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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1994

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **December 7, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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 Christine Todd Whitman
Executive Order No. 24(1994)
Free Cuba Task Force

Issued: October 11, 1994.
Effective: October 11, 1994.
Expiration: Indefinite.

WHEREAS, the Cuban people have demonstrated a longing for freedom and democracy by expressing increasing and visible opposition to the communist regime in Cuba; and

WHEREAS, in light of the liberation movements that have resulted in freedom for the people in the former Soviet Union and in Eastern Europe, the Cuban-American community in New Jersey looks forward to the time when similar democratic reform may occur in Cuba; and

WHEREAS, the Cuban-American community in New Jersey awaits the day when the Cuban people are liberated from communist dictatorship, and the Cuban people are free to form a government that is democratic, respects human rights and provides due process of law to its citizens; and

WHEREAS, a liberated Cuba will enable the Cuban people to engage in economic, social, cultural and educational exchanges with the people of the United States, including the people of New Jersey; and

WHEREAS, a free and open exchange of ideas, people and goods will benefit the people of Cuba as well as the people of New Jersey; and

WHEREAS, New Jersey contains the second largest population of people of Cuban descent in the United States and should, therefore, study the immigration process and its possible impact on New Jersey and its population and develop appropriate procedures to respond to a potential influx of immigrants; and

WHEREAS, Executive Order No. 89 (Florio) directed the Department of Commerce and Economic Development to conduct a study to determine the likely social, economic, and cultural consequences that would result from the liberation of the people of Cuba; and

WHEREAS, the liberation of the people of Cuba is becoming increasingly more imminent and Executive Order No. 89 (Florio) should be reconstituted in recognition of the current situation in Cuba.

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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. Executive Order No. 89 (Florio) is hereby superseded by this Order.
2. The New Jersey Department of Commerce and Economic Development shall create a Free Cuba Task Force ("Task Force"), which shall conduct a study to determine the likely economic, social, immigration and cultural consequences that would result from the liberation of the people of Cuba.
3. The Task Force shall prepare a plan to be presented in a report setting forth a strategy that will enable the State of New Jersey and the people of Cuba to participate, for mutual advantage, in the economic, social and cultural opportunities that would result from democratic reform in Cuba. The report shall delineate appropriate steps to be taken with respect to immigration issues which may impact on New Jersey as a result of these developments.
4. The Task Force shall, whenever necessary, coordinate this effort with any and all other State departments having relevant expertise or knowledge of such issues.
5. The Task Force shall consist of fifteen members appointed by the Governor, including the Commissioner of the Department of Commerce and Economic Development who shall serve as an ex officio member and shall chair the Task Force. In the Commissioner's absence, his designee shall serve as chairperson of the Task Force.
6. The Department of Commerce shall report its findings to me no later than six months following the date of this Order and every six months thereafter.
7. This Order shall take effect immediately.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Homelessness Prevention Program

Proposed Readoption with Amendments: N.J.A.C. 5:12

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27C-24, 52:27D-280.
Proposal Number: PRN 1994-589.

Submit written comments by December 7, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

N.J.A.C. 5:12, which sets forth the rules for the Homelessness Prevention Program, is scheduled to expire on December 27, 1994, pursuant to Executive Order No. 66(1978).

The Department of Community Affairs has reviewed these related rules and finds that they continue to be necessary and appropriate for the fair and orderly administration of the Prevention of Homelessness Act (1984), N.J.S.A. 52:27D-280 et seq.

Under the Prevention of Homelessness Act (1984), as implemented by N.J.A.C. 5:12, people who are homeless or in imminent danger of homelessness may receive temporary assistance to enable them to find or retain housing that they will, with the temporary assistance, be able to keep once the period of assistance has passed. Unlike the public welfare system, the program is not designed to assist those who are chronically in need of assistance and is not so funded that it can provide the help that they require. The rules include program eligibility requirements and habitability standards.

This proposal includes several proposed amendments. They are as follows:

1. At N.J.A.C. 5:12-2.1(e), the making of a false or misleading statement, or a material omission, in a document submitted to the Program is made a cause of ineligibility. Current rules only make a person ineligible for fraud or abuse in another governmental assistance program. The sentence making the provision inapplicable to any finding of fraud, abuse or material misrepresentation that has been reversed on final appeal is proposed to be deleted because it is unnecessary; a finding that has been reversed is no longer a finding.

2. At N.J.A.C. 5:12-2.1(g)2, a tenant shall be required to have lived in a rental unit for at least three months before becoming eligible for assistance with back rent. It has been the experience of the Program that tenants who move into a unit, pay the security deposit and the first month's rent, and make no payments thereafter are not stable tenants who can reasonably be expected to keep the unit once the period of assistance has ended.

3. At N.J.A.C. 5:12-2.1(i)1, eligibility for mortgage assistance is to be limited to persons who own single unit residences (which may include condominium units). The purpose of the program is only to prevent people from losing the units in which they live, not to help them keep properties that are also investment properties.

4. At N.J.A.C. 5:12-2.1(i)3, the limitation on the amount that can be loaned to homeowners is to be reduced from six times 120 percent of the monthly "Fair Market Rental" (FMR) established for the Section 8 Existing Housing Program to six times the FMR. Recently, the FMR figures, which had been quite low, were raised substantially. A monthly assistance payment not exceeding the amount of the monthly FMR is therefore appropriate.

5. At N.J.A.C. 5:12-2.1(i)2, eligibility for mortgage assistance is to be limited to households with only one mortgage on the property. It has been the experience of the program that households with more than one mortgage are unlikely to be able to keep the property once the period of temporary assistance has ended and that the Program loan is unlikely to recover the money that it has advanced.

Social Impact

Failure to readopt these rules would have an adverse social impact since it would eliminate the procedures and standards under which homelessness prevention assistance is provided and would thereby contribute to increased homelessness. The proposed amendments address issues that have arisen in the course of administering the Program and should advance the goal of fair and orderly distribution of the limited funds available to those most able to use it efficiently in order to regain the ability to keep their homes.

Economic Impact

In Fiscal Year 1994, the Program spent approximately $5,307,000 to assist 2,609 households in avoiding homelessness. In Fiscal Year 1993, $4,587,298 was spent to assist 2,561 households.

The proposed amendments would allow the Program to redirect available funds to the detriment of those who would no longer qualify and to the benefit of others for whom the money would not otherwise be available. To the extent that the amendments allow the Program to recover money loaned to homeowners, there will be more money available to help others.

Regulatory Flexibility Statement

These rules affect persons who are homeless or imminently threatened by homelessness. They do not affect small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:12.

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

5:12-2.1 Eligibility

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

(e) No person or household found in any administrative or legal proceeding, in which notice and an opportunity to be heard have been given, to have committed fraud or abuse in another governmental assistance program, including, without limitation, other programs providing rental subsidies, or to have made [any material misrepresentation to the Program] **a false or misleading statement or a material omission in any submission to the Program,** shall be eligible for assistance. [This provision shall not apply, however, to any case in which a finding of fraud, abuse or material misrepresentation has been reversed on final appeal.]

(f) (No change.)

(g) No person or household determined by the [Bureau of Housing Services] **Program** to be unlikely to pay shelter costs after the period of assistance has ended shall be eligible for assistance.

1. Program staff will work with each applicant in the preparation of a budget that will be of use in determining the applicant's ability to carry shelter costs.

2. No person or household shall be eligible for assistance with back rent unless they have resided in the housing unit for at least three months prior to falling into arrears.

(h) (No change.)

(i) Assistance to any person or household facing foreclosure as a result of mortgage or property tax arrearages shall be in the form of a loan which shall be secured by a recorded mortgage.

1. No person or household shall be eligible for a mortgage loan unless the home is an owner-occupied **single family** dwelling (which may be an attached or detached house or a condominium unit) that [was] **shall have been** owned and occupied by the applicant for at least one year prior to falling into arrears on the mortgage loan or property taxes.

2. No person or household shall be eligible for a mortgage loan in the event of initiated or ongoing bankruptcy proceedings **or in the event that the property is encumbered by more than one mortgage.**

3. The total amount of any mortgage loan shall not exceed an amount equal to [720] **600** percent (six times [120] **100** percent) of the monthly "Fair Market Rental" as defined for the Section 8 Existing Program for the region in which the property is located, as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development.

(a)

DIVISION OF FIRE SAFETY

Uniform Fire Code
Fire Service Training and Certification
Proposed New Rule: N.J.A.C. 5:18-2.22
Proposed Amendments: N.J.A.C. 5:18-1.5, 2.7, 2.8, 3.3, 3.4, 3.5, 4.9, and 4.13; 5:18C-2.4

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-25d, 52:27D-198 and 52:27D-2.19.

Proposal Number: PRN 1994-566.

Submit written comments by December 7, 1994 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX Number: (609) 633-6729

The agency proposal follows:

Summary

This proposal is a compilation of changes, corrections and clarifications to both the Fire Prevention Code and the Fire Safety Code. These changes are as follows.

At N.J.A.C. 5:18-1.5, the definition and code requirements for bed and breakfast establishments are modified to include facilities with up to 50 occupants, as well as to clarify requirements for fire alarms at N.J.A.C. 5:18-4.9 egress at N.J.A.C. 5:18-3.5 and 4.11 and vertical opening protection at N.J.A.C. 5:18-4.13. The "guest house" definition is changed to "bed and breakfast."

Provisions are added at N.J.A.C. 5:18-2.7 and 2.22 that require traveling circuses and carnivals to register with the Division and to provide basic information related to compliance with fire safety requirements and dates and locations of operations at N.J.A.C. 5:18-2.22. Registration fees are established at N.J.A.C. 5:18-2.8.

Multiple attached one family dwellings are classified as R-3. Group rentals are classified as R-2. Bed and breakfasts are classified as either R-1 or R-3 depending on the number of guests they are designed to accommodate. These classifications are contained in N.J.A.C. 5:18-1.5 in the definition of "use" or "use group."

Requirements for the use of flame producing devices are expanded at N.J.A.C. 5:18-3.3 to include any such use in or on a building or structure. Additionally, specific requirements for fire watches and fire extinguishing equipment are classified at N.J.A.C. 5:18-3.3(d)2 and 3.

Requirements for propane grills at N.J.A.C. 5:18-3.3(h)3 are clarified to include only portable units fueled by liquified propane gas. Use of such units under any building overhang is prohibited.

Requirements for smoke detection systems at N.J.A.C. 5:18-4.9 in hotels and multiple dwellings are modified to require any new systems to be installed in accordance with the Uniform Construction Code. Additionally, if battery operated detectors are installed in dwelling units, requirements are maintained at N.J.A.C. 5:18-3.4 to require the owner maintain and test the units.

Emergency lighting requirements are expanded at N.J.A.C. 5:18-3.5(e)6 to include any occupancy with two or more means of egress. Also specific language is added to require these units be maintained in an operational condition at all times.

Requirements for asphalt kettles are modified at N.J.A.C. 5:18-3.3(n) to eliminate removal of valve handles as an acceptable means of securing tanks.

The proposal amends the facility requirements at N.J.A.C. 5:18C-2.4 for smoke buildings and live burn facilities to require a second means of egress from every floor instead of the current requirement of a second means of egress from every room. It also recogizes new technologies, such as propane simulators used for live fire training and sets forth minimum requirements for their use.

Social Impact

The requirements for bed and breakfast establishments will assure enforcement of the code in all such occupancies and enhance the level of safety for the occupants. The requirements for emergency lighting will assure that any occupancy with more than 50 occupants will have these devices in place as already required for exit signs.

Requirements for carnivals will assure adequate notification to the Division and local fire officials so that thorough inspections can be performed to assure the safety of the general public.

Clarification of the applicability of the code in residential uses will assure the protection of the general public while maintaining the privacy of single family dwellings.

The proposed amendments will also allow existing fire training facilities to continue to provide the necessary training to the fire service, as well as set forth minimum requirements for the safe use of live fire training simulators.

Economic Impact

Carnivals will be required to register and pay a fee of $50.00, $75.00 or $100.00, depending on the number of locations, for a carnival registration certificate. The information submitted to the Division in the application for the certificate will be given to the fire official of all municipalities in which the carnival will stop, thereby eliminating any need for multiple applications and approvals. This will prevent last minute notifications and potential delays and/or cancellations of carnivals due to previously unknown requirements.

Most bed and breakfast establishments will experience reductions in their registration fees as a result of the creation of new classifications. Fire suppression requirements have been modified to allow for equivalent but less costly alternative systems.

Expansion of the emergency lighting provisions will require some occupancies to install these units. The main groups impacted are business uses with between 50 and 100 occupants and mercantile occupancies with more than 50 occupants or with floors below or more than one story above grade. It is estimated that the cost of installing emergency lighting is likely to be $100.00 or more, depending on the number of units and the amount of wiring, if any, required to be done. The buildings affected by the proposed amendments should only need two to four battery-operated units.

The replacement of the existing provisions for alarm systems in hotels and multiple dwellings with compliance with the Uniform Construction Code is for new installations only. As this requirement has existed for at least 10 years, all buildings affected should already be in compliance.

Regulatory Flexibility Analysis

Inasmuch as the requirements of the Uniform Fire Code are necessary for the protection of the health, safety and welfare of all persons who enter buildings and premises subject to the Code, no distinctions can be made between those owners of buildings and facilities subject to the Code who qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and those who do not.

To the extent that volunteer fire companies are deemed to be "small businesses," the proposed amendment will have a beneficial impact and will allow existing facilities used for firefighter training to continue in use, as well as provide minimum guidelines for the use of live fire training simulators. This will be beneficial to fire service entities that might fall within the definition of "small businesses" to the same extent that it would be to other fire service entities. No special provisions for such "small businesses" are necessary or appropriate.

Registration of carnivals will require an application for registration the payment of a fee based on the number of locations. The requirements for permits, fees for permits and all requirements for records and documentation are contained in existing regulations. No professional services will be required.

No additional requirements or costs are imposed on bed and breakfasts.

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

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192

et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

"Bed and breakfast" means a facility providing sleeping or dwelling accommodations to transient guests which:

1. Is comprised of a structure originally constructed as a private residence or a bed and breakfast;

2. Includes individual sleeping accommodations for 50 or fewer guests;

3. Has at least one dwelling unit occupied by the owner of the facility as his place of residence during any time that the facility is being used for the lodging of guests;

4. Has not less than 300 square feet of common area for the exclusive use of the guests, including, but not limited to, parlors, dining rooms, libraries and solariums;

5. Prohibits cooking and smoking in guest rooms;

6. Provides a meal to the guests in the forenoon of each day but does not operate as a restaurant open to the general public;

7. Is not a "rooming house" or "boarding house" as defined in N.J.S.A. 55:13B-3; and

8. Does not allow:

i. More than 15 percent of the guests to remain more than 30 successive days or more than 30 days of any period of 60 successive days or more than 30 days of any period of 60 successive days; or

ii. Any guest to remain more than 60 successive days or more than 60 days of any period of 90 successive days.

"Bed and breakfast guesthouse" means a bed and breakfast designed to accommodate at least six guests, but not more than 25 guests.

"Bed and breakfast homestay" means a bed and breakfast designed to accommodate five or fewer guests.

"Bed and breakfast inn" means a bed and breakfast designed to accommodate at least 26 guests, but not more than 50 guests.

"Carnival" means a traveling circus or other traveling amusement show having one or more of the following uses:

1. Mobile enclosed structures used for human occupancy;

2. Tents or temporary tension membrane structures requiring a permit in accordance with N.J.A.C. 5:18-2.7(b)3iii;

3. Any use involving open flame or flame producing device(s).

...

["Guest house" means a facility providing sleeping or dwelling accommodations to transient guests which:

1. Is comprised of a structure originally constructed for the purposes of a private residence;

2. Includes individual sleeping accommodations for 15 or fewer guests;

3. Has at least one dwelling unit occupied by the owner of the facility as his place of residence during any time that the facility is being used for the lodging of guests;

4. Has not less than 300 square feet of common area for the exclusive use of the guests, including, but not limited to, parlors, dining rooms, libraries and solariums;

5. Prohibits cooking and smoking in guest rooms;

6. Does not serve food to the general public on the premises;

7. Is not a "rooming house" or "boarding house" as defined in N.J.A.C. 55:13B-3; and

8. Does not allow any guest to remain more than 30 successive days or more than 30 days of any period of 60 successive days.]

...

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put, as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy [which use would] **that** would subject it to the provisions of this Code if it were a building or premises.

1.-14. (No change.)

15. "Use Group R-1": This Use Group shall include all hotels, motels, and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than 30 days. **This definition shall also mean and include bed and breakfast guesthouses and bed and breakfast inns.**

16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses, **group rentals where the occupants are living independently of each other** and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature. **This Use Group shall also include attached one- and two-family dwelling units which do not meet the definition for Use Group R-3.**

17. "Use Group R-3": This Use Group shall include all buildings arranged for the use of **detached** one- and two-family dwelling units, including not more than five lodgers or boarders per family. **This definition shall also mean and include:**

i. Bed and breakfast homestays; and

ii. Attached one- and two-family dwellings constructed in accordance with the Uniform Construction Code requirements for multiple single family dwellings.

18.-19. (No change.)

5:18-2.7 Permits required

(a)-(k) (No change.)

(l) No permit(s) shall be issued for a carnival, as defined in N.J.A.C. 5:18-1.5, if the carnival has not been registered in accordance with N.J.A.C. 5:18-2.21.

5:18-2.8 Fees: registration[,]; certificate of smoke detector compliance [and]; permit; **carnival registration certificate**

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

(e) The application fee for a carnival registration certificate shall be as follows:

1. For 10 or fewer locations: $50.00;

2. For 11 to 25 locations: $75.00;

3. For 26 or more locations: $100.00.

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

5:18-2.22 Registration of carnivals

(a) No carnival shall be operated at any time or at any location unless a carnival registration certificate has been issued by the Division.

(b) The owner of every carnival shall apply for a carnival registration certificate at least 30 days before the first intended operation. The application shall include the following:

1. Dates and locations of intended operation;

2. All uses requiring a permit under N.J.A.C. 5:18-2.7;

3. Complete plans for all mobile enclosed structures to be used for human occupancy;

4. Flame spread certifications, seating and usage diagrams for all tents;

5. Certificate of insurance;

6. Name, address and telephone number of the owner(s) of the carnival; and

7. Name of the person who will be with the carnival and will be responsible for securing all permits required by N.J.A.C. 5:18-2.7 and for the correction of any violations of this Code.

(c) Upon review and approval of the application, the Division will issue a carnival registration certificate to the owner. Additionally, copies shall be provided to all local enforcing agencies identified on the submitted schedule.

1. The certificate must be maintained by the responsible party identified pursuant to (b)7 above at all show locations and be available for inspection by the fire official.

2. Possession of a carnival registration certificate shall not relieve the owner of responsibility for obtaining permits as required by N.J.A.C. 5:18-2.7 or for otherwise complying with the requirements of this chapter.

(d) Any application for a carnival registration certificate shall be accompanied by the fee as set forth in N.J.A.C. 5:18-2.8.

5:18-3.3 General precautions against fire

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

(d) Any person using a torch or other flame-producing device for removing paint, [from any building or structure shall provide one approved portable fire extinguisher or water hose connected to the water supply on the premises where such burning is done. In all cases, the person doing the burning shall remain on the premises one hour after each use of the torch or flame-producing device.] **for the sealing of membrane roofs, or for any similar use in or around any building, structure or combustible material is responsible for the prevention of fire and shall do the following:**

1. Provide, in a ready state, within 15 feet, (4.6 meters) travel distance of the work being done, either an approved fire extinguisher having a minimum 2A rating or a water hose connected to a reliable water supply. If a water hose is used as the approved extinguisher, it shall be charged and be equipped with a suitable nozzle;

2. Provide shielding, wetting, or other approved means to protect exposed combustible material in close proximity of the flame. Approved stored pressure water fire extinguisher shall not be used to wet combustible material; and

3. Remain in the immediate vicinity for a minimum of one hour or a period of time sufficient to assure that no fire will result from the work that was done or to detect any fire that does occur, which fire shall be reported immediately.

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

(h) The following apply to open flame or light:

1.-2. (No change.)

3. [Propane] **Portable LP-gas** cooking equipment such as barbecue grills shall not be stored or used:

i. [on] **On** any porch, balcony or any other portion of a building[,];

ii. [within] **Within** any room or space of a building[,];

iii. [within] **Within** five feet of any combustible exterior wall[, or];

iv. [within] **Within** five feet, vertically or horizontally, of an opening in any wall[.]; **or**

v. Under any building overhang.

(i)-(m) (No change.)

(n) The following apply to asphalt (tar) kettles:

1.-4. (No change.)

5. When liquified petroleum gas cylinders or containers are utilized for fueling asphalt (tar) kettles, the LPG cylinder shall be protected against vandalism and tampering.

i. (No change.)

[ii. LPG cylinders or containers which cannot be secured in a protected area shall have the dome covers locked and secured or, if the container does not have a dome cover, the valve handle shall be removed or secured in the OFF position to insure against unauthorized opening of the LPG cylinders.]

Recodify existing iii. as **ii.** (No change in text.)

(o)-(w) (No change.)

5:18-3.4 Fire protection systems

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

(g) The following apply to fire alarm systems:

1. (No change.)

2. Battery operated smoke detectors in Use Group R-1 and R-2 buildings shall be maintained, tested and inspected as follows:

i. The owner of the building or his representative shall inspect each detector whenever a change of occupant occurs; and

ii. The owner of the building or his representative shall clean the detector and/or replace the batteries as necessary, but at least once a year, to assure proper operation.

5:18-3.5 Means of egress

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

(e) The following apply to signs and lighting:

1.-5. (No change.)

6. Emergency lighting units shall be maintained, operable and ready for use at all times and shall activate upon primary power failure. Nothing shall be placed so as to block or obstruct these devices.

i. Emergency lighting units shall be tested on at least an annual basis.

ii. The owner of the building or his representative shall maintain a written record of all maintenance and tests on the premises.

(f) (No change.)

5:18-4.9 Automatic fire alarms

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

1. (No change.)

2. In all buildings of Use Group R-1 and R-2 **and in R-3 bed and breakfast homestays;** [as follows:

i. Smoke detectors shall be installed and shall be Underwriters Laboratories, Inc. (U.L.), Factory Mutual Research Corporation (F.M.) or other nationally recognized testing laboratory listed ionization or photoelectric type detectors.

(1) Single station detectors shall have integral alarms capable of emitting a minimum sound intensity of 85 dbA at a ten foot distance, an easily seen and activated manual unit test button or approved alternative, and a power source monitor light or trouble signal.

(2) Multiple station detectors shall be either a series of interconnected single station detectors or smoke detectors of the non-self contained type which are interconnected to a common alarm system.

(3) All detectors shall be listed, shall meet the requirements of U.L. 217 when the detectors are of single station type and U.L. 268 when the detectors are of multiple station type, shall be installed and maintained as per manufacturer's recommendations and shall comply with NFiPA No. 72 E or No. 74 standards as applicable, except as otherwise provided in this section.

ii. All smoke detectors and/or supervised systems shall be powered by an alternating current (AC) constantly active electric circuit which cannot be deactivated by the operation of any interconnected switching device and shall comply with NFiPA-70 (National Electrical Code) requirements, except as otherwise provided in this section. All common area smoke detector units and systems shall be on circuitry that is connected into the building owner's electric meter. In dwelling units or guestrooms, battery-powered single station detectors may be installed provided that the owner of the building or his representative shall inspect each detector whenever a change of occupant occurs and shall clean the detector or replace batteries whenever necessary.

iii. Dwelling units or guestrooms shall have smoke detectors installed at locations as follows:

(1) Each dwelling unit or guestroom shall have a minimum of one approved single station smoke detector located in close proximity to each sleeping area.

(A) Smoke detectors shall be located so that the maximum distance from the detector to any sleeping area exit door shall not exceed 10 feet if outside the sleeping area or 15 feet if within the sleeping area.

(B) If any required detector is to be located closer than five feet to a kitchen or bathroom area, it shall be of photoelectric type only.

(2) A basement or cellar having direct access from within a dwelling unit and used solely by the occupants of that unit shall have a minimum of one approved smoke detector. Such basement detector(s) shall be interconnected with other units in the dwelling unless installed prior to the effective date of this subchapter.

(A) At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm(s).

(B) Basements or cellars that contain utility services or storage space for other dwelling units shall comply with common area requirements.

(3) In any dwelling unit other than a hotel room, rooming unit or efficiency apartment, the detector required to be in close proximity to each sleeping area shall be outside of the sleeping area.

iv. Common areas shall be required to have an approved system of multiple station detectors installed as hereinafter provided. In buildings of Use Group R-1, less than four stories in height above grade, other than school dormitories for students up to and including the 12th grade, and in buildings of Use Group R-2 less than six

stories in height above grade, the system shall not be required to be supervised or connected to an emergency power supply.

(1) Detection systems shall be powered by alternating current (AC), constantly active electric circuits that cannot be deactivated by the operation of any interconnected switching device and shall comply with NFiPA-70 (National Electrical Code) requirements, except as otherwise provided in this section.

(A) Systems shall consist of smoke detectors of the non-selfcontained type or single station detectors so interconnected that the activation of any one detector will simultaneously activate the individual alarms of all other detectors or other separate alarms in the system.

(B) Alarms shall be located so as to be effectively heard above all other sounds, by all the occupants, in every occupied space within the building not separated by fire walls having a minimum fire-resistance rating of two hours.

(C) All detection and control units, wiring, and systems installations shall be listed as conforming to U.L. 217, 268, and 864 requirements and shall comply with NFiPA No. 72A, No. 72E and No. 74 standards, except as otherwise provided in this section.

(D) The maximum number of single station detectors that can be interconnected in a multiple station system shall not exceed the number permitted in the installation manual or instructions provided with each detector and referenced in the detector marking.

(E) All components of any interconnected system shall be compatible with each other as indicated in the installation instructions provided with each such component.

(2) All public corridors up to 40 feet in length that form part of a means of egress shall have a minimum of one approved smoke detector.

(A) An additional smoke detector shall be installed for every additional 40 feet or part thereof.

(B) Detectors shall be located at a maximum distance of 20 feet from end walls.

(C) Where corridor width exceeds 10 feet, smoke detector spacing shall be reduced in accordance with NFiPA-72E standards.

(3) All interior stairways not enclosed by a minimum one hour fire-rated separation from other common areas or which function as a sole interior means of egress, shall have approved smoke detectors installed at each floor level at either the ceiling of the landing or the high point of the sloped staircase soffit.

(4) All interior common areas other than public corridors, interior stairs and basements or cellars shall have approved smoke detectors installed at spacings not to exceed 900 square feet of floor space coverage per smoke detector.

(A) No such detector shall be spaced further than 15 feet from the nearest wall or other vertical building element or be closer than three feet to a window, door or air vent unless not practicable or noted otherwise in NFiPA-72E standards.

(B) Attics with ceiling heights less than seven feet that are not used for any type of storage, and crawl spaces with ceiling heights less than four feet that are not used for any type of storage and are separated from adjacent building spaces by minimum 1½ hour fire rated walls and opening protectives shall not be required to have smoke detectors installed therein.

(5) Basements and cellars shall be subject to the following:

(A) All basements or cellars that lack a minimum one hour fire-rated smooth ceiling assembly shall have approved smoke detectors installed at spacings not to exceed 450 square feet of floor space coverage per smoke detector. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm. The maximum spacing between detectors in open joist ceilings perpendicular to the joists shall be 15 feet, and the maximum spacing between detectors parallel to the joists shall be 30 feet. Such detectors shall be installed on the bottom surface of the joists.

(B) All basements or cellars that have an existing approved minimum one hour fire-rated smooth ceiling assembly shall have a minimum of one approved smoke detector per 900 square feet of area. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening or other approved location where the earliest detection of fire would activate the alarm(s).

(C) Compartmentalized and partially enclosed basement or cellar areas shall have additional detectors as required to afford complete protection of the total basement/cellar area in conformity with the above spacing criteria. Where partitions do not extend beyond a distance of 18 inches below the ceiling surface, additional detectors shall not be required.

(6) Additional smoke detectors shall be required in all ceiling areas that are enclosed or separated by beams or similar type projections in order to afford complete protection of the total building area.

(A) Beams that project more than eight inches from ceiling surfaces and girders which support open joists or beams and have less than a four-inch clearance between the top of girder and ceiling surface, shall have smoke detectors spaced at a maximum distance of 20 feet perpendicular to the beam or girder projections.

(B) In building areas containing a single beam or girder that projects more than 12 inches from the ceiling surface, smoke detectors shall be located at a maximum distance of 10 feet from the beam or girder projection.

(C) Ceiling bays created by beams that exceed 18 inches in depth and that are spaced more than eight feet on centers, shall be treated as separate enclosed areas for determining the number of smoke detectors required.

(D) Additional smoke detectors shall not be required in atrium or coffered type ceilings that exceed 12 feet in height.

(E) Ceilings with beams or girders, or coffered type ceilings, or ceilings in atriums having a ceiling height of at least 12 feet, shall conform to the smooth ceiling requirements.

(7) All hotels four stories or more in height, all multiple dwellings six stories or more in height and having 30 or more dwellings units and all rooming houses with six or more occupants, any one of which is 62 years of age or older, shall have approved smoke detection systems located in all interior occupiable common areas, shall be connected to a supervisory type listed control panel conforming to U.L. 864 requirements and NFiPA No. 72A standards, except as otherwise provided in this section, and shall be powered by an approved emergency power source as required by NFiPA-70 (National Electrical Code).

(A) The control panel shall be of the multi-zoned type that will visually indicate the floor from which the alarm is activated.

(B) All such panels shall be located in accordance with NFiPA-72A standards or as directed by the local fire subcode official.

(8) A pre-signal alarm feature is not permitted.

(9) The separate zoning of floors in high rise buildings for selective floor evacuation is permitted at the discretion of the fire official.

(10) Existing common area smoke detection systems that were installed in compliance with this subchapter prior to its effective date, for which a construction permit was issued subject to plan review approval, shall be accepted as conforming to this section, unless the fire official shall determine, in accordance with N.J.A.C. 5:18-1.4(g), that a hazardous condition exists.

(11) With the approval of the local fire protection subcode official, fixed temperature or combination rate-of-rise and fixed temperature heat detectors may be substituted for smoke detectors in those locations where frequent nuisance alarms would be likely to occur. Such building spaces include but are not limited to garages, crawl spaces, uninhabitable attics, heater and boiler rooms, laundry rooms, kitchens, restaurants service areas and other rooms where the ambient temperatures are under 40 degrees Fahrenheit or are above 100 degrees Fahrenheit and/or have a relative humidity either under 20 percent or above 85 percent or where environmental conditions are likely to produce nuisance alarms.

(12) The maximum spacing between either heat detectors or the nearest side wall or partition and a heat detector shall not exceed the spacings permitted by Underwriters Laboratories, Inc. listings.]

[v.] **i.** (No change in text.)

ii. In dwelling units or guestrooms, battery-powered single station detectors may be installed, provided that the detectors are maintained in accordance with N.J.A.C. 5:18-3.4(g)2.

iii. In bed and breakfast homestays of Use Group R-3, the system shall not be required to be supervised or connected to an emergency power supply.

[vi.] **iv.** (No change in text.)

3.-4. (No change.)

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

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. (No change.)

2. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions.

3. Any new fire escapes shall be constructed and installed in accordance with the Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

[i. All occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.]

[ii.] **i.** (No change in text.)

[iii.]**4.** In all buildings of Use Group E, up to and including the 12th grade, buildings of Use Group I, rooming houses and child care centers, ladders of any type are prohibited on **all new and existing** fire escapes used as a required means of egress.

5. All occupants shall have unobstructed access to all new and existing fire escapes without having to pass through a room subject to locking.

6. In all bed and breakfast homestays, every sleeping room shall be provided with an approved window having sill height of not more than 44 inches.

Recodify existing 3. as **7.** (No change in text.)

(b)-(i) (No change.)

(j) Means of egress lighting shall be connected to an emergency electrical system conforming to NFiPA 70 (National Electrical Code) to assure continued illumination for a duration of not less than one hour in case of primary power loss in [the following buildings:

1. In all buildings of Use Group A, E, and I;

2. In all buildings of Use Group B containing more than 100 occupants;

3. In all buildings of Use Group M when greater than 3,000 square feet in area on any floor, or when having one or more floors above or below grade floor;

4. In buildings of Use Group R-1 containing more than 25 sleeping rooms;

5. In all buildings of Use Group R-2 in any means of egress which serves more than 50 occupants;

6. In all windowless buildings or portions thereof containing more than 50 occupants] **all buildings, rooms, or spaces required to have more than one exit or exit access.**

(k) In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated or self-luminous signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. Exceptions to (k) above:

i. Exit signs shall not be required in buildings of Use Groups I-1, R-2 and R-3 having a total occupant load, excluding staff, of 20 or less.

ii. Exit signs shall not be required when the second means of egress is a fire escape that is accessed directly from the individual sleeping rooms.

iii. Approved main exterior doors that are clearly identified as exits are not required to have "Exit" signs.

2.-4. (No change.)

(l)-(o) (No change.)

5:18-4.13 Protection of interior stairways and other vertical openings

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

(c) Interior stairways and other vertical openings connecting no more than three levels shall be enclosed with approved assemblies and opening protectives having a fire resistance as follows:

1.-9. (No change.)

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided by November 6, 1990 to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system **installed in accordance with NFPA 13 or 13R**; or

[ii. In buildings which meet the definition of a "guest house" in N.J.A.C. 5:18-1.5 if the following conditions are met:

(1) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c); and

(2) Any exit access corridor exceeding eight feet in length which serves two means of egress, at least one of which is an unprotected vertical opening, shall be separated from the vertical opening by a one-hour fire barrier; or]

[iii.] **ii.** In buildings with [less] **not more** than 25 guests in which the following conditions are met:

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

11. (No change.)

5:18C-2.4 Facility requirements

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

(f) Smoke building requirements are as follows:

1. (No change.)

2. The smoke building shall meet the following requirements:

i. There shall be an exterior exit or secondary means of egress [in every room] **on every floor**;

ii.-iii. (No change.)

iv. There shall be a means to provide emergency ventilation which may include **automatic or** manual control of roof openings, doors and exterior windows.

3. (No change.)

(g) (No change.)

(h) Live burn facility requirements are as follows:

1. The following apply to burn buildings:

i. The purpose of the burn building is to safely train firefighters in methods of interior fire suppression. Every [room should] **floor shall** have an exterior exit or a second means of egress.

ii. (No change.)

iii. Class B materials shall not be used for fuel except [as part of approved simulation] **when part of an engineered and designed system, such as propane or natural gas simulation, certified by the manufacturer as having been installed and maintained in accordance with the manufacturer's instructions and recommendations.**

[iv. Fire should be limited to short duration.

v.] **iv.** Emergency ventilation should be provided by **automatic or** manual control of the roof openings, doors, and exterior shuttered windows.

2. (No change.)

(i) (No change.)

(a)

DIVISION OF FIRE SAFETY
Uniform Fire Code
Life Hazard Uses
Proposed Amendment: N.J.A.C. 5:18-2.4A

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-198.
Proposal Number: PRN 1994-567.

Submit written comments by December 7, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

Camps where children of school age stay overnight are currently considered to be life hazard uses. Dining and recreation facilities at these camps are considered separate uses and are registered accordingly. The proposed amendment at N.J.A.C. 5:18-2.4A will create a new separate life hazard use category for overnight camps that also have dining and/or recreation facilities. Only one fee will be paid for the entire facility, rather than the multiple fees now paid.

