 (1958).

The paramount purpose of the Local Budget Law is to require local governments to follow sound business principles in their budgetary practices, and its aim is to insure that anticipated revenues equal expenditures. Morris Cty. v. Skokowski, 86 N.J. 419, 423 (1981). In construing the provisions of N.J.S.A. 40A:4-46, the New Jersey Supreme Court has noted that the propriety of a post-budget emergency appropriation would depend upon whether there had been a failure to make adequate provision in the budget for the costs at issue, and whether the failure occurred "despite a bona fide effort to include whatever items should reasonably have been inserted in the budget in reasonable amounts." Passaic v. Local Finance Bd., Commun. Aff., Etc., 88 N.J. 293, 300 (1982). In considering what would constitute a bona fide effort, the Court cited the requirement that budgets be prepared on a "cash basis", N.J.S.A. 40A:4-3, and noted that "[m]unicipal financing is formulated on a pay-as-you-go principle. To permit the unbridled use of supplemental emergency funding subverts that tenet and could effectively constitute deficit financing."[2] Passaic, 88 N.J. at 300-01.

The emergency appropriation which may be made pursuant to N.J.S.A. 40A:4-55.13 can only be made "after the budget is adopted." Clearly, this means that the costs which may be funded by an emergency appropriation could not have been foreseen or could not have been provided for in full despite a bona fide effort to do so at the time the budget was adopted. Had the Legislature intended a different result, there would have been no reason to require that the special emergency appropriation be made "after the budget is adopted."

This view is consistent with the Supreme Court's approach in Passaic, supra. There the Court concluded that an emergency appropriation is only available to a local governing body where the need is unforeseen at budget-making time or where the failure to provide in full for an anticipated need occurred despite a bona fide effort to structure a reasonable budget. Id., 88 N.J. at 302-03. Planning for an emergency appropriation during the budget process, as is being done in this case, is inconsistent with making a bona fide effort to structure a reasonable budget. Clearly then, it must be concluded that costs which are known at the time of budget preparation should be included during that process. In this case, the County signed a consent order in January 1990 and thus knew it was obligated to incur the expenses involved here at a time when it was operating under a temporary budget and in the midst of planning for its final budget. It would be unreasonable to conclude under these circumstances that these expenses were unforeseen.

The County advances the argument that since N.J.S.A. 40A:4-55.13 does not include the word "unforeseen," when compared with the language of N.J.S.A. 40A:4-46, the Legislature must have intended a county to use a special emergency appropriation to fund the costs of a civil disturbance, regardless of when the disturbance occurred. To the contrary, any reasoned interpretation of the statute must conclude that the Legislature's true design was to address only true emergency situations, i.e. those incapable of being provided for in any reasonable planning process. Therefore, in our view, the County places undue reliance on the absence of one word from the text to the detriment of the fair import of the entire provision.[3]

Having concluded that the County may resort to emergency appropriations only when the costs intended to be funded by such appropriations result from true emergencies occurring after completion of the budget process, it is necessary to turn briefly to the obligations of the Director of the Division of Local Government Services. The Local Budget Law requires the Director to examine the annual budgets of all municipalities and counties and to determine, among other things, whether each of those budgets complies with the requirements of law and the regulations of the local government board. N.J.S.A. 40A:4-76 to -77. No budget may be adopted by a local governing body unless the Director has certified his

prior approval. N.J.S.A. 40A:4-10. If the Director finds that the budget does not meet all requirements of law and of the regulations of the local government board, he is required to "refuse to approve it." N.J.S.A. 40A:4-78. The Budget Law prohibits any county or municipality from expending any money or incurring any liability in the absence of an appropriation for the particular expenditure or liability. N.J.S.A. 40A:4-57; Trainor v. Burlington Cty., Freeholder Bd., 200 N.J. Super. 288, 301-02 (Law Div. 1984). It also requires that annual budgets be adopted "on a cash basis unless otherwise permitted by law." N.J.S.A. 40A:4-3. Therefore, when a special emergency appropriation under N.J.S.A. 40A:4-55.13 or under N.J.S.A. 40A:4-46 is not available to the County to meet its fiscal needs that are known and can be provided for in the final budget, the Director is not empowered to approve a final budget that relies on such budget approaches.[4]

In sum, you are advised that the Director may not approve the proposed Essex County budget under N.J.S.A. 40A:4-78, in the circumstances of this particular inquiry, on the ground that the budget does not meet all requirements of law where it fails to provide for an appropriation to address known liabilities or expenditures imposed by court order as required by N.J.S.A. 40A:4-55.13.