The same considerations apply to schools. Since schools invariably include a public assembly use, be it an auditorium or a gymnasium, used for assembling the entire student body for certain functions, inspection of a school always involves this added inspection.

Schools and other public assembly uses they contain have one overarching similarity to the overnight camps. Both uses are occupied by children who are supervised by staff. In the case of overnight camps, these are resident staff people. The children know who is in charge. Among the camp activities that are generally the best supervised are those that take place within the dining hall or recreation building, even though these activities may involve entertainment during evening hours.

Social Impact

These facilities are already subject to registration and inspection under the Uniform Fire Safety Act. The creation of the new category for overnight camps will afford them treatment comparable to that given to schools.

Economic Impact

The creation of a single registration category will reduce fees paid by these types of facilities by up to two-thirds, while still providing sufficient funding to conduct the required inspections.

Regulatory Flexibility Statement

While the registration fees are based on the nature of the facility and the activity, not on the form of organization or size of the owner, smaller facilities will pay a proportionally lower fee. However, as the requirements of the Uniform Fire Code are necessary for the protection of the health, safety and welfare of all persons who enter buildings and premises subject to the code, no distinctions can be made for "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As the multiple camp/dining and/or assembly facility inspection (and fee) requirement is eliminated, all such camps should benefit economically.

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

5:18-2.4A Type Aa through Aj life hazard uses
(a)-(c) (No change.)
(d) Type Ad life hazard uses are as follows:
1.-4. (No change.)
5. Camps where children of school age stay overnight with a maximum permitted occupancy of fewer than 50 persons with dining and/or assembly facilities.
(e) (No change.)
(f) Type Af life hazard uses are as follows:
1.-5. (No change.)
6. Camps where children of school age stay overnight with a maximum permitted occupancy of 50 or more but fewer than 100 persons with dining and/or assembly facilities.
(g) Type Ag life hazard uses are as follows:
1.-3. (No change.)
4. Camps where children of school age stay overnight with a maximum permitted occupancy of 100 or more but fewer than 200 persons with dining and/or assembly facilities.
(h)-(i) (No change.)
(j) Type Aj life hazard uses are as follows:
1.-2. (No change.)
3. Camps where children of school age stay overnight with a maximum permitted occupancy of 200 or more persons with dining and/or assembly facilities.

(b)

DIVISION OF FIRE SAFETY
DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code; Uniform Construction Code Construction Boards of Appeal
Proposed New Rule: N.J.A.C. 5:18-2.11A
Proposed Amendments: N.J.A.C. 5:23-2.9, 2.34, 2.35, 2.36, 2.37 and 4.40

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124 and 52:27D-198.
Proposal Number: PRN 1994-568.

A **public hearing** on this proposal will be held on January 5, 1995 at the William Ashby Department of Community Affairs Building, 101 South Broad Street, Trenton, New Jersey, at 10:00 A.M.

Submit written comments by January 5, 1995 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

Section 15 of the Uniform Fire Safety Act, N.J.S.A. 52:27D-206, designates the construction board of appeals in each county or municipality, created pursuant to section 9 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-127, as the body empowered to decide appeals from actions and orders of local fire officials. There has been some confusion over the years as to how the boards are to deal with fire code appeals. The proposed new rule and amendments will establish procedural rules for hearing fire code appeals and expand upon existing rules for hearing construction code appeals. In order to improve the boards' ability to decide fire code appeals, one member of each board is required to be certified as a fire official. The 15-day appeals period (reduced from 20 days) is made applicable to construction code, as well as fire safety, appeals.

The new rule and amendments provide for the scheduling of hearings (including in exigent circumstances), that hearings shall be open to the public, and transcripts available for the transcription costs. A perfected appeal is described, and the current appeal fee of $50.00 established as a minimum, which can be increased to a higher fee not to exceed $100.00 as established by the board's local or county governing body. The requirements for a hearing quorum are set forth, as well as the manner of presentation of an appeal at hearing. The contents of the board's written decision are prescribed, along with bases for reduction of penalties. Direction on board decisional actions is given. The Division may assume jurisdiction of a case, in the public interest, if it is likely to have a serious, adverse impact on public health, safety and welfare. The board chairman is required to annually provide the Division, and keep current, a list of board members and alternates and a board contact person. Any board rules or modification thereto must be forwarded to the Division.

Social Impact

Clarification of the procedures applicable to both fire code and construction code appeals will benefit appellants, code officials and board members, all of whom will have a better idea of what is expected of them in connection with an appeal before a construction board of appeals.

Economic Impact

A fee not exceeding $100 is established at N.J.A.C. 5:18-2.11A(e) for persons filing appeals under the fire code. The $50.00 fee already existing for construction code appeals may be modified by the county or municipal governing body to be an amount not exceeding $100.00. Other board and appellant expenses will be administrative in nature, ranging in type and quantity with each appeal.

To the extent that having stated procedural rules reduces costs attributable to uncertainty as to what is expected, the proposed new rule and amendments will have a beneficial economic effect upon all parties involved in appeals to construction boards of appeal.

Regulatory Flexibility Analysis

The proposed new rule and amendments concern procedures to be followed in appeals in matters relating to the public health, safety and welfare. The procedures required to be followed by applicants as outlined in the Summary above are, in the judgment of the Department, not unduly burdensome upon any party, whether "small business" or not. The proposed new rule and amendments are intended to ensure that construction boards of appeal function in a uniform and efficient manner. Costs will be as described in the Economic Impact above; while not required, an appellant may wish to employ legal or subject matter professionals. No special provisions for "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. that would detract from this goal are either necessary or appropriate.

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

5:18-2.11A Construction board of appeals procedures

(a) The construction board of appeals shall meet in accordance with a schedule set by the chairman and, if required by its workload or to comply with (b) below, upon notice from the chairman. All hearings shall be open to the public and shall be recorded. Any party or interested individual shall be entitled to a transcript upon payment of the transcription costs.

(b) Except in cases of imminent hazards or in exigent circumstances, as determined by the fire official, the board shall schedule an appeal for a hearing within 45 days of the date on which the appeal is filed. Scheduled appeals shall not be adjourned or otherwise postponed without the prior approval of both the fire official and the appellant. In exigent circumstances, the board shall hear the matter within 10 business days of the fire official's written notice.

1. In imminent hazards, the provisions of N.J.A.C. 5:18-2.11(c) shall apply.

2. A fire official may determine that exigent circumstances exist if the violations do not constitute an imminent hazard but present a sufficient threat to safety to warrant a hearing prior to the expiration of 45 days. Except in extraordinary circumstances, the appeal of a penalty alone shall not be deemed to be exigent circumstances.

i. A fire official who determines that a matter requires an expedited hearing due to exigency shall prepare a written request documenting the need and serve it on the board chairman and the appellant within three business days of receipt of the appeal.

(c) Appeals shall be rejected if not received within 15 days after service of the order, notice or ruling being contested. To be perfected, the appeal must contain the information required by N.J.A.C. 5:18-2.11(a)3 and be accompanied by a fee, which shall be in the amount of $50.00, or such higher amount, not exceeding $100.00, as may be established by the county or local governing body having jurisdiction over the board, either at the time filed or as set forth below.

1. The board secretary shall review each submission for compliance with N.J.A.C. 5:18-2.11(a)3 and shall notify an applicant of any omissions and that the appeal will be rejected if the information or fee is not supplied at least 10 days prior to the hearing date. The fire official and board chairman shall be copied on the secretary's notification.

(d) To hear appeals of Uniform Fire Code matters, at least one board member who is a certified fire official, or an alternate member so certified, must be present.

1. An appellant may consent to a hearing by as few as three members, provided appellant also agrees that a majority decision of those present shall be deemed a final determination.

2. If the appellant and the fire official (or designated representative) concur, the matter may be adjourned to the next regular or specially-scheduled meeting of the board.

3. If a properly constituted quorum is not present and the appellant does not consent to a hearing with fewer than five members, or if both parties do not then consent to an adjournment, the appeal shall be deemed to have been denied and the appelant shall be eligible to appeal to the appropriate court of law.

i. If an appeal is thus deemed to be denied, the board secretary shall serve formal notice of such action on all parties within five days of the intended hearing date. The notice shall state that this completes the board's involvement and that the fire official may resume enforcement action.

(e) The board shall commence the hearing by stating for the record the date the action appealed from was served and the date the appeal was filed. The chairman, or in his or her absence the senior member, shall enter on the record the basis of the appeal. Thereafter, the matter shall proceed with the fire official or his or her designated representative explaining the basis for the action. The appellant or his or her representative shall present the basis for his or her disagreement.

1. Either party may testify or may present witnesses, written arguments or materials and may examine and cross-examine witnesses consistent with reasonable rules of procedure, due process and the interests of fairness. Any board member may question any witness at the conclusion of the questioning of the witness by the parties.

i. A board member shall not visit a site for purposes of review without prior notification to the chairman and to the parties. Any member who has visited a site subsequent to the filing of the appeal shall disclose that fact on the record prior to a party's presentation and shall be subject to questions from either party or any board member pertaining to his visit.

2. Either or both the appellant and fire official may present their case in person, through legal representatives or by written presentation.

i. If a written presentation is to be made to the board, either by the appellant or the fire official, the board and the other party to the appeal must be advised, in writing, at least five working days prior to the scheduled hearing date. The written notice must state the party's agreement that the hearing proceed to a decision with the written presentation being considered as the full participation of that party.

ii. If the appellant fails to appear or provide a written presentation, the appeal shall be dismissed.

iii. If the fire official or his or her designated representative fails to appear after receiving the required notice and no written presentation has been received, the board shall enter that fact on the record, consider the matter and render a decision consistent with sound application of the Uniform Fire Code and the interests of public safety.

iv. In seeking to settle a matter, neither the board nor any member shall discuss the issues with one of the parties outside the presence of the other.

3. The board shall hear the appeal, deliberate and render an oral decision based on the facts of record at the conclusion of the presentation. The decision shall be written, as specified below, within 10 business days of the conclusion of the hearing and shall be promptly served on the appellant and the local enforcing agency personally or by registered or certified mail. At the same time, the board shall file a copy of its decision with the Office of Regulatory Affairs, Division of Fire Safety. If both parties consent, service of

the written decision may be extended for a period not to exceed 30 days from the hearing. The failure to appear or specifically to withhold consent in a written presentation shall be deemed consent by that party to an extension of the time to prepare and serve a written decision.

i. The board's failure to hear, decide and serve a written decision within the time limits prescribed shall be deemed a denial for purposes of subsequent action by the local enforcing agency or the appellant.

ii. If the Division determines that the board's decision is not in accordance with (f) below, it shall send a written request for elaboration or correction. The board shall take necessary remedial action and respond to the Division in writing within 45 days.

(f) The written decision shall contain the following:

1. A statement of the date appellant received the violation or action being appealed, the date the appeal was filed, the appearances or absences of the parties and the board members participating.

2. A statement of the pertinent facts including the type of use, the violations or action appealed, the basis for the appeal and the basis for the violation or action. A copy of the local enforcing agency's action should be attached to the decision unless to do so would be unduly burdensome, in which case the omission shall be explained.

i. The decision shall disclose the names and areas of expertise of any expert witnesses, the party on whose behalf they testified and whether any materials not in the record were used by the expert. If so, it shall provide copies or description of such materials.

ii. In an appeal of a penalty, the board shall state the maximum permissible penalty applicable.

3. The board's analysis of the case containing its understanding of the code provisions and their application to the facts. If the board determines to deviate from the action taken by the local enforcing agency, it shall specifically explain the basis for its action in detail including reference to any technical code provisions relied upon in support.

4. A statement of disposition containing the board's determination.

(g) The board may affirm, reverse or modify the local enforcing agency's action. Decisions shall be by a majority of the members present and participating. The appellant's failure to secure a majority shall be deemed a confirmation of the local enforcing agency's action.

1. The board may reduce a penalty that is under appeal if it is clearly excessive or void it if shown not to be authorized by the Act or by the Code. The board shall specifically explain its reasoning in reducing a penalty which is below the maximum permitted and shall explain why the reduction will not impede the deterrence of future violations. In determining whether to reduce a penalty, the board shall consider the extra costs required of the local enforcing agency due to appellant's action or inaction regarding compliance. A penalty shall not be totally abated if the fire official demonstrates the lack of a good faith compliance effort prior to imposition of the penalty.

i. A penalty may not be reduced except to the extent that it is clearly excessive. No reduction may be made final unless the violation is abated at the time of the hearing or within 30 days thereafter.

ii. The initial penalty shall be automatically reinstituted if the violation remains unabated after 30 days. The board shall inform appellant of these facts.

2. On an appeal from a failure to issue a permit, the board may remand the matter for action or may direct that the permit be granted if the appellant is so entitled in accordance with the code. If the board determines to direct that the permit be granted, the fire official shall provide suggested conditions or limitations and the board shall direct that they be included or specifically explain the basis for any modifications or rejections.

3. On an appeal relating to a variation, the board may direct the local enforcing agency to grant the variation and shall impose such conditions as may be appropriate to comply with the intent and purposes of the code. The board shall not consider directing the granting of a variation unless the appellant's proper application to the local enforcing agency for a variation was denied or more than 30 days elapsed without action as of the date of the appeal. In acting on a variation, the board shall be bound by the provisions of N.J.A.C. 5:18-2.3.

4. On an appeal of a penalty, the appellant may not offer argument that the violation(s) for which the penalty was issued did not exist, and the board shall accept the existence of the violation(s) as having been proven, provided that a notice had been served and no timely appeal was entered.

(h) In all its decisions, the board shall give effect to the intent and purposes of the Uniform Fire Safety Act and the Uniform Fire Code, N.J.A.C. 5:18.

1. If the Division determines that any decision of a construction board of appeals is likely to have a serious adverse impact upon the health, safety and welfare of the public, the Division may assume jurisdiction in the case for the purpose of issuing and enforcing such orders as it may consider to be necessary in the public interest. Any such orders may be appealed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in the same manner as any other orders issued by the Division.

(i) The board chairman shall annually provide the Division with a list of the members and alternate members of the board, as well as the name and address of a contact person. Such information shall be updated whenever a change occurs. If the board establishes its own rules or modifies any existing rules, a copy of such rules shall be forwarded to the Division within 10 days of adoption.

5:23-2.9 Variations and exceptions

(a) (No change.)

(b) Except as otherwise specified in this chapter, no variations may be granted from any of the requirements of N.J.A.C. 5:23-2, 4 and 5.

5:23-2.34 Construction board of appeals

(a) There shall be established in each county of the State, a construction board of appeals to hear appeals from the decisions of **local** enforcing agencies **enforcing either the State Uniform Construction Code Act or the Uniform Fire Safety Act** in that county; provided that a municipality may establish its own construction board of appeals; and provided further, that where two or more municipalities have combined to appoint a joint enforcing agency for all subcodes, they may combine to establish a joint construction board of appeals. Such municipal or joint board of appeals shall hear appeals from municipal or joint enforcing agencies, as the case may be, **and from all local enforcing agencies enforcing the Uniform Fire Safety Act within the municipality or municipalities,** instead of the county board.

(b) The board chairman shall annually provide the Construction Code Element with a list of the members and alternate members of the board, as well as the name and address of a contact person. Such information shall be updated whenever a change occurs.

5:23-2.35 Applicant's right of appeal; procedure

(a) (No change.)

(b) The application for appeal shall be taken within [20] **15** business days of the receipt of written notice of the denial or other decision of the enforcing agency.

(c) (No change.)

(d) The application shall be accompanied by a fee in the sum of $50.00 [unless] **or such higher fee, not to exceed $100.00,** established otherwise by the local or county governing body. An application shall not be considered complete unless accompanied by the appeal fee. In the case of **an** appeal based on the failure of the enforcing agency to act within any time frame specified, the fee shall be waived.

(e) The time for appeal may be extended prior to a meeting upon application to the secretary of the board, or may be extended at any regular or special meeting of the board, by the affirmative vote of a majority of the board present.

1. Appeals for which no extension has been granted shall be rejected if not received within 15 business days after service of the

order, notice or ruling which is contested. To be perfected, the appeal must contain the information and the fee required pursuant to this section.

2. The board secretary shall review each submission for compliance with this section and shall notify an applicant of any omissions and that the appeal will be rejected if the information or fee is not supplied prior to the hearing date. The construction official and board chairman shall be copied on the secretary's notification.

5:23-2.36 Procedure of the board

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

(d) Scheduled appeals shall not be adjourned or otherwise postponed without the approval of both the construction official and the appellant.

(e) The board shall commence the hearing by stating for the record the date the action appealed from was served and the date the appeal was filed. The chairman, or in his or her absence the senior member, shall enter on the record the basis of the appeal. Thereafter, the matter shall proceed with the construction official or his or her designated representative explaining the basis for the action. The appellant or his representative shall present the basis for his disagreement.

1. Either party may testify or may present witnesses, written arguments or materials and may examine and cross-examine witnesses consistent with reasonable rules of procedure, due process and the interests of fairness. Any board member may question any witness at the conclusion of the witness' questioning by the parties.

i. A board member shall not visit a site for purposes of review without prior notification to the chairman and to the parties. Any member who has visited a site subsequent to the filing of the appeal shall disclose that fact on the record prior to a party's presentation and shall be subject to questions from either party or any board member pertaining to his or her visit.

2. The appellant and construction official may each present their case in person, through legal representatives or by written presentation.

i. If a written presentation is to be made to the board, either by the appellant or the construction official, the board and the other party to the appeal must be advised, in writing, at least five working days prior to the scheduled hearing date. The written notice must state the party's agreement that the hearing proceed to a decision with the written presentation considered to be the full participation of that party.

ii. If the appellant fails to appear or provide a written presentation, the board shall deny the appeal.

iii. If the construction official or his or her designated representative fails to appear after receiving the required notice and no written presentation has been received, the board shall enter that fact on the record, consider the matter and render a decision consistent with sound application of the Uniform Construction Code and the interests of public safety.

iv. In seeking to settle a matter, neither the board nor any member shall discuss the issues with one of the parties outside the presence of the other.

v. The board may decide to rehear an appeal on which a decision has been rendered in the absence of one or both parties if it deems the reason for absence to be valid.

(f) Procedures of the board in cases arising under the Uniform Fire Safety Act shall be in accordance with N.J.A.C. 5:18-2.11A.

5:23-2.37 Decision of the board

(a) Procedure:

1. The board shall hear the appeal, render a decision thereon, and file its decision [with a statement of the reasons therefore], **which shall be prepared in accordance with (d) below,** with the enforcing agency from which the appeal has been taken not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the appellant. Such decision shall also be filed with the Construction Code Element, Bureau of Regulatory Affairs, CN816, Trenton, NJ 08625. Decisions of the board shall be available for public inspection at both the offices of the bureau and the enforcing agency during normal business hours.

2. Such decision may affirm, reverse, or modify the decision of the enforcing agency or remand the matter to the enforcing agency for further action. [Whenever the board shall reverse or modify the decision of the enforcing agency, its statement of reasons therefor shall explain in specific detail the nature and extent of its disagreement with the enforcing agency.]

3.-7. (No change.)

(b) [Criteria:] Decisions of the board shall be in accordance with the following:

[1. Where an enforcing agency has failed to act on an application for a construction permit, the board may order the enforcing agency to act or may grant such permit if the applicant is otherwise entitled thereto, or may deny the permit.

2. Where an enforcing agency has denied an application for a construction permit, the board may reverse or modify such decision upon a finding that such was arbitrary, or based upon an erroneous interpretation of the regulations.

3. Where an enforcing agency has, pursuant to this subchapter, denied in whole or in part an application for a variation, or placed conditions upon the granting of a variation, the board may, upon making the same findings as are required by this subchapter, such grant variation, and establish any conditions of the variation. Except as is otherwise specified, no variations may be granted from any of the requirements of N.J.A.C. 5:23-2, 4 and 5.

4. Where the appeal is from an order to pay a monetary penalty, the board may reduce such penalty if it determines that the assessment was excessive; it may void such penalty if it determines that its assessment was unnecessary to bring about compliance, or that it was an inappropriate remedy under the circumstances of the case; or it may hold such penalty in abeyance until the issuance of a certificate of occupancy or some earlier event or period in anticipation of reducing or voiding such penalty where no further violation of the regulations are uncovered.

5. Where the appeal is based on any other action of the enforcing agency, the decision of the board shall give effect to the intent and purpose of the act and shall be consistent with the interests of the general health, safety and welfare.]

1. The board may reduce a penalty that is under appeal if it is clearly excessive or void it if shown not to be authorized by the Act or by the Code. The board shall specifically explain its reasoning in reducing a penalty which is below the maximum permitted and shall explain why the reduction will not impede the deterrence of future violations. In determining whether to reduce a penalty, the board shall consider the extra costs required of the local enforcing agency due to appellant's action or inaction regarding compliance. A penalty shall not be totally abated if the construction official demonstrates the lack of a good faith compliance effort on the part of the applicant prior to imposition of the penalty.

i. A penalty may not be reduced except to the extent that it is clearly excessive. No reduction may be made final unless the violation is abated at the time of the hearing or within 30 days thereafter.

ii. The initial penalty shall be automatically reinstituted if the violation remains unabated after 30 days. The board shall inform appellant of these facts.

iii. On an appeal of a penalty, the appellant may not offer argument that the violation(s) for which the penalty was issued did not exist, and the board shall accept the existence of the violation(s) as having been proven, provided that a notice of the underlying violation had been served and no timely appeal was entered.

2. On an appeal from a failure or refusal to issue a permit, the board may remand the matter for action or may direct that the permit be granted if the appellant is so entitled in accordance with the code. If the board determines to direct that the permit be granted, the construction official shall provide suggested conditions or limitations. The board shall either direct that these conditions or limitations be included or specifically explain the basis for not doing so.

3. On an appeal relating to a variation, the board may direct the local enforcing agency to grant the variation and shall impose such conditions as may be appropriate to comply with the intent and purposes of the code. The board shall not consider directing the granting to a variation unless the appellant's proper application to the local enforcing agency for a variation was denied or more than 20 business days have elapsed without action as of the date of the appeal. In acting on a variation, the board shall be bound by the provisions of N.J.A.C. 5:23-2.9.

(c) If the element has any questions regarding the board's decision, it shall send a written request for additional information or clarification to the board secretary. The board shall respond to the element in writing within 45 days of the receipt of the request by the board secretary.

(d) The written decision shall contain the following:

1. A statement of the date appellant received the notice, order or decision being appealed, the date the appeal was filed, the appearances or absences of the parties and the board members participating.

2. A statement of the pertinent facts including the type of use, the violations or action appealed, the basis for the appeal and the basis for the notice, order or decision. A copy of the local enforcing agency's notice, order or decision shall be attached to the decision unless to do so would be unduly burdensome, in which case the omission shall be explained.

i. The decision shall disclose the names and areas of expertise of any expert witnesses, the party on whose behalf they testified and whether any materials not in the record were used by the expert. If so, it shall provide copies or descriptions of such materials.

ii. In an appeal of a penalty, the board shall state the maximum permissible penalty applicable.

3. The decision shall include the board's analysis of the case, including its understanding of the code provisions and their application to the facts. If the board determines to deviate from the action taken by the local enforcing agency, or to direct that action be taken by the local enforcing agency, it shall specifically explain the basis for its action in detail including reference to any technical code provisions relied upon in support.

4. There shall be a statement of disposition containing the board's determination.

(e) In all its decisions, the board shall give effect to the intent and purposes of the State Uniform Construction Code Act and this chapter.

(f) Decisions of the board in cases arising under the Uniform Fire Safety Act shall be in accordance with N.J.A.C. 5:18-2.11A.

5:23-4.40 Construction boards of appeal

(a) (No change.)

(b) Rules concerning organization are:

1. Membership; term; qualifications of members:

i.-ii. (No change.)

iii. No more than two members of the board shall be selected from the same profession or business. At least one member of the board shall be as qualified as a plumbing subcode official, one as qualified as an electrical subcode official, one a registered architect, licensed professional engineer with building construction experience or other person as qualified as a building subcode official and one **be certified as a fire official, pursuant to N.J.A.C. 5:18A-4, and also be** qualified as a fire protection subcode official;

(1) (No change.)

iv. (No change.)

v. Each member shall be qualified by experience or training to perform his duties as a member of the board, which shall be no less than that which is required of a construction or subcode official, under section 8b of the act. Members of the board, **except for the member who is required to be certified as a fire official,** need not be certified. No member shall receive an appointment unless he shall meet at least these minimum requirements.

(1) Each member shall be required to attend a course offered by the Department for members of construction boards of appeals within 12 months of appointment if he or she has not already done so. Members currently serving on a construction board of appeals will have 12 months from the date on which the Department announces the availability of the course in which to complete [this course] **it.** The Department will notify each Board on the Department roster at least two months prior to this date in order to provide adequate service. Members who have completed the subcode official course **and the fire official course** offered by the Department pursuant to the **State** Uniform Construction Code Act **and the Uniform Fire Safety Act** [will] **shall** not be required to fulfill any additional educational requirement.

(2)-(3) (No change.)

vi. (No change.)

2.-6. (No change.)

(c) Rules concerning administration and enforcement are:

1.-3. (No change.)

4. Procedures governing appeals under the Uniform Fire Safety Act shall be in accordance with N.J.A.C. 5:18-2.11A.

(d) (No change.)

(a)

DIVISION OF FIRE SAFETY

Uniform Fire Code; Fire Code Enforcement; High Level Alarms; Fire Service Training and Certification

Proposed Readoptions: N.J.A.C. 5:18, 5:18A, 5:18B and 5:18C

Proposed New Rules: N.J.A.C. 5:18-2.13 and 2.17

Proposed Amendments: N.J.A.C. 5:18-1.1, 1.3, 1.4, 1.5, 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 2.12, 3.1, 3.11, 3.15, 3.16, 4.1, 4.2, 4.3, 4.13; 5:18A-1.1, 1.4, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3 and 4.7

Proposed Recodifications with Amendments: N.J.A.C. 5:18-2.3 as 2.14, 2.8 as 2.9, 2.9 as 2.10, 2.10 as 2.11, 2.11 as 2.19, 2.14 as 2.16, 2.15 as 2.18, 2.17 as 2.12A and 2.20 as 2.3

Proposed Recodification: N.J.A.C. 5:18-2.13 as 2.15, 2.19 as 2.20

Proposed Repeals and New Rules: N.J.A.C. 5:18-4.4, 4.5; 5:18A-2.4

Proposed Repeals: N.J.A.C. 5:18-1.6, 2.16 and 2.18

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198, 201 and 219.

Proposal Number: PRN 1994-569.

Submit written comments by December 7, 1994 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules concerning the Uniform Fire Code (N.J.A.C. 5:18), Fire Code Enforcement (N.J.A.C. 5:18A) and High Level Alarms (N.J.A.C. 5:18B) are scheduled to expire on January 4, 1995 and the rules concerning Standards for Fire Service Training and Certification (N.J.A.C. 5:18C) are scheduled to expire on February 5, 1995. The Department has reviewed these related rules and finds that they continue to be necessary for the orderly enforcement of the Uniform Fire Safety Act, P.L. 1983, c.383 (N.J.S.A. 52:27D-192 et seq.) and of P.L. 1984, c.31 (N.J.S.A. 52:27D-214 et seq.). Review of these chapters by the Department has, however, indicated the need for certain amendments, which are proposed in conjunction with the readoption.

N.J.A.C. 5:18, the Uniform Fire Code, includes the Fire Prevention Code and the Fire Safety Code and contains life hazard use classifications and various other administrative and enforcement provisions. N.J.A.C. 5:18A, Fire Code Enforcement, contains rules for the establishment, organization and administration of local, county and State enforcing agencies, including rules concerning fire officials. N.J.A.C. 5:18B, High Level Alarms, contains requirements for high level alarm systems intended to warn of any danger of overflow of above-ground storage tanks holding flammable liquid. N.J.A.C. 5:18C, Standards for Fire Service Training and Certification, contains rules on educational programs and facilities and certification requirements for firefighters and instructors.

The proposed readoption and amendments are intended to continue in effect the technical provisions and streamline the administrative provisions of the Uniform Fire Code. Specific changes are outlined as follows:

The existing wording at N.J.A.C. 5:18-1.1 is unnecessarily repetitive and does not provide the needed information in as clear a fashion. Moreover, it does not follow current Office of Administrative Law rulemaking editorial specifications.

At N.J.A.C. 5:18-1.3, reference to Appendix in the Fire Prevention Code (N.J.A.C. 5:18-3) should be in that Code in accordance with the organization required in the Office of Administrative Law's rulemaking specifications which mandate logical internal structure.

In N.J.A.C. 5:18-1.4, citations to the UCC have been modified here and throughout the proposal as UCC is defined in N.J.A.C. 5:18-1.5 and does not need further clarification in each individual section. N.J.A.C. 5:18-1.4(f) has been moved to N.J.A.C. 5:18-3.1(b)4 where it is more practical.

At N.J.A.C. 5:18-1.5, new definitions added include "day," "owner-occupied," "premises"; others modified are: "Fire Official," "local enforcing agency," "Use-Groups R-2 and R-3"; definitions of "hardware store" and "K-12 educational building" have been moved to N.J.A.C. 5:23-2.4(d); and the definition "nightclub," has been deleted.

N.J.A.C. 5:18-1.6 is being repealed because the Code is now fully effective and phasing in of requirements is no longer of any relevance.

N.J.A.C. 5:18-2.1 has been completely rewritten to clarify authority in residential units and to move language dealing with jurisdiction to N.J.A.C. 5:18A-2.2 where it is more appropriate. Current wording limits State jurisdiction for non-life hazard uses (LHUs) to imminent hazard cases. The Division preserves its option to enforce as resources permit and as it deems necessary, otherwise municipalities receive an unwarranted "benefit" by driving out a local enforcing agency (LEA). N.J.A.C. 5:18-2.1 as proposed will clarify enforcement, revise wording to comport with that in the Act and break thoughts into sentences for ease of understanding. It will also avoid reliance on "catch all" mentality, clarify the schedule of inspections and the codes/standards applicable. Requirements on police assistance are out of place in this current location. The present wording is misleading. As rewritten it clarifies the matter as an obligation on the fire official. The Department cannot require the police to provide support and should not encourage fire officials to use self-help. If fire officials are required to seek police intervention, the Department should be informed so that appropriate remedies may be considered.

At N.J.A.C. 5:18-2.2, the new definition of "premises" allows one word to replace three and aids readability. It also adds consistency to coverage and clarifies that the parties and not the fire official should determine who is responsible and makes it clear that both the owner and the tenant can be held responsible. The fire official can cite either for the violation. Moreover, there is joint responsibility for any use, not just life hazards.

Requirements for certificate of fire code status were relocated to this rule at N.J.A.C. 5:18-2.2(e). Additionally, wording was added to establish minimal fees not to exceed $35.00 for this item and to clarify who may request a certificate. This simplifies the procedure and eliminates costs if registration fees have been paid. The proposed amendment to subsection (b) avoids the paradox that a purchaser, or someone else who succeeds in ownership or control, who requests the certificate and has notice need not abate violations or pay penalties.

N.J.A.C. 5:18-2.3 deals with variances and has been recodified as N.J.A.C. 5:18-2.14. The requirements for the certificate of smoke detector compliance was recodified from N.J.A.C. 5:18-2.20 to 2.3.

N.J.A.C. 5:18-2.4 is made a more functional section while the previous substantive content has been retained. Definitions of "day care center," "day nursery" and "motor vehicle" have been added, and the definitions of "hardware store" and "K-12 educational building" moved from N.J.A.C. 5:18-1.5.

N.J.A.C. 5:18-2.5 was reworded for clarity. The requirements for covered mall inspections were modified. The rewording clarifies the intent that an inspection need not be limited to the common areas and that good cause is not necessary to inspect retail establishments. As rewritten it is now clear that the periodic life hazard use inspection requirement is satisfied if only the common areas are inspected. Also, since the Department does not regulate forms used by the local enforcing agency, the Department is deleting text at N.J.A.C. 5:18-2.5(c) that requires specific information on the form.

At N.J.A.C. 5:18-2.6, requirements for a separate registration survey and form were merged into a single application. Requirements for information to be provided were streamlined and reduced.

N.J.A.C. 5:18-2.7(a) is proposed to be deleted as there are no permits for these activities and this type of introduction is not necessary. The revised language serves to clarify the use of permits.

N.J.A.C. 5:18-2.8 has been recodified as N.J.A.C. 5:18-2.9.

N.J.A.C. 5:18-2.9 has been recodified as N.J.A.C. 5:18-2.10 and has been rewritten for clarity. Provisions on minimum periods for abatement have been relocated here from N.J.A.C. 5:18-2.16. A new provision on police assistance has been added at N.J.A.C. 5:18-2.10(f).

N.J.A.C. 5:18-2.10 has been recodified as N.J.A.C. 5:18-2.11. The section deals with service of notice and orders and has been rewritten to provide a more logical order of delivery of notice and orders that is easier to follow.

N.J.A.C. 5:18-2.12 pertains to penalties and has been rewritten to clarify wording and restructured for ease of use. Penalties are more properly apportioned based on degree of danger. N.J.A.C. 5:18-2.12(a), both existing and proposed, specifies a maximum penalty of $5,000 per violation per day. The proposed amendment replaces the existing text of 14 specific penalties with 11. To account for the possibility that an otherwise routine type violation presents a higher level hazard, a special hazard provision has been added at N.J.A.C. 5:18-2.12(b)10.

N.J.A.C. 5:18-2.12A and 2.13: the existing N.J.A.C. 5:18-2.17(b) was moved into N.J.A.C. 5:18-2.13 and revised for clarity. The application of fire suppression costs was clarified to include fires that are exacerbated by a violation, not simply started by a violation, which is rarely a possibility. The current N.J.A.C. 5:18-2.17(a) was recodified on 2.12A.

N.J.A.C. 5:18-2.16 and 2.17: the proposed changes recognize the need to issue orders in imminent hazard situations as well as the fact that the violator may not be the owner. It also provides for a specific content of the notice consistent with other violations. N.J.A.C. 5:18-2.16(a) specifies that the owner or violator correct a violation in a period not to exceed 24 hours.

Moreover, a violation marked as having been abated has the same effect as the rescision of the order, without the connotation that the order was issued in error. The modification includes a procedure for involvement with the Division and clarifies the point of contact while eliminating unnecessary wording. The change also reflects the intent to provide needed jurisdiction over areas adjacent to dangerous structures. Also added at N.J.A.C. 5:18-2.17 is a requirement for posting of evacuated premises in the same manner as required by the UCC.

N.J.A.C. 5:18-2.18 is former N.J.A.C. 5:18-2.15 and pertains to punitive closing. The section has been amended to provide consistency with other provisions and simplifies language.

All matters dealing with appeals at N.J.A.C. 5:18-2.11 were moved to N.J.A.C. 5:18-2.19 and rewritten for clarity. This modification provides for centralized treatment of all appeals and allows punitive appeal cases to utilize the same procedures developed for imminent hazards.

Existing N.J.A.C. 5:18-2.19 has been recodified as 2.20. The current N.J.A.C. 5:18-2.20 is recodified as 2.3.

N.J.A.C. 5:18-3.1 pertains to the purpose and scope of the Fire Prevention Code. New provisions have been moved here from N.J.A.C. 5:18-1.3(c) and 1.4(f).

At N.J.A.C. 5:18-3.11, a change corrects a typographical error in referencing N.J.A.C. 5:18-3.29(g)4.

The amendment to N.J.A.C. 5:18-3.15 makes it clear that the posting requirement applies to each room or space used for assembly or educational purposes.

The amendment to N.J.A.C. 5:18-3.16 removes the prohibition on above-ground storage tanks which is in conflict with the UCC.