[1]As noted, the second requirement of the statute is that the special emergency appropriation must be in response to "civil disturbances." It is unnecessary for us to resolve whether the costs of funding the court-ordered remedial correctional measures here were caused by a civil disturbance within the meaning of the statute if it is determined that the civil disturbance must occur after the budget is adopted in order to invoke the statutory provision.

[2]Such a funding mechanism could, in certain circumstances, be seen as an evasion of the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., which limits the amount by which the budget may be increased annually. We are not suggesting, however, that the restrictions of the Cap Law are an issue in this matter.

[3]There are other provisions in the Local Budget Law which may permit "special emergency appropriations" for costs that could be reasonably foreseen at the time of the adoption of a final budget. See N.J.S.A. 40A:4-53 (preparation of tax maps, etc.); N.J.S.A. 40A:4-55.8 (expenses of county colleges in anticipation of aid). None of the expenses at issue here are sought to be financed under these provisions which, in any event, must be seen as limited legislative modifications to the recognized general rule that a budget encompass all foreseeable expenses at the time of its adoption in order to ensure responsible spending practices by the local government entity. Passaic, supra. Parenthetically, we note that the Supreme Court was comfortable in applying an "unforeseeability" test under N.J.S.A. 40A:4-46, and by extension of reasoning here to N.J.S.A. 40A:4-55.13, while recognizing that unforeseeability is not a predicate to the use of a "special emergency appropriation" to fund significant governmental expenses under N.J.S.A. 40A:4-53. Passaic, 88 N.J. at 298. In short, the Legislature has done no more than exercise its right to establish different alternatives for different circumstances.

[4]To the extent the County must satisfy its court-imposed obligation by making capital improvements to county jails, it may be possible for it to proceed in part under the Local Bond Law, N.J.S.A. 40A:2-1 et seq., by adopting a bond ordinance to issue debt for any capital improvement or property which it may lawfully make or acquire, or for any other purpose for which a county is authorized by law to make an appropriation, provided that the purpose does not constitute a current expense and provided further that the purpose has a period of usefulness of not less than five years. N.J.S.A. 40A:2-3; N.J.S.A. 40A:2-21. Although we have not been asked to consider the propriety of this option in the context of your inquiry and we express no opinion in that regard, we note that the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., provides that a county may construct, repair, alter, enlarge, rebuild, refurnish or rehabilitate any building or other capital improvement for any county public purpose. N.J.S.A. 40A:12-3. This approach, however, may be of little practical utility here since it appears the majority of costs associated with the implementation of the consent order are for operating expenses and not capital improvements, and further, that the capital improvements may have already been made and paid for, thereby casting strong doubt on the use of bonds as a source of financing.

(a)

ATTORNEY GENERAL

Formal Opinion No. 2(1990)

Placement on General Election Ballots of Non-binding Referenda Regarding Statewide Tax Reform Measures

August 28, 1990

Honorable Joan M. Haberle
Secretary of State
315 W. State Street
CN 300
Trenton, New Jersey 08625

Re: FORMAL OPINION NO. 2 (1990):
Placement on General Election Ballots of Non-binding Referenda Regarding Statewide Tax Reform Measures.

Dear Secretary Haberle:

You have asked whether local governing bodies may place on the upcoming General Election ballot non-binding referenda regarding recent State tax reform measures and the level of State appropriations for government purposes. For the reasons set forth below, you are advised that such questions are not properly included on the ballot since they do not deal specifically with any question or policy pertaining to the internal affairs of the governmental bodies proposing the resolutions, and because the issues for which voters' sentiment are sought are not matters with respect to which the governmental bodies have the power to take direct action.