The applicability of N.J.A.C. 5:18-4.1 is clarified. Provisions for comprehensive fire protection plans in subsection (c) are moved to N.J.A.C. 5:18-4.5.

N.J.A.C. 5:18-4.2 through 4.5 were rewritten, moved and consolidated for clarity and ease of use.

N.J.A.C. 5:18-4.13: the proposed amendments to N.J.A.C. 5:18-4.13 involve removing a past date and do not affect the enforcement of the section.

The amendment to N.J.A.C. 5:18A-1.1 parallels the change in N.J.A.C. 5:18-1.1. It provides clear citation guidance and eliminates unnecessarily repetitive and unclear wording.

At N.J.A.C. 5:18A-1.4, the definition of "fire district," "Fire Official" and "local enforcing agency" are amended, and that for "health care facility" deleted.

N.J.A.C. 5:18A-2.2 pertains to matter covered, jurisdictions and exceptions. The jurisdictional subsection, N.J.A.C. 5:18A-2.2(b), has been rewritten to clarify the jurisdiction of each agency. Most importantly, it specifically avoids the conflict inherent in the existing provisions on concurrent jurisdiction. It also clarifies the fact that interstate compact agencies may be inspected and made to conform without the imposition of fees or penalties. Notably, this allows for other types of enforcement actions such as injunctions. The provision at N.J.A.C. 5:18A-2.2(c) related to the United States has been clarified to aid in Code implementation. The final subsection (d) has been eliminated in its entirety since it is out of place in this section and its intent is incorporated into N.J.A.C. 5:18A-3.2.

N.J.A.C. 5:18A-2.3 has been modified to reflect the actual LEA operation, as the Division has shaped it to conform with its needs and objectives. The rewrite of paragraph (a)3 allows the elimination of current paragraphs (a)5 and 6. The date in existing paragraph (a)7 is no longer required and is, therefore, proposed to be deleted.

At N.J.A.C. 5:18A-2.4, requirements only applicable to fire district creation and dissolution were moved from N.J.A.C. 5:18A-2.3(d) and (e) to this section.

In N.J.A.C. 5:18A-2.5, responsibility of the Division was clarified and unnecessary wording removed.

N.J.A.C. 5:18A-2.6 has been modified to clarify existing policies regarding charging government agencies, appropriation of funds to LEAs and local collection of judgments.

N.J.A.C. 5:18A-2.7 has been modified to clarify effective dates for new enforcing agencies and to consolidate all requirements related to these matters.

N.J.A.C. 5:18A-2.8 has been rewritten to consolidate all requirements from throughout the UFC into one section.

At N.J.A.C. 5:18A-2.9, acceptability of the use of adjoining LEA's to perform conflict inspections has been added.

At N.J.A.C. 5:18A-2.10, the ability of the Division to act against an improperly formed LEA has been added. Allowances for all agencies to petition for reestablishment has been added regardless of the reason for the loss of the agency.

At N.J.A.C. 5:18A-2.11, reference is made to the statutory provision concerning hearings in order to make it clear that the statutory limitations on the right to a hearing apply.

N.J.A.C. 5:18A-3.2 has been completely modified to conform to changes in other sections and to clarify the role of the appointed legal counsel at N.J.A.C. 5:18A-3.2(d).

N.J.A.C. 5:18A-3.3(a)8 is revised to replace "survey" with "application," (a)12 is clarified, and fire officials functions are expressly stated to include coordinating transition to a successor fire official.

N.J.A.C. 5:18A-3.5 pertains to coordination with construction, fire subcode and other officials. The proposed new subsection (c) was moved here from N.J.A.C. 5:18-2.1(c).

At N.J.A.C. 5:18A-3.6, the proposed new subsection (f) was moved here from 5:18-2.5(e), and hotels and multiple dwellings are added as facilities to which the section's requirements apply.

N.J.A.C. 5:18A-4.3(d) was moved to N.J.A.C. 5:18A-4.6(a).

At N.J.A.C. 5:18A-4.5, the recertification cycle for fire officials and fire inspectors is being expanded from two years to three years. The number of CEU's required is increased proportionally, as is the recertification fee at N.J.A.C. 5:18A-4.7 from $30.00 to $45.00.

Social Impact

The proposed readoption and amendments will continue enforcement on a statewide basis of a uniform, minimum fire safety standard which has been in effect for 10 years. By elimination of unnecessary wording, and consolidating similar administrative provisions into logical sections, the rules further the objective of fair and uniform enforcement of the Uniform Fire Code.

Failure to readopt these rules would jeopardize fire safety in New Jersey by eliminating the standards under which fire inspections are conducted and the administrative rules under which enforcing agencies are organized. The existence of these standards and rules is mandated by the Uniform Fire Safety Act and the supplementary legislation concerning high level alarms.

Economic Impact

Continuing with rules that have been in effect for an extended period will assure that all businesses are equally affected by the provisions of the Code. The addition of provisions for securing a certificate of fire code status will reward businesses that are current in all fees and establish a fee of $35.00 for those that are not or when multiple requests are made. The extension of fire official/fire inspector certifications from two to three years will lessen the administrative burden for recertification without affecting either the fee or technical requirements.

Property owners must have a way of knowing with a reasonable degree of certainty what is required of them in order to have their property be fire-safe. The existence of uniform standards allows both local fire officials and property owners to know what must be done in each case. Failure to readopt would temporarily relieve owners of the obligation to comply with current standards, but it would also eliminate the predictability that results from continuity. Furthermore, failure to readopt the rules would most likely reduce the level of fire safety enforcement in the State, with consequent increase in loss of life and property due to fire.

Regulatory Flexibility Analysis

The proposed readoption, amendments and new rules of N.J.A.C. 5:18 impose compliance requirements in accordance with the Uniform Fire Code on the owners of new and existing buildings, many of whom may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Fire prevention and safety requirements are set forth in N.J.A.C. 5:18-3 and 4, respectively. Code compliance inspections of structures by local enforcing agencies are required. Structures must be registered, with fees charged based upon the life hazard use type of the structures, ranging from $70.00 to $3,250 per year. Permits are required for certain activities, with fees ranging from $35.00 to $1,380. Costs of compliance, in addition to these fees, will vary greatly depending upon the extent to which a building is not currently in compliance, and may include the employment of professionals, such as building contractors, electricians and plumbers. Application may be made for variances.

N.J.A.C. 5:18A, Fire Code Enforcement, regulates the establishment and operation of local enforcing agencies, which are government entities rather than small businesses, and fire official certification requirements. The latter include application and course content requirements for institutions and organizations seeking to provide fire official education programs. Such institutions and organizations, some of which may be small businesses, would incur the administrative costs of application, and the cost inherent in meeting the program course content requirements. Any professional services needed would be limited to instructor employment.

N.J.A.C. 5:18B sets forth the administrative compliance and technical requirements for "high level alarms" necessary to prevent the serious hazards presented by overfilling of flammable liquid storage tanks filled by pipeline. Owners of subject facilities may be small businesses, although the Department is not aware of any that are. Varying costs will be incurred in establishing and maintaining a high level alarm system, establishing procedures for the prevention of overfilling, and developing a fire and emergency plan. Professionals, such as engineers and safety specialists, may be employed. Applications for variations may be made.

N.J.A.C. 5:18C establishes standards for fire service training and certification. These requirements relate to individuals seeking Firefighter I certification, and instructors. Educational program standards apply to governmental entities or institutions of higher learning, neither of which are small businesses.

Inasmuch as these rules are necessary for the protection of the health, safety and welfare of all persons who enter buildings and premises subject to the Code, no distinctions can be made between those buildings and facilities subject to the Code that qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, and those that do not. The proposed readoption with amendments streamlines the administrative provisions of the Code and does not impose any additional reporting, recordkeeping or other compliance requirements on small businesses.

The proposed amendments make it clear that both the owners and/or tenants can be held responsible for violations, and that subsequent owners will be responsible for correcting unabated violations. The

proposed new provisions for securing a certificate of fire code status will reward businesses current in all fees, and establish a $35.00 fee for those that are not or if multiple requests are made.

The proposed amendments clarify requirements and make certain changes and corrections, as delineated in the Summary, for the purpose of preserving the safety of the general public. The physical and other requirements apply to all property owners, including those which may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, and are not dependent upon business size. The number of small businesses affected cannot be estimated reliably. The costs also cannot be estimated reliably, since market forces and owner preferences impact upon such costs, and vary with each situation regulated. No differentiation based upon businesses has been provided in the amendments, since fire safety violations must be corrected regardless of the size or organization of the affected business, as fires and explosions do not discriminate on these grounds.

Full text of the proposed readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 5:18, 5:18A, 5:18B and 5:18C.

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

5:18-1.1 Title; division into subchapters

(a) The regulations contained in this chapter shall be known as the "New Jersey Uniform Fire Code" and are referred to herein as the Code.

(b) [The Code is divided into four parts:

1. Subchapter 1 is entitled "General Provisions" and may be cited throughout the Code as N.J.A.C. 5:18-1, and when referred to in Subchapter 1 of this chapter, may be referred to as this subchapter.

2. Subchapter 2 is entitled "Administration and Enforcement" and may be cited throughout the Code as N.J.A.C. 5:18-2, and when referred to in subchapter 2 of this chapter, may be referred to as this subchapter.

3. Subchapter 3 is entitled "State Fire Prevention Code," and may be cited throughout the code as N.J.A.C. 5:18-3 and when referred to in subchapter 3 of this chapter, may be referred to as this subchapter.

4. Subchapter 4 is entitled "State Fire Safety Code" and may be cited throughout the Code as N.J.A.C. 5:18-4 and when referred to in subchapter 4 of this chapter, may be referred to as this subchapter.] **The Code is divided into four subchapters:**

1. N.J.A.C. 5:18-1, entitled "General Provisions";

2. N.J.A.C. 5:18-2, entitled "Administration and Enforcement";

3. N.J.A.C. 5:18-3, entitled "State Fire Prevention Code"; and

4. N.J.A.C. 5:18-4, entitled "State Fire Safety Code."

5:18-1.3 Intent and purpose

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

[(c) Whenever in the Fire Prevention Code adopted in subchapter 3 of this chapter, reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted herein.]

5:18-1.4 Applicability

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

(e) The planning, design and construction of new buildings and structures, or the planning, design and alteration or renovation of existing buildings and structures, to provide the necessary egress facilities, fire protection and built-in fire protection equipment shall be controlled by the New Jersey Uniform Construction Code, [N.J.A.C. 5:23-1 et seq.]; and any alterations, additions or changes in or to buildings and structures required by the provisions of this Code which are within the scope of the Uniform Construction Code shall be made in accordance therewith, unless specifically provided otherwise by this Code.

[(f) Existing buildings shall be treated as follows:

1. Buildings or other facilities built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used for such use as originally permitted, shall be exempt from the requirements of subchapter 3 of this Code pertaining to any of the following matters:

i. Fire protection of structural elements except as provided for existing buildings under the Uniform Construction Code;

ii. Isolation of hazardous operations: provided, however, that the fire official may require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where, in the judgment of the fire official, they are necessary to provide safety to life and property.

iii. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire official may prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property.

2. The requirements established for existing buildings by subchapter 4 of this Code shall apply to all buildings subject to them regardless of when the building was constructed or whether they met construction codes applicable to them at the time they were erected and first occupied.]

Recodify existing (g)-(h) as **(f)-(g).** (No change in text.)

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

"Day" means a calendar day, unless otherwise specified.

...

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency. **This term shall also include "Fire Marshal" where the fire official has been appointed pursuant to N.J.A.C. 5:18A-3.2.**

...

["Hardware store" means a building or location of less than 12,000 square feet offering for sale a variety of merchandise including, but not restricted to, limited amounts of tools and associated equipment, garden supplies and paints, and also offering limited quantities of building materials including, but not limited to, plumbing, electrical and carpentry supplies. The establishment may also provide services such as glazing, sharpening and repairs.]

...

["K-12 educational building" means an educational building serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.]

...

"Local enforcing agency" means a municipal **agency,** fire department, fire district or county fire marshal authorized by municipal ordinance to enforce the Act within a specific local jurisdiction[,] or, where such authorization has not been granted by local ordinance, it means the Department of Community Affairs. **"Local enforcing agency" shall also mean and include a county fire marshal authorized by ordinance or resolution of the board of chosen freeholders to enforce the Act in county facilities.**

...

["Nightclub" means any structure or portion thereof used primarily to provide for dancing or to present theatrical or musical entertainment or any other form of the performing arts and which affords less than 15 square feet net area per occupant where the service of food and beverage is incidental and where normal lighting levels are reduced during hours of operation. If the principal reason for attendance is to dance, to view a show, or to be entertained by a show or act, then the occupancy is to be defined as a nightclub even though full food service is offered.]

...

"Owner-occupied" when used in conjunction with "Use Group R-3" means a building serving as the residence of at least one holder of record of title to the property.

"Premises" means a specific locality, area of land or portion thereof, and shall include any buildings, structures or portions of buildings or structures thereon.

...

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy which use would subject it to the provisions of this Code if it were a building or premises.

1.-15. (No change.)

16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature. **This Use Group shall also include attached one- and two-family dwelling units which do not meet the definition for Use Group R-3.**

17. "Use Group R-3": This Use Group shall include all buildings arranged for the use of one- or two-family dwelling units, including not more than five lodgers or boarders per family. **This Use Group shall also include attached one- and two-family dwellings constructed in accordance with Uniform Construction Code requirements for multiple single family dwellings.**

18.-19. (No change.)

5:18-1.6 [Operative date] **(Reserved)**

[(a) The provisions of this Code pertaining to registration of life hazard uses, registration application, and annual registration fees and the collection thereof shall be effective upon promulgation of this Chapter.

(b) The remaining provisions of the Code shall become operative in each municipality upon adoption of an ordinance creating a local enforcement agency, but in no case later than August 18, 1985.

(c) The provisions of this Code found in Subchapter 4 shall take effect as provided in N.J.A.C. 5:18-4.1 except that the fire official may require partial or full compliance sooner where an imminent hazard shall have been found to exist.]

5:18-2.1 Enforcement authority

(a) It shall be the duty and responsibility of the [fire official] **agency having jurisdiction in accordance with N.J.A.C. 5:18A-2.2** to enforce the provisions of this Code as set forth herein.

1. Where no local enforcing agency has been created [by the local governing body having jurisdiction then it shall be the duty and responsibility of the Division of Fire Safety in the Department of Community Affairs (hereinafter cited as the Division), to] **the Division shall** enforce the provisions of this Code [as herein set forth] for life hazard uses or whenever conditions which constitute an imminent hazard are found to exist.

[i. The Division shall publish quarterly a roster of enforcing agencies which shall list the enforcing agency having general jurisdiction and the enforcing agency having jurisdiction for life hazard uses in each municipality, fire district and fire department area in the State. The listing shall determine the agency that has jurisdiction.

2. In any county in which a county fire marshal has been appointed, and has been authorized by resolution or ordinance of the board of chosen freeholders to serve as a local enforcing agency under the Act, the county fire marshal shall serve as the local enforcing agency for all county-owned or -leased facilities subject to the Act and shall have concurrent jurisdiction with the local enforcing agency for all facilities owned or leased by a local government or any instrumentality thereof.

3. The Division shall enforce the provisions of this Code, as herein set forth, for all facilities owned by the State or any board, commission or authority thereof, and shall have concurrent jurisdiction with the local enforcing agency or the county fire marshal for all facilities owned or leased by State, county and local governments and any instrumentality thereof.]

(b) The [fire official] **local enforcing agency** shall inspect all [structures and] premises, except [single-family and two-family dwellings occupied by the holder of title to the property and dwelling units within two-family and multi-family dwellings,] **owner-occupied detached Use Group R-3 structures used exclusively for dwelling purposes. These inspections shall be made in accordance with the schedule contained in the Code, when required under any cyclical inspection program and** as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with fire operations, endanger life or any **conditions constituting** violations of the provisions or intent of this Code or [any other ordinance affecting fire safety] **a locally adopted amendment. Except in the case of cyclical inspection programs or other good cause, inspections shall not include occupied dwelling units.** [Inspections shall not, in the absence of good cause, include occupied dwellings.]

(c) Whenever[, in the enforcement of the fire code and other codes and ordinances, it becomes] necessary to [subject a given building to multiple inspections in the same general time frame, it shall be the duty of all involved inspectors to coordinate their inspections and administrative orders as much as possible so that the owners and occupants of the structure shall not be subjected to inspections more numerous than necessary, nor multiple conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provisions of some law, ordinance or code of the jurisdiction, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.] **make an inspection to enforce any of the provisions of this Code, or whenever the fire official or his or her authorized representative has reasonable cause to believe that there exists in any or upon any premises any condition which makes such building or premises unsafe, the fire official or his or her authorized representative may enter such premises, at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this code, provided that if such premises be occupied, he or she shall first present proper credentials and demand entry; and if such premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry.**

1. No owner or occupant or any other persons having charge, care or control of any premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the fire official or his or her authorized representative for the purpose of inspection and examination pursuant to this Code. If the owner or occupant denies entry, the fire official or his or her authorized representative shall obtain a proper warrant or other remedy provided by law to secure entry.

[(d) Whenever requested to do so by the fire official, or his authorized representative, the chief of police may assign such available police officers as in his discretion may be necessary to assist the fire official in enforcing the provisions of this Code.

(e) Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the fire official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises unsafe, the fire official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this Code, provided that if such building or premises be occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry.

1. No owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the fire official or his authorized representative for the purpose of inspection and examination pursuant to this Code. If the

owner or occupant denies entry, the fire official or his authorized representative shall obtain a proper warrant or other remedy provided by law to secure entry.

(f) The fire official shall investigate, or cause to be investigated, every reported fire or explosion occurring within the jurisdiction that involves the loss of life or serius injury or causes destruction or damage to property. Such investigation shall be initiated immediately upon the occurrence of such fire or explosion; and if it appears that such an occurrence is of a suspicious nature, the fire official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire or explosion, take means to prevent access by any person or persons to such building, structure or premises until such person designated by law to pursue investigations into such matters become involved and shall further cooperate with such authorities in the collection of evidence and prosecution of the case.

(g) The fire official shall keep a record of all reported fires in life hazard uses and all facts concerning the same, including investigative findings and information as to the cause, origin and the extent of such fires and the deaths, injuries, and damage caused thereby.

(h) As provided in the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., neither a governmental agency nor a public employee is generally liable for injury caused by failure to inspect any property or by inadequate or negligent inspection of any property. A public employee is not liable if he acts in good faith in enforcing any law.]

5:18-2.2 Responsibility for compliance

(a) The owner shall be responsible for the safe and proper maintenance of the premises at all times.

(b) Owners of [buildings] **premises** which are, or which contain, [a life hazard use] **one or more uses subject to this Code,** shall have concurrent responsibility with [any] **the** owners of any [life hazard] **such** uses [within such buildings] for compliance with the Code. [Where building owners and use owners are separate persons, responsibility for compliance with the Code shall be determined by the fire official, provided that no] **No** person shall be required to abate any violations which he has no power to abate or to require to be abated. **If a violation is served on an owner who cannot comply due to lack of authority, within five days of receipt of the notice of violation, the owner shall either provide notice of the violation to the party with authority or inform the fire official of such party's name and address.**

(c) If an occupant of a premises creates conditions in violation of this Code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant can be held responsible for the abatement of said hazardous conditions.

(d) A person shall be deemed to have violated or caused to have violated a provison of this Code if an officer, agent or employee under his control and with his knowledge has violated or caused to have violated any of the provisions of this Code.

(e) Subsequent owners or those succeeding to control over the premises shall be responsible for correcting unabated violations and for the payment of outstanding fees and/or penalties whether or not they have requested a certificate of fire code status.

1. Upon request of the owner, contract purchaser, transferee or the authorized agent of any of them, the enforcing agency having jurisdiction over the premises shall issue a certificate either indicating that violations exist or that fees and/or penalties remain outstanding according to its records, or which states that its records indicate that no violations remain unabated and no penalties or fees remain unpaid. Upon request, the agency shall provide copies of the violations list and penalty orders.

2. If an owner is current in payments of applicable life hazard or non-life hazard fees, there shall be no charge for the first two certificates requested in any twelve month period. Thereafter, or if an owner has not made such payment, a notation to that effect shall be made on the bill and the requestor may be charged a fee for the issuance of the certificate not to exceed $35.00.

5:18-[2.3]**2.14** Variances

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

(d) Copies of all variance applications and records of the action taken on them shall be maintained as permanent public records by the fire official.

1. A [local] fire official shall promptly provide the Division with copies of all decisions granting or denying variances after they have been rendered.

(e) Variations to requirements found in the Uniform Construction Code may only be granted by the Construction Official in accordance with [N.J.A.C. 5:23-2.9] **the Uniform Construction Code.**

5:18-2.4 **Scope and classification** of [Life] life hazard uses [defined]

[The buildings, uses, and premises listed in N.J.A.C. 5:18-2.4B through 2.4D, other than those that are incidental or auxiliary to the agricultural use of a farm property, constitute life hazard uses which are subject to registration and periodic inspection requirements established by this subchapter.

(b) Where two or more life hazard uses exist at the same building or premises, each one shall be considered as separate and distinct for the purposes of this Code and shall be registered pursuant to N.J.A.C. 5:18-2.8]

(a) The premises and uses identified as life hazard uses shall be divided into four basic groups designated as types "A", "B", "C", and "D." The premises and uses included in each of these types are set forth in N.J.A.C. 5:18-2.4A, 2.4B, 2.4C and 2.4D, respectively. This designation is for reference purposes only and shall not be determinative of the degree of hazard associated with them. Within each group, the various uses shall be specifically identified or described and subdivided by the use of lower case letters.

(b) Premises that are incidental or auxiliary to the agricultural use of a farm property shall not be classifed as life hazard uses.

(c) Each individual life hazard use shall be registered separately and treated as separate and distinct for the administrative purposes of this Code whether or not there are other life hazard uses at the same premises.

(d) Wherever used in N.J.A.C. 5:18-2.4A, 2.4B, 2.4C and 2.4D, the following words shall have the meanings indicated:

"Day care center" shall include any facility licensed by the Department of Human Services as a day care center, regardless of the ages of the persons in the care of the center.

"Day nursery" shall include any facility licensed by the Department of Human Services as a day nursery.

"Hardware store" shall mean a building or location of less than 12,000 square feet offering for sale a variety of merchandise including, but not restricted to, limited amounts of tools and associated equipment, garden supplies and paints, and also offering limited quantities of building materials including, but not limited to, plumbing, electrical and carpentry supplies. The establishment may also provide services such as glazing, sharpening and repairs.

"K-12 educational building" shall mean an educational building serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.

"Motor vehicle" shall include all motor-powered means of transportation, including, without limitation, boats and airplanes.

5:18-2.5 Required inspections

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not any less often than specified herein:

1.-3. (No change.)

4. Type Da through Dc life hazard uses: once every three months. **The periodic inspection of a covered mall may be limited to the common areas.**

(b) Where a life hazard use is operated on a seasonal basis, the number of required annual inspections shall not be reduced. Inspections of type Ca through [Cg] **Ci** and type Da **through Dc** life hazard uses which are in operation for only a portion of the year shall be conducted immediately prior to opening and closing and twice during operation of the use.

[1. Inspections of covered mall buildings shall be limited to the common areas unless there appears to be good reason to inspect individual retail establishments.]

(c) Within 30 days following each annual and every other quarterly inspection of a life hazard use, the owner shall file an application for a certificate of inspection on forms provided by the local enforcing agency. Forms shall be provided either before or at the time of inspection. [The form shall request, and the owner shall provide, the information specified below, or where applicable, certify that it remains as stated on the registration survey.] The form shall be returned to the local enforcing agency [which shall review it and forward it to the Division.

1. Building owner's full name, business and residential addresses, and respective telephone number. If complete agent information is supplied, the owner need not supply residential information.

2. The full name, business and residential addresses, and telephone numbers of an agent authorized to accept service of documents including rulings, orders or notices.

3. For partnerships, the name and business addresses of all general partners.

4. For corporations, the name, residential and business addresses, and telephone number of the registered agent. In addition, if it is not a publicly traded corporation, the name, business and residential addresses, and telephone numbers of each officer, director, or stockholder holding 10 percent or more of the stock.

5. If the fire official or local enforcing agency has identified life hazard uses within the building, and such uses are separately owned, the use-owner's full name, residential address, and business and residential telephone numbers, as well as the name, business and residential addresses of any person authorized to accept service of rulings, actions, orders or notices. If complete agent information is supplied, the use owner need not supply residential information.]

(d) **Upon completion of a required inspection, the local enforcing agency shall issue a certificate of inspection.** A certificate of inspection shall not be issued until [the application is properly completed and reviewed and any] **all** violations cited have been corrected. The certificate of inspection shall be posted by the owner of the use in a conspicuous location therein.

[(e) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the Division of Fire Safety, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. A local enforcing agency may, by ordinance, establish reasonable fees to cover the cost of such inspections in accordance with N.J.A.C. 5:18A-2.3(b).

(f) If a building is a multiple dwelling or a hotel, as defined in N.J.S.A. 55:13A-3, or a rooming house or boarding house, as defined in N.J.S.A. 55:13B-3, the local enforcing agency shall send a copy of the certificate of inspection to the Division of Fire Safety at the time of issuance of the certificate.]

5:18-2.6 Registration of buildings and uses

(a) Whenever the Commissioner or any local enforcing agency shall have cause to believe **that** a building or use is a life hazard use, then the Commissioner or the agency shall submit a registration [survey] **application** to the owner [of the building or use]. It shall be a violation of the Code for an owner to fail to complete and return such [a survey] **an application** within 30 days.

1. (No change.)

(b) The owner of a life hazard use shall file with the Commissioner, upon forms provided by the Commissioner, [an application for a certificate of registration] **a registration application.** Each **registration** application shall include at least the following information:

1.-4. (No change.)

[5. A description of any storage or activity which would require a type 4 permit pursuant to this subchapter except for the exception provided by N.J.A.C. 5:18-27(b);

[6.]**5.** Where the owner of the use and the owner of the building in which it is located are not the same then the application shall include the same information for the owner of the building as is herein required for the owner of the use[;

7. The name, address, physical location and telephone number of the person responsible for the maintenance of the premises.

8. The name of the fire and liability insurance carriers, the policy number and policy amount].

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

(e) When applying for registration[, and thereafter as required by (d) above], the owner of each life hazard use shall appoint an agent for the purpose of receiving service of process and orders or notices issued by the Commissioner **or a local enforcing agency** pursuant to the Act **and designate the street address of the location at which such agent may be served.** Each agent shall be either a resident of this State **or a person who maintains a bona fide office in this State** or **shall be** a corporation licensed to do business in this State.

(f) If the ownership of a life hazard use is transferred, whether by sale, assignment, gift, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file with the Commissioner, within 30 days of the transfer, an application for a certificate of registration, [pursuant to (a) above] and appoint an agent for the service of process, pursuant to [(d) above] **this section.**

(g) (No change.)

(h) The owner of each life hazard use in the State shall pay to the Department an annual fee in the amount specified in this subchapter. The [annual registration fee shall be paid when due] **owner shall pay the annual fee within 30 days of the bill date.**

[(i) The owner of a life hazard use shall pay the annual fee within 30 days of the day on which it is demanded by the Department.] If the owner fails to do so, the Department may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon his record of docketed judgments the name of the owner and of the Department, a designation of the statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgment in the office of the clerk, but without prejudice to the owner's right of appeal. **The owner shall also be subject to a penalty in accordance with N.J.A.C. 5:18-2.12(b)8ii.**

1. (No change.)

5:18-2.7 Permits required

[(a) It shall be unlawful to engage in any business activity involving the handling, storage or use of hazardous substances, materials or devices; or to maintain, store or handle materials; to conduct processes which produce conditions hazardous to life or property; to install equipment used in connection with such activities; or to establish a place of assembly without first obtaining a permit from the fire official.]

[(b)](**a**) Permits shall be required[,] and [shall be] obtained from the [fire official,] **local enforcing agency** for [any of] the activities specified in this section, except where they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-7. (No change.)

Recodify existing (c)-(g) as (b)-(f) (No change in text.)

[h.](**g**) A permit shall remain in effect until revoked, or for one year unless a shorter period of time is otherwise specified. Permits are not transferable and any change in use, operation or tenancy shall require a new permit.

1. Exception: A type 1 permit for welding or cutting shall be [for various locations within the jurisdiction of a] **effective throughout**

the local enforcing agency's **jurisdiction** and shall be issued on an annual basis.

[(i)]**(h)** Any permit issued shall become invalid if the authorized work or activity is not commenced within six months after issuance of the permit, or if the authorized work or activity is suspended or abandoned for a period of six months after the time of commencement [except as provided for in N.J.A.C. 5:18-3].

Recodify existing (j) as (i) (No change in text.)

[(k) A permit issued under a pre-existing local fire prevention code shall remain valid for no more than one year from the date it was issued.]

5:18-[2.8]**2.9** Fees: registration, certificate of smoke detector compliance and permit

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

(d) The application fee for a certificate of smoke detector compliance, as required by N.J.A.C. 5:18-2.[20]**3**, shall be $20.00.

(e) (No change.)

5:18-[2.9]**2.10** Enforcement procedures

(a) Whenever the fire official or the fire inspector [shall find in any structure or upon any premises dangerous or hazard conditions or materials as set forth in the State Fire Prevention Code, N.J.A.C. 5:18-3, the fire official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this Code] **observes a violation of a provision of this Code or locally adopted amendments the fire official shall prepare and serve on the owner a written notice of violation identifying the condition which is in violation, including the location, the appropriate Code section, and specifying time limits for the required repairs or improvements to be made. The notice shall contain or be accompanied by a written statement of the owner's right to appeal as set forth in N.J.A.C. 5:18-2.19.**

(b) [The owner shall be responsible for the safe and proper maintenance of the building, structure, premises or lot at all times. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarm devices and safeguards required by this Code and other jurisdictional ordinances, shall be maintained in a safe and proper operating condition except in the case of vacant buildings with the approval of the fire official.] **Time periods allowed for abatement of violations of this Code shall be as follows:**

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement of the submission of a request for an extension, in accordance with (d) below.

(c) [If an occupant of a building creates conditions in violation of this Code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant can be held responsible for the abatement of said hazardous conditions] **These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.16 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(f).**

[(d) Whenever the fire official, or the authorized representative of the fire official, observes an apparent or actual violation of a provision of this Code or other code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of violation describing the condition deemed unsafe, including the appropriate Code section, and specifying time limits for the required repairs or improvements to be made to render the building structure or premises safe and secure.

1. Time limits for abatement of violations other than imminent hazard shall be as set forth in N.J.A.C. 5:18-2.16.

2. Violations constituting an imminent hazard shall be abated immediately or the premises shall be either vacated and closed or used only subject to such conditions as the fire official may establish.]

[(e)]**(d)** The fire official may grant extensions of time whenever he shall determine that despite diligent effort compliance cannot be accomplished within the time specified in the notice.

1. No extension shall be granted unless it is requested in writing by the owner. A request for extension shall set forth the work which has been accomplished, the work that remains, the reason why an extension is necessary and the date by which the work will be completed.

2. An application for an extension shall be deemed to be an admission that the notice of violation is factually and procedurally correct and that the violations do or did exist.

i. An owner who inquires concerning an extension shall be informed of the provisions of (d)2 above.

ii. If the local enforcing agency provides forms for an application for extension, the provisions of (d)2 above shall be prominently printed on them.

[(f)]**(e)** If the notice of violation is not complied with within the time specified by the fire official, the fire official shall institute the appropriate enforcement proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this Code or of any order or direction made pursuant thereto. [The fire official shall request the police department of the jurisdiction to make arrests for any offense against this Code or orders of the fire official affecting the immediate safety of the public and shall file any necessary complaints.]

(f) If the fire official determines that the Code cannot be adequately or safely enforced without police support, he shall request the chief of police to provide assistance. If no assistance is forthcoming, he shall pursue formal action to address the situation and shall not use physical force.

(g) Any person, firm or corporation violating any of the provisions of the Code or failing to comply with any order issued pursuant to any section thereof, shall be subject to the penalties provided [herein] **in N.J.A.C. 5:18-2.12. The imposition of penalties shall not prevent the fire official from instituting appropriate action to restrain, correct or abate a violation; or to prevent illegal occupancy of a building, structure or premises; or to stop an illegal act, business or use in or about any premises.** [Each day that a violation continues, after a service of notice as provided for in this Code, shall be deemed a separate offense.

(h) The imposition of the penalties herein described shall not prevent the fire official from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a building, structure or premises; or to stop an illegal act, business or use in a building or structure or in or about any premises.]

5:18-[2.10]**2.11** Service of notice and orders

(a) Notice, rules, decisions and orders [required or permitted to be issued and served pursuant to the act shall be served as follows:

1. On the owner:

i. By certified mail to the person designated as owner or agent on the certificate of registration, in the municipal tax records, or in the records of the Secretary of State; however, if the certified mailing is returned, the original letter shall be remailed to the last known address of the person by ordinary mail;

ii. By serving the document on the Secretary of State, who shall be deemed the owner's agent for service of process; except that reasonable efforts have first been made to serve the owner or his agent by certified mail and that a copy of the document be posted in a conspicuous location on the premises. Conspicuous location shall include the walls of the front vestibule or any common foyer or hallway immediately inside the main front entrance;

iii. By personal delivery of the document to the owner; or

iv. By leaving the document at the office or dwelling unit of the owner with a person 14 years of age or older.

2. On any other person:

i. By certified mail to the person at his last known address; however, if the certified mailing is returned, the original letter shall be remailed to the last known address of the person by ordinary mail;

ii. By personal delivery of the document to the person; or

iii. By leaving the document at the office or dwelling unit of the person with an individual 14 years of age or older.] **issued and served**

pursuant to the Act shall be effective if served by any one of the methods set forth below:

1. By personal delivery; or

2. By leaving the document at the addressee's office or dwelling unit with a person 14 years of age or older; or

3. By certified mail return receipt requested to the person's last known address; however, if the document is returned as "refused" or "unclaimed" with no indication of a change of address, service may be made by ordinary mail to the same address; or

4. If on an owner, by serving the document on the Secretary of State, who shall be deemed the owner's agent for service of process; if:

i. A certified mailing was returned; and

ii. A copy of the document is posted in a conspicuous location on the premises, which location shall include the walls in a front vestibule, common foyer or hallway near the inside main front entrance.

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

5:18-[2.11]**2.19** Appeals

(a) The person aggrieved may appeal any enforcement action, including rulings, orders and notices, by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or an authorized agent of the owner, may be a person aggrieved.

1. (No change.)

2. If from the act of the Department [serving as the local enforcing agency,] the request shall be made to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625. The hearing shall be conducted by the Office of Administrative Law, with the Commissioner or his or her designee issuing the final decision.

3. (No change.)

(b) (No change.)

(c) In imminent hazard cases, except in emergent circumstances, **and in punitive closure cases,** the owner shall have a period of 24 hours to request a hearing before the order to close, vacate or remove shall be effective. In emergent circumstances, orders may be effective immediately. Hearing requests within the 24 hour period may be made orally to the person designated on the form served but shall be written in accordance with (a)3 above and served on the enforcing agency at the hearing. At the expiration of 24 hours, if the action required **in the order** has been taken, the owner shall have a period of 15 days to request a hearing.

1. (No change.)

2. If the request is to a Construction Board **of Appeals** and no final decision is issued within two working days, thereafter, **the owner may make** written application **for a hearing** [may be made] to the Department at the address specified in (a)2 above [for a hearing]. The application shall clearly state that it is an imminent hazard appeal and shall identify the local enforcing agency and [Local] Construction Board **of Appeals**. In such case, a hearing shall be held and a final decision issued within three working days from receipt of the request.