The State Constitution does not provide for any procedure to ascertain directly citizens' viewpoints on public policy issues. However, the Legislature, in furtherance of its particular responsibility over election matters, Fields v. Hoffman, 105 N.J. 262, 271-272 (1987), has adopted a statutory provision which permits non-binding referenda at the local level under certain specific and limited circumstances. That statute, N.J.S.A. 19:37-1, provides:

> When the governing body of any municipality or of any county desires to ascertain the sentiment of the legal voters of the municipality or county upon any question or policy pertaining to the government or internal affairs thereof, and there is no other statute by which the sentiment can be ascertained by the submission of such question to a vote of the electors in the municipality or county at any election to be held therein, the governing body may adopt at any regular meeting an ordinance or a resolution requesting the clerk of the county to print upon the official ballots to be used at the next ensuing general election a certain proposition to be formulated and expressed in the ordinance or resolution in concise form. Such request shall be filed with the clerk of the county not later than 74 days previous to the election. (emphasis supplied)

This provision has been consistently interpreted as limiting the scope of the referenda authorized by the statute to subjects actually and specifically encompassed within the definite jurisdictional authority of the particular governmental body proposing the referenda and is designed to test voter sentiment on well-defined and concrete public issues. In capsulizing the intent of this provision, the State Supreme Court has observed that

> the legislature never intended the non-binding-referendum procedure to be used to test public opinion in the abstract or to ascertain the public's views on controversial or timely issues outside the province of the governing body soliciting them. [Bd. of Chosen Freeholders v. Szaferman, 117 N.J. 94, 104 (1989).]

The parameters of N.J.S.A. 19:37-1 were most recently construed by the Supreme Court in Bd. of Chosen Freeholders v. Szaferman, supra. There, the County Freeholders enacted a resolution placing a referendum question on the General Election ballot asking voters if the Freeholders should advise the Legislature to take certain actions regarding various issues involving automobile insurance. The Court held under the statute that the referendum question did not pertain to matters involving the government or internal affairs of the county and, for that reason, the referendum question could not be included on the ballot. The Court rejected the argument that the county's expenditure of funds for automobile insurance costs and its interest in minimizing the size of its budget

expenditures were sufficient reasons to justify the referendum question. Said the Court:

> By that standard, any referendum question that addressed a subject related to municipal or county budgets would be authorized, whether or not it was within the sphere of municipal or county government. If the governmental-interest test were satisfied merely by a budgetary impact, then any county could use its non-binding-referendum authority to elicit public opinion on issues related to welfare, court administration, law enforcement, and a myriad of other subjects that are statutorily committed to government at the state level and beyond the scope of county governmental responsibility. [Id. at 106.]

In supporting its interpretation of N.J.S.A. 19:37-1, the Court observed that matters of insurance reform are matters of statewide significance committed to State government. Permitting local governments to place non-binding referenda on the ballot for matters involving statewide issues would thus be contrary to the more limited intentions of the statute. Accord, Botkin v. Mayor and Borough Council of Westwood, 52 N.J. Super. 416 (App. Div.), appeal dismissed, 28 N.J. 218 (1958) (local government body had no authority to propose a referendum regarding affairs of independent local school district); Santoro v. Mayor and Council of South Plainfield, 57 N.J. Super. 307 (Law Div.), aff'd, 57 N.J. Super. 498 (App. Div. 1959) (city council had no authority to solicit voters' sentiment with respect to affairs of local sewerage authority, a distinct local government unit).

In this matter, you have advised that a number of counties and municipalities have passed resolutions authorizing referenda intended to solicit voter sentiment with respect to recently enacted State tax reform legislation and with respect to proposals to reduce State government spending. The central question to be resolved is whether these referenda involve matters in which these local governmental units have "the power to act." Botkin, 52 N.J. Super. at 433. If not, then there is no authority vested in these local government units under N.J.S.A. 19:37-1 to propose such non-binding referenda for inclusion on the General Election ballot.