3. (No change.)

5:18-2.12 Penalties

(a) [It shall be a violation of this Code for any person to:

1. Obstruct, hinder, delay or interfere by force or otherwise with the Commissioner or any local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of this Code;

2. Prepare, utter or render any false statement, pertaining to reports, documents, plans or specifications permitted or required under the provisions of this Code;

3. Render ineffective or inoperative, or fail to properly maintain, any protective equipment or system installed, or intended to be installed, in a building or structure;

4. Refuse or fail to comply with a lawful ruling, action, order or notice of the Commissioner or a local enforcing agency; or

5. Violate, or cause to be violated, any of the provisions of this Code.] **The Commissioner or a local enforcing agency may assess, levy and collect penalties to ensure compliance with the Code. No penalty shall be imposed except upon issuance of a written order requiring abatement and the allowance of a reasonable specified period in which to comply, unless clear notice of the violation otherwise exists.**

(b) [A person who violates or causes to be violated a provision of (a) above shall be liable to a penalty of not more than $5,000 for each violation. If a violation of (a) above is of a continuing nature, each day during which the violation remains unabated after the date fixed in the order or notice for the correction or termination of the continuing violation shall constitute an additional and separate violation, except while an appeal from the order is pending.

1. A violation shall be deemed to be of a continuing nature if notice of the violation is served within two years of the date of service of a previous notice and where violation, premises and person cited in both notices are substantially identical.] **The maximum penalty for any act or omission in violation of the act or code but not enumerated in this subsection is $5,000 per violation per day. Except as specified below, a violation of N.J.A.C. 5:18-3 or 4 shall subject a violator to a maximum penalty of $500.00 per violation, per day. Specific violations shall subject violators to penalties as follows:**

1. Imminent hazard—punitive closure:

i. Failure to obey an imminent hazard order—a maximum of $5,000 per day for each day that the failure continues.

ii. Failure to obey an order to close for fixed period of time issued pursuant to N.J.A.C. 5:18-2.17—a maximum of $5,000 per day for each day that the failure continues.

2. Egress:

i. Blocking, locking, or obstructing required exits in a place of public assembly or education—a maximum of $5,000 per occurrence;

ii. Blocking, locking, or obstructing required exits in any other place—a maximum of $2,500 per occurrence.

3. Occupancy:

i. Exceeding the maximum permitted occupancy in a place of public assembly or education;

(1) For the first offense—a maximum of $2,500;

(2) For a subsequent offense—a maximum of $5,000;

ii. Exceeding the maximum permitted occupancy in any other place;

(1) For the first offense—a maximum of $500.00;

(2) For a subsequent offense—a maximum of $2,500.

4. Fire protection equipment:

i. Failure to install a required suppression or detection device after having been given written notice of the requirement to do so:

(1) In a place of public assembly or education—a maximum of $2,500 per violation per day;

(2) In any other place—a maximum of $1,000 per violation per day.

ii. Disabling or decreasing the effectiveness of any fire suppression or alarm device or system.

(1) In a place of public assembly or education—a maximum of $5,000 per occurrence;

(2) In any other place—a maximum of $1,000 per occurrence.

5. Failure to comply with a lawful action:

i. A negligent or inadvertent failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of $2,000 per occurrence.

ii. A refusal or deliberate failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of $5,000 per occurrence.

6. Obstruction:

i. Anyone who obstructs, hinders, delays or interferes by force or otherwise with the Commissioner or any member of a local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of this Code—a maximum of $2,500 per occurrence.

7. Permits:

i. Failure to obtain a required permit prior to commencing the operation, process or activity for which a permit was required—a maximim of double the amount of the applicable permit fee.

ii. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity—a maximum of $5,000 per day during which the operation, process, or activity continues.

8. Registration:

i. Failure to file a registration application after having been ordered to do so—an amount equal to double the applicable registration fee, but not less than $200.00 or more than $1,000 for each registration.

ii. Failure to pay the required annual registration fee when due—an amount equal to the unpaid fee. Payment of the fee after imposition of the penalty shall not absolve the owner from responsibility for the penalty nor shall payment of the penalty be deemed to absolve the owner from the obligation to pay the fee.

9. False statements:

i. Preparing, uttering or rendering any false statement, pertaining to reports, documents, plans or specifications permitted or required under the provisions of this code—a maximim of $5,000.

ii. Submission of a materially false application for a permit or registration—a maximum of $1,000 per occurrence.

10. Special hazards:

i. For any violation of N.J.A.C. 5:18-3 or 4 of this Code which is not specifically enumerated above but which, under the circumstances, presents a specific hazard to life—a maximum of $5,000 per violation per day. The violation notice must set forth the basis for determining the basis for a special hazard.

(c) [The Commissioner or a local enforcing agency may levy and collect penalties in the amounts set forth in this section, but not in excess of the maximum amounts set forth in (e) below for different types of violations. If the administrative penalty order has not been satisfied by the thirtieth day after its issuance, the penalty may be sued for, and recovered by and in the name of the Commissioner or the enforcing agency, as the case may be, in a civil action by a summary proceeding under "the Penalty Enforcement Law," (N.J.S.A. 2A:58-1 et seq.) in the Superior Court, county district court or municipal court. All moneys recovered in the form of penalties by a municipality shall be paid into the treasury of the municipality and shall be appropriated for the enforcement of the Act. A person who fails to pay immediately a money judgment rendered against him pursuant to this subsection may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgment is sooner paid.] **Each day during which the violation remains unabated after the date or time specified in the order or notice for its correction or termination shall constitute an additional and separate violation.**

(d) [A person shall be deemed to have violated or caused to have violated a provision of (a) above if an officer, agent or employee under his control and with his knowledge has violated or caused to have violated any of the provisions of (a) above.] **The filing of a timely appeal shall stay the action until a decision is made by the construction board of appeals or the Commissioner, as the case may be.**

[(e) The enforcing agency shall assess a civil penalty whenever such shall be likely to assist in bringing about compliance. The penalty shall be in such amount as the enforcing agency deems necessary and appropriate to bring about compliance except that penalties shall not exceed those set forth below for the various types of violations listed.

1. Failure to respond to a registration application survey when one is served—$500.00 maximum each occurrence.

2. Failure to pay the required annual registration fee on time—an amount equal to the amount of the unpaid fee.

3. Failure to obtain a required permit prior to commencing an operation, process or activity for which a permit is required.

i. Type 1 permit—a maximum of $100.00 for each occurrence.

ii. Type 2 permit—a maximum of $500.00 for each occurrence.

iii. Type 3, 4 or 5 permit—a maximum of $1,000 once.

4. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity for which the permit is required—a maximum of $5,000 per day during which the operation, process, or activity continues without application having been made.

5. Failure to install required protection equipment after having been given written notice of the requirement to do so—a maximum of $1,000 per violation per day.

6. Failure to abate any violation after having been given notice of the violation—a maximum $500.00 per violation per day.

7. Storage of any material in violation of this Code or the conduct of any process in violation of the Code—a maximum of $500.00 per violation per day that this violation continues.

8. Blocking, locking, or obstructing required exits:

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

9. Disabling or vandalizing any fire suppression or alarm device or system.

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

10. Failure to obey a notice of imminent hazard and order to vacate—a maximum of $5,000 per day that the failure continues.

11. Failure to obey an order to close for fixed period of time issued pursuant to this subsection—a maximum of $5,000 per day that the failure continues.

12. Obstructing the entry of an authorized inspector into a premises—a maximum of $500.00 for each occurrence.

13. Any willfully false application for a permit or registration—a maximum of $1,000 for each occurrence.

14. Any other act or omission prohibited by the Act or the Regulations but not enumerated in this subsection—a maximum of $5,000 per violation per day.]

(e) A violation that is recurring justifies imposition of an immediate penalty without the necessity for an interval in which correction can be made. A violation shall be deemed to be a recurring violation if a notice has been served within two years from the date that a previous notice was served and the violation, premises and responsible party are substantially the same.

(f) If [an owner has been given notice of the existence of a violation of this chapter, or any other violation of the Act, and fails to abate the violation, he or she shall, in addition to being liable to the penalties set forth in (e) above, be liable to dedicated and compensatory penalties in accordance with N.J.A.C. 5:18-2.17(a).] **a penalty order has not been satisfied by the 30th day after its issuance, the Commissioner or local enforcing agency may institute a civil penalty action by a summary proceeding under the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.) in the Superior Court or municipal court.**

1. A person who fails to pay immediately a money judgment rendered against him may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgment is sooner paid.

2. All moneys that are recovered as a result of the assessment of penalties shall be paid into the designated trust account and shall be appropriated to support the local enforcing agency's operation.

(g) The [enforcing agency shall have the right to compromise or settle any claim arising out of the assessment of a penalty provided such compromise or settlement shall be likely to bring about compliance.

1. No claim shall be finally compromised or settled so long as the violation which caused its assessment remains in existence.

2. If a penalty assessed pursuant to (e) above is compromised, any dedicated or compensatory penalty assessed pursuant to N.J.A.C. 5:18-2.17(a), other than a penalty in the amount of the actual cost of suppressing the fire and other actual expenses, shall be compromised to the same extent.]

Commissioner or fire official may offer to reduce any penalty provided that such reduction is in the best interest of fire safety and will assure compliance. No penalty reduction can be made final while the violation that led to its assessment remains in existence.

5:18-2.13 Fire department costs

(a) An owner who has been given notice of a violation shall be responsible for a penalty not exceeding $150,000 or the costs of suppressing any fire which directly or indirectly results from the violation, whichever is greater. To create an obligation, the violation need not have been the initial cause of the fire; it is sufficient if the violation's existence has increased the intensity of the fire or the difficulty of its extinguishment. This penalty is independent of any penalty issued in accordance with N.J.A.C. 5:18-2.12 for failure to abate the violation. Suppression costs may be imposed for a fire which occurs during the period allowed for abatement.

(b) The suppression costs shall include, but not be limited to, costs of labor, equipment and material incurred by municipalities, fire districts or fire departments involved in suppressing the fire, as well as any other actual expenses, included attorney fees, incurred for the collection of the penalty. If a compensatory penalty in excess of $150,000 is sought, the cost of suppression shall be certified to the fire official of the area in which the fire occurred by the chiefs of the suppression units involved.

(c) The fire official shall serve notice on the owner and order payment. The notice shall state the violations justifying imposition of the penalty. If payment is not received within 30 days, the fire official shall pursue collection in the manner specified herein for penalties. The monies collected shall be paid to the municipalities or districts and appropriated in accordance with N.J.A.C. 5:18-2.12A(b).

5:18-[2.14]**2.16** Imminent hazards

(a) If, upon an inspection [of a building, structure or premises], the enforcing agency discovers a violation of the Act that constitutes an imminent hazard [to the health, safety or welfare of the occupants or intended occupants, fire fighters, or the public generally] **as defined in (b) below**, the enforcing agency [may] **shall** issue and cause to be served on the owner of the [building, structure or] premises**, or on the violator,** a written order directing that the [building, structure or] premises be vacated, closed, or removed forthwith or that the violation be corrected within a period [specified in the order] **not to exceed 24 hours**. The order shall state the nature of the violation and the date and hour by which the [building, structure or] premises shall be vacated, closed or removed or the violation shall be abated.

[(b) The enforcing agency shall reinspect the building, structure or premises within 48 hours of receiving written notice from the owner of a building, structure or premises that has been vacated or closed, or ordered to be vacated or closed, stating that the violation has been terminated. If, upon reinspection, the enforcing agency determines that the violation has been terminated, it shall rescind the order requiring the vacation of the building, structure or premises and occupancy may be resumed immediately; provided that if the reinspection is not made by the local enforcing agency within 48 hours of the receipt of the notice, the owner may apply to the Director, Division of Fire Safety in the Department of Community Affairs for a reinspection.]

[(c)]**(b)** (No change in text.)

[(d)] When, in the opinion of the fire official, there is actual and/or potential danger to the occupants or those in proximity to any building, structure or premises because of any condition constituting an imminent hazard in accordance with (c) above, the fire official may order the immediate evacuation of said building, structure or premises.

1. All occupants so notified shall immediately leave the building, structure or premises and no person shall enter or re-enter until authorized to do so by the fire official.

2. Any person who shall refuse to leave, or who shall interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to have violated this Code, and may be subject to arrest as provided in N.J.A.C. 5:18-2.9(f).]

[3.](c) Upon determination of the existence of an imminent hazard in accordance with this section, the fire official shall immediately notify the construction code official of his or her findings.

(d) The enforcing agency shall reinspect the premises within 48 hours of receiving written notice from the owner, violator or agent thereof stating that the violation has been terminated. If, upon reinspection, the enforcing agency determines that the violation has been terminated, it shall mark the violation "abated", and rescind the order requiring the vacation of the premises and occupancy may be resumed immediately. If the reinspection is not made by the local enforcing agency within 48 hours of the receipt of the notice, the owner, violator or agent may apply to the Division for a reinspection and shall provide a copy of such application to the local enforcing agency. The Division shall complete a reinspection and make a determination within three working days from the date of notification. If a local enforcing agency completes its reinspection prior to issuance of the Division's notice, it shall immediately notify the Division; an oral notification shall be followed promptly in writing.

5:18-2.17 Evacuation of unsafe premises

(a) When, in the opinion of the fire official, there is actual and/or potential danger to the occupants or those in proximity to any premises because of any condition constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.16, the fire official is hereby authorized and empowered to order the imminent evacuation of said premises.

1. All occupants so notified shall immediately leave the premises and no person shall enter or re-enter until authorized to do so by the fire official.

2. Any person who shall refuse to leave, or who shall interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to have violated this Code, and may be subject to arrest as provided in N.J.A.C. 5:18-2.10(f). This paragraph shall not be used to penalize a properly qualified individual who is authorized to perform, and is performing, work to abate the violation and eliminate the unsafe condition.

3. The fire official shall cause to be posted at each entrance to such premises a notice reading as follows: This premises is unsafe and its use or occupancy has been prohibited by the fire official and it shall be unlawful for any person to enter such premises except for the purpose of making the required repairs.

5:18-[2.15]**2.18** Punitive closing

[(a)] If the enforcing agency finds a violation of the provisions of the Act in a life hazard use to be willful or grossly negligent, or to be in violation of a previously issued order, and to constitute a clear danger to human life, in addition to ordering the building, structure or premises vacated and closed until the violation is abated, the enforcing agency may order the building, structure or premises to remain vacated and closed for a further period not to exceed 60 days and until such time as a certificate of continued occupancy, issued pursuant to [regulations authorized by section 6 of the "State] **the** Uniform Construction Code [Act," P.L. 1975, c.217 (C.52:27D-124)] shall be obtained by the owner.

[(b) If the owner of a building, structure or premises denies that a violation exists justifying an order to remain closed for the period of time indicated in the order, the owner may apply to the Commissioner, or Construction Board of Appeals, as the case may be, for a reconsideration hearing. The hearing shall be conducted and a final decision issued, within 48 hours of receipt of the request. Failure to issue a decision shall constitute denial of the appeal.]

5:18-[2.17]**2.12A** Dedicated and compensatory penalties

(a) When an owner has been given notice of the existence of a violation and has not abated the violation, [he or she] **that owner** shall, in addition to being liable to the penalty provided for by N.J.A.C. 5:18-2.12, be liable to a dedicated penalty assessed pursuant to this subsection.

1. (No change.)

2. The amount of any dedicated penalty assessed pursuant to this subsection shall be in accordance with the standards set forth in N.J.A.C. 5:18-2.12[(e)]**(b)**, except that a dedicated penalty of up to

$50,000 for each violation may be assessed where there is a serious injury or loss of human life directly or indirectly resulting from any unabated violation.

3. (No change.)

[(b) A compensatory penalty, in an amount not exceeding $150,000 or the expense of suppression, whichever is greater, may be imposed as compensation to the fire department or fire district for suppressing any fire directly or indirectly resulting from the unabated violation and for any other actual expenses, including attorney fees, incurred by the municipality for the collection of the penalty.

1. If a compensatory penalty in excess of $150,000 is sought, the cost of suppression shall be documented and certified to the local enforcing agency by the chief of the department or company involved. The local enforcing agency shall assess a compensatory penalty in at least the amount certified and collect it in the same manner as other penalties.]

[(c)](b) (No change in text.)

[5:18-2.16 Time limits for abatement of violations

(a) Time periods allowed for abatement of violations of this Code shall be as follows:

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement or the submission of a request for an extension, in accordance with N.J.A.C. 5:18-2.9(e).

(b) These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.14 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(g).

5:18-2.18 Certificate of Fire Code status

(a) Upon request of the owner or bona fide purchaser of a building or structure, the enforcing agency having jurisdiction over the building or structure shall issue a certificate either enumerating the violations indicated by its records to be unabated and the penalties or fees indicated to be unpaid, or stating that its records indicate that no violations remain unabated and no penalties or fees remain unpaid.

(b) A person who purchases a property without having obtained a certificate stating that there are no unabated violations of record and no unpaid fees or penalties shall be deemed to have notice of all violations of record and shall be liable for the payment of all unpaid fees or penalties.

(c) The fire official may establish a reasonable fee for issuing such a certificate.]

Agency Note: N.J.A.C. 5:18-2.11 is recodified as 2.19.

5:18-[2.19]**2.20** (No change in text.)

5:18-[2.20]**2.3** Certificate of smoke detector compliance

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

(d) No CSDC shall be issued until inspection of the structure indicates compliance with N.J.A.C. 5:18-4.19, **except as provided in (d)1 below.**

1. (No change.)

5:18-3.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall be applicable to:

1. (No change.)

2. **Attached owner-occupied Use Group R-3 structures used exclusively for dwelling purposes only to the extent necessary to protect adjacent dwelling units; and**

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

4. Buildings or other facilities built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used for such use as originally permitted, shall be exempt from the requirements of this subchapter pertaining to any of the following matters:

i. Fire protection of structural elements except as provided for existing buildings under the Uniform Construction Code;

ii. Isolation of hazardous operations: provided, however, that the fire official may require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where, in the judgment of the fire official, they are necessary to provide safety to life and property.

iii. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire official may prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property.

(c) Whenever, in this subchapter, reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted herein.

5:18-3.11 Crop ripening or coloring processes

(a) (No change.)

(b) Fire safety requirements are as follows:

1. (No change.)

2. The location of buildings in which crop ripening or coloring processes utilizing gas containers of ethylene are conducted shall be approved by the fire official.

i.-ii. (No change.)

iii. Ethylene gas containers other than those connected for use shall be stored outside of the building or in a special building except that not more than two portable U.S. Department of Transportation (DOT) containers not connected for use may be stored inside of the building premises. Such inside rooms or portions of buildings used for storage of these containers shall be constructed in accordance with N.J.A.C. 5:18-[3.20]**3.29**(g)4.

iv. (No change.)

3.-6. (No change.)

5:18-3.15 Places of assembly and education

(a) General provisions concering places of assembly and education are as follows:

1.-2 (No change.)

3. Each place of assembly or education, **including each separate room or space used for purposes of assembly or education,** shall be posted with an approved legible sign in contrasting colors conspicuously located near the main exit from the room or space stating the number of occupants permitted within such space. The number of occupants permitted shall be determined by the Fire Safety Code, N.J.A.C. 5:18-4.11(f). Assembly rooms or spaces which have multiple use capability shall be posted for all such uses. The owner shall be responsible for installing and maintaining such signs.

i. (No change.)

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

5:18-3.16 Service stations, garages and fuel dispensing operations

(a) (No change.)

(b) Flammable and combustible liquids used or intended to be used as fuel for motor vehicles shall be stored in underground **or approved aboveground** tanks on the premises in conformance with N.J.A.C. 5:18-3.28.

1. Flammable and combustible fuel may be stored in approved containers inside a building provided the total amount does not exceed 120 gallons.

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

5:18-4.1 Code adopted; scope

(a) (No change.)

(b) All buildings for which requirements are established in this subchapter shall be in compliance with such applicable requirements of this subchapter [by June 16, 1989], unless a [later] date for compliance is set forth in this subchapter.

1. Use Group R-3 structures used exclusively for dwelling purposes shall not be subject to any requirements of this subchapter other than N.J.A.C. 5:18-4.19.

[(c) A comprehensive facility fire protection plan may be submitted for facilities located within the jurisdiction of more than one

local enforcing agency that are under single facilities management, ownership and operational control.

1. The plan shall be submitted to the Division of Fire Safety for approval and shall include an original and one copy plus a copy for each local enforcing agency having jurisdiction in the areas in which the subject facilities are located. The plan shall include the following:

i. A comprehensive fire protection plan which includes all buildings which are part of the facilities at every location included in the plan. The plan must include the use group of each building in accordance with the Uniform Construction Code and an evaluation of the fire protection for each building which includes all requirements established in this subchapter for buildings of that use group;

ii. A timetable for compliance with the requirements of this subchapter; and

iii. A written application for a variance submitted in accordance with N.J.A.C. 5:18-2.3(b) for all proposed deviations from this subchapter.

2. The Division shall consult with the fire official in each local enforcing agency having jurisdiction in the areas in which facilities included on the plan are located before taking any final action on a plan.

3. Within 60 days after receiving the facility fire protection plan, the Division of Fire Safety shall approve or disapprove of the plan submitted in writing. If the plan is disapproved, then the written statement shall include the reason(s) for the disapproval.

i. A plan which is not approved within 60 days shall be deemed to have been disapproved unless the 60 day period is extended by mutual agreement of the Division and the applicant;

ii. A disapproval may be appealed as provided in N.J.A.C. 5:18-2.11;

iii. No owner shall be required to retrofit a facility pending approval or disapproval of the plans by the Division.

4. The original approved plan will be maintained on file by the Division of Fire Safety. One copy of the approved plan shall be returned to the applicant and one copy will be supplied to the fire official in each local enforcing agency having jurisdiction in the areas in which facilities included on the plan are located.

5. Any deviation from the plan as approved must be submitted to the Division for approval in accordance with the procedure established herein for the submission and approval of plans.

6. Inspections for compliance shall be conducted by the fire official in each local enforcing agency in which facilities are located and shall be in accordance with the plans as approved.]

5:18-4.2 Compliance with the State Fire Prevention Code and other fire safety regulations

(a) **The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3).**

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

(d) Existing fire suppression and detection systems that were installed in accordance with the Uniform Construction Code, the Uniform Fire Code or which met the intent of the applicable NFPA standards at the time of installation shall be accepted as meeting the requirements of this Code, except as otherwise specifically provided in this Code.

5:18-4.3 Relationship to the Uniform Construction Code [and other Codes]

(a) (No change.)

(b) A building in full compliance with the current fire safety requirements of the [New Jersey] Uniform Construction Code [(N.J.A.C. 5:23)], as determined by the construction official with the concurrence of the fire subcode official and in consultation with the fire official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a [New Jersey] Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the [Construction Code Element and after consultation with the Division of Fire Safety and with the fire official and with the concurrence of the Director, Division of Housing and Development] **Division of Housing and Development after consultation with the Division of Fire Safety and the fire official and, if necessary, with the concurrence of the Assistant Commissioner, Department of Community Affairs.**

2. (No change.)

[3. Existing fire suppression, smoke detector and fire alarm systems that meet the intent of NFiPA standards and the New Jersey Uniform Construction Code shall be accepted as meeting the requirements of this Code.

(c) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local enforcing agency under the New Jersey Uniform Construction Code in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators International, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(d) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of the Uniform Fire Code, shall remain valid, subject to the following conditions:

1. To be accepted, the variation must have been:

i. Granted in writing;

ii. Granted through formal process or procedure; and

iii. Granted upon a finding that equivalent life safety was provided.

(e) Notwithstanding the provisions of (a) through (d) above, nothing shall prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.14 or the construction official from making a finding of unsafe building pursuant to N.J.A.C. 5:23-2.23 and requiring correction of such hazard or unsafe condition in accordance with those regulations.]

5:18-4.4 [Relation to State Fire Prevention Code] **General provisions**

[The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.)]

(a) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local construction code enforcing agency in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(b) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of this subchapter, shall remain valid, subject to the following conditions:

1. To be accepted the variation must have been:

i. Granted in writing;

ii. Granted through a formal process or procedure; and

iii. Granted upon a finding that equivalent life safety was provided.

(c) Nothing in this Code shall be construed as preventing any State agency from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such action shall not reduce the requirements of these regulations.

(d) The provisions of N.J.A.C. 5:18-4.1 through 4.3 shall not prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.16 or the construction official from making a finding of unsafe building pursuant to the Uniform Construction Code and requiring correction of such hazard or unsafe condition in accordance with those regulations.

5:18-4.5 [Modifications] **Comprehensive facility fire protection plans**

(a) [Any municipality may, by ordinance, modify this subchapter so as to make it more restrictive or more inclusive; provided, however, that this subchapter may not be modified so as to be more restrictive than the New Jersey Uniform Construction Code

(N.J.A.C. 5:23) or so as to include one- or two-family, owner occupied dwellings.] **A comprehensive facility fire protection plan may be submitted for facilities located within the jurisdiction of more than one local enforcing agency which are under single facilities management, ownership and operational control.**

1. The plan shall be submitted to the Division for approval and shall include an original and one copy plus a copy for each local enforcing agency in which the subject facilities are located. The plan shall include the following:

i. All buildings which are part of the facilities at every location included in the plan and for each building, the use group and an evaluation of the fire protection, including all requirements established in this subchapter;

ii. A timetable for compliance with the requirements of this subchapter; and

iii. A written application for a variance submitted in accordance with N.J.A.C. 5:18-2.14 for any proposed deviations from this subchapter.

2. The Division shall consult with each local enforcing agency in which facilities included on the plan are located before taking any final action.

3. Within 60 days after receiving the plan, the Division shall approve or disapprove it in writing. If the plan is disapproved, then the written statement shall include the reason(s) for the disapproval.

i. A plan which is not approved within 60 days shall be deemed to have been disapproved unless the 60 day period is extended by mutual agreement of the Division and the applicant;

ii. A disapproval may be appealed as provided in N.J.A.C. 5:18-2.19;

iii. No owner shall be required to retrofit a facility pending approval or disapproval of the plans by the Division.

4. The original approved plan shall be maintained on file by the Division. One copy of the approved plan shall be returned to the applicant and one copy shall be supplied to each local enforcing agency in which facilities included on the plan are located.

5. Any deviation from the plan as approved must be submitted to the Division for approval in accordance with the procedure established herein for the submission and approval of plans.

6. Inspections for compliance with the plans as approved shall be conducted by the local enforcing agency in which facilities are located.

[(b) Nothing in this Code shall be construed as preventing any State agency from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such action shall not reduce the requirements of these regulations.]

5:18-4.13 Protection of interior stairways and other vertical openings

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

(c) Interior stairways and other vertical openings connecting no more than three levels shall be enclosed with approved assemblies and opening protectives having a fire resistance as follows:

1. (No change.)

2. In Use Group B, a minimum 30 minutes fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barriers may be omitted in buildings not exceeding 3,000 square feet per floor or when the building is protected throughout by an approved automatic fire suppression system.

3. In Use Group E, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings connecting not more than three floor levels. Such barrier may be omitted when the building is protected throughout by an approved automatic fire suppression system.

4. In Use Group F, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted:

i.-ii. (No change.)

5. In Use Group H, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when necessary for manufacturing operations [and] **in a building where** every floor level has direct access to at least two remote enclosed stairways or other approved exits.

6. In Use Group I-1, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings exceeding three floor levels. Such fire barrier may be omitted at either the top or bottom of a stairway which connects not more than two floor levels[,] when such stairway does not serve as a required means of egress[,] and the occupant load does not exceed 12, excluding staff.

7. In Use Group I-2, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when connecting not more than two floor levels[,] which are separated by a one-hour fire barrier equipped with a self-closing or automatic-closing 20 minute door at the top or bottom of the stairway, [and] when such stairway does not serve as a required means of egress.

8. (No change.)

9. In Use Group M, a minimum 30 minute fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when:

i.-ii. (No change.)

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i.-iii. (No change.)

11. In Use Group R-2, a minimum 30 minute fire barrier shall be provided [by November 6, 1990] to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted.

i.-iii. (No change.

5:18A-1.1 Title; scope; division into parts

(a) These regulations shall be known as the "Regulations for Fire Code Enforcement" [and are referred to herein as the "regulations"].

(b) The regulations [contain four separate parts:

1. Subchapter 1 contains general provisions pertaining to Fire Code Enforcement and may be cited throughout these regulations as N.J.A.C. 5:18A-1 and when referred to in subchapter 1 of this chapter, may be cited as this subchapter.

2. Subchapter 2 controls matters pertaining to the creation, establishment, organization and disbanding of local enforcing agencies and may be cited throughout these regulations N.J.AC. 5:18A-2, and when referred to in subchapter 2 of this chapter may be cited as this subchapter.

3. Subchapter 3 controls matters pertaining to the administration and enforcement of the New Jersey Uniform Fire Code (N.J.A.C. 5:18) and may be cited throughout these regulations as N.J.A.C. 5:18A-3, and when referred to in subchapter 3 of this chapter, may be cited as this subchapter.

4. Subchapter 4 controls matters pertaining to the certification of fire officials and fire inspectors and may be cited throughout these regulations as N.J.A.C. 5:18A-4, and when referred to in subchapter 4 of this chapter, may be cited as this subchapter.] **are divided into four subchapters:**

1. N.J.A.C. 5:18A-1, entitled "General Provisions";

2. N.J.A.C. 5:18A-2, entitled "Enforcing Agencies, Establishment and Responsibilities";

3. N.J.A.C. 5:18A-3, entitled "Organization, Administration and Enforcement"; and

4. N.J.A.C. 5:18A-4, entitled "Certification of Fire Officials."

5:18A-1.4 Definitions

(a) As used in this chapter:

...

"Fire district" means a district established pursuant to N.J.S.A. 40A:14-70 [for the purpose of providing firefighting services].

...

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code [by the appointing authority of a local enforcing agency]. **This term shall also include "Fire Marshal" where the fire official has been appointed pursuant to N.J.A.C. 5:18A-3.2.**

...

[Health care facility" means facilities licensed by the New Jersey Department of Health including hospitals, long term care facilities, residential care facilities, acute alcohol treatment facilities; outpatient surgery facilities; renal dialysis facilities; abortion clinics and birthing centers.]

...

"Local enforcing agency" means a municipal **agency**, fire department, fire district, or county fire [marshall] **marshal** authorized by municipal ordinance to enforce the act within a specific local jurisdiction; or where such authorization has not been granted by local ordinance, it means the Department of Community Affairs. **"Local enforcing agency" shall also mean and include a county fire marshal authorized by ordinance or resolution of the board of chosen freeholders to enforce the Act in county facilities.**

...

5:18A-2.2 Matter covered; jurisdictions; exceptions

(a) (No change.)

(b) Jurisdictional responsibilities for enforcing the Code are as follows:

1. A local enforcing agency, where established, shall be responsible for enforcement of the Code within its jurisdictional area for:

i. All privately-owned [property] **premises** subject to the Code, **including, but not limited to, premises leased to but not maintained by the State, or any of its boards, commissions, agencies or authorities**;

ii. All [property] **premises** owned by **or leased to** any municipality or local authority, **board, commission or agency**;

iii. All [property] **premises** owned by **or leased to** any county or any regional authority **or its boards, commissions, agencies or authorities if no county enforcing agency has been designated to enforce the Code or if requested to do so in accordance with N.J.A.C. 5:18A-2.9(a)1**[, this responsibility being concurrent with that of the county enforcing authority;

iv. All property leased by the State of New Jersey or any of its boards, commissions, agencies or authorities;

v. All buildings leased, in whole or in part, by the State of New Jersey or any of its boards, commissions, agencies or authorities, provided that the jurisdiction of the local enforcing agency in such buildings shall be concurrent with that of the Division].

2. County enforcing agencies, where established, shall be responsible for enforcement of the Code for:

i. All [privately-owned property subject to the Code within a jurisdictional area for which it has been designated as the local enforcing agency] **premises owned by or leased to the county or any of its boards, commissions, agencies or authorities**;

ii. All privately-owned [property leased wholly or in part by the county or a county regional authority, this responsibility being concurrent with that of the local enforcing agency having jurisdiction in the area] **premises within its jurisdictional area in which a municipality has designated the county as its local enforcing agency**;

iii. All [property owned by a municipality or municipal authority, by the county or by any county or regional authority, this responsibility being concurrent with that of the local enforcing agency having jurisdiction in the area] **premises owned by or leased to a municipality or municipal authority, in the area in which the county has been designated as the local enforcing agency as well as any such premises for which it is requested to inspect pursuant to N.J.A.C. 5:18A-2.9(a)1**; and

iv. All [property] **premises** leased **to but not maintained** by the State of New Jersey or any of its boards, commissions, agencies or authorities within the jurisdictional area for which [it] **the county** has been designated as the local enforcing agency.

3. The Division shall [be responsible for enforcing the Code] **have concurrent jurisdiction with any local or county enforcing agency and shall enforce the Code in all premises subject to it as follows**:

i. In life hazard uses; or[,] whenever conditions **may exist** that constitute an imminent hazard [are found to exist and a local enforcing agency has not been created nor has a county enforcing agency been] **and as the interest of safety requires; in jurisdictions where neither a local nor a county enforcing agency has been established or** designated to enforce the Code; **and**

ii. In all [buildings] **premises** owned **or maintained** by the State of New Jersey or any of its boards, commissions, agencies or authorities; and

iii. [Have concurrent jurisdiction with any local or county enforcement agency.] **In accordance with N.J.A.C. 5:18A-2.10(e) and 4.3(c); and**

iv. In premises within the jurisdiction of a local or county enforcing agency if necessary to properly enforce the Code or avoid a conflict of interest.

4. (No change.)

(c) [Exceptions to these rules follow] **Special matters of jurisdiction are as follows**:

1. Agencies created by Interstate Compact **may be inspected by the State and** shall conform to the Code but shall not be subject to **fees or penalties nor to** the enforcement jurisdiction of any local[,] **or** county [or state] enforcing agency.

2. [The United States and agencies of the United States except that property leased by the United States or any of its agencies or instrumentalities shall be subject to the jurisdiction of the local or county agency as the case may be in the same manner as any other privately owned building] **Premises owned by or leased to and maintained by the United States or its agencies or instrumentalities shall not be subject to the enforcement jurisdiction of any State, county or local enforcing agency except by mutual consent. Premises leased to but not maintained by the United States or any of its agencies or instrumentalities shall be subject to the jurisdiction of the appropriate enforcing agency.**

[(d) Any type of enforcing agency may individually adopt further rules for their internal governance, not inconsistent with any specific provision of this subchapter, or its stated intent.]

5:18A-2.3 Local enforcing agencies; establishment

(a) Creation of a local agency shall be subject to the following:

1. (No change.)

2. The governing body [shall] **may** create or designate a local enforcing agency within the limits of a requesting fire department or district, **subject to N.J.A.C. 5:18A-2.4.**

3. The governing body [shall] **may** designate [a county enforcing agency or] **as its** local enforcing agency[, other than the Division, to enforce the Code within the limits of] a **requesting** fire department, [or] **fire** district, [if requested by the proper department or district authority] **or an available county agency. In the event that none of the entities enumerated are available for designation, the governing body may elect to create or designate a local enforcing agency within the municipality. If no agency is created or designated, the Division shall exercise jurisdiction in accordance with N.J.A.C. 5:18A-2.2(b)3.**

4. [Where a] **A** municipality **that** has two or more departments or districts within its limits [it] may make different provisions [for] **as requested by** each [depending upon the wishes of the respective department and districts]. **Such provisions shall not establish differing fees or standards within the areas served by separate agencies.**

5. [Where a municipality has no fire department or chooses to rely on the services of a fire department from a neighboring municipality, then the governing body may, with the consent of that fire department, designate it to enforce the Code or the governing body may designate the county enforcing agency or the Department of Community Affairs] **Where the governing body shall create two**

or more agencies because there are two or more departments or districts within its limits, jurisdictional limits for each shall be specified so that each has a distinct geographic area, without overlap.