Matters of State tax and budget policies, although they concededly could have a significant impact on local governments, are matters plainly "committed to government at the State level." Bd. of Chosen Freeholders v. Szaferman, 117 N.J. at 106. Under the State Constitution, it is the Legislature and the Governor who have been constitutionally charged with the responsibility and authority to make appropriations, to establish appropriate levels of State spending and to provide for a balanced State budget. N.J. Const. (1947), Art. VIII, §II, ¶2; Camden v. Byrne, 82 N.J. 133 (1982). See also, N.J. Const. (1947), Art. V, §I, ¶15 (line-item veto power vested in the Governor). Similarly, although the Legislature has delegated to local governments the authority to tax in some cases, the underlying fundamental authority to impose taxes resides exclusively in the Legislature. Robinson v. Cahill, 62 N.J. 473, 497 (1973); Salomon v. Jersey City, 12 N.J. 379, 383-84 (1953). It is therefore self-evident that the non-binding referenda involving State taxes and State spending concern matters of State and not local authority and may not be placed on the ballot pursuant to N.J.S.A. 19:37-1. (emphasis supplied) Gloucester County Resolution. Accord, Camden County Board of Chosen Freeholders v. Camden County Clerk, 193 N.J. Super. 100 (Law Div.), aff'd, 193 N.J. Super. 100 (App. Div. 1983) (county non-binding referendum addressing budget directive of the Chief Justice of the Supreme Court of New Jersey did not implicate county's internal affairs or pertain to its governance within the meaning of N.J.S.A. 19:37-1).

In sum, local governments may not place non-binding referenda on the General Election ballot under N.J.S.A. 19:37-1 where the subject matter of the referenda does not touch on matters "pertaining to the government or internal affairs" of the proposing local government entity. Here, non-binding referenda soliciting voter sentiment with respect to recent State tax reform legislation and reductions in the level of State appropriations are clearly matters committed to the exclusive jurisdiction of State government and are not matters with which the local governments have the power to act. For these reasons, such non-binding referenda may not properly be included on the ballot for the upcoming General Election.

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 September 4, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 20, 1990

NEXT UPDATE: SUPPLEMENT SEPTEMBER 17, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to the OAL	22 N.J.R. 2066(a)	R.1990 d.484	22 N.J.R. 3003(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-18.4	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10B-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		

Most recent update to Title 1: TRANSMITTAL 1990-4 (supplement August 20, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
AGRICULTURE—TITLE 2				
2:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)		
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)	R.1990 d.494	22 N.J.R. 3146(a)
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)	R.1990 d.495	22 N.J.R. 3146(b)
2:48	Dairy industry rules	22 N.J.R. 2625(a)		
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)		

Most recent update to Title 2: TRANSMITTAL 1990-7 (supplement August 20, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)	R.1990 d.497	22 N.J.R. 3213(a)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(a)	R.1990 d.498	22 N.J.R. 3213(b)
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:41	Cemetery Board rules	22 N.J.R. 2627(a)		

Most recent update to Title 3: TRANSMITTAL 1990-5 (supplement July 16, 1990)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)		
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)		
4A:4-5.5	Working test period	22 N.J.R. 2629(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1-.8, 1.21	Family leave: administrative correction	________	________	22 N.J.R. 2682(a)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)		

Most recent update to Title 4A: TRANSMITTAL 1990-4 (supplement August 20, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)	R.1990 d.459	22 N.J.R. 2964(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)		
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14–3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)	R.1990 d.507	22 N.J.R. 3214(a)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)	R.1990 d.489	22 N.J.R. 3147(a)
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)	R.1990 d.490	22 N.J.R. 3148(a)
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)	R.1990 d.508	22 N.J.R. 3218(a)
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:26-1.4, 2.11, 9.3, 11.1, 11.5	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R.1990 d.452	22 N.J.R. 2682(b)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)		
5:70-6.3	Congregate Housing Services Program: income and service subsidies	22 N.J.R. 1970(a)	R.1990 d.467	22 N.J.R. 2964(b)
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)	R.1990 d.504	22 N.J.R. 3220(a)
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

Most recent update to Title 5: TRANSMITTAL 1990-8 (supplement August 20, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)		
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:20-1.1, 1.2, 4.1–4.4, 4.7–4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)		
6:22-5.4	School facility planning service: administrative correction	________	________	22 N.J.R. 2683(a)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5–2.9, 3.3–3.7, 3.9, 4.1, 4.2, 4.4–4.8, 5.1, 5.2, 6.1–6.5, 7.1, 7.4, 8.1, 8.4–8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)	R.1990 d.450	22 N.J.R. 2683(b)
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:61, 62, 63, 65	State Library rule forewords: administrative deletion	________	________	22 N.J.R. 2964(c)

Most recent update to Title 6: TRANSMITTAL 1990-5 (supplement August 20, 1990)