[6. If the fire department or district chooses neither to enforce the Code nor to designate an existing county fire marshal, of if the fire marshal declines designation, the municipality may create its own local enforcing agency subject to (a)7 below. If no agency is created, or designated, the Division will assume jurisdiction in accordance with N.J.A.C. 5:18A-2.2.

7. If the fire department has not made any request to the governing body concerning establishment of a local enforcing agency by June 18, 1985, the governing body shall be free to make any designation consistent with the Act without the consent of the fire department. Any request or consent of the fire department shall be given in writing and shall be signed by the chief executive officer of the fire department.]

(b) An ordinance creating one or more local enforcing agencies shall include at least the following provisions:

1. A designation of the organization, office or agency to enforce the Code. [Any organization, office or agency so designated shall become a part of the municipal government for the purposes of these regulations] **The fire official and all other local enforcing agency personnel shall be considered public employees.**

2. Provisions governing the appointment of a fire official **or fire marshal** to serve as the chief administrator of the local enforcing agency, [and such] fire inspectors **and other personnel** as may be necessary to enforce the Code. [The ordinance must contain a provision specifying who makes the appointment. Such provision must be acceptable to the fire department or fire district.]

i. If the ordinance provides that more than one fire department chief or board of fire commissioners may recommend appointments, the ordinance shall provide a mechanism to facilitate a recommendation.

ii. Nothing in this subsection shall be construed to conflict with or in any way limit the rights of any person under State or local personnel rules or other employment rights provided by Law.

3. [When two or more fire department chiefs have jurisdiction within the jurisdictional area served by a local enforcing agency, the ordinance shall provide a mechanism, such as single chief, chief's association, an association of fire districts, fire district commissioners, a municipal official, or a similar representative for the purpose of recommending appointments to the local appointing authority] **A designation of the agency that will be responsible for the periodic inspection of life hazard uses, if such agency is different from the one designated to perform inspections pursuant to the Code for non-life hazard uses. This agency may be the local enforcing agency, the county enforcing agency, or the Division. The ordinance shall not designate any agency that does not have at least one paid fire official and such paid fire inspectors as may be necessary to enforce the Code.**

4. [Nothing in this subsection shall be construed as in any way derogating from or limiting the right of any person under Title 11 of the Revised Statutes (Civil Service)] **Any locally desired Code or permit requirements, provided that such requirements exceed those contained in the Code.**

5. [A designation of the agency that will be responsible for the periodic inspection of life hazard uses. This agency may be the local enforcing agency, the county enforcing agency, or the Department. The ordinance shall not designate any agency that does not have at least one paid fire official and such paid fire inspectors as may be necessary to enforce the Code.] **Any fees to be charged for non-life hazard uses, or permit inspections which differ from those set forth in the Code, shall be specified.**

6. [Establish] **Adoption of** any [desired] local [requirements for mandated periodic inspections over and above those required by the Code] **amendments desired to N.J.A.C. 5:18-3 or 4 in accordance with N.J.A.C. 5:18A-2.8.**

7. [Establish any desired local permit requirements over and above those required by the Code] **Repeal any earlier ordinances which the governing body may deem to conflict with or cause confusion with the State Uniform Fire Code.**

[8. Set any fees for the locally required periodic inspections or permits.

9. Adopt any local amendments desired to subchapters 3 of 4 of N.J.A.C. 5:18, the State Fire Prevention Code and/or the State Fire Safety Code. No amendment to subchapters 1 or 2 of the State Fire Code is permitted.

10. Repeal any earlier ordinances which the governing body may deem to conflict with or cause confusion with the State Uniform Fire Code.

11. Where the governing body shall create two or more agencies because there are two or more departments or districts within its limits then the following shall apply:

i. Differing permit and periodic inspection requirements may be established for different agencies;

ii. The ordinances shall include the established jurisdictional limits of each agency. There shall be no geographical overlap.]

(c) [The effective date of the establishment of an enforcing agency shall be determined as follows] **Creation of a county agency shall be subject to the following:**

1. [When a municipality adopts an ordinance establishing a local] **A county** enforcing agency[, the effective date of the establishment of that agency] shall **only** be [as specified in the] **created by** ordinance **or resolution adopted by the Board of Chosen Freeholders in a county with a duly authorized county fire marshal.**

2. [If no local enforcing agency was established by August 18, 1985, or a local enforcing agency was established but no election was made by that date to enforce the Code in life hazard uses, the Division shall enforce the Code in life hazard uses within the municipality, or within such portion of the municipality as is not served by a local enforcing agency that enforces the Code in life hazard uses] **Only a county fire marshal shall be designated to serve as the fire official for a county enforcing agency.**

3. [When, at any time after August 18, 1985, a municipality adopts an] **The** ordinance [creating a local] **or resolution shall specify whether the county** enforcing agency [authorized to enforce the Code in life hazard uses, or the municipality or county, as the case may be, adopts an ordinance or resolution authorizing an existing local enforcing agency to enforce the Code in life hazard uses, and a copy of the ordinance or resolution, as the case may be, has been filed with the Division, the effective date of the assumption by the local enforcing agency of enforcement responsibility in life hazard uses] shall [be the date of the next quarterly publication of the Registry of Enforcing Agencies.]:

i. Limit its activity to the inspection of county facilities;

ii. Be available for designation as a local enforcing agency at the request of a local governing body for the inspection of both or either life hazard and non-life hazard uses;

iii. Establish, where necessary, additional periodic inspections, permits or permit requirements beyond those specified in the Code for areas within its jurisdiction. In the event that additional fees for non-life hazard uses are desired, the county shall inform the municipality and coordinate an appropriate enactment.

[4. If the Division determines that a local enforcing agency is not properly enforcing the Code in life hazard uses and, also, with regard to imminent hazard, the Division may assume responsibility for enforcing the Code in life hazard uses with regard to imminent hazards within the territorial jurisdiction of the local enforcing agency. In any such case, the effective date shall be as established by the Division in its notice of findings.

5. If the Commissioner returns jurisdiction to a local enforcing agency pursuant to N.J.A.C. 5:18A-2.10, the effective date shall be the date of the next quarterly publication of the Registry of Enforcing Agencies following the Commissioner's decision.

6. When the Division assumes responsibility pursuant to N.J.A.C. 5:18A-4.3(c), then the effective date shall be the 61st day after the vacancy occurs unless the Division grants a 30 day extension, as provided in N.J.A.C. 5:18-4.3(c).

(d) If a fire district designated as a separate local enforcing agency under this subchapter is dissolved, the fire department within the

territorial area of the dissolved district shall have the option, within 30 days of the dissolution, to assume the local enforcing agency responsibilities. If the fire department does not exercise this option, it shall pass to another district within the municipality and, if not exercised by a district, shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

1. If the dissolved district has combined with another district or districts to form a local enforcing agency (LEA), the remaining district(s) shall have the option, within 30 days of the dissolution, to assume local enforcing agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

2. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body that enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Division.

3. The local enforcing ordinance governing the local enforcing agency shall be modified if necessary and promptly filed with the Division. The new local enforcing agency shall promptly assume LEA responsibilities and notify the Division.

4. If, within 60 days of dissolution, the Division has not received proper written notice of the assumption of a dissolved district's obligations, the Division shall assume responsibility.

(e) Fire Districts created after June 18, 1985 shall have 60 days from the date of the first meeting of the Board of Commissioners in which to request designation as a local enforcing agency in accordance with the provisions set forth in this subchapter. If such a request is made and a local enforcing agency exists, the district and such agency shall cooperate in transferring the LEA responsibilities.]

5:18A-2.4 [County enforcing agency; establishment] **Fire districts**

(a) [A county enforcing agency shall only be created by an ordinance or resolution of the Board of Chosen Freeholders, but only when the Board shall have created a county fire marshal.] **If a fire district designated as a local enforcing agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution, to assume the local enforcing agency responsibilities. If the fire department does not exercise the option, it shall pass to another district within the municipality, and if not exercised by another district shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.**

1. If the dissolved district has combined with another district or districts, the remaining district(s) shall have the option, within 30 days of the dissolution, to assume local enforcing agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

2. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body which enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Division.

3. The local enabling ordinance governing the local enforcing agency shall be modified if necessary and promptly filed with the Division. The new local enforcing agency shall promptly assume local enforcing agency responsibilities and notify the Division.

4. If, within 60 days of dissolution, the Division has not received proper written notice of the assumption of a dissolved district's obligations, the Division shall assume responsibility.

(b) [Only a county fire marshal shall be designated to serve as a county enforcing agency.] **Fire districts created after June 18, 1985, shall have 60 days from the date of the first meeting of the Board of Commissioners in which to request designation as a local enforcing agency in accordance with the provisions set forth in this subchapter. If such a request is made and a local enforcing agency exists, the district and such agency shall cooperate in transferring the local enforcing agency responsibilities.**

[(c) The ordinance or resolution shall specify whether the county enforcing agency shall:

1. Limit its activity to the inspection of county facilities;

2. Be available to inspect life hazard uses upon designation by a local governing body;

3. Be available to enforce the Code on behalf of a local enforcing agency upon designation by a local governing body;

4. Establish, where desired, additional periodic inspections, permits, and/or fees beyond those specified in the Code for areas within its jurisdiction.]

5:18A-2.5 State enforcing agency; establishment

(a) The Division [of Fire Safety in the Department of Community Affairs] is constituted as the State enforcing agency for the purpose of administering and enforcing the Code [(N.J.A.C. 5:18, 5:18A, and 5:18B)] in those areas where a local enforcing agency has not been established **or designated** for the inspection of life hazard uses and [that responsibility has not been delegated to a county fire marshal] **as provided in N.J.A.C. 5:18-2.2(b)3.**

[(b) The Division of Fire Safety shall also carry out any other responsibility of the Department under the Code or these regulations.]

5:18A-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. The Division shall annually bill for and take such steps as may be necessary to collect or provide for the collection of the annual registration fees provided for by the Code. **No fee shall be assessed against premises owned by the agency enforcing the Code.**

2.-3. (No change.)

4. Where a local enforcing agency has been assigned a certificate of judgment in accordance with N.J.A.C. 5:18-2.6[i](**g**)1, it shall remit 35 percent of the **net** amount collected to the Division by the end of the quarter next succeeding the one in which the fees were collected.

i. (No change.)

(b) Permit fees and other fees provided for or allowed by the Code or any local ordinance or any penalties shall be collected and retained fully on behalf of the enforcement agency having jurisdiction. **Penalties collected by the Division for failure to register or for late payment of fees shall be retained fully by the Division.**

(c) All revenues collected by the Division shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the Division [of Fire Safety].

(d) All revenues generated [by a local enforcing agency] **pursuant to the Act or local implementing ordinance which are collected by or provided to a county or municipality** shall be appropriated by the local governing body to the local enforcing agency for the purpose of enforcing the Code**, operating the local enforcing agency and advancing local fire prevention interests**.

(e) (No change.)

5:18A-2.7 Registry of agencies

(a) Each municipality that passes an ordinance establishing a local enforcing agency shall file a copy of same with the Division [of Fire Safety] within two weeks of final adoption. Each county that passes an ordinance or resolution establishing a county enforcing agency shall file a copy of same with the Division [of Fire Safety] within two weeks of adoption.

1. Any municipality or county that later amends a resolution or an ordinance that established an enforcing agency shall file a copy of the amendments with the Division [of Fire Safety] within two weeks of adoption.

2. A municipality or county that does not file an ordinance **or resolution** shall be deemed not to have passed one, in which case, the Division [of Fire Safety] shall enforce the Code in that jurisdiction.

(b) The Division [of Fire Safety] shall compile those ordinances **and resolutions** and shall issue quarterly a Registry of Enforcing

Agencies. The Registry shall be made available to the general public and shall show what agency is responsible to enforce the Code and what agency is responsible to inspect life hazard uses in every [Fire Code jurisdictional] area of the State.

(c) The status of any enforcing agency with respect to responsibility to enforce the Code or inspect life hazard uses shall change [upon publication of the change in the Registry next succeeding the adoption of the ordinance or resolution which makes the change] **as of the deadline date for submission to the next applicable quarterly registry unless the Division assumes jurisdiction in accordance with these regulations. Submission deadline dates for the registry are as follows:**

i. For the annual (first quarter) registry, December 31 of the previous year.

ii. For the second quarter registry, March 31; for the third quarter registry, June 30; and, for the fourth quarter registry, September 30.

(d) If the Commissioner returns jurisdiction to a local enforcing agency pursuant to N.J.A.C. 5:18A-2.10, the effective date shall be the deadline date for submission of the next quarterly publication of the Registry of Enforcing Agencies following the Commissioner's decision.

(e) When the Division assumes responsibility pursuant to N.J.A.C. 5:18A-4.3(c), then the effective date shall be the 61st day after the vacancy occurs unless the Division grants a 30 day extension as provided in N.J.A.C. 5:18A-4.3(c).

5:18A-2.8 Amendments to the Code

(a) Local amendments of the technical standards of [the State Fire Code] **N.J.A.C. 5:18-3 and 4** are permitted to be adopted by ordinance but no such amendment shall require a building which complies with the Uniform Construction Code [(N.J.A.C. 5:23] to conform to a more restrictive standard.

(b) No amendment to N.J.A.C. 5:18-1 and 2 is permitted except for permit and certificate of smoke detector compliance fees in accordance with N.J.A.C. 5:18-2.7.

(c) Any amendments adopted [to the State Fire Code] shall be filed with the Division [of Fire Safety] **in accordance with N.J.A.C. 5:18A-2.7(a)**. [Failure to file shall not affect the validity of the amendment.]

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

5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency[,] as a fire official or fire inspector[,] shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she or a member of his or her immediate family has an economic interest.

1. Where an inspection or enforcement procedure is necessary or required in any such property or business, then the fire official shall arrange for the inspection or enforcement to be carried out by the county enforcing agency**, the local enforcing agency of an adjoining jurisdiction** or the Division of Fire Safety.

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

5:18A-2.10 Departmental monitoring

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

(e) Where the local enforcing agency shall fail to take corrective action, [or] where the failure to enforce the Code is pervasive and substantial**, or if the agency is improperly constituted** then the Division shall notify the local enforcing agency of its determination or final finding and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency. All fees and penalties associated with the enforcement in life hazard uses shall from that date forward be paid to the Division.

(f) Where the Division has assumed responsibility [due to the failure of a local enforcing agency to enforce the Code properly] the local agency may petition the Commissioner to return jurisdiction. The petition shall set forth the corrective action the local enforcing agency has taken, or will take, to ensure proper enforcement of the Code. The Commissioner may return jurisdiction if he or she finds that the Code will be properly and fully enforced.

5:18A-2.11 Right of appeal

[Any] **In accordance with N.J.S.A. 52:27D-206, any** person or agency aggrieved by a notice, order, action or decision of the Division pursuant to this subchapter shall be entitled to a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1, provided that a request for a hearing is submitted to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625 within 15 days of the person or agency's receipt of the notice or order complained of.

5:18A-3.1 Applicability

The provision of this subchapter shall apply to all local and county enforcing agencies. The term local enforcing agency shall mean and include county enforcing agencies whenever the term is used in this **sub**chapter.

5:18A-3.2 Local enforcing agencies; organization

(a) The fire official shall be appointed in the manner provided for in the ordinance establishing the local enforcing agency. He shall serve as the chief administrator of the agency. He shall establish the day-to-day operating routines of the agency and shall coordinate the activities of any inspectors or other staff. He shall be certified in accordance with [subchapter 4 of this chapter] **N.J.A.C. 5:18A-4** if the local enforcing agency inspects life hazard uses for compliance with the Code.

(b) The municipality**, fire district** and the fire department shall ensure that the enforcing agency has an adequate number of inspectors to complete all necessary inspections and review all permit applications and act on them in a timely manner as well as sufficient staff to ensure that enforcement actions are taken in a timely manner when violations are found and not corrected. Any inspectors engaged in the inspection of life hazard uses shall be certified as specified in [Subchapter 4 of this chapter] **N.J.A.C. 5:18A-4.**

(c) (No change.)

(d) The municipality **or fire district** shall specifically appoint legal counsel to assist **and represent** the local enforcing agency [to enforce the Code. The designated agency attorney] **in all matters related to the Code. Such legal counsel** shall advise the agency and undertake such actions at law as the fire official shall deem necessary. [to gain compliance with the Code.

(e) When two or more fire department chiefs have jurisdiction within the physical area served by a local enforcing agency, the ordinance shall provide a mechanism, such as a single chief, chief's association, an association of fire districts, fire district commissioners, a municipal official, or a similar representative for the purpose of supervising and directing the local appointing authority.]

5:18A-3.3 Duties of fire officials and fire inspectors

(a) The fire official shall enforce the code and the regulations and shall:

1.-7. (No change.)

8. Assist the Division, when requested, with any registration [survey] **application**;

9.-11. (No change.)

12. Ensure that all **persons seeking to** appeal[s] are promptly referred to the Construction Code Board of Appeals;

13.-22. (No change.)

23. Carry out such other functions as are necessary and appropriate to the position of fire officials **including coordinating transition to a successor fire official**;

24. Respond to and cause to be investigated any complaints brought under the [State Fire] Code;

25. (No change.)

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

5:18A-3.5 Coordination with construction, [and] fire subcode **and other** officials

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

(c) Whenever, in the enforcement of the fire code and other codes and ordinances, it becomes necessary to subject a given building to multiple inspections in the same general time frame, it shall be

the duty of all involved inspectors to coordinate their inspections and administrative orders as much as possible so that the owners and occupants of the structure shall not be subjected to inspections more numerous than necessary, nor to multiple conflicting orders. Whenever an inspector observes a violation of some law, ordinance or code of the jurisdiction that is not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.

5:18A-3.6 Coordination for State licensed **and regulated** facilities

(a) The provisions of this section shall apply to the following types of facilities which are licensed **or regulated** by State agencies:

1.-2. (No change.)

3. Department of Community Affairs:

i.-ii. (No change.)

iii. Hotels;

iv. Multiple dwellings.

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

(f) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the Division, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. A local enforcing agency may, by ordinance, establish reasonable fees to cover the cost of such inspections, in accordance with N.J.A.C. 5:18A-2.3(b).

5:18A-4.2 Authority; hearings

(a) The following rules concern Office of [Fire Code Enforcement] **Training and** Certification:

1. There is hereby established in the Division [of Fire Safety], an Office of [Fire Code Enforcement] **Training and** Certification. The Office shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this subchapter.

2. The responsibilities of the [Division of Fire Safety] **Office**, in addition to all others provided in this subchapter, are as follows:

i.-iii. (No change.)

(b) The following rules concern hearings:

1. Any person aggrieved by any notice, action, ruling or order of the Division, with respect to this subchapter, [shall] **may** have a right to a hearing before the Office of Administrative Law, **conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.** The final decision in any such case shall be issued by the Commissioner.

2. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be mailed to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

5:18A-4.3 Certification required

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

[(d) The following shall be deemed to be violations of the Uniform Fire Safety Act subject to a penalty of not more than $500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by a fire-fighter during the course of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail to notify the Division concerning a vacancy as required by this subsection.]

5:18A-4.5 Renewal of certification

(a) Every [two] **three** years, any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of [Fire Code Enforcement] **Training and** Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Division shall renew, for a term of [two] **three** years, the certification previously issued. The expiration date of the certification shall be January 31 or July 31.

(b) (No change.)

(c) Continuing education requirements, as follows, must be met for renewal of certification. The requirements are based upon the type(s) of certification(s) held and not upon employment position held. Continuing education units (CEU's) shall be approved by the Division for technical and administrative courses (one CEU equals 10 contact hours).

1. Fire inspector certification—[1.5] **2.0** CEU's (technical);

2. Fire official certification—[2.0] **3.0** CEU's ([1.5] **2.0** technical and [.5] **1.0** administrative).

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

5:18A-4.6 Revocation of certifications and alternative sanctions

(a) The following shall be deemed a violation of the Uniform Fire Safety Act subject to a penalty of not more than $500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by a firefighter during the course of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail to notify the Division concerning a vacancy as required by N.J.A.C. 5:18A-4.3.

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

[(c)]**(d)** The Commissioner shall appoint a review committee to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons holding certifications who are alleged to have done any act or omission proscribed by [(a)] **(b)** above. The Department shall provide necessary staff for the review committee.

1.-3. (No change.)

4. In any case in which the Department makes a preliminary finding that a person holding certification has done any act or omission proscribed under [(a)] **(b)** above, it shall have the case reviewed by the review committee prior to the issuance of any order revoking or suspending the certification or assessing a civil penalty.

5. (No change.)

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the **Deputy** Director, Division of Fire Safety within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the **Deputy** Director. Failure of the review committee to submit a timely recommendation shall be deemed to be in concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the person holding certification.

7. (No change.)

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

5:18A-4.7 Fees

(a) No application for a certification shall be acted upon unless the application is accompanied by a fee as follows:

1. The initial application fee shall be [$30.00] **$45.00**.

2. The [two-year] **three-year** renewal application fee shall be [$30.00] **$45.00**.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Community Associations

Proposed Amendment: N.J.A.C. 5:26-8.2

Authorized By: William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-35.

Proposal Number: PRN 1994-570.

Submit comments by December 7, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX #(609) 633-6729

The agency proposal follows:

Summary

N.J.A.C. 5:26-8.2 was amended in 1993 (see 25 N.J.R. 3693(b) and 4901(b)) to require that meetings of community associations be held either whithin the development or, if there is no suitable meeting room within the development, elsewhere in the same municipality. The purpose of the amendment was to prevent the holding of meetings at remote locations where it would be difficult for unit owners to attend.

The New Jersey chapter of the Community Associations Institute has asked the Department to make a further amendment to the rule to allow meetings to be held in an adjoining municipality. The Institute has brought to the Department's attention several cases in which associations have not been able to find a suitable meeting room in the municipality in which the development is located but have been able to find such a meeting room in an adjoining municipality.

Since, as has been stated, the purpose of the 1993 amendment was to prevent the holding of meetings at locations that would be inconvenient to unit owners, and since, given the facts of New Jersey geography, a location in an adjoining municipality is unlikely to be significantly less convenient than a location in the same municipality, the Department agrees that the requested change is reasonable and is therefore proposing this amendment.

Social Impact

By allowing greater flexibility in the selection of meeting places without materially affecting the convenience of the location to unit owners, the proposed amendment will make it easier for associations to conduct their meetings at appropriate locations.

Economic Impact

The wider range of options for meeting sites may be of some economic benefit to community associations.

Regulatory Flexibility Statement

The proposed amendment will provide greater flexibility in compliance with the rule for all community associations, whether or not they would qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:26-8.2 Powers and duties

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

(d) All meetings of the association that are required by law to be open to all unit owners shall be held at a location within the development or, if there is no suitable meeting room within the development, at a suitable meeting room **either** elsewhere in the municipality in which the development is located **or in an adjoining municipality**.

1. (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Weakfish, Bluefish, Winter Flounder, Lobster, Atlantic Sturgeon

Proposed Amendments: N.J.A.C. 7:25-18.1, 18.4, 18.5, 18.14 and 18.15

Proposed Repeal and New Rule: N.J.A.C. 7:25-18.12

Proposed New Rule: N.J.A.C. 7:25-18.13

Authority: N.J.S.A. 23:2B-6.

DEP Docket Number: 45-94-10/480.

Proposal Number: PRN 1994-584.

Public hearings on the proposal will be held on:
Monday, November 28, 1994, 7:30 P.M.
Ocean County Administration Building
Room 119
101 Hooper Avenue
Toms River, NJ

Tuesday, November 29, 1994, 7:30 P.M.
Rutgers Cooperative Extension of Cape May County
Dennisville Road (Route 657)
Cape May Court House, NJ

Submit written comments by December 7, 1994 to:
Janis Hoagland, Attn: DEP Docket 45-94-10/480
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing amendments to the marine fisheries rules to implement management measures for winter flounder, bluefish, weakfish, Atlantic sturgeon and American lobster that will bring New Jersey into compliance with the Fishery Management Plan (FMP) for each of these species approved by the Atlantic States Marine Fisheries Commission (ASMFC).

The Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act) was enacted by Congress and signed into law by President Clinton on December 20, 1993. The purpose of this Act is to support and encourage the development, implementation and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources.

Under the Act, the ASMFC, which is responsible for preparing and adopting coastal FMPs, shall specify the requirements necessary for states to be in compliance with a FMP. If the ASMFC determines that a state has failed to implement the conservation measures necessary to be in compliance with a FMP, the state shall be declared out of compliance with the FMP. Upon making a finding that a state is out of compliance with a FMP, the Secretary of Commerce may declare a moratorium on fishing in the fishery in question within the waters of the non-complying state until the state comes into compliance.

A provision of the Act requires the ASMFC to establish a schedule for implementing and enforcing the requirements of state compliance with the approved FMPs. Such compliance dates, established by the Policy Board of the ASMFC, specify the deadline by which all states, including New Jersey, shall implement the management measures necessary to come into compliance with the FMPs for certain species: winter flounder, bluefish, weakfish, American lobster and Atlantic sturgeon. Failure to come into compliance with a specific FMP by the deadline may result in a Federally imposed moratorium on fishing in that fishery. The proposed amendments are designed to meet the requirements of the ASMFC and bring New Jersey into compliance with the FMPs for the species listed above.

These proposed amendments were developed and approved by the New Jersey Marine Fisheries Council (Council). For each species of primary interest (winter flounder, bluefish, weakfish, Atlantic sturgeon) the Council established an advisory committee with commercial and

recreational representatives. The Atlantic Sturgeon Committee did not have any recreational representatives since there is no recreational harvest of this species in New Jersey. Each committee evaluated the impacts of the various management options for its specific species. The committee then selected those management options which would best serve the needs of the commercial and recreational user groups while, at the same time, bringing the fishery into compliance with the approved management plans of the ASMFC. The committees submitted their recommendations to the Council for consideration and subsequent approval.

Winter Flounder

The ASMFC FMP for Inshore Stocks of Winter Flounder indicates that winter flounder stocks are overfished. Although no long term fishery independent survey data exist for winter flounder in New Jersey, data from the Marine Recreational Fishery Statistics Survey (MRFSS) indicate that the recreational harvest is decreasing. Recreational landings totaled 5,464,000 pounds in 1985 and have decreased since then to 113,652 pounds in 1992. Commercial landings have remained relatively constant, generally ranging between 200,000 and 300,000 pounds a year. Commercial landings have historically constituted only a minor portion of the State's total winter flounder landings. Total recreational and commercial winter flounder landings in New Jersey have decreased from 5,940,818 pounds in 1985 to 397,682 pounds in 1992.

The ASMFC FMP for winter flounder requires restraining fishing mortality in order to effectively manage the winter flounder resource at stock sizes which can sustain a stable, productive fishery over the long term. The plan mandates, as an interim management measure, that stocks be preserved at 30 percent of their maximum spawning potential, and eventually at 40 percent of their maximum spawning potential. In New Jersey, current fishing rates are above the level necessary to preserve the winter flounder stock at an appropriate level. In order for New Jersey to comply with this mandate, exploitation must be reduced 44 percent.

In accordance with the reduction in exploitation of winter flounder required by the ASMFC, the Department proposes to implement the following management provisions: establishing commercial fishing seasons, increasing the commercial size limit, setting an otter trawl cod-end mesh size, and establishing a recreational fishing season for winter flounder. The winter flounder commercial fishing season for all gears except fyke nets is proposed to be from February 15 through May 31. The fyke net season will remain open from November 1 to April 30, but winter flounder caught in fyke nets during the months of December and March cannot be landed and must be immediately returned to the water. Fishing for other species with all other gear can continue during the closed season for winter flounder where and when it is legal, but winter flounder caught during the closed season cannot be landed and must be immediately returned to the water. The Department also proposes to implement a 5.0 inch minimum stretched mesh for otter and beam trawls used in a directed winter flounder fishery. The possession of more than 100 pounds of winter flounder onboard a vessel shall constitute a directed fishery for winter flounder. In addition, the Department proposes to increase the minimum size limit of winter flounder for sale, for fish harvested by all commercial gear except fyke nets, from 10 inches to 12 inches. The size limit for winter flounder for sale harvested from fyke nets will remain at 10 inches. The Department is also proposing recreational fishing seasons from March 1 to May 31 and from September 15 to December 31. The recreational size limit will remain at 10 inches.

Bluefish

The FMP for bluefish, developed jointly by the Mid-Atlantic Fishery Management Council (MAFMC) and the ASMFC, was adopted by both agencies in October 1989. The primary purpose of the FMP is to address the problems that would occur if the bluefish fishery were to expand significantly or the bluefish resource were to decline. The three major management measures of the FMP are (1) limiting the commercial fishery (on a coastwide basis) to no more than 20 percent of the total harvest (recreational plus commercial landings) each year; (2) requiring any person selling bluefish to have a commercial fishing permit; and (3) restricting anglers to a possession limit of no more than 10 bluefish. Prior to this proposal, New Jersey has not implemented any provisions of the bluefish FMP.

The MAFMC and the ASMFC jointly determined that the trigger provision of the bluefish FMP (that coastwide commercial landings had exceeded 20 percent of the total coastwide recreational and commercial landings) had been met and thus implemented a quota for the commercial fishery in 1994. The coastwide commercial quota for 1994 is 11,475,769 pounds, of which New Jersey's share is 1,780,629 pounds. In order to come into compliance with the bluefish FMP, the Department is proposing to allocate a portion of the State's quota to each gear type based upon the percent of the total commercial landings for which each gear has historically accounted. Season closures will be used to regulate each gear's allocation. The proposed open season for each gear is as follows:

Gill net for 1994: January 1 through June 30 and September 2 through December 31;

Gill net begining in 1995: January 1 through October 10;

Pound net: May 15 through December 31;

Otter trawl: January 1 through July 31 and October 1 through December 4;

Hook and line (commercial): January 1 through September 8.

All commercial harvesters will be required to possess a Federal bluefish permit to sell bluefish. In addition, a 10 fish possession limit, as required by the bluefish FMP, is proposed for the recreational fishery.

Weakfish

The ASMFC FMP for weakfish indicates that the weakfish stock is overfished. Total landings along the Atlantic Coast fell from 78.4 million pounds in 1980 to 9.2 million pounds in 1992. Recreational landings obtained from the Marine Recreational Fishery Statistics Survey declined from 42.5 million pounds to 1.8 million pounds. Commercial landings obtained from the National Marine Fisheries Service (NMFS) declined from 35.9 to 7.4 million pounds. Fishery independent surveys, such as the NMFS inshore trawl survey, also indicate a decline in abundance.

Amendment 1 to the ASMFC weakfish FMP requires a 25 percent reduction in fishing mortality for the fishing year April 1, 1994 through March 31, 1995 and a larger reduction in fishing mortality in the fishing year beginning April 1, 1995.

To achieve the necessary reductions, the Department proposes to maintain the current minimum length and net mesh size requirements and to shorten the open season for the otter trawl and gill net fisheries. To attain the required decrease in fishing mortality for the otter trawl fishery the Department is proposing open seasons for 1994 from January 1 through July 31 and October 3 through December 31. Beginning in 1995, the open seasons will be from January 1 through July 31 and October 9 through December 31. The proposed open seasons for the gill net fishery in 1994 will be from January 1 through June 6, July 1 through August 31, and October 12 through December 31. These open seasons, which also reflect the June 7 through June 30 closure that was in effect in 1994, will yield the reduction in mortality required for the fishing year April 1, 1994 through March 31, 1995. The proposed gill net fishery open seasons for the fishing year beginning in 1995 will be from January 1 through May 20, September 3 through October 19, and October 27 through December 31. The possession limit for the recreational fishery will remain at ten fish, with a 13 inch minimum size. In addition, the Department is proposing open recreational seasons from January 1 through October 17 and November 1 through December 31.

Atlantic sturgeon

The FMP developed for Atlantic sturgeon was adopted by the ASMFC in 1990. To protect Atlantic sturgeon from further stock depletion, the FMP recommended imposing (1) minimum size limit of 84 inches, (2) a moratorium on all harvest, or (3) the adoption of alternative measures that are conservationally equivalent. Option 3 allows states to implement size limits less than the recommended 84 inches if the state successfully demonstrates to the ASMFC that a reduced quota at a lower size limit is conservationally equivalent to an 84 inch minimum size limit. The Department proposes to maintain its existing minimum size limit of 60 inches and reduce its annual quota to 15,475 pounds. This proposal has been approved by the ASMFC as being a conservation equivalent. Since most commercially caught sturgeon are landed in a dressed condition with head and tail removed prior to landing, the Department proposes to implement a dressed length minimum size limit of 36 inches, which is equivalent to the 60 inch minimum size limit.

Based on the annual quota of 15,475 pounds and estimating a mean weight per fish landed of 66 pounds, 234 Atlantic sturgeon possession tags will be distributed to sturgeon permit holders. Atlantic sturgeon possession tags will be distributed to permit holders in accordance with the permit holder's past level of participation in the fishery. No sturgeon may be landed without a properly affixed Atlantic sturgeon possession tag. Permits may be transferred among gill net fishermen and possession

tags may be transferred to another Atlantic Sturgeon Gill Net Permit holder. The monthly permittee reporting requirement has been changed to an annual requirement.

In addition to the directed Atlantic sturgeon fishery, the proposed amendment authorizes the issuance of Atlantic Sturgeon By-Catch Permits. A harvest quota, derived as a percentage of the State's annual quota of 15,475 pounds, will be issued through a specified allocation of possession tags. Otter trawl and pound net fishermen, who qualify for by-catch permits based on past participation in the fishery, may apply to the Department for a by-catch permit in accordance with proposed N.J.A.C. 7:25-18.15(f).

American lobster

For American lobster, the proposed amendments increase the escape vent opening to be compatible with a 3¼ inch minimum carapace size so as to comply with Federal rules. The amendments also require that lobster pots include a degradable panel that is designed to break down within 12 months so that lost pots will not continue to catch and kill lobsters and fish indefinitely. These amendments are necessary to meet the requirements of the FMP for lobsters.

Other amendments

An amendment to the possession limit for cobia is also proposed. The current possession limit for cobia for anglers is two. This limit was established as part of an amendment adopted May 16, 1994 (see 26 N.J.R. 2021(b), 2024). This proposed amendment modifies the possession limit for cobia to be consistent with the Federal rule which establishes the possession limit for all commercial and recreational fishermen of two cobia.

The current rules prohibit the filleting of flatfish at sea as a means to prevent circumvention of minimum size limits. The proposed amendment extends this prohibition to the 10 additional species listed in N.J.A.C. 7:25-18.1(b). As is the case now, party boats (those vessels certified to carry 15 or more passengers) will be able to obtain a special permit to fillet these species at sea. In addition, N.J.A.C. 7:25-18.1(f)3viii is amended to provide a 20 day period to request a hearing on a Special Fillet Permit suspension or revocation.

The proposed amendments also give the Commissioner of the Department the flexibility, with the approval of the Marine Fisheries Council, to modify the minimum size limits, minimum net mesh sizes, fishing seasons, possession limits and quotas by notice in order to maintain compliance with ASMFC management plans as they are modified pursuant to 16 U.S.C. §5105(b). In this manner, the Department can also quickly respond to ASMFC-imposed emergency season closures or modifications in fishing conditions, and thereby substantially reduce the likelihood of a Federally imposed moratorium upon fishing pursuant to 16 U.S.C. §1851(4) or §5105-6.