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)	R.1990 d.457	22 N.J.R. 2965(a)
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)		
7:7-2.3	Waterfront development	22 N.J.R. 2361(a)	R.1990 d.503	22 N.J.R. 3222(a)
7:7-2.3	Waterfront development: extension of comment period	22 N.J.R. 2669(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)	R.1990 d.446	22 N.J.R. 2753(a)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)	R.1990 d.444	22 N.J.R. 2754(a)
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	R.1990 d.443	22 N.J.R. 2758(a)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	R.1990 d.442	22 N.J.R. 2816(a)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-18.1	Taking of striped bass	22 N.J.R. 3078(a)		
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26	Hazardous waste management	22 N.J.R. 2882(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)	R.1990 d.445	22 N.J.R. 2826(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2	Hazardous waste exclusions: administrative correction	________	________	22 N.J.R. 3148(b)
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.15	Hazardous waste listing: administrative correction	________	________	22 N.J.R. 3227(a)
7:26-10.6	Surface impoundments: administrative correction	________	________	22 N.J.R. 3227(b)
7:26-10.8	Hazardous waste landfills: administrative correction	________	________	22 N.J.R. 2966(a)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:28-3.12	Ionizing radiation-producing machines: registration fees: administrative correction	________	________	22 N.J.R. 2830(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)	R.1990 d.511	22 N.J.R. 3227(a)
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)	R.1990 d.505	22 N.J.R. 3229(a)

Most recent update to Title 7: TRANSMITTAL 1990-8 (supplement August 20, 1990)

HEALTH—TITLE 8

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)		
8:21	Food and drugs	22 N.J.R. 2465(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)	R.1990 d.462	22 N.J.R. 3004(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-App. VI	Computation of reasonable direct patient care costs: administrative correction	________	________	22 N.J.R. 3229(b)
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)		
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)		
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)	R.1990 d.513	22 N.J.R. 3230(a)
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)		
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)	R.1990 d.473	22 N.J.R. 3013(a)
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)		
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)	R.1990 d.421	22 N.J.R. 2703(b)
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)	R.1990 d.422	22 N.J.R. 2705(a)
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)	R.1990 d.423	22 N.J.R. 2708(a)
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)	R.1990 d.463	22 N.J.R. 3014(a)
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)	R.1990 d.512	22 N.J.R. 3232(a)
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)	R.1990 d.472	22 N.J.R. 3014(b)
8:57-1.6	Reportable communicable diseases and immunization requirements: administrative correction	________	________	22 N.J.R. 2709(a)
8:57-3.2	Reporting of occupational and environmental diseases and poisons: administrative correction	________	________	22 N.J.R. 3025(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)	R.1990 d.453	22 N.J.R. 2710(a)
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b))	22 N.J.R. 1214(b)	R.1990 d.487	22 N.J.R. 3149(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)		

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HIGHER EDUCATION—TITLE 9

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)		
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)		
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		

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HUMAN SERVICES—TITLE 10

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:6	Administrative hearings	22 N.J.R. 3115(a)		
10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:31-1.4, 2.1, 2.3, 8.1	Screening and Screening Outreach Program: notice of rule invalidation	———	———	22 N.J.R. 2966(b)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)	R.1990 d.430	22 N.J.R. 2710(b)
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)		
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)	R.1990 d.431	22 N.J.R. 2712(a)
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)	R.1990 d.409	22 N.J.R. 3030(a)
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)		
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(b)	R.1990 d.456	22 N.J.R. 2713(a)
10:60	Home Care Services Manual	22 N.J.R. 1663(a)	R.1990 d.458	22 N.J.R. 2966(c)
10:60	Home Care Services Manual	22 N.J.R. 3116(a)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)	R.1990 d.466	22 N.J.R. 2967(a)
10:65-2.1	Medical day care reimbursement	Emergency (expires 11-19-90)	R.1990 d.509	22 N.J.R. 3253(a)
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	Emergency (expires 9-28-90)	R.1990 d.424	22 N.J.R. 2604(a)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1–12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)	R.1990 d.437	22 N.J.R. 2715(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendance Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

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CORRECTIONS—TITLE 10A

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)		
10A:9-4.6	Consideration for minimum custody status: administrative correction	————	————	22 N.J.R. 2969(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)	R.1990 d.488	22 N.J.R. 3149(b)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

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INSURANCE—TITLE 11

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)	Expired	
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-3.37, 14.8	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		
11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-16–App.	Private passenger automobile rate filings: administrative correction	________	________	22 N.J.R. 2969(b)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(a)		
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)	R.1990 d.470	22 N.J.R. 2969(c)
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 2108(a)		
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)	Expired	
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

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LABOR—TITLE 12

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 3885(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:56	Wage and hour	22 N.J.R. 2235(a)		
12:57	Wage orders for minors	22 N.J.R. 2240(a)		
12:58	Child labor	22 N.J.R. 2241(a)		
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)	R.1990 d.436	22 N.J.R. 2744(a)
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)		

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COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

Most recent update to Title 12A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)	R.1990 d.477	22 N.J.R. 3151(a)
13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)	R.1990 d.506	22 N.J.R. 3236(a)
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)	R.1990 d.465	22 N.J.R. 2982(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:18-4.2–4.6, 4.9, 4.14–4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)	R.1990 d.491	22 N.J.R. 3151(b)
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)	R.1990 d.514	22 N.J.R. 3236(b)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)	R.1990 d.435	22 N.J.R. 2747(a)
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)		
13:35-6.13	Board of medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)	R.1990 d.476	22 N.J.R. 3153(a)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)	R.1990 d.478	22 N.J.R. 3153(b)
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)	R.1990 d.434	22 N.J.R. 2747(b)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)		
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)	R.1990 d.433	22 N.J.R. 2747(c)
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)	R.1990 d.454	22 N.J.R. 2748(a)
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)	R.1990 d.468	22 N.J.R. 2982(b)
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)	R.1990 d.468	22 N.J.R. 2982(b)
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
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13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
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13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)	R.1990 d.485	22 N.J.R. 3154(a)
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13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-22.1	Harness racing: public telephones at tracks	22 N.J.R. 2403(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)	R.1990 d.486	22 N.J.R. 3155(a)
13:75-1.12	Violent Crimes Compensation Board: attorney fees	22 N.J.R. 2260(a)	R.1990 d.501	22 N.J.R. 3237(a)
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)	R.1990 d.471	22 N.J.R. 2999(a)