A proposed amendment to N.J.A.C. 7:25-18.4 modifies the definition of spearfishing to include taking by hand. Scuba divers had expressed concern that the rules did not specifically permit the taking of lobster by hand even though it is a traditional method. This amendment merely clarifies that harvesting lobster by hand is legal.

N.J.A.C. 7:25-18.1(n), concerning the Striped Bass Trophy Program, is proposed to be deleted, and a new rule at N.J.A.C. 7:25-18.13 is proposed specifically for this program. Because of their complexity, the Department believes it is appropriate to locate the trophy program's provisions in a discrete section of the subchapter.

Social Impact

In order for New Jersey to come into compliance with existing ASMFC FMPs, the Department is proposing conservation measures that will result in reductions in harvest and fishing activity. These will have an initial negative social impact.

One of the purposes of the proposed amendments is to implement a management program for winter flounder consistent with the ASMFC FMP for winter flounder. An immediate goal of this management program is to reduce the harvest of winter flounder to assure the viability of the resource. Management provisions effecting the commercial fishery include: an increased size limit, a definition of a directed fishery, a new mesh size for otter trawls and a closed season. Commercial otter trawlers are already restricted by a mesh size in a directed winter flounder fishery when fishing in Federal waters. Most vessels fishing in State waters also fish in Federal waters and are, therefore, familiar with mesh restrictions and should not experience any additional social impact as a result of this provision. Since a 12 inch minimum size limit already exists for the commercial winter flounder fishery in Federal waters, fishermen should experience litte problem adjusting to the amended 12 inch minimum size limit.

The Department proposes to implement a closed fishing season for the recreational winter flounder fishery as well as the commercial winter flounder fishery. Commercial and/or recreational seasonal closures already exist for a few marine species and for many freshwater species; therefore, many fishermen are familiar with these types of management measures and the negative social impact for these individuals would be minimal. Although the commercial and recreational harvests will be restricted, the proposed amendments do not in any other way restrict the opportunity to fish for winter flounder nor do they exclude anyone from participating in the winter flounder fishery.

The amendments also implement a bluefish management program consistent with the joint ASMFC-MAFMC FMP for bluefish. An immediate goal of the management program is to reduce the commercial landings to a maximum of 20 percent of the total (recreational and commercial) coastwide landings. A coastwide quota was developed and states were allocated a share of the quota based upon their portion of the commercial landings from 1982 through 1991. New Jersey's share of the commercial quota for 1994 represents a decrease of 18 percent compared to 1993 commercial landings. This reduction will be accomplished by means of closed seasons of varying lengths for the different commercial fishing gears. This will have some negative social impact since bluefish will no longer be subject to an unrestricted fishery as has existed in the past, and fishermen and consumers will have to adjust to the closed seasons and reduced availability of locally harvested bluefish. The requirement to possess a Federal bluefish permit to sell bluefish for the commercial fishery should have no social impact as most persons currently selling bluefish already possess this permit. Those who have not previously obtained this permit need only complete an application and forward it to the NMFS.

Recreational bluefish fishermen will have to adjust to the 10 fish possession limit for bluefish. The 10 fish limit for bluefish has been in existence in Federal waters (beyond three miles from shore) for the last several years, so New Jersey fishermen fishing those waters have already been subject to the 10 fish limit.

The amendments also implement a management program for weakfish consistent with the ASMFC weakfish FMP. One goal of the weakfish FMP is to reduce the harvest of weakfish as the first step in the process of restoring this fishery. The commercial fishery has had minimum size limits for weakfish, minimum mesh sizes for nets and closed seasons since 1992. Given this background, the social impact of these proposed amendments should be less than it might have been had no such restriction been in place. Still, the increases of approximately one month in the length of the closed season for gill nets and of two months for otter trawl are significant and will require some adjustment on the part of the fishermen. The current size limits and net mesh sizes will remain in effect, which should offset the negative impact of the amendments.

The recreational weakfish fishery also has had size and possession limits in place since 1992, so fishermen are familiar with these measures. Although there will be a negative social impact as a result of the closed season, the Council recommended this alternative in lieu of reducing the possession limit below 10 fish. The Council and the Department believe that reducing the possession limit would result in a greater negative social impact to recreational fishermen than would the closed season.

Commercial fishermen in the Atlantic sturgeon fishery will be affected by the reduction in the annual quota being implemented to attain conservation equivalency. Under the existing rule, Atlantic sturgeon permit holders may harvest up to 226,753 pounds annually. The ASMFC FMP reduces the annual quota to 15,475 pounds annually. Although this represents a significant reduction in allowable potential harvest, the reduction as compared with actual 1993 landings is not quite as significant. In 1993 approximately 30,000 pounds were landed. The proposed quota thus represents a 50 percent reduction over 1993 landings. Maintaining a 60 inch minimum size limit instead of adopting the recommended FMP minimum size of 84 inches will also lessen the impact of the changes necessary to comply with the FMP. Increasing the size limit to 84 inches would have virtually eliminated this fishery, since few sturgeon caught in New Jersey waters exceed this size. Allowing fishermen to land dressed Atlantic sturgeon by implementing a minimum dressed size limit is expected to have a positive social impact because it gives the fishermen the flexibility to dress the fish at sea. The 36 inch dressed length is equivalent to the 60 inch total length.

The existing rule limits the directed gill net sturgeon fishery to historical participants and allows all other fishermen a by-catch of one sturgeon per day. The amendments eliminate the one sturgeon per day allowable by-catch for all non-permitted fishermen. However, a certain percentage of the annual quota will be reserved for by-catch harvest and those fishermen who have historically landed a by-catch of sturgeon in the otter trawl and pound net fisheries may be eligible for an Atlantic Sturgeon By-Catch Permit. This provision will reduce the social impact of eliminating the by-catch allowance for those fishermen who have historically had a by-catch of Atlantic sturgeon in other directed fisheries.

Issuing possession tags to permitted sturgeon fishermen will have a positive social impact since a fisherman will know how many sturgeon he or she may harvest throughout the year. The fisherman will thus be able to decide when to harvest his or her allocation. Allowing permit holders to transfer their tags and/or permits also has a positive social impact by allowing a fisherman to decide if he or she wishes to participate in the sturgeon fishery or to pursue other fisheries.

Failing to comply with the restrictive measures of the Atlantic sturgeon FMP places the State at risk of a Federal moratorium on its entire Atlantic sturgeon fishery. This would eliminate all marketing of Atlantic sturgeon by New Jersey fishermen. The small market for smoked sturgeon would be eliminated by such a moratorium.

The proposed amendments affecting American lobster fishermen are not expected to have any negative social impacts. The degradable panel requirement and escape vent dimensions are compatible with existing Federal regulations which are currently enforced in waters outside the State's territorial sea. Presently, less than one percent of the American lobster landed in New Jersey are from State waters. The amendment, therefore, will have an impact on a very small portion of the existing fishery. The amendment will bring New Jersey into compliance with existing FMP management measures and avoid a disruption in the fishery which would occur if a moratorium on lobster fishing were imposed.

The proposed amendment to the possession limit on cobia should have no social impact. This species is rarely landed in New Jersey. The amendment will bring New Jersey into compliance with the Federal regulations for cobia.

The proposed amendment to prohibit the filleting of fish with a minimum size limit at sea is designed to deter individuals from circumventing minimum size limits. This provision may result in some slight adverse social impact to those recreational fishermen aboard private boats, party and charters boats (licensed to carry fewer than 15 passengers) who wish to fillet or have their fish filleted by mates, before returning to the dock. This impact should not be substantial as facilities exist for shoreside cleaning of fish and waste disposal. Where not available, facilities such as cleaning tables, running water and waste disposal containers could easily be set up. Although this proposed amendment may cause some minor difficulty where there are no shoreside facilities for cleaning of fish or disposal of waste, this difficulty and the small cost of establishing such facilities are outweighed by the importance of preventing circumvention of size limits. Furthermore, party and charter boat owners whose vessel is licensed to carry 15 or more passengers may be able to lessen the impact of this amendment through acquisition of a Special Fillet Permit. The permit suspension or revocation hearing request deadline may improve the efficiency of the adjudicatory process, while maintaining the important hearing right.

The proposed amendments give the Commissioner, with approval of the Council, the ability to modify minimum size limits, minimum mesh net sizes, fishing seasons, possession limits and quotas by notice should result in a positive social impact. Like all other coastal states, New Jersey is required to comply with the ASMFC plans as well as any modifications made to such plans during the course of the year by either the Secretary of Commerce pursuant to 16 U.S.C. §5103(b) or the ASMFC pursuant to 16 U.S.C. §5104(b). Since the State's failure to timely comply with Federally imposed emergency amendments to the Plans can result in a Federally imposed moratorium upon the fishery for one or more fishing seasons pursuant to 16 U.S.C. §1851(4) or 16 U.S.C. §5105-5106, it is critical that a regulatory mechanism exist by which the Commissioner can quickly implement such emergency restrictions on fishing such as early termination of certain fishing seasons or reductions in catch or size limits. Affording the Commissioner this ability greatly reduces the risk that a moratorium will be impsoed on New Jersey fisheries.

Clarifying the definition of spearfishing to include "taking by hand" will result in a positive social impact to those individuals that currently harvest lobster by hand. Scuba divers had expressed concern that the rule did not specifically permit them to take lobster by hand, even though it has been a popular and traditional practice. The amendment merely clarifies that taking of lobster by hand is a legal harvest method.

Deleting the subsection of N.J.A.C. 7:25-18 concerning the Striped Bass Trophy Program and placing those provisions in a separate section will have a positive social impact by reducing the complexity of these rules.

Should the Department fail to meet the compliance requirements of an approved ASMFC FMP, New Jersey might be declared out of compliance with the FMP and, as a result, a Federal moratorium on fishing in the respective fishery could be imposed within New Jersey. The moratorium on all fishing activity in a fishery would have a far greater negative social impact than the negative social impacts realized by implementing the conservation measures of these proposed amendments and new rule. It is important to realize that a state may be declared out of compliance with a species plan if any one of the state's conservation measures fails to meet the requirements of the FMP. Non-compliance with a species FMP resulting from inadequate recreational fishing conservation measures will result in a moratorium for that species imposed on both the recreational and commercial fisheries within the waters of the non-complying state. Similarly, non-compliance with the commercial fishery provisions will result in a moratorium imposed on both the commercial and recreational fisheries.

Economic Impact

Any time the harvest of an important recreational and commercial species is restricted, a negative economic impact is likely to occur. These amendments will initially have an adverse economic impact on the respective fisheries. Failure to implement the proposed provisions, however, could result in a Federally imposed moratorium, with severe economic consequences. The intent of the various plans is to rebuild presently overfished stocks. Once the stocks are rebuilt, management restrictions could be liberalized and a positive economic impact realized.

One of the purposes of the proposed amendments is to manage the winter flounder stocks to assure the future viability of this resource. Some otter trawl vessels may be required to purchase new nets (approximately $1,000 each) to comply with minimum mesh sizes. However, Federal regulations currently require the use of larger mesh sizes in Federal waters. Many vessels landing winter flounder in New Jersey also fish for this species in Federal waters or fish for other species requiring larger nets. Since these fishermen already must meet larger mesh requirements, any additional economic impact as a result of this provision should be minimal. Furthermore, any short term economic loss resulting from increasing size limits and mesh sizes will be more than offset by improvement in stock conditions in the long term, which will result in economic benefit for the recreational and commercial fisheries.

Although the Department believes the fishing community will experience economic gains in the future as a result of the proposed amendments for winter flounder, some immediate negative economic impact will occur as a result of seasonal closures. Because the amendments do not set individual commercial catch limits, it is impossible to determine the economic impact on individual commercial fishermen. The amendments decrease the commercial harvest by 44 percent; therefore, the commercial fisheries can expect to see a similar reduction in economic benefit. Fortunately, the New Jersey winter flounder commercial fishery is relatively small compared with those for other species, which will lessen the impacts on the overall commercial fishing community.

Segments of New Jersey's recreational fishing community, especially boat liveries and charter and party boats specializing in winter flounder, should not experience any significant negative economic impact as the result of these proposed amendments. Although recreational harvest of winter flounder will also be decreased by 44 percent, the open recreational season will include the period of March through May when the majority of by boat liveries, charter and party boats specializing in winter flounder are most active. During the closed summer season, boat liveries, charter and party boats usually target other more abundant species and during the winter closure they are often idle due to severe weather.

There will be an adverse economic impact on commercial bluefish fishermen as a result of the amendment. The closed season will result in an 18 percent decrease in commercial landings with an anticipated loss in revenue for fishermen. Since the catch is allocated by gear type, rather than by individual catch limits, it is impossible to determine the economic impact on individual commercial fishermen. The requirement

to possess a Federal bluefish permit to sell bluefish will have no economic impact because there is no fee for the permit and anyone may obtain one.

The recreational segments of the bluefish fishery, especially charter and party boats, may experience some negative economic impact initially due to the 10 fish possession limit. However, the impact from this provision is minimized since those individuals who have traditionally taken greater than the proposed possession limit may continue to do so by obtaining the Federal bluefish permit to sell as provided in the bluefish FMP.

These proposed amendments are also designed to manage the weakfish stock to assure the future viability of this resource. Although the Department believes the fishing community will experience economic gains in the long term as a result of the proposed amendments for weakfish, some adverse economic impact will occur in the near future as a result of seasonal closures. Because the amendments do not set individual commercial catch limits, it is impossible to determine the economic impact on individual commercial fishermen. The amendments decrease commercial harvest by a certain percentage; therefore, it is expected that the commercial fisheries will experience economic decrease in revenue proportional to those harvest reductions.

Segments of New Jersey's recreational fishing community, especially boat liveries and charter and party boats specializing in weakfish, should experience some adverse economic impact due to these amendments. Although the recreational harvest of weakfish will be decreased, the season for recreational fishing will be open during the period when most of the revenue derived from recreational weakfishing is realized. The Council recommended the implementation of a closed season in lieu of a reduction in the possession limit to meet the FMP requirements. Reducing the possession limit would result in a far greater negative economic impact than a closed season. In addition, during the closed weakfish season, boat liveries, charter and party boats are targeting other species such as bluefish and striped bass.

The proposed reduced quota for Atlantic sturgeon will have an adverse economic impact on commercial fishermen in the short term. The restrictive management measures of the FMP, however, are designed to rebuild the stock for the future, when harvest could be increased. Under the existing rules, Atlantic sturgeon permit holders may harvest up to 226,753 pounds annually. The ASMFC plan reduces the annual allocation to 15,475 pounds. Although this represents a significant reduction in allowable harvest, the difference between allowable 1994 harvest and the actual 1993 landings is not quite as significant. In 1993 approximately 30,000 pounds were landed. The proposed allocation represents a 50 percent reduction over 1993 landings. Although this reduction still results in a significant negative economic impact on the fishermen, permitting a harvest above the level approved by ASMFC could lead to a Federally imposed moratorium and complete closure of the fishery. This would have an even greater negative economic impact upon the participants in this fishery.

The existing rules limit the directed gill net sturgeon fishery to historical participants and allow all other fishermen a by-catch of one sturgeon per day. The amendments will eliminate the current one fish per day by-catch for all non-permitted fishermen. A certain percentage of the annual quota, however, will be reserved for by-catch harvest and those fishermen that have historically landed sturgeon as a by-catch in the otter trawl and pound net fisheries may be eligible for an Atlantic Sturgeon By-Catch Permit. New Jersey's limited entry sturgeon program was designed to ensure that individual fishermen who have historically participated in the sturgeon fishery derive whatever economic benefits are available from the fishery. The monthly permittee reporting requirement has been changed to an annual requirement which will reduce expenses to these permittees.

Issuing possession tags to permitted fishermen will have a positive economic impact since a fisherman will know how many sturgeon he or she may harvest throughout the year. Therefore, the fisherman will be able to decide when he or she wishes to harvest his or her allocation and thus maximize economic return based upon market conditions.

Smokehouses may be impacted by these proposed amendments if the market for smoked sturgeon cannot be sustained due to a shortage of fish. If too few fish are headed for the smokehouses, transportation costs may become cost-prohibitive and the smokehouses may be unable to continue to operate.

The proposed amendments affecting American lobster fishermen will have a minor economic impact since less than one perent of the American lobsters landed in New Jersey are from State waters. The existing fishery in Federal waters has already incorporated the degradable panel requirement and the proposed escape vent size specifications. Fishermen who utilize pots only in State waters will experience a small negative economic impact as they must modify their pots to comply with these requirements.

The proposed escape vent height in lobster and fish pots of 1⅞ inches was determined to be the appropriate size to allow escape of lobsters under the minimum carapace size of 3¼ inches. This management measure should improve survivability of the sublegal lobsters entering a pot. Improvement in survivability should lead to enhanced stock conditions resulting in a significant positive economic impact for lobster fishermen. There may also be some finfish by-catch losses experienced by lobster fishermen attributable to the increased dimension of the escape vent but this negative economic impact should be minor. Most of the finfish taken as by-catch in lobster pots are also subject to increased minimum sizes in order to rebuild stocks. In the long term, the rebuilt stocks will result in positive economic impacts.

The proposed amendment to the possession limit for cobia should have no economic impact. This species is rarely landed in New Jersey. The amendment, however, is necessary to bring New Jersey into compliance with the Federal regulations for cobia.

The provision prohibiting the filleting of fish with a minimum size limit at sea may have a slight negative economic impact. There should be no economic impact, however, on recreational or commercial fishermen. Although some recreational fishermen may be inconvenienced by not being able to fillet at sea, it will not result in any economic loss.

One segment of the fishing community that may experience a slight adverse economic impact, as a result of the fillet prohibition, is the party and charter boat industry, specifically mates working aboard vessels not eligible (those licensed to carry fewer than 15 passengers) to obtain a Special Fillet Permit. Mates on these vessels receive tips based upon cleaning or filleting their customers' catch, which have historically constituted a significant portion of their income. This provision will prevent mates from filleting any species listed at N.J.A.C. 7:25-18.1(b) until the vessel docks. Although fish may be filleted upon reaching the dock, it is likely that some customers will be anxious to go home and may not wait to have their fish filleted. This could result in a slight adverse economic impact for mates aboard these vessels because of lost revenue. However, this economic impact is not anticipated to be significant. There could be a maximum of 14 fishermen waiting to have fish filleted and a competent mate should be able to fillet the catch in a timely manner. Owners of vessels licensed to carry 15 or more passengers will be eligible to obtain a Special Fillet Permit and fillet fish at sea; mates aboard these vessels should experience no adverse economic impacts. As fish stocks are rebuilt as the result of enhanced compliance with minimum size limits, long term economic benefits can be expected because the species listed are important commercially and popular among party and charter boat customers. Rebuilt stocks will increase opportunities to catch and harvest these desirable fish.

The provisions that give the Commissioner, with approval of the Council, the ability to modify minimum size limits, minimum mesh net sizes, fishing seasons, possession limits and quotas by notice could result in temporary negative economic impacts but are expected to yield a long-term positive economic benefit. As indicated in the Summary, New Jersey must comply with Federally-mandated fishery management plans, including season length and catch limits, or face the imposition of moratoriums of undetermined length upon the non-complying fisheries pursuant to 16 U.S.C. §1851(4) or §5105-5106. In order to avert the imposition of a moratorium and its dramatic effect upon the incomes of all persons depending upon the fishery for their livelihood, it is important that the Commissioner have the authority to expeditiously modify the more commonly used management measures to match the Federal requirements for the fishery. Of course, any Federally imposed reduction in season or catch limits will have a negative economic impact for that season upon those participating in the affected fishery. However, timely State compliance with the Federal plan will avert the imposition of a Federal moratorium upon the fishery, thereby allowing the fishery to remain open for the season, resulting in a net positive economic impact for the fishery as a whole.

Deleting the subsection of N.J.A.C. 7:25-18 concerning the Striped Bass Trophy Program and proposing a new rule clarifying those provisions and clarifying the definition of spearfishing in N.J.A.C. 7:25-18.4 are expected to have no economic impact.

Environmental Impact

The Act was enacted in order to support and encourage the development, implementation and enforcement of effective interstate conservation and management of the Atlantic coastal fishery resources. Pursuant to the Act, states are required to come into compliance with FMPs approved by the ASMFC. This requirement of state compliance will have a positive environmental impact. Concerted coastwide conservation and management of coastal fishery resources are necessary for the best interests of the resource. Most of the species addressed in these conservation measures migrate through the waters of several coastal states. The failure by one or more Atlantic states to fully implement a coastal fishery management plan can affect the status of the conservation of the entire coastal fishery. Hence, compliance with the FMPs through the State's adoption of the conservation measures specified by the ASMFC will have a positive environmental impact on these fishing resources.

The proposed amendments are expected to result in positive environmental impacts for winter flounder, bluefish, weakfish, Atlantic sturgeon and American lobster. The proposed amendments for these species are consistent with the respective ASMFC FMPs. With the coastwide implementation of comparable measures, the abundance of these species should increase, assuring the continued viability of these resources and the commercial and recreational fisheries which rely upon them.

Based on current levels of exploitation, spawning stock biomass of winter flounder is well below the ASMFC FMP interim target of preserving 30 percent of maximum spawning potential and the final target of preserving 40 percent of maximum spawning potential. In order to begin to assure future viability of the New Jersey's winter flounder resource, these amendments reduce exploitation to preserve 30 percent of maximum spawning potential.

Increasing commercial size limits and mesh sizes and instituting seasonal closures for the winter flounder fisheries will help to preserve the necessary level of maximum spawning potential. Size limits and fishing seasons will reduce the number of fish harvested. Instituting a larger mesh size will allow more small fish to escape and decrease "discard" mortality from otter trawls. Although the size limit for winter flounder taken in fyke nets is smaller than for other commercial fisheries, the environmental benefits will be similar to other commercial fisheries due to shorter fishing seasons for fyke netting.

Spawning stock biomass for Atlantic coast bluefish has been declining since 1984. The proposed season and possession limits will help to slow or stop this decline by reducing the number of fish harvested.

Based on current levels of exploitation, spawning stock biomass of weakfish is well below the ASMFC FMP interim target of preserving 20 percent of maximum spawning potential and final target of preserving 40 percent of maximum spawning potential. In order to begin to assure future viability of New Jersey's weakfish resource, these amendments reduce exploitation to preserve 20 percent of maximum spawning potential. The implementation of seasonal closures, along with the existing size limits and mesh sizes, will help to preserve the necessary level of maximum spawning potential.

The Atlantic sturgeon provisions will have a positive environmental impact on the resource. The restrictive measures proposed are designed to rebuild the stock. Fewer younger sturgeon will be harvested, which should result in an increase in spawning stock biomass and increased production in the future.

The degradable panel requirement and the modification of the size of escape vents will both have positive environmental impacts on the lobster fishery. The degradable panel will allow the escape of lobsters and fish from pots which have been lost or abandoned, thus reducing mortality for both lobster and finfish resources. Escape vent modifications will improve the survivability of sublegal-sized lobsters and finfish.

The provision to prohibit at sea filleting of fish with a minimum size limit specified at N.J.A.C. 7:25-18.1(b), should result in a positive environmental impact. Providing a mechanism to enforce minimum size limits will benefit those fishery resources. All of the species listed are subject to coastwide management measures designed to improve and rebuild the respective stocks. Minimum size limits are one means to protect spawning stocks. If a large percentage of fish survive to spawn, the opportunity to increase year class strength on a continuing basis is enhanced and the possibility of a recruitment failure is decreased. It is therefore important to ensure compliance with minimum size limits to allow for the maximum number of fish to spawn.

The provisions that give the Commissioner, with the approval of the Marine Fisheries Council, the ability to modify minimum size limits, minimum net mesh sizes, fishing seasons, possession limits and quotas by notice should result in a positive environmental impact. By giving the Commissioner the authority to modify the more common management measures, by notice, the negative impacts to the resource can be minimized. As fishery stock conditions change, the Department can quickly respond with management measures that are designed to alleviate pressure on a declining resource.

The amendment concerning cobia is designed to bring New Jersey into compliance with the Federal regulations for this species. The new rule containing the Striped Bass Trophy Program is designed to simplify the rules, and the amendment on spearfishing is designed to clarify that rule's application. As such, none of these provisions will result in any environmental impact.

Regulatory Flexibility Analysis

The proposed amendments and new rule apply to recreational and commercial fishermen and party and charter boats fishing for striped bass, cobia, winter flounder, bluefish, weakfish, American lobster, and Atlantic sturgeon. Most of the commercial fishermen and party and charter boats would be defined as small businesses under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:43-16 et seq. Although these businesses would have to comply with the provisions of the amendments and new rules, as described in the Summary above, no new recordkeeping requirements are proposed, nor should professional services be needed for compliance. The provision which changes the Atlantic sturgeon reporting requirements from a monthly basis to an annual basis actually reduces the reporting burden of Atlantic sturgeon permittees. Some capital costs will be incurred by these small businesses in order to comply with the proposed increased mesh sizes for otter trawls, and requirements for degradable panels and escape vents in lobster pots. In developing these amendments, the Department balanced the need to protect the fisheries resources against the economic impacts of the proposed requirements. It determined that to minimize the impact of the amendments further would endanger the fisheries resources and would impair New Jersey's ability to come into compliance with the ASMFC fishery management plans, thus risking imposition of a fishing moratorium in the State's waters. The imposition of a moratorium could, in turn, endanger the public welfare. Therefore, no exemption for coverage is provided for small businesses.

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

7:25-18.1 Size and possession limits

(a) A person shall not purchase, sell, offer for sale, or expose for sale any species listed below less than the minimum length, measured in inches, **except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section.** [Full] **Fish** length shall be measured from the tip of the snout to the tip fo the tail.

Species	Scientific Name	Minimum Size (inches)
Atlantic Mackerel	*Scomber scombrus*	7
Atlantic Sturgeon	***Acipenser oxyrhynchus***	**60**
Black Sea Bass	*Centropristis striata*	8
Bluefish	*Pomatomus saltatrix*	9
Kingfish	*Menticirrhus saxatilis* *Menticirrhus americanus*	8
Porgy (Scup)	*Stenotomus chrysops*	7
Goosefish (Monkfish)	*Lophius americanus*	17
Winter Flounder	***Pleuronectes americanus***	12

1. In addition to the total minimum goosefish size, all goosefish tails possessed must be at least 11 inches in length from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. The total weight of all goosefish livers landed shall not be more than 30 percent of the total weight of all goosefish tails landed or 12 percent of the total weight of all goosefish landed.

2. A person may not possess a dressed Atlantic sturgeon for sale less than 36 inches in length, subject to the additional provisions in N.J.A.C. 7:25-18.15. Dressed length is the length of an Atlantic sturgeon after the head, collar, tail and viscera have been removed.

(b) A person shall not take from the marine waters in the State or have in his or her possession any species listed below less than

the minimum length, measured in inches, except as **may be** provided **elsewhere** in [N.J.A.C. 7:25-18.14] **this subchapter, and subject to the specific provisions of any such section.** Fish length shall be measured from the tip of the snout to the tip of the tail.

Species	Scientific Name	Minimum Size (inches)
Atlantic Cod	*Gadus morhua*	19
Atlantic Sturgeon	*Acipenser oxyrhynchus*	60
Cobia	*Rachycentron canadum*	37
Haddock	*Melanogrammus aeglefinus*	19
King Mackerel	*Scomberomorus cavalla*	23
Pollock	*Pollachius virens*	19
Red Drum	*Sciaenops ocellatus*	18
Spanish Mackerel	*Scomberomorus maculatus*	14
Summer Flounder (Fluke)	*Paralichthys dentatus*	14
[Tautog (Blackfish), through December 31, 1994	*Tautoga onitis*	11]
Tautog (Blackfish)[, beginning January 1, 1995 and thereafter]	*Tautoga onitis*	12
Weakfish	*Cynoscion regalis* *Cynoscion nebulosus*	13
Winter Flounder	*Pleuronectes americanus*	10

(c) A person angling with a hand line or with rod and line or spearfishing shall not **take in any one day or** possess [any summer flounder or summer flounder parts beginning October 31 through April 29 nor shall any person angling with a hand line or with rod and line or spearfishing possess more than eight summer flounder at any time during the period beginning April 30 through October 30, except as provided in N.J.A.C. 7:25-18.14. The Commissioner, after consultation with the Marine Fisheries Council, may modify the possession limit of summer flounder during the open season and/or set the open season by notice. The possession limit of summer flounder shall be consistent with the possession limit established by the Northeast Regional Director of the National Marine Fisheries Service. The Department shall provide notice of any change by publishing in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and preparing a news release and submitting to individuals on the Division of Fish, Game and Wildlife's outdoor writers mailing list] **more than the possession limit specified below for each species listed during the open season except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section. A person angling or spearfishing shall not possess any species listed below during the closed season for that species.**

Species	Open Season	Possession Limit
Bluefish	**No closed season**	**10**
King Mackerel	**No closed season**	**5**
Spanish Mackerel	**No closed season**	**10**
Summer Flounder	**April 30-October 30**	**8**
Weakfish	**January 1-October 17 and November 1-December 31**	**10**
Winter Flounder	**March 1-May 31 and September 15-December 31**	**No limit**

(d) A person shall not **take in any one day or** possess [at any one time more than five red drum only one of which may be in excess of 27 inches in length, nor shall any person angling with a hand line or with rod and line or spearfishing possess more than five king mackerel, more than 10 Spanish mackerel, or more than two cobia] **more than the possession limit specified below for each species listed, except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section.**

Species	Possession Limit
Atlantic Sturgeon	**0**
Cobia	**2**
Red Drum	**5, only 1 of which may be greater than 27 inches**

(e) Except as provided in (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any [summer flounder, winter flounder] **species with a minimum size limit specified at (b) above** or **any** other species of flatfish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

(f) Special provisions applicable to a Special [Summer Flounder] Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special [Flounder] Fillet Permit to fillet [summer flounder (fluke) and winter flounder] **species specified at (b) above** at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special [Flounder] Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, **no parts or carcasses of any species specified in (b) above and** no flatfish parts or carcasses shall be discarded overboard; **of the species specified at (b) above,** only whole live [flatfish] **fish** may be returned to the water;

ii. No carcasses of any flatfish **or species listed at (b) above** shall be mutilated to the extent that its length or species cannot be determined;

iii. All [flatfish] **fish** carcasses **of species specified at (b) above** shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any flounder shall be less than seven inches in length during the period of May 1 through October 31 or less than five inches in length during the period of November 1 through April 30;

v. No fillet or part of any species listed below shall have the skin removed and no fillet shall be less than the minimum length in inches specified below.

Species	Minimum fillet or part length
Atlantic Cod	**13 inches**
Cobia	**26 inches**
Haddock	**13 inches**
King Mackerel	**16 inches**
Pollock	**13 inches**
Red Drum	**13 inches**
Spanish Mackerel	**10 inches**
Tautog	**7 inches**
Weakfish	**9 inches**

[v.]**vi.** [Flatfish] **Fish** carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

[vi.]**vii.** Violation of any of the provisions of the Special [Flounder] Fillet Permit shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner, of the Special [Flounder] Fillet Permit according to the following schedule;

(1) First offense: 30 days suspension;

(2) Second offense: 90 days suspension; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

[vii.]**viii.** [Prior] **Upon receipt of the notice of suspension but prior** to the suspension or revocation of the Special [Flounder] Fillet Permit, the permittee has [the right] **20 days** to **request** a hearing[,

upon the permittee's request to] **from** the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1. **If a request for a hearing is not received by the Department within 20 days of the permittee's receipt of the notice of suspension, the permit suspension or revocation will be effective on the date indicated in such notice.**

(g)-(i) (No change.)

(j) Except for striped bass hybrids that are the products of commercial aquaculture, a person shall not [have] **possess** more than [total of one fish] **the possession limit established pursuant to N.J.S.A. 23:5-45.1** [that is either a], **whether** striped bass or striped bass hybrid, [in his or her possession] while on or angling in the marine waters of this State.

(k)-(l) (No change.)

(m) Any person violating the provisions of [(i)](**h**) through (l) above shall be liable for a penalty of $100.00 for each fish taken or possessed. Each fish taken or possessed shall constitute a separate and distinct offense.

[(n) Pursuant to the provisions of N.J.S.A. 23:5-45.1c the possession of one "trophy sized" striped bass, measuring not less than 38 inches in length, will be allowed in addition to the one fish allowed under the provision of N.J.S.A. 23:5-45.1(a) in accordance with the following provisions:

1. Any person intending to take one striped bass measuring not less than 38 inches in length in addition to his normal possession of one striped bass measuring not less than 28 inches in length shall apply to the Division for a "fish possession tag." Applications may be obtained from either of the following:

i. Division of Fish, Game and Wildlife
Striped Bass Trophy Fish Program
CN 400
Trenton, NJ 08625; or

ii. Fish checking stations, as authorized by the Division and identified by public notice in the New Jersey Register;

2. The application form shall be completely filled in to include the name, address and telephone number of the applicant and any other information requested therein;

3. Applications for a fish possession tag will be accepted for participation in the trophy fish program and processed in order of receipt by the Division;

4. Successful applicants will receive one, non-transferable fish possession tag. This tag is to be placed through the mouth and out behind the gill cover of the trophy fish and fastened to form a complete circle immediately upon capture;

5. Any fish possession tag not utilized during the calendar year in which it was issued will be valid for subsequent years except during those periods in which the Department has closed the State's waters to harvesting as provided below at (n)11;

6. Successful applicants shall keep and submit annual records of their striped bass fishing activity as requested on forms furnished by the Division. Such records shall include, but not be limited to, the days and hours fished, number of striped bass caught and location of fishing activity. Extra forms can be obtained from fish checking stations.

7. A person shall not have in his or her possession at any time more than two striped bass, of which one shall be not less than the size provided for in N.J.S.A. 23:5-45.1 and the other shall be not less than 38 inches in length and shall have properly affixed, completely fastened and legal fish possession tag;

8. A striped bass taken under the provision of this subsection shall be transported to an authorized fish checking station by the person who caught the fish on the day so taken. A person shall not present for registration or permit to be registered in his or her name a striped bass which he or she did not catch. Any person who legally takes and tags a striped bass under these provisions and who cannot arrive at a fish checking station prior to closing time shall immediately report to the marine enforcement office at (609) 748-2050 and supply his or her name, the date, the time and the striped bass tag number and shall check the fish at an authorized fish checking station the following day;

9. A person shall not possess any striped bass taken or tagged under the provisions of this subsection which is damaged or mutilated to the extent that its length cannot be determined, other than immediately prior to preparation or being served as food;

10. If available, an additional fish possession tag may be provided to the angler upon recording of his or her prior legally tagged striped bass at an authorized fish checking station; and

11. When, at any time during the calendar year, the Division has projected that the quota established by the Atlantic States Marine Fisheries Commission of striped bass will have been harvested within the next 72 hours under the provisions of this section, the Division will close the State's waters to any further harvesting upon two days public notice in the Newark Star-Ledger, Asbury Park Press and The Press (of Atlantic City).

12. The quota described in (n)11 above shall be 63,800 pounds until such time as another quota is duly promulgated by the Atlantic States Marine Fisheries Commission.

13. Upon promulgation of any change in the quota described in (n)11 above, the Division will provide public notice thereof in the Newark Star-Ledger, the Asbury Park Press and The Press (of Atlantic City).

(o) Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or (h) and (n) above shall be liable to a penalty of $100.00 per fish for the first offense and a penalty of $200.00 per fish for each subsequent offense. In addition, any person violating any of (n) above shall be liable to revocation from the Striped Bass Trophy Fish Program. Any tag in such person's possession at that time shall be invalid and shall be returned to the Division upon notification of such revocation. Failure to return tag upon Division request shall subject the violator to penalties prescribed pursuant to N.J.S.A. 23:2B-14.]