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14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.2	Cable television: requests for service	22 N.J.R. 2890(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.13	Cable television: restoration standards	22 N.J.R. 2891(a)		
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14:18-5.1	Cable television: location	22 N.J.R. 2894(a)		
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14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
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16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:13	Rural Secondary Road System Aid	22 N.J.R. 1989(a)	R.1990 d.447	22 N.J.R. 2748(b)
16:20A-4.4	Right-of-way acquisition (county and municipal aid): relocation assistance	22 N.J.R. 2900(a)		
16:20B-4.3	Right-of-way acquisition (municipal fund): relocation assistance	22 N.J.R. 2901(a)		
16:21	State aid to counties and municipalities	22 N.J.R. 1896(a)	R.1990 d.439	22 N.J.R. 2749(a)
16:21B	Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act rules	22 N.J.R. 2901(b)		
16:28-1.8, 1.27	Speed limit zones along Route 159 in Morris and Essex counties, Route 183 in Morris and Sussex counties	22 N.J.R. 2244(a)	R.1990 d.492	22 N.J.R. 3156(a)
16:28-1.22, 1.30	Speed limit zones along Route 109 in Cape May and Route 70 in Medford Township	22 N.J.R. 3111(a)		
16:28-1.72	Speed limit zones along U.S. 206 in Sussex County	22 N.J.R. 3112(a)		
16:28-1.72	Speed limit zones along U.S. 206 in Somerset, Morris, and Sussex counties: administrative correction	———	———	22 N.J.R. 3156(b)
16:28-1.94	Speed limit zones along Route 10 in Morris and Essex counties	22 N.J.R. 1697(a)	R.1990 d.440	22 N.J.R. 3025(b)
16:28-1.97, 1.167	Speed limit zones along Route 77 in Cumberland, Salem and Gloucester counties, and Route 181 in Morris and Sussex counties	22 N.J.R. 3113(a)		
16:28-1.106, 1.132	Speed limit zones along Route 31 in Hunterdon County and Route 47 in Cape May County	22 N.J.R. 2245(a)	R.1990 d.493	22 N.J.R. 3157(a)
16:28A-1.1, 1.23	No stopping or standing zones along U.S. 1 in South Brunswick and Route 33 in Hightstown	22 N.J.R. 2904(a)		
16:28A-1.7, 1.11, 1.65	Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	22 N.J.R. 1897(a)	R.1990 d.438	22 N.J.R. 2749(c)
16:28A-1.7, 1.21, 1.24, 1.105	Restricted parking and stopping along U.S. 9 in Little Egg Harbor, Route 34 in Colts Neck, Route 54 in Hammonton, and U.S. 30 in Berlin	22 N.J.R. 2905(a)		
16:28A-1.8, 1.9, 1.33, 1.41, 1.104	Restricted parking and stopping along Route 10 in Livingston, Route 47 in Vineland, Route 17 in Upper Saddle River, U.S. 40-322 in Atlantic City, and Route 77 in Bridgeton	22 N.J.R. 2906(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.13, 1.62	No stopping or standing zones along U.S. 22 in Warren, Hunterdon, Somerset and Union counties, and Route 12 in Hunterdon County	22 N.J.R. 2118(a)	R.1990 d.475	22 N.J.R. 3027(a)
16:28A-1.33	Restricted stopping along Route 47 in Dennis Township	22 N.J.R. 1536(a)	R.1990 d.381	22 N.J.R. 2749(b)
16:28A-1.33, 1.41, 1.55	Restricted parking and stopping along Routes 47 in Vineland, 77 in Bridgeton, and U.S. 202 in Morris Plains	22 N.J.R. 1990(a)	R.1990 d.460	22 N.J.R. 3028(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Upper Deerfield Township	22 N.J.R. 2908(a)		
16:28A-1.41	Restricted stopping and standing along Route 77 in Cumberland County: administrative correction	————	————	22 N.J.R. 3158(a)
16:28A-1.104	Bus stop zone along U.S. 40 and Route 322 in Egg Harbor	22 N.J.R. 2908(b)		
16:29-1.47, 1.68, 1.69, 1.70	No passing zones along Route 15 in Sussex County, Route 7 in Hudson, Bergen and Essex counties, Route 10 in Essex County, and Route 50 in Cape May	22 N.J.R. 2909(a)		
16:30-10.12	Mid-block crosswalks along Route 47 in Glassboro and Deptford	22 N.J.R. 1992(a)	R.1990 d.461	22 N.J.R. 3029(a)
16:30-11.2	Traffic control in rest areas along I-80, Roxbury Township	22 N.J.R. 3114(a)		
16:31-1.4, 1.28	Turning restrictions along Route 35 in Monmouth, Middlesex and Ocean counties, and Route 4 in River Edge	22 N.J.R. 2910(a)		
16:38-1.1, 1.5	Roadside and drainage maintenance	22 N.J.R. 2246(a)	R.1990 d.499	22 N.J.R. 3237(b)
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:42	Road equipment rental	22 N.J.R. 3114(b)		
16:44-3.1–3.5, 7.2, 7.3	Construction services	22 N.J.R. 2247(a)	R.1990 d.500	22 N.J.R. 3238(a)
16:44-8.1, 8.2, 8.3	Construction services: vendor ethical standards	22 N.J.R. 1898(a)	R.1990 d.429	22 N.J.R. 2750(a)
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
16:49-1.1, 1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials	22 N.J.R. 2676(a)		
16:53D-1	Regular route autobus carriers: zone of rate freedom	22 N.J.R. 1993(a)	R.1990 d.474	22 N.J.R. 3029(b)
16:62-7.2	Air safety zone for Somerset Airport	22 N.J.R. 1899(a)	R.1990 d.441	22 N.J.R. 2751(b)
16:72	NJ TRANSIT: procurement policies and procedures	22 N.J.R. 2460(a)		
16:78	Senior Citizen and Disabled Resident Transportation Assistance Act Program	22 N.J.R. 2911(a)		