(n) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, minimum size limits and possession limits specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b). The Department shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and shall submit a news release to individuals on the Division of Fish, Game and Wildlife outdoor writers' mailing list.

Recodify existing (p) and (q) as **(o) and (p)** (No change in text.)

7:25-18.4 Spearfishing

It shall be lawful to take, catch, or kill all species of fish by means of spearfishing, during the **respective** open season [therefor], except for those species of fish specifically protected. For the purpose of this rule, spearfishing shall mean the taking of fish by means of a spear, harpoon, or other missile, **or by hand,** while completely submerged in the marine waters of the State.

7:25-18.5 General net regulations

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

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. To be eligible to purchase a 1992 license for a drifting, staked or anchored gill net the applicant shall have purchased a gill net license during 1990[,] **or** 1991 or a 1992 license prior to May 1, 1992 or provide documented proof of active military service within one year of application. An applicant who does not meet the above requirements must file an application, in person, with the Department in each of two consecutive years. Such an applicant shall be eligible for gill net licenses in the following calendar year. Beginning in the license year (January 1-December 31) 1993, an applicant for a gill net license must have possessed a gill net license in one of the two previous years. Failure to purchase a gill net license in one of the prior two years shall subject the applicant to the two year waiting period described above. Availability of Delaware Bay Gill Net Permits shall

be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1. (No change.)

2. Fykes shall have a length, including leaders, which shall not exceed 30 fathoms and no part of the net or leaders shall be constructed of monofilament or have a mesh larger than five inches stretched. Fyke nets may be used for all species except those specifically protected.

i.-iv. (No change.)

v. Any winter flounder taken by fyke net during the month of December or March shall not be retained and must be immediately returned to the water.

vi. A person shall not possess, purchase, sell, offer for sale or expose for sale any winter flounder less than 10 inches in length taken by fyke nets during the months of November, January, February and April.

vii. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons and minimum size limits for winter flounder specified at (g)2v and vi above by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b). The Department shall publish notice of any such modification in the Division's commercial regulation publication and the New Jersey Register.

[v.]**viii.** The fyke resident fee shall be $12.00 per net. Each licensee shall notify the Department in their license application of the specific estuary in which they intend to fish the fyke net(s). Licensees shall notify the Department as to any change in the specific estuary within which the fyke net is located no later than seven days following the change in estuary. Such notice shall be in writing to:

Division of Fish, Game and Wildlife
Marine Fisheries Administration
CN 400
Trenton, NJ 08625

3.-10. (No change.)

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay.

i.-iv. (No change.)

v. Effective [January 1, 1987] **March 20, 1995**, all lobster and fish [traps] **pots** set north of Barnegat Inlet (LORAN C 9960-Y-43300) must be constructed to include one of the following escape vents in the parlor section of the [trap] **pot** located in such a manner that it would not be blocked or obstructed in normal use by any portion of the [trap] **pot**, associated gear, or the sea floor;

(1) A rectangular portal with an unobstructed opening not less than [1.75]**1.875** inches ([44.5]**47.6** mm) by [six]**5.75** inches ([152.5] **146.0** mm); or

(2) Two circular portals with unobstructed openings not less than [2.25]**2.375** inches ([57.2]**60.3** mm) in diameter.

vi. Effective March 20, 1995, all lobster and fish pots must be constructed to include a ghost panel or other mechanism which is designed to create an opening to allow the escape of lobsters within 12 months after a pot has been abandoned or lost, and which meets the following specifications:

(1) The opening covered by the panel or created by other approved mechanism shall be rectangular and measure at least 3¾ by 3¾ inches, shall be located in the outer parlor section(s) of the pot, and shall be in a position which allows the unobstructed exit of lobsters or fish from the pot;

(2) The panel shall be constructed of, or fastened to the pot with, one of the following materials: wood lath; cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter; or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter;

(3) The door of the pot may serve as the ghost panel if the door is fastened to the pot with a material specified in (g)11vi(2) above;

(4) The escape vent specified in (g)11v above may serve as a ghost panel if the escape vent is incorporated into a panel constructed of, or attached to the pot with, a material specified in (g)11vi(2) above, and, upon breakdown of the degradable materials, will create an opening of at least 3¾ by 3¾ inches for the exit of lobster or fish; and

(5) Pots constructed entirely or partially of wood shall be considered to be in compliance with this subparagraph if constructed of wood lath to the extent that deterioration of wooden component(s) will result in an unobstructed opening as specified in (g)11vi(1) above.

Recodify existing vi.-viii. as **vii.-ix.** (No change in text.)

12. (No change.)

(h) (No change.)

7:15-18.12 [Weakfish management] **Commercial fishing seasons and quotas**

[(a) A person angling with hand line or with rod and line shall not possess more than ten weakfish at any time.

(b) A person shall not remove the head, tail or skin or otherwise mutilate to the extent that its length or species cannot be determined any weakfish, except after such weakfish has been landed to any ramp, pier, wharf, dock or other shore structure where it may be inspected for compliance with the appropriate size limits, except that weakfish fillets with the skin attached may be landed provided they are not less than the minimum size specified at N.J.A.C. 7:25-18.1(b) or 18.14(j)2.

(c) Any person violating the provisions of (a) or (b) above or N.J.A.C. 7:25-18.14(j)2 shall be liable for a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(d) A person shall not take, or attempt to take, any weakfish by any means other than angling, and a person shall not possess more than ten weakfish, during the closed seasons beginning June 7 through June 30 and October 20 through December 31 except as provided in (f) below. After advertisement and public distribution of the Council meeting agenda and consultation with the Marine Fisheries Council, the Commissioner may modify the closed seasons specified above upon notice provided the spring closure established is between May 15 and June 30 and the fall closure established is between October 1 and December 31. The Department shall provide notice of any change by filing and publishing in the New Jersey Register. All such notices shall be effective when the Department files notice with the Office of Administrative Law or as specified otherwise in the notice.

(e) A person shall not set, tend, or attempt to set or tend a drifting, stakes or anchored gill net in Delaware Bay during the spring closed season specified in (d) above or as modified by the Commissioner by notice unless such person has obtained a Gill Net Mesh Exemption Permit as specified in N.J.A.C. 7:25-18.5(g)5vii and such net is one of the following:

1. Drifting, staked or anchored nets with a stretched mesh not less than 10 inches;

2. Drifting, staked or anchored nets with a stretched mesh not less than 5.5 inches south of Lorant C42800;

3. Drifting, staked or anchored nets with a stretched mesh not less than 2.75 inches or greater than 3.0 inches in Delaware Bay within two nautical miles of the mean high water line.

(f) A person shall not sell, barter, possess for sale or barter, or offer for sale or barter any weakfish landed in New Jersey during the closed seasons specified in (d) above, or as modified by the Commissioner, except weakfish harvested by otter trawl during the fall closure.

(g) Possession of greater than 10 weakfish at any time during the closed seasons shall be prima facie evidence of violation of the no sale provision (f) above.]

(a) The following provisions are applicable to the commercial harvest of weakfish:

1. A person shall not land any weakfish by the gear specified below except during the respective open season specified below or as modified by the Commissioner pursuant to (d) below.

Gear	Open Season
Otter Trawl	January 1 through July 31 and October 9 through December 31
Pound Nets	January 1 through June 6 and July 1 through December 31
Gill Nets, through December 31, 1994	January 1 through June 6, July 1 through August 31 and October 12 through December 31
Gill Nets, beginning January 1, 1995	January 1 through May 20, September 3 through October 19 and October 27 through December 31

2. A dealer shall not accept any weakfish landed in New Jersey taken by the respective gear types specified in (a)1 above except during the respective open season specified above or as modified by the Commissioner pursuant to (d) below.

(b) The following provisions are applicable to the commercial harvest of bluefish:

1. New Jersey's annual allocation of bluefish as determined by the National Marine Fisheries Service shall be allocated according to gear type as follows:

i. Gill Net: 60.9 percent;
ii. Pound Net: 14.9 percent;
iii. Otter Trawl: 14.7 percent;
iv. Purse Seine: 7.5 percent; and
v. Hook and Line: 1.8 percent.

2. A person shall not land any bluefish taken by the gear type specified in (b)1 above except during the respective open season specified below or as modified by the Commissioner pursuant to (d) below.

Gear Type	Open Season
Gill Net, through December 31, 1994	January 1 through June 30 and September 2 through December 31
Gill Net, beginning January 1, 1995	January 1 through October 10
Pound Net	May 15 through December 31
Otter Trawl	January 1 through July 31 and October 1 through December 4
Hook and Line	January 1 through September 8

3. A dealer shall not accept any bluefish landed in New Jersey taken by the respective gear type specified in (b)1 above except during the respective open season specified in (b)2 above or as modified by the Commissioner pursuant to (d) below.

4. As specified at (b)1 above, the annual bluefish quota for the purse seine fishery shall be 7.5 percent of New Jersey's annual commercial bluefish quota as allocated by the National Marine Fisheries Service. No purse seine vessel shall land and no dealer shall accept any bluefish landed in New Jersey that have been harvested by purse seine in excess of the annual purse seine quota or after the purse seine season has been closed. If the annual purse seine quota is exceeded in any one calendar year, the overharvest shall be deducted from the purse seine quota in the next subsequent calendar year(s).

5. A person angling with a handline or with rod and line shall not possess more than the possession limit for bluefish set forth at N.J.A.C. 7:25-18.1(c) except during the open commercial hook and line season and provided that the angler is in possession of a valid National Marine Fisheries Service commercial bluefish permit in the angler's name.

6. The Commissioner, or his or her designee, may close the season for the respective gear types in (b)2 above upon four days public notice of the projected date the quota for the respective gear types shall be landed. Such notice shall be sent by first class mail to all commercial docks and commercial fishing organizations on the mailing list of the Division of Fish, Game and Wildlife.

(c) For the purpose of this section, "land" shall mean to begin offloading fish, to offload fish or to enter port with fish.

(d) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas and/or seasons specified in this section, by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b). The Department shall publish notice of any such modification in the Division's commercial regulation publication and the New Jersey Register.

7:25-18.13 [(Reserved)] Striped bass trophy program

(a) Pursuant to N.J.S.A. 23:5-45.1(c), the possession of one "trophy sized" striped bass, measuring not less than 38 inches in length, will be allowed in addition to the possession limit allowed under N.J.S.A. 23:5-45.1(a), pursuant to (b) through (o) below.

(b) Any person intending to take one striped bass measuring not less than 38 inches in length in addition to his or her striped bass possession limit as specified at N.J.S.A. 23:5-45.1 shall apply to the Division for a "fish possession tag." Applications may be obtained from the following:

1. Division of Fish, Game and Wildlife
Striped Bass Trophy Fish Program
Nacote Creek Research Station
P.O. Box 418
Port Republic, NJ 08241

2. Fish checking stations, as authorized by the Division and identified by public notice in the New Jersey Register.

(c) The application form shall be completed to include the name, address and telephone number of the applicant.

(d) Applications for a fish possession tag will be accepted for participation in the trophy fish program and processed in order of receipt by the Division.

(e) Successful applicants will receive one, non-transferable fish possession tag. This tag is to be placed through the mouth and out behind the gill cover of the trophy fish and fastened to form a complete circle immediately upon capture.

(f) Any fish possession tag not utilized during the calendar year in which it was issued will be valid for subsequent calendar years except during those periods in which the Department has closed the State's waters to harvesting as provided at (l) below.

(g) Successful applicants shall keep and submit annual records of their striped bass fishing activity as requested on forms furnished by the Division. Such records shall include the name, address, and tag number(s) of the fishermen, the days and hours fished, the lengths of striped bass caught, the location of fishing activity and the type of fishing. Extra forms can be obtained from fish checking stations.

(h) A person shall not have in his or her possession at any time more than two striped bass, of which one shall be not less than the size provided for at N.J.S.A. 23:5-45.1 and the other shall be not less than 38 inches in length and shall have properly affixed, completely fastened and legal fish possession tag.

(i) Any striped bass taken under this section shall be transported to an authorized fish checking station by the person who caught the fish on the day so taken. A person shall not present for registration or permit to be registered in his or her name a striped bass which he or she did not catch. Any person who legally takes and tags a striped bass under this section and who cannot arrive at a fish checking station prior to closing time shall immediately report his or her harvest to the marine enforcement office at (609) 748-2050 and supply his or her name, the date, the time and the striped bass tag number and shall check the fish at an authorized fish checking station the following day.

(j) A person shall not possess any striped bass taken or tagged under the provisions of this section which is damaged or mutilated to the extent that its length cannot be determined, other than immediately prior to preparation or being served as food.

(k) An additional fish possession tag shall be provided to the angler upon recording of his or her prior legally tagged striped bass at an authorized fish checking station, provided the season has not been closed pursuant to (l) below.

(l) When, at any time during the calendar year, the Division has projected that the quota established by the Atlantic States Marine Fisheries Commission for striped bass will have been harvested within the next 72 hours under the provisions of this section, the

Division will close the State's waters to any further harvesting upon two days public notice in the Newark Star-Ledger, Asbury Park Press and The Press (of Atlantic City). A notice shall also be published in the New Jersey Register.

(m) The quota described in (1) above shall be 63,800 pounds until such time as another quota is duly promulgated by the Atlantic States Marine Fisheries Commission.

(n) Upon promulgation of any change in the quota described in (1) above, the Division will provide public notice thereof in the Newark Star-Ledger, the Asbury Park Press and The Press (of Atlantic City) and the New Jersey Register.

(o) Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or this section shall be liable for a penalty of $100.00 per fish for the first offense and a penalty of $200.00 per fish for each subsequent offense. In addition, any person violating any provision of this section shall be subject to revocation from the Striped Bass Trophy Program. Any fish possession tag in such person's possession shall be invalid and shall be returned to the Division upon such person's receipt of notification of such revocation. Failure to return the tag upon notification shall subject the violator to penalties prescribed pursuant to N.J.S.A. 23:2B-14.

7:25-18.14 Otter and beam trawls

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

(j) Special provisions applicable to a directed weakfish fishery are as follows:

1.-3. (No change.)

4. A person shall not land any weakfish harvested by otter trawl except during the open seasons of January 1 through July 31 and October 9 through December 31 or as modified by the Commissioner pursuant to (n) below. No dealer shall accept any weakfish landed in New Jersey taken by otter trawl except during such open seasons or as modified by the Commissioner pursuant to (n) below.

(k) Special provisions applicable to a directed winter flounder fishery are as follows:

1. The possession of more than 100 pounds of winter flounder on board a vessel or landed from a vessel shall constitute a directed fishery for winter flounder.

2. A person shall not possess any winter flounder less than 12 inches in length that have been harvested by otter or beam trawl.

3. A person utilizing an otter or beam trawl in a directed fishery for winter flounder shall not use a net of less than 5.0 inches stretched mesh inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net.

4. No person shall land any winter flounder taken by otter trawl or by any other net, trap, dredge or commercial gear, except during the open season of February 1 through May 14 or as modified by the Commissioner pursuant to (n) below. No dealer shall accept any winter flounder landed in New Jersey except during such open season or as modified by the Commissioner pursuant to (n) below. The harvest of winter flounder by the use of fyke nets is subject to the provisions of N.J.A.C. 7:25-18.5(g)2.

(l) Special provisions concerning the harvest of bluefish are as follows:

1. The annual bluefish allocation to the otter trawl fishery shall be 14.7 percent of New Jersey's annual commercial bluefish quota as allocated by the National Marine Fisheries Service.

2. A person shall not land any bluefish taken by otter trawl except during the open seasons of January 1 through July 31 and October 1 through December 4 or as modified by the Commissioner pursuant to (n) below.

(m) For the purpose of this section, "land" shall mean to begin offloading fish, to offload fish or to enter port with fish.

(n) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, mesh sizes, minimum size limits and seasons specified in this section by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b). The Department shall publish notice of any such modification in the Division's commercial regulation publication and the New Jersey Register.

7:25-18.15 Atlantic sturgeon management

(a) An individual shall not take or attempt to take [more than one Atlantic sturgeon per day for the purposes of sale or barter from the marine waters of the State, or from the marine waters outside the State and landed within]**, possess or land any Atlantic sturgeon in** the State, without a valid Atlantic Sturgeon Commercial Gill Net Permit **or a valid Atlantic Sturgeon By-Catch Permit** issued by the [Commissioner.] **Department. No holder of either permit shall land an Atlantic sturgeon unless such sturgeon has a valid, properly affixed possession tag as specified at (g) and (h) below. No person shall possess any Atlantic sturgeon that does not have a valid, properly affixed possession tag. "Land" shall mean to begin offloading fish, to offload fish or to enter port with fish.**

(b) **An** Atlantic Sturgeon Commercial Gill Net Permit[s are not transferable] **may be transferred to another individual eligible for a gill net license for the purpose of taking Atlantic sturgeon with gill nets. The permittee shall request approval to transfer the permit in writing to the Department, and no such transfer shall be valid until the transferee has received a valid permit issued in his or her name from the Department. An Atlantic sturgeon commercial gill net possession tag may be transferred to another Atlantic Sturgeon Commercial Gill Net Permit holder. The permittees shall list on the permittee's annual report pursuant to (l) below the name of the permittee or permittees to whom the permittee transferred any possession tag. The recipient of the transferred possession tag or tags shall list in the annual report pursuant to (l) below each such transferred tag received.**

(c) (No change.)

(d) The application period closes April 2, 1993. Therefore, the Commissioner will determine an annual quota of Atlantic sturgeon (in pounds dressed) that may be harvested for each qualified applicant based upon the following:

1. The total allocation for the directed Atlantic sturgeon gill net fishery **in 1993** shall equal the 1990 documented dressed weight landings provided by applicants on their applications, to be divided in the following way:

i.-ii. (No change.)

(e) (No change.)

(f) [Following May 2, 1993, not more than one Atlantic sturgeon per day may be commercially harvested unless the Atlantic Sturgeon Commercial Gill Net Permit has been issued and received.] **An Atlantic Sturgeon By-Catch Permit and a harvest quota will be issued to each qualifying applicant who provides documentation of Atlantic sturgeon landed in New Jersey by otter trawl or pound net of at least 1,000 pounds dressed weight during any one of the years 1988, 1989, or 1990. The Atlantic Sturgeon By-Catch shall not exceed 5.8 percent of the State allocation for Atlantic sturgeon. This represents the percentage of Atlantic sturgeon landed in New Jersey by otter trawl and pound net in 1990 as reported by the National Marine Fisheries Service. To qualify for an Atlantic Sturgeon By-Catch Permit, an applicant shall comply with (f)1 through 4 below within 45 days of the effective date of this subsection:**

1. The applicant shall complete an application, provided by the Department, listing the dressed weight of Atlantic sturgeon he or she landed by otter trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by otter trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight. Such proof shall consist of one or more of the following:

i. Weigh-out slips totaling the dressed weight harvested;

ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser's business records);

iii. Other documentation similar to that specified in (f)2ii above may be accepted at the discretion of the Department.

3. The application period closes 45 days following the effective date of this subsection.

4. Within 75 days following the effective date of this subsection, each qualified applicant will receive an "Atlantic Sturgeon By-Catch Permit" which shall indicate that permittee's annual (calendar year) harvest quota of Atlantic sturgeon that may be landed.

(g) The Department will issue serially numbered Atlantic sturgeon possession tags to each Atlantic sturgeon commercial gill net and by-catch permittee based upon the permittee's annual harvest quota percentage established pursuant to (d) and (f) above and an equivalent average weight per fish landed as determined through average weighout landing verifications. No person shall reuse or alter any tag, or use a broken tag. All unused tags must be returned to the Department by January 15 of the following year. Tags will be issued for each calendar year by February 15.

(h) An Atlantic sturgeon commercial gill net or Atlantic sturgeon by-catch permittee who takes and possesses an Atlantic sturgeon of legal size shall tag such sturgeon with a numbered tag issued by the Department. Such tag shall be attached and securely locked at the throat of the fish once such fish has been dressed and prior to tending another piece of gear. All Atlantic sturgeon not tagged or of less than the legal minimum size shall be returned uninjured to the water immediately.

(i) The possession of Atlantic sturgeon of a length less than 60 inches or a dressed length less than 36 inches is prohibited. Dressed length is the length of an Atlantic sturgeon after the head, collar, tail and viscera have been removed.

[(g)](j) All [individuals] **Atlantic Sturgeon Commercial Gill Net and Atlantic Sturgeon By-Catch Permit holders** shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing Atlantic sturgeon.

[(h)](k) All Atlantic sturgeon harvested under the Atlantic Sturgeon Commercial Gill Net Permit **or Atlantic Sturgeon By-Catch Permit** shall be landed in New Jersey. [For the purposes of this section, landed shall mean the transfer of a catch of fish from a vessel to the land or any pier, wharf, or dock.]

[(i)](l) All permittees shall be required to complete [monthly] **annual** reports **on forms** supplied by the Department. The [monthly] **annual** report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than **Janury 15 of the next subsequent calendar year** [five working days following the end of the reported month] at the following address:

Division of Fish, Game and Wildlife
Atlantic Sturgeon Program
[CN 400
Trenton, NJ 08625]
P.O. Box 418
Port Republic, NJ 08241

1. The [monthly] **annual** report shall include:

i. The daily harvest and sale of Atlantic sturgeon (in pounds dressed) **and possession tag number for each fish landed;**

ii. The buyer(s) name;

iii. [The cumulative total of Atlantic sturgeon (in pounds dressed) at the beginning of the month;] **Name(s) and address(es) of the permit holder(s) who landed an Atlantic sturgeon that was tagged with the permittee's transferred possession tag;**

iv. The cumulative total of Atlantic sturgeon (in pounds dressed) **landed** at the end of the [month] **year;**

v.-vi. (No change.)

[(j) At any time during the calendar year that the permittee's annual quota of Atlantic sturgeon has been harvested, the permittee shall cease all harvesting of Atlantic sturgeon. A monthly report marked "FINAL" shall be forwarded to the Division at the address provided at (i) above within five working days.]

[(k)](m) Adjustments in individual allocation for [years] **any calendar year** subsequent to 1993 may be made annually by the [Commissioner] **Department**, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual commercial landings data from the National Marine Fisheries Service and an individual's historical harvest performance. If no such adjustment is made, each permittee's quota shall remain at the previous year's amount.

[(l)](n) (No change in text.)

[(m)](o) Any person **or permittee** violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

1.-2. (No change.)

3. Failure to comply with the provisions of [(i) and (j)] **(a), (h), or (l)** above shall subject the violator to suspension or revocation of the Atlantic Sturgeon Commercial Gill Net Permit **or the Atlantic Sturgeon By-Catch Permit.**

4. (No change.)

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1994-573.

A **public hearing** concerning these proposed amendments will be held on Monday, November 21, 1994, at 2:00 P.M. at the following address:

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

Submit written comments by December 7, 1994 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or 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.

The Drug Utilization Review Council is mandated by law to ascertain whether every manufacturer included in the List of Interchangeable Drug Products meets all Federal and State standards, specifically to include compliance with the U.S. Food and Drug Administration's (FDA's) Current Good Manufacturing Practices (CGMP) regulations.

At a previous meeting, the Drug Utilization Review Council agreed that the appropriate products of those manufacturers who do not meet Current Good Manufacturing Practices should be proposed for deletion from the List of Interchangeable Drug Products. The Council has been informed by the U.S. Food and Drug Administration that Geneva does not meet the criteria established as Current Good Manufacturing Practices. Therefore, those drugs manufactured by Geneva are being proposed for deletion from N.J.A.C. 8:71.

Social Impact

There would be no social impact of the proposed deletions on prescribers, pharmacies or patients, because, in all instances, other generic manufacturers who continue to meet the FDA's CGMPs will remain on the List of Interchangeable Drug Products. There is no evidence nor allegations that the failure of these manufacturers who meet CGMPs has resulted in products being marketed that would be detrimental to the public's health. Thus, the main impact of these proposed amendments would fall on the non-compliant manufacturers.

Economic Impact

A negative economic impact would primarily affect the involved manufacturer, who would lose sales in New Jersey (of a magnitude not

determinable) because the products would no longer be acceptable as legal substitutes for brand-name medications. To the extent that some of the medications from the involved manufacturers cannot be returned to suppliers for credit, a secondary impact would also be felt by pharmacies that stocked medications by these companies.

Regulatory Flexibility Analysis

The proposed amendments, which delete specific medications, impose no recordkeeping or recording requirements; however, the amendments do impose compliance requirements on pharmacies and those licensed to prescribe medications, in that they may no longer consider deleted medications as generic alternatives when prescribing or when dispensing prescriptions. Some members of the regulated group are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. However, the Department does not consider it appropriate to make any differential requirement for small businesses, due to an overriding concern for public health and safety, which requires consistency in the application of standards.

Full text of the proposed amendments follows:

The following products are proposed for **DELETION** from the List of Interchangeable Drug Products:

ALDOMET
Methyldopa
500mg
Tablet
Geneva

ALDOMET
Methyldopa
250mg
Tablet
Geneva

ALDOMET
Methyldopa
125mg
Tablet
Geneva

ALDORIL
Methyldopa,
Hydrochlorothiazide
250mg/15mg
Tablet
Geneva

ALDORIL
Methyldopa 500mg,
Hydrochlorothiazide 30mg
D-30
Tablet
Geneva

ALDORIL
Methyldopa,
Hydrochlorothiazide
250mg/25mg
Tablet
Geneva

ALDORIL
Methyldopa 500mg,
Hydrochlorothiazide 50mg
D-50
Tablet
Geneva

ANAPROX
Naproxen sodium
275mg
Tablet
Geneva

ANAPROX DS
Naproxen sodium
550mg
Tablet
Geneva

ANTIVERT
Meclizine HCl
12.5mg
Tablet
Geneva

ANTIVERT/25
Meclizine HCl
25mg
Tablet
Geneva

APRESOLINE
Hydralazine HCl
10mg
Tablet
Geneva

APRESOLINE
Hydralazine HCl
25mg
Tablet
Geneva

APRESOLINE
Hydralazine HCl
50mg
Tablet
Geneva

ASCENDIN
Amoxapine
50mg
Tablet
Geneva

ASCENDIN
Amoxapine
100mg
Tablet
Geneva

ASCENDIN
Amoxapine
150mg
Tablet
Geneva

ASCENDIN
Amoxapine
25mg
Tablet
Geneva

ATARAX
Hydroxyzine HCl
10mg
Tablet
Geneva

ATARAX
Hydroxyzine HCl
50mg
Tablet
Geneva

ATARAX
Hydroxyzine HCl
25mg
Tablet
Geneva

ATIVAN
Lorazepam
0.5mg
Tablet
Geneva

ATIVAN
Lorazepam
2mg
Tablet
Geneva

ATIVAN
Lorazepam
1mg
Tablet
Geneva

BACTRIM
Sulfamethoxazole/
trimethoprim
400mg/80mg
Tablet
Geneva

BACTRIM DS
Sulfamethoxazole/
trimethoprim
800mg/160mg
Tablet
Geneva

BENADRYL
Diphenhydramine HCl
25mg
Capsule
Geneva

BENADRYL
Diphenhydramine HCl
50mg
Capsule
Geneva

BENADRYL
Diphenhydramine HCl
12.5mg/5ml
Elixir
Geneva

BLOCADREN
Timolol maleate
20mg
Tablet
Geneva

BLOCADREN
Timolol maleate
10mg
Tablet
Geneva

BLOCADREN
Timolol maleate
5mg
Tablet
Geneva

BUTISOL
Butabarbital sodium
15mg
Tablet
Geneva

BUTISOL
Butabarbital sodium
30mg
Tablet
Geneva

CAFERGOT
Ergotamine tartrate, caffeine
1mg/100mg
Tablet
Geneva

CALAN
Verapamil HCl
40mg
Tablet
Geneva

CALAN
Verapamil HCl
80mg
Tablet
Geneva

CALAN
Verapamil HCl
120mg
Tablet
Geneva

CATAPRES
Clonidine HCl
0.3mg
Tablet
Geneva

CATAPRES
Clonidine HCl
0.2mg
Tablet
Geneva

CATAPRES
Clonidine HCl
0.1mg
Tablet
Geneva

CLINORIL
Sulindac
150mg
Tablet
Geneva

CLINORIL
Sulindac
200mg
Tablet
Geneva

DALMANE
Flurazepam
15mg
Capsule
Geneva

DALMANE
Flurazepam
30mg
Capsule
Geneva

DARVOCET N
Propoxyphene napsylate/
acetaminophen
100mg/650mg
Tablet
Geneva

DARVON
Propoxyphene HCl
65mg
Capsule
Geneva

DARVON COMPOUND-65
Propoxyphene HCl/Aspirin/
Caffeine
65/389/32.4mg
Capsule
Geneva

DESYREL
Trazodone HCl
100mg
Tablet
Geneva

DESYREL
Trazodone HCl
50mg
Tablet
Geneva

DIABINESE
Chlorpropamide
250mg
Tablet
Geneva

DIABINESE
Chlorpropamide
100mg
Tablet
Geneva

DISALCID
Salsalate
500mg
Tablet
Geneva

DISALCID
Salsalate
750mg
Tablet
Geneva

DONNATAL
Belladonna alkaloids,
phenobarbital
Tablet
Geneva

DYAZIDE
Triamterene/
hydrochlorothiazide
50mg/25mg
Capsule
Geneva

ELAVIL
Amitriptyline
150mg
Tablet
Geneva

ELAVIL
Amitriptyline
50mg
Tablet
Geneva

ELAVIL
Amitriptyline
10mg
Tablet
Geneva

ELAVIL
Amitriptyline
100mg
Tablet
Geneva

ELAVIL
Amitriptyline
25mg
Tablet
Geneva

ELAVIL
Amitriptyline
75mg
Tablet
Geneva

EMPIRIN WITH CODEINE
Aspirin, codeine
(#4) 60mg
Tablet
Geneva

EMPIRIN WITH CODEINE
Aspirin, codeine
(#2) 15mg
Tablet
Geneva

EMPIRIN WITH CODEINE
Aspirin, codeine
(#3) 30mg
Tablet
Geneva

ENDURON
Methyclothiazide
2.5mg
Tablet
Geneva

ENDURON
Methyclothiazide
5mg
Tablet
Geneva

EQUANIL
Meprobamate
400mg
Tablet
Geneva

FIORINAL
Aspirin, butalbital, caffeine
325/50/40mg
Tablet
Geneva

FIORINAL
Aspirin, butalbital, caffeine
325/50/40mg
Capsule
Geneva

FLAGYL
Metronidazole
250mg
Tablet
Geneva

FLAGYL
Metronidazole
500mg
Tablet
Geneva

FLEXERIL
Cyclobenzaprine
10mg
Tablet
Geneva

GANTRISIN
Sulfisoxazole
500mg
Tablet
Geneva

HALDOL
Haloperidol
2mg
Tablet
Geneva

HALDOL
Haloperidol
20mg
Tablet
Geneva

HALDOL
Haloperidol
10mg
Tablet
Geneva

HALDOL
Haloperidol
1mg
Tablet
Geneva

HALDOL
Haloperidol
0.5mg
Tablet
Geneva

HALDOL
Haloperidol
5mg
Tablet
Geneva

HYDRODIURIL
Hydrochlorothiazide
50mg
Tablet
Geneva

HYDRODIURIL
Hydrochlorothiazide
25mg
Tablet
Geneva

IMODIUM
Loperamide HCl
2mg
Capsule
Geneva

INDERAL
Propranolol HCl
10mg
Tablet
Geneva

INDERAL
Propranolol HCl
20mg
Tablet
Geneva

INDERAL
Propranolol HCl
40mg
Tablet
Geneva

INDERAL
Propranolol HCl
60mg
Tablet
Geneva

INDERAL
Propranolol HCl
80mg
Tablet
Geneva

INDOCIN
Indomethacin
25mg
Capsule
Geneva

INDOCIN
Indomethacin
50mg
Capsule
Geneva

ISORDIL
Isosorbide dinitrate
5mg
Tablet, oral
Geneva

ISORDIL
Isosorbide dinitrate
10mg
Tablet, oral
Geneva

ISORDIL
Isosorbide dinitrate
5mg
Tablet, subling
Geneva

ISORDIL
Isosorbide dinitrate
20mg
Tablet, oral
Geneva

ISORDIL
Isosorbide dinitrate
2.5mg
Tablet, subling
Geneva

KAY-CIEL
Potassium chloride
10% (20mEq/15ml)
Liquid
Geneva

LASIX
Furosemide
40mg
Tablet
Geneva

LASIX
Furosemide
20mg
Tablet
Geneva

LASIX
Furosemide
80mg
Tablet
Geneva

LIBRIUM
Chlordiazepoxide HCl
25mg
Capsule
Geneva

LIBRIUM
Chlordiazepoxide HCl
10mg
Capsule
Geneva

LIBRIUM
Chlordiazepoxide HCl
5mg
Capsule
Geneva

LOMOTIL
Diphenoxylate HCl 2.5mg, atropine sulfate 0.025mg
Per 5ml
Liquid
Geneva

LOMOTIL
Diphenoxylate HCl, atropine sulfate
2.5/0.025mg
Tablet
Geneva

MAXZIDE
Triamterene, hydrochlorothiazide
75/50mg
Tablet
Geneva

MAXZIDE-25 MG
Triamterene, hydrochlorothiazide
37.5/25mg
Tablet
Geneva

MECLOMEN
Meclofenamate sodium
100mg
Capsule
Geneva

MECLOMEN
Meclofenamate sodium
50mg
Capsule
Geneva

MELLARIL
Thioridazine HCl
25mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
150mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
100mg/ml
Concentrate
Geneva

MELLARIL
Thioridazine HCl
30mg/ml
Concentrate
Geneva

MELLARIL
Thioridazine HCl
15mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
10mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
50mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
200mg
Tablet
Geneva