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TREASURY-GENERAL—TITLE 17

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17:1-2.36	Alternate Benefit Program: transferred funds	22 N.J.R. 2405(a)		
17:2-6.1	PERS retirement applications: administrative correction	————	————	22 N.J.R. 3001(a)
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:8	Supplemental Annuity Collective Trust program	22 N.J.R. 1900(a)	R.1990 d.515	22 N.J.R. 3238(b)
17:9-4.2	State Health Benefits Program: "full-time employee"	22 N.J.R. 1903(a)	R.1990 d.480	22 N.J.R. 3158(b)
17:9-6.7	Police and Firemen's and State Police retirement systems: health insurance coverage for accidental death benefit recipients	22 N.J.R. 1903(b)	R.1990 d.481	22 N.J.R. 3158(c)
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:28	Public Employee Charitable Fund-Raising Campaign	22 N.J.R. 1994(a)	R.1990 d.464	22 N.J.R. 3001(b)
17:29	Charitable fund-raising among local government employees	22 N.J.R. 2248(a)		
17:40	Governor's Council on Alcoholism and Drug Abuse	22 N.J.R. 2120(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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18:1-1.8	Administrative hearings	22 N.J.R. 1995(a)		
18:5-8.10	Administrative hearings	22 N.J.R. 1995(a)		
18:7-1.15, 3.8	Corporation Business Tax: investment companies	22 N.J.R. 1904(a)	R.1990 d.482	22 N.J.R. 3159(a)
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:7-11.12, 11.15, 12.1, 12.3	Corporation Business Tax: IRC 338(h)(10) election	22 N.J.R. 2125(a)		
18:7-13.2	Administrative hearings	22 N.J.R. 1995(a)		
18:8-5.1, 5.2	Administrative hearings	22 N.J.R. 1995(a)		
18:9-6.7-6.10	Administrative hearings	22 N.J.R. 1995(a)		
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)		
18:22-1.3	Public utility corporations: "public street, highway, road or other public place"	22 N.J.R. 2249(a)		
18:23-1.1, 3.6, 5.6, 6.3, 7, 8.1, 8.2, 8.6, 11.2, 11.3, App.	Railroad Property Tax	22 N.J.R. 2250(a)		
18:23A-1	Tax maps	22 N.J.R. 1997(a)	R.1990 d.449	22 N.J.R. 2751(b)
18:26-9.8	Post tax amnesty: administrative correction	________	________	22 N.J.R. 2752(a)

Most recent update to Title 18: TRANSMITTAL 1990-5 (supplement August 20, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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19:6-1, 3	Hackensack Meadowlands District Building Code	22 N.J.R. 2126(a)		
19:8-1.1	Garden State Parkway: services vehicles north of interchange 105	22 N.J.R. 2128(a)	R.1990 d.479	22 N.J.R. 3164(a)
19:25	Election Law Enforcement Commission rules	22 N.J.R. 2251(a)		
19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Fee schedule for review of applications	22 N.J.R. 1999(a)		

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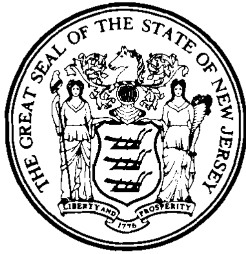
N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:41-1.3	Casino employees license display	22 N.J.R. 1911(a)	R.1990 d.448	22 N.J.R. 2752(b)
19:41-7.2A	Applicant for a casino license (repeal)	22 N.J.R. 2651(a)		
19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:45-1.1, 1.26, 1.26A	Redemption of checks	22 N.J.R. 1911(b)		
19:45-1.1, 1.34, 1.35, 1.46, 1.46A	Automated coupon redemption machine: 90-day experiment	Expires 11-25-90	________	22 N.J.R. 2542(a)
19:45-1.9A	Transportation expense reimbursements	22 N.J.R. 2913(a)		
19:45-1.11A	Casino licensees and applicants: jobs compendium submissions	22 N.J.R. 2253(a)		
19:45-1.24A	Wire transfer of funds	22 N.J.R. 1700(a)		
19:45-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
19:46-1.6	Gaming equipment	22 N.J.R. 2914(a)		
19:46-1.10	Double-spot blackjack layout: 90-day experiment	Expires 11-11-90	________	22 N.J.R. 2343(a)
19:47-1.6	Five times odds at craps: 90-day experiment	Expires 10-21-90	________	22 N.J.R. 2187(b)
19:47-1.6	Five times odds at craps	22 N.J.R. 2254(a)		
19:47-2.14	Double-spot blackjack layout: 90-day experiment	Expires 11-11-90	________	22 N.J.R. 2343(a)

Most recent update to Title 19K: TRANSMITTAL 1990-8 (supplement August 20, 1990)



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