MELLARIL
Thioridazine HCl
100mg
Tablet
Geneva

MINIPRESS
Prazosin
5mg
Capsule
Geneva

MINIPRESS
Prazosin
1mg
Capsule
Geneva

MINIPRESS
Prazosin
2mg
Capsule
Geneva

MODURETIC 5-50
Amiloride HCl, hydrochlorothiazide
5/50mg
Tablet
Geneva

MOTRIN
Ibuprofen
600mg
Tablet
Geneva

MOTRIN
Ibuprofen
300mg
Tablet
Geneva

MOTRIN
Ibuprofen
400mg
Tablet
Geneva

MOTRIN
Ibuprofen
800mg
Tablet
Geneva

NALFON
Fenoprofen calcium
600mg
Tablet
Geneva

NALFON
Fenoprofen calcium
300mg
Capsule
Geneva

NALFON
Fenoprofen calcium
200mg
Capsule
Geneva

NAPROSYN
Naproxen
250mg
Tablet
Geneva

NAPROSYN
Naproxen
375mg
Tablet
Geneva

NAPROSYN
Naproxen
500mg
Tablet
Geneva

NAVANE
Thiothixene
10mg
Capsule
Geneva

NAVANE
Thiothixene
1mg
Capsule
Geneva

NAVANE
Thiothixene
2mg
Capsule
Geneva

NAVANE
Thiothixene
5mg
Capsule
Geneva

NEPTAZANE
Methazolamide
25mg
Tablet
Geneva

NEPTAZANE
Methazolamide
50mg
Tablet
Geneva

NORPACE
Disopyramide phosphate
150mg
Capsule
Geneva

NORPACE
Disopyramide phosphate
100mg
Capsule
Geneva

NORPRAMIN
Desipramine HCl
100mg
Tablet
Geneva

NORPRAMIN
Desipramine HCl
10mg
Tablet
Geneva

NORPRAMIN
Desipramine HCl
75mg
Tablet
Geneva

NORPRAMIN
Desipramine HCl
50mg
Tablet
Geneva

NORPRAMIN
Desipramine HCl
25mg
Tablet
Geneva

NORPRAMIN
Desipramine HCl
150mg
Tablet
Geneva

ORINASE
Tolbutamide
0.5g
Tablet
Geneva

ORNADE
Chlorpheniramine maleate, phenylpropanolamine
12/75mg
Capsule, ER
Geneva

PAMELOR
Nortriptyline HCl
25mg
Capsule
Geneva

PAMELOR
Nortriptyline HCl
10mg
Capsule
Geneva

PAMELOR
Nortriptyline HCl
75mg
Capsule
Geneva

PAMELOR
Nortriptyline HCl
50mg
Capsule
Geneva

PARAFLEX
Chlorzoxazone
250mg
Tablet
Geneva

PARAFON FORTE DSC
Chlorzoxazone
500mg
Tablet
Geneva

PERIACTIN
Cyproheptadine HCl
4mg
Tablet
Geneva

PERSANTINE
Dipyridamole
50mg
Tablet
Geneva

PERSANTINE
Dipyridamole
25mg
Tablet
Geneva

PERSANTINE
Dipyridamole
75mg
Tablet
Geneva

PROBANTHINE
Propantheline bromide
15mg
Tablet
Geneva

PROLIXIN
Fluphenazine HCl
5mg
Tablet
Geneva

PROLIXIN
Fluphenazine HCl
2.5mg
Tablet
Geneva

PROLIXIN
Fluphenazine HCl
1mg
Tablet
Geneva

PROLIXIN
Fluphenazine HCl
10mg
Tablet
Geneva

PRONESTYL
Procainamide HCl
250mg
Capsule
Geneva

PRONESTYL
Procainamide HCl
500mg
Capsule
Geneva

PRONESTYL
Procainamide HCl
375mg
Capsule
Geneva

PROVENTIL
Albuterol sulfate
2mg
Tablet
Geneva

PROVENTIL
Albuterol sulfate
4mg
Tablet
Geneva

QUINAGLUTE DURATABS
Quinidine gluconate
324mg
Tablet, ER
Geneva

QUINAMM
Quinine sulfate
260mg
Tablet
Geneva

REGLAN
Metoclopramide
10mg
Tablet
Geneva

RESTORIL
Temazepam
15mg
Capsule
Geneva

RESTORIL
Temazepam
30mg
Capsule
Geneva

ROBAXIN
Methocarbamol
750mg
Tablet
Geneva

ROBAXIN
Methocarbamol
500mg
Tablet
Geneva

SINEQUAN
Doxepin HCl
10mg
Capsule
Geneva

SINEQUAN
Doxepin HCl
50mg
Capsule
Geneva

SINEQUAN
Doxepin HCl
25mg
Capsule
Geneva

SINEQUAN
Doxepin HCl
100mg
Capsule
Geneva

SINEQUAN
Doxepin HCl
75mg
Capsule
Geneva

SOMA
Carisoprodol
350mg
Tablet
Geneva

STELAZINE
Trifluoperazine HCl
10mg/ml
Concentrate
Geneva

STELAZINE
Trifluoperazine HCl
5mg
Tablet
Geneva

STELAZINE
Trifluoperazine HCl
2mg
Tablet
Geneva

STELAZINE
Trifluoperazine HCl
1mg
Tablet
Geneva

STELAZINE
Trifluoperazine HCl
10mg
Tablet
Geneva

TAVIST
Clemastine fumarate
1.34mg
Tablet
Geneva

TAVIST
Clemastine fumarate
2.68mg
Tablet
Geneva

TENORMIN
Atenolol
25mg
Tablet
Geneva

TENORMIN
Atenolol
50mg
Tablet
Geneva

TENORMIN
Atenolol
100mg
Tablet
Geneva

THORAZINE
Chlorpromazine HCl
30mg/ml
Concentrate
Geneva

THORAZINE
Chlorpromazine HCl
100mg/ml
Concentrate
Geneva

TOFRANIL
Imipramine HCl
50mg
Tablet
Geneva

TOFRANIL
Imipramine HCl
25mg
Tablet
Geneva

TOFRANIL
Imipramine HCl
10mg
Tablet
Geneva

TOLECTIN 200
Tolmetin sodium
200mg
Tablet
Geneva

TOLECTIN 600
Tolmetin sodium
600mg
Tablet
Geneva

TOLECTIN DS
Tolmetin sodium
400mg
Capsule
Geneva

TOLINASE
Tolazamide
500mg
Tablet
Geneva

TOLINASE
Tolazamide
250mg
Tablet
Geneva

TOLINASE
Tolazamide
100mg
Tablet
Geneva

TRANXENE
Clorazepate dipotassium
7.5mg
Tablet
Geneva

TRANXENE
Clorazepate dipotassium
15mg
Tablet
Geneva

TRANXENE
Clorazepate dipotassium
3.75mg
Tablet
Geneva

TRIAVIL 2-10
Perphenazine, amitriptyline
2/10mg
Tablet
Geneva

TRIAVIL 2-25
Perphenazine, amitriptyline
2/25mg
Tablet
Geneva

TRIAVIL 4-10
Perphenazine, amitriptyline
4/10mg
Tablet
Geneva

TRIAVIL 4-25
Perphenazine, amitriptyline
4/25mg
Tablet
Geneva

TRIAVIL 4-50
Perphenazine, amitriptyline
4/50mg
Tablet
Geneva

TRILAFON
Perphenazine
2mg
Tablet
Geneva

TRILAFON
Perphenazine
4mg
Tablet
Geneva

TRILAFON
Perphenazine
8mg
Tablet
Geneva

TRILAFON
Perphenazine
16mg
Tablet
Geneva

TYLENOL WITH CODEINE
Acetaminophen, codeine (#4)
300/60mg
Tablet
Geneva

TYLENOL WITH CODEINE
Acetaminophen, codeine (#3)
300/30mg
Tablet
Geneva

VALIUM
Diazepam
2mg
Tablet
Geneva

VALIUM
Diazepam
5mg
Tablet
Geneva

VALIUM
Diazepam
10mg
Tablet
Geneva

VASODILAN
Isoxsuprine HCl
20mg
Tablet
Geneva

VASODILAN
Isoxsuprine HCl
10mg
Tablet
Geneva

VISKEN
Pindolol
5mg
Tablet
Geneva

VISKEN
Pindolol
10mg
Tablet
Geneva

VISTARIL
Hydroxyzine pamoate
50mg
Capsule
Geneva

VISTARIL
Hydroxyzine pamoate
100mg
Capsule
Geneva

VISTARIL
Hydroxyzine pamoate
25mg
Capsule
Geneva

WYGESIC
Acetaminophen,
propoxyphene HCl
650/65mg
Tablet
Geneva

ZYLOPRIM
Allopurinol
100mg
Tablet
Geneva

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1994-574.

A **public hearing** concerning these proposed amendments will be held on Monday, November 21, 1994, at 2:00 P.M. at the following address:

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

Submit written comments by December 7, 1994 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

Over the past 16 years of its existence, certain medications have been added to the Formulary which are no longer made by specific manufacturers. At this time, specific products are proposed for deletion, based on their unavailability, to make the Formulary more up-to-date and uncluttered.

Social Impact

There would be little social impact of the proposed deletions on prescribers, pharmacies or patients, because the medications would continue to be available to those who need them from other manufacturers. The proposed products are either not available or no longer manufactured.

Economic Impact

To the extent that some medications from involved manufacturers cannot be returned to suppliers for credit, a minor impact would be felt by certain pharmacies that stocked these medications. However, this is greatly minimized, since these products have not been available for quite some time and most inventories have been totally depleted.

Overall, it is anticipated that very few persons will be economically adversely affected by these deletions.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq: specifically, over 2,000 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting, recordkeeping or other requirements for pharmacies or small generic drug manufacturers. The amendments eliminate from the List products no longer manufactured.

Full text of the proposed amendments follows:

The following products are proposed for **DELETION** from the List of Interchangeable Drug Products:

ACHROMYCIN V
Tetracycline HCl
250mg
Capsule
ICN

ALDOMET
Methyldopa
250mg
Tablet
Purepac

ALDOMET
Methyldopa
500mg
Tablet
Purepac

ALDORIL
Methydopa with
Hydrochlorothiazide
250mg/15mg
Tablet
Purepac

ALDORIL
Methydopa with
Hydrochlorothiazide
250mg/25mg
Tablet
Purepac

AZO GANTRISIN
Sulfisoxazole and
phenazopyridine HCl
50mg/50mg
Tablet
Trinity

ELIXOPHYLLIN
Theophylline
80mg/15ml
Elixir
Life

ELIXOPHYLLIN KI
Theophylline 80mg/15ml with
potassium
iodide 139mg/15ml
Elixir
Forest

DYAZIDE
Triamterene/
hydrochlorothiazide
50mg/25mg
Capsule
Geneva

DYAZIDE
Triamterene/
hydrochlorothiazide
50mg/25mg
Capsule
Penn Labs

EQUAGESIC
Aspirin with meprobamate
325mg/200mg
Tablet
Par

GANTANOL
Sulfamethoxazole
0.5g
Tablet
Roche

HALDOL
Haloperidol
2mg/ml
Solution
Searle

KEFLEX
Cephalexin
250mg
Capsule
IBSA

KEFLEX
Cephalexin
500mg
Capsule
IBSA

MEDROL
Methylprednisolone
4mg
Tablet
Chelsea

NOCTEC
Chloral hydrate
250mg
Capsule
Pharmacaps

NOCTEC
Chloral hydrate
500mg
Capsule
Pharmacaps

ORNADE
Chlorpheneramine maleate,
phenylpropanolamine
12/75mg
Capsule, ER
Geneva

PROLIXIN
Flufenazine HCl
0.5mg/ml
Elixir
Copley

STELAZINE
Trifluoperazine HCl
1mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
2mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
5mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
10mg
Tablet
Zenith

SURMONTIL
Trimipramine maleate
100mg
Capsule
PBI

SURMONTIL
Trimipramine maleate
50mg
Capsule
PBI

SURMONTIL
Trimipramine maleate
25mg
Capsule
PBI

TERRAMYCIN
Oxytetracycline HCl
250mg
Capsule
P-D

TERRAMYCIN
Oxytetracycline HCl
250mg
Capsule
MK

TERRAMYCIN
Oxytetracycline HCl
250mg
Capsule
West-Ward

THEO-ORGANIDIN
Theophylline 120mg, iodinated
glycerol
30mg
Per 5ml
Elixir
Barre-National

TRI-VI-FLOR WITH IRON
Tri-Vi-Flor with Iron
substitute
0.25mg/ml
Drops, liquid
Hi-Tech

URISED
Urised substitute
Per tablet
Tablet
Trinity

VIBRAMYCIN
Doxycycline hyclate
100mg
Capsule
Rachelle

VIBRAMYCIN
Doxycycline hyclate
50mg
Capsule
Rachelle

VIBRATABS
Doxycycline hyclate
100mg
Tablet
Rachelle

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1994-575.

A **public hearing** concerning these proposed amendments will be held on Monday, November 21, 1994, at 2:00 P.M. at the following address:

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

Submit written comments by December 7, 1994, to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, NJ 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

For example, the proposed bumetanide tablet could be used as a less expensive substitute for Bumex, a branded prescription medicine. Similarly, the proposed glipizide, could be substituted for the more costly branded product, Glucotrol.

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

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

Social Impact

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

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

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

Economic Impact

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

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

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

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

Full text of the proposed amendments follows:

The following products are proposed for **ADDITION** to the List of Interchangeable Drug Products:

ANAPROX
Naproxen sodium
275 mg
Tablet
Mylan

ANAPROX DS
Naproxen sodium
550 mg
Tablet
Mylan

ANSAID
Flurbiprofen
100 mg
Tablet
Lemmon

ANUSOL HC
Hydrocortisone acetate
25 mg
Suppository
Bio-Pharm

BENADRYL
Diphenhydramine HCl
12.5 mg/5 ml
Elixir
Pharm. Assoc.

BICITRA
Sodium citrate 1500 mg, citric acid 1002 mg
Per 15 ml
Oral solution
Pharm. Assoc.

BUMEX
Bumetanide
0.5 mg
Tablet
Zenith

BUMEX
Bumetanide
1 mg
Tablet
Zenith

BUMEX
Bumetanide
2 mg
Tablet
Zenith

CAPOTEN
Captopril
12.5 mg
Tablet
Danbury

CAPOTEN
Captopril
25 mg
Tablet
Danbury

CAPOTEN
Captopril
50 mg
Tablet
Danbury

CAPOTEN
Captopril
100 mg
Tablet
Danbury

CARDIZEN CD
Diltiazem
120 mg
Capsule
Blue Ridge/Carderm

CARDIZEM CD
Diltiazem
180 mg
Capsule
Blue Ridge/Carderm

CARDIZEM CD
Diltiazem
240 mg
Capsule
Blue Ridge/Carderm

CARDIZEM CD
Diltiazem
300 mg
Capsule
Blue Ridge/Carderm

CECLOR
Cefaclor
250 mg
Capsule
Zenith

CECLOR
Cefaclor
500 mg
Capsule
Zenith

CECLOR
Cefaclor
125 mg/5 ml
Suspension
Zenith

CECLOR
Cefaclor
187 mg/5 ml
Suspension
Zenith

CECLOR
Cefaclor
250 mg/5 ml
Suspension
Zenith

CECLOR
Cefaclor
375 mg/5 ml
Suspension
Zenith

CLOMID
Clomiphene citrate
50 mg
Tablet
Blue Ridge

CORGARD
Nadolol
20 mg
Tablet
Zenith

CORGARD
Nadolol
40 mg
Tablet
Zenith

CORGARD
Nadolol
80 mg
Tablet
Zenith

CORGARD
Nadolol
120 mg
Tablet
Zenith

CORGARD
Nadolol
160 mg
Tablet
Zenith

CORGARD
Nadolol
80 mg
Tablet
Copley

CORGARD
Nadolol
120 mg
Tablet
Copley

CORGARD
Nadolol
160 mg
Tablet
Copley

DECONSAL II
Guaifenesin/pseudoephedrine
600 mg with 60 mg
Tablet
Anabolic

DOLOBID
Diflunisal
250 mg
Tablet
Danbury

DOLOBID
Diflunisal
500 mg
Tablet
Danbury

DURA-VENT
Guaifenesin/
phenypropranolamine HCl
600 mg/75 mg
Tablet
KV Pharm

DYAZIDE
Triamterene/
hydrocholorothiazide
50 mg/25 mg
Capsule
Zenith

ELIXOPHYLLIN
Theophylline
80 mg/15 ml
Elixir
Pharm. Assoc.

ENTEX
Phenylpropanolamine HCl 20 mg, phenylephrine 5 mg, guaifenesin
200 mg
Per capsule
Capsule
Duramed

ENTEX PSE
Guaifenesin/pseudoephedrine
600/120
Tablet
Anabolic

ERYC
Erythromycin base enteric coated pellets
250 mg
Capsule
Barr

FIORICET
Acetaminophen, butalbutal and caffeine
325/50/40 mg
Tablet
Graham

GARAMYCIN
Gentamicin sulfate
40 mg/ml
Injection
Steris Labs.

GLUCOTROL
Glipizide
5 mg
Tablet
Circa

GLUCOTROL
Glipizide
10 mg
Tablet
Circa

HALCION
Triazolam
0.125 mg
Tablet
Roxane

HALCION
Triazolam
0.25 mg
Tablet
Roxane

HALDOL
Haloperidol
2 mg/ml
Solution
Silarx

HALDOL
Haloperidol
2 mg/1 ml
Solution
Pharm. Assoc.

HUMIBID DM
Guaifenesin/DM
600/30
Tablet
Anabolic

HUMIBID LA
Guaifenesin
600 mg
Tablet
KV Pharm

ILOTYCIN
Erythromycin
0.5%
Ophth oint
Sight/B&L

LANOXIN
Digoxin
0.125 mg
Tablet
Amide

LANOXIN
Digoxin
0.25 mg
Tablet
Amide

LANOXIN
Digoxin
0.5 mg
Tablet
Amide

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Teva

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Teva

LOZOL
Indapamide
2.5 mg
Tablet
Mylan

MEDROL
Methyprednisolone
4 mg
Tablet
Greenstone

NEPTAZANE
Methazolamide
25 mg
Tablet
Mikart

NEPTAZANE
Methazolamide
50 mg
Tablet
Mikart

NOCTEC
Chloral hydrate
500 mg/5 ml
Syrup
Pharm. Assoc.

NORPRAMIN
Desipramine HCl
25 mg
Tablet
Blue Ridge

NORPRAMIN
Desipramine HCl
50 mg
Tablet
Blue Ridge

NORPRAMIN
Desipramine HCl
75 mg
Tablet
Blue Ridge

NORPRAMIN
Desipramine HCl
100 mg
Tablet
Blue Ridge

PERIDEX
Chlorhexidine gluconate
0.12%
Oral rinse
Paco Pharmaceuticals

PHENERGAN/CODEINE
Promethazine HCl 6.25 mg, Codeine phosphate 10 mg
Per 5 ml
Syrup
Pharm. Assoc.

PHENOBARBITAL
Phenobarbital
20 mg/5 ml
Elixir
Pharm. Assoc.

PYRAZINAMIDE
Pyrazinamide
500 mg
Tablet
Mikart

REGLAN
Metoclopramide
5 mg/5 ml
Syrup Pharm. Assoc.

ROBITUSSIN A-C
Codeine phosphate 10 mg, guaifenesin 100 mg
Per 5 ml
Liquid
Pharm. Assoc.

RONDEC
Carbinoxamine maleate 2 mg, pseudoephedrine HCl 25 mg
Per ml
Drops
H.N. Norton

TAGAMET
Cimetidine
200 mg
Tablet
Zenith

TAGAMET
Cimetidine
300 mg
Tablet
Zenith

TAGAMET
Cimetidine
400 mg
Tablet
Zenith

TAGAMET
Cimetidine
800 mg
Tablet
Zenith

TENORMIN
Atenolol
50 mg
Tablet
Teva

TENORMIN
Atenolol
100 mg
Tablet
Teva

TENUATE DOSPAN
Diethylpropion HCl
75 mg
Tablet
Blue Ridge

TIGAN
Trimethobenzamide HCl
100 mg
Suppository
Bio-Pharm

TIGAN
Trimethobenzamide HCl
200 mg
Suppository
Bio-Pharm

TOLECTIN 200
Tolmetin sodium
200 mg
Tablet
Noramco

TOLECTIN 400
Tolmetin sodium
400 mg
Tablet
Noramco

TOLECTIN 600
Tolmetin sodium
600 mg
Tablet
Noramco

TOLECTIN 600
Tolmetin sodium
600 mg
Tablet
Mylan

TYLENOL WITH CODEINE
Acetaminophen with codeine (#2)
300/15 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen with codeine (#3)
300/30 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen with codeine (#4)
300/60 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen 120 mg & codeine 12 mg
Per 5 ml
Elixir
Pharm. Assoc.

TYLOX
Oxycodone with acetaminophen
5mg/500mg
Capsule
Noramco

VOLTAREN
Diclofenac sodium
25 mg
Tablet
Ciba-Geigy

VOLTAREN
Diclofenac sodium
50 mg
Tablet
Ciba-Geigy

VOLTAREN
Diclofenac sodium
75 mg
Tablet
Ciba-Geigy

VOLTAREN
Diclofenac sodium
50 mg
Tablet
Purepac

VOLTAREN
Diclofenac sodium
75 mg
Tablet
Purepac

HUMAN SERVICES

(a)

OFFICE OF EDUCATION

Instructional Staff; Tenure

Proposed Readoption with Amendments: N.J.A.C. 10:11

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

Authority: N.J.S.A. 30:1-12; N.J.S.A. 18A:1-1; N.J.S.A. 18A:60-1 and 18A:60-1.1, et seq. (P.L. 1986, c.158).

Proposal Number: PRN 1994-588.

Submit comments by December 7, 1994 to:
Mark Gelardo, Ph.D.
Administrative Practice Officer
Office of Education
Department of Human Services
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposal seeks to readopt the chapter first adopted effective January 6, 1990, with only minor amendments. The chapter was originally adopted following the enactment of P.L. 1986, c.158 which was codified as N.J.S.A. 18A:60-1 and 1.1. Under the provisions of Executive Order No. 66(1978), N.J.A.C. 10:11 will expire on January 16, 1995. The Department of Human Services has reviewed these rules and, with the amendments described below, determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The chapter clarifies implementation of N.J.S.A. 18A:60-1 and 1.1, which provide tenure protection to educationally certified instructional staff within the Department of Human Services. The rules establish the procedures by which instructional staff attain tenure rights and provide a legal basis for decisions regarding the granting or denial of tenure rights to these employees. Specifically, instructional staff who complete three years of satisfactory service with appropriate educational certification within the time frames set forth are eligible for tenure rights parallel to those otherwise granted by the teacher tenure statutes. Prior to enactment of the legislation, Department of Human Services' instructional staff were in the unclassified service and were subject to removal pursuant to that status.

N.J.A.C. 10:11-1.1 establishes the legal authority of the rules. N.J.A.C. 10:11-1.2 describes the Department of Human Services' staff affected by the rules. N.J.A.C. 10:11-1.3 contains the definitions used in the chapter. N.J.A.C. 10:11-1.4 discusses the scope of tenure rights. N.J.A.C. 10:11-1.5 sets forth the eligibility criteria for the acquisition of tenure. N.J.A.C. 10:11-1.6 establishes the procedures for notice of reemployment or non-reemployment. N.J.A.C. 10:11-1.7 discusses the use of performance assessment reviews for tenure purposes. N.J.A.C. 10:11-1.8 contains the procedures used in cases where disciplinary is recommended or implemented as a result of charges made against a tenured staff person. N.J.A.C. 10:11-1.9 allows the Commissioner of Human Services to reduce the number of instructional staff under cerain circumstances.

Three minor amendments are being proposed. N.J.A.C. 10:11-1.5 has been amended to remove the date designated for procurement of a standard certificate. This is necessary, as instructional staff are required to obtain a standard certificate within three years from the date an emergency certificate is issued, and, since the promulgation of the original rule, instructional staff who have not had this opportunity have been employed by the Department. The amendments at N.J.A.C. 10:11-1.7 and 1.9 address the recodification of N.J.A.C. 6:3-1.10, 1.19 and 1.21.

Social Impact

Readoption of N.J.A.C. 10:11 will result in the continuation of the procedures by which instructional staff employed by the Department of Human Services attain tenure rights. In the five years the rules have been in existence, the majority of instructional staff have been granted tenure. Tenure status has allowed instructional staff certain rights over non-tenured individuals in situations where facilities have had to undergo a reduction in force. Additionally, tenure ensures that instructional staff are granted the right to continuation of employment subject to dismissal for cause.

The proposed amendments are necessary to correct inaccuracies and do not affect the general provisions of the chapter.

Economic Impact

The Department of Human Services does not anticipate any economic impact since additional funding is not necessary to implement or maintain the amendments, and there are no fees being charged by the Department for participation in the tenure program.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect instructional staff who are employed by the Department of Human Services.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:11.

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

10:11-1.5 Eligibility

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

(c) Employment experience obtained under emergency or provisional certification may be applied towards tenure eligibility. However, tenure may be acquired only when standard certification is issued. [Appropriate standard certification must be obtained by January 16, 1994.] **Instructional staff shall obtain a standard**

certificate within three years from the date an emergency certificate is issued. Requests for an extension of time shall be presented in writing to the Director, Office of Education. Extensions of time to obtain a standard certificate shall be granted by the Director, Office of Education, based upon a demonstration of extraordinary circumstances which prevented the requestor from completing the necessary course work within the time allotted.

10:11-1.7 Performance assessment for tenure purposes

(a) Educationally certified supervisory personnel or the Director, Office of Education, as appropriate, shall conduct performance assessment reviews in compliance with the standards and criteria promulgated by the Commissioner of the Department of Personnel pursuant to N.J.S.A. 11A:6-28 and N.J.A.C. 4A:1-1, and set forth fully at N.J.A.C. 6:3-[1.19]**4.1** and [1.21]**4.3**.

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

(d) For purposes of evaluation of non-tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-[1.19]**4.1**.

1. (No change.)

(e) For purposes of evaluation of tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-[1.21]**4.3**.

1. (No change.)

(f)-(h) (No change.)

10:11-1.9 Reduction in force

Nothing contained in N.J.S.A. 18A shall be held to limit the right of the Commissioner of Human Services in the case of any State institution conducted under his or her jurisdiction, supervision or control, to reduce the number of instructional staff in any such institution or institutions when the reduction is due to natural diminution of the number of students or pupils in the institution or institutions, subject to N.J.A.C. 6:3-[1.10]**5.1**.

(a)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Food Stamp Applications in Pending Status

Proposed Amendment: N.J.A.C. 10:87-2.31

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

Authority: N.J.S.A. 30:4B-2, Food Stamp Act of 1977 as amended (7 U.S.C. Sections 3 and 5), and 7 CFR Part 273.

Proposal Number: PRN 1994-562.

Submit comments by December 7, 1994 to:
Marion E. Reitz, Director.
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing to amend N.J.A.C. 10:87-2.31(e), which specifies the action which county welfare agencies (CWAs) must take when the processing of a food stamp application is delayed due to action or inaction by an applicant household.

Presently, when an applicant household causes a delay in the processing of its food stamp application so that the CWA cannot certify or deny that application 30 days after the application was filed, the application is placed in pending status, and the household is notified in writing of this action. The household is also notified of the action which it must perform in order to complete the processing of its application. The household is also advised that if it does not take the necessary action within 60 days of the date that the application was originally filed, its application will be denied on that 60th day.

The Department is proposing to amend this procedure by denying such a food stamp application 30 days after it is filed, rather than placing it in pending status. Federal regulations at 7 CFR 273.2(h)(2) allow State agencies the option of sending a notice of denial to the household in lieu of the notice of pending status. The regulations stipulate that if a notice of denial is issued, and the household takes the required action within 60 days following the date of the application, the CWA shall reopen the case without requiring the household to file a new application. No further action is required by the CWA after the notice of denial is sent to the household if the household fails to take the required action within 60 days after the date the application was filed.

The proposed amendment is being made to take advantage of a Federal regulatory option, and will result in improved efficiency in the administration of the Food Stamp Program. Under the proposed amendment, the CWAs will no longer need to take further action to deny applicants who fail to take required actions within the second 30-day time period.

Social Impact

The proposed amendment will affect those applicants for the Food Stamp Program who fail to take an action which is fundamental to the disposition of the application for food stamp benefits, as their applications will be denied 30 days after the date that the applications were originally filed. Applicants that take the necessary action to rectify the cause for denial of the application within 60 days of the original filing date of the application will have their applications reinstated without having to file new applications. If they are determined to be eligible, they will receive benefits retroactive to the first day of the month in which they took the required action. This is identical to the current procedure of providing initial benefits to households when their applications were placed in pending status, but take necessary action after the first 30-day period. In both situations, the households lose entitlement to food stamp benefits for the month of application, per N.J.A.C. 10:87-2.31(e)2.

Economic Impact

The proposed amendment will benefit the CWAs that will no longer need to take further action to deny the case at the end of the 60-day period when the household has failed to respond to the notice of pending status.

Regulatory Flexibility Statement

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

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

10:87-2.31 Delays in processing

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

(e) Delays caused by the household: If, by the 30th day, the CWA cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application.

[1. Pending status: When the household has failed to take action by the 30th day, an "Adverse Action Notice" shall be sent on the 30th day advising the household of action still required to determine eligibility and that their case is being placed in pending status. The household will have an additional 30 days to take the required action. If the household has not taken the required action within 60 days of the date the application was filed, the household will be required to file a new application to determine eligibility for benefits.

2. Households found eligible in second 30-day period: If the household was at fault for the delay in the first 30-day period but is found to be eligible during the second 30-day period, the CWA shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay is the fault of the household.]

1. On the 30th day, the CWA shall send a Notice of Denial to the household. If the household takes the required action within 60 days following the date that the application was filed, the CWA shall reopen the case without requiring a new application. No further action by the CWA is required after the Notice of Denial is sent, if the household fails to take the required action within 60 days following the date the application was filed.

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

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Proposed Readoption with Amendments: N.J.A.C. 10A:2

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10; Executive Order No. 93(1993); and N.J.S.A. 2C:46-4.

Proposal Number: PRN 1994-565.

Submit comments by December 7, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:2, Fiscal Management, expires on February 5, 1995. The Department of Corrections has reviewed these rules and, with the addition of new rules at subchapter 1, and the amendments in subchapters 2, 3, 5, 6, 7, 8, 9 and 10, has determined these rules to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the Department is proposing the readoption of these rules at this time. Due to the Department of Corrections' organizational restructuring plan effective November 19, 1992, and July 1, 1994, all references to the "Division of Adult Institutions" when used throughout this chapter have been replaced with the "Division of Operations" and all references to the word "appropriate" when referring to the Assistant Commissioner have been deleted. Additionally, all references to "Invoice Form AR 50/54" have been changed to "Form PV3-93 State of New Jersey Payment Voucher-Vendor Invoice" which is the correct form name used in conjunction with the New Jersey Comprehensive Financial Information System.

A new subchapter, N.J.A.C. 10A:2-1, Introduction, is being proposed which will provide the purpose and scope of the chapter, the definition of words and terms and a list of forms that are utilized in the fiscal management process. For ease of locating and for the purpose of clarification, all of the sections referring to definitions found at N.J.A.C. 10A:2-5.1, 6.1, 7.1, 9.1 and 10.1 are being recodified into N.J.A.C. 10A:2-1.3, Definitions, and all of the sections referring to forms found at N.J.A.C. 10A:2-6.8, 8.9 and 9.2 are being recodified into N.J.A.C. 10A:2-1.4, Forms. At N.J.A.C. 10A:2-1.3, the definition for "inmate property" has been expanded to include inmate personal property that is held by a correctional facility but is not in the possession of the inmate. The definition of "restitution" has been expanded to include court ordered indemnification.

Subchapter 2 provides the rules setting forth the policy and the procedures for the establishment of inmate individual savings accounts. Pursuant to N.J.S.A. 2C:46-4, the regulations at N.J.A.C. 10A:2-2.2 will be amended to provide the authority to correctional facility Business Managers to deduct either earned or unearned funds in excess of a $15.00 balance to pay court ordered penalty assessments, restitution, fines, or other revenue obligations.

Subchapter 3 provides the rules specifying the sources from which income for inmate welfare funds may be derived, the role of the Institutional Boards of Trustees and the expenditures for which inmate welfare funds may and may not be spent. For the sake of clarity, language at N.J.A.C. 10A:2-3.1 regarding "interest" and "savings" has been changed to "income" and "investments."

Subchapter 4 is reserved.

Subchapter 5 provides an outline of the appropriate procedure to be followed when a correctional facility is reporting the discovery of the loss of funds by theft, larceny, embezzlement, or mysterious disappearance. The section heading at N.J.A.C. 10A:2-5.3 has been changed to read "Reporting the loss of funds" and the text amended to specify that the Assistant Commissioner, Division of Administration, will receive the written report of loss of funds and shall prepare and submit the request for reimbursement. The section heading of N.J.A.C. 10A:2-5.4 has been deleted and the text recodified as N.J.A.C. 10A:2-5.3(c) and amended to read that the loss of funds not covered by the Bureau of Risk Management shall be referred to the Deputy Commissioner, Division of Administration. These amendments are being proposed due to the Department of Corrections' organizational restructuring plan.

Subchapter 6 establishes the policies and procedures to be used in processing inmate claims for lost, damaged, or destroyed personal property. The Department of Corrections proposes the text at N.J.A.C. 10A:2-6.3 be repealed and the existing N.J.A.C. 10A:2-6.4 through 6.7 be recodified to N.J.A.C. 10A:2-6.2 through 6.5. This repeal of language is necessary due to Executive Order No. 93(1993) under the Reorganization Plan No. 001(1993), which transferred all juvenile residential centers from the Department of Corrections to the Department of Human Services. Proposed amendments add minor changes in language throughout the recodified N.J.A.C. 10A:2-6 for the purpose of clarifying the process of handling claims. The newly recodified N.J.A.C. 10A:2-6.2(l) has been further amended to clarify that the Deputy Director also disapproves claims, and a new subsection (m) has been proposed which specifies who receives Deputy Director approved or disapproved claim packets.

Subchapter 7 establishes the policies and procedures for the withdrawal of restitution from an inmate's account to compensate a correctional facility for the loss or damage of property.

Subchapter 8 establishes the policies and procedures whereby the Bureau of Parole may provide a limited amount of financial aid to persons meeting certain criteria who are released upon expiration of sentence, to parole supervision or to preparole status in the Electronically Monitored Home Confinement Program.

Subchapter 9 establishes a process by which gifts may be donated and accepted for use by correctional facilities or programs within the New Jersey Department of Corrections. The proposed amendments in this subchapter include a minor change in spelling and the correction of a form name. Also, N.J.A.C. 10A:2-9.7, 9.8 and 9.10 have been amended to reflect that the Assistant Commissioner, Division of Administration, is responsible for the approval or disapproval of gifts of vehicles or vehicle parts, capital construction and medical supplies or medical equipment. These amendments are being proposed due to the Department of Corrections organizational restructuring plan.

Subchapter 10 specifies the responsibilities of the Grants Manager of the Department of Corrections and establishes the procedures for submitting and processing proposals, concept papers and other requests for funding projects with financial resources from non-State budgeted agencies.

Social Impact

The rules within N.J.A.C. 10A:2 have been in effect as rules since February 5, 1990. These rules have served to govern the fiscal management of inmate accounts, inmate welfare funds, reporting loss of funds, reimbursement for property, restitution, financial aid upon release from correctional facilities, gifts and grants. The continued use of these rules will assist Business Managers to prudently and efficiently administer the day to day responsibilities of fiscal management. The proposed amendments further clarify existing procedures and bring certain sections into compliance with current accounting practices and regulations. A beneficial social impact can be derived by the continued effect of rules that govern the receipt and use of gifts to enhance existing programs such as educational and recreational programs. With the addition of Subchapter 1, interested persons can readily find and understand the purpose, scope, definitions, and type of forms used in conjunction with N.J.A.C. 10A:2.

Economic Impact

Additional financial resources will not be required to maintain the proposed readoption with amendments of N.J.A.C. 10A:2 since most financial services and/or procedures are obtained by the Department of Corrections through the established State budgetary process. The inmate welfare fund will continue to generate an income which contributes to the purchase of items and services for programs and activities for inmates. Gifts may have some economic benefit to the correctional facilities to which gifts are given, but there is no measurable economic benefit on the New Jersey Department of Corrections' budget as a whole. Gifts of material items or money may enable a correctional facility to offer programs or services not usually available within the Department of Corrections' budget, thereby enhancing existing programs, such as the educational and recreational programs. The rules permitting correctional facilities to be reimbursed for costs of the repair or replacement of

property, should continue to increase the amount of financial resources available for the purchase of additional property and services for inmates. The rules on reimbursement for lost, damaged, or destroyed personal property will continue to ensure that inmates will receive financial reimbursement when their claims are approved. Resources associated with Executive Order No. 93(1993) and the Reorganization Plan No. 001(1993) which transferred all juvenile residential centers from the Department of Corrections to the Department of Human Services have now been allocated between the Department of Corrections and the Department of Human Services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments and new rules does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments and new rules impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:2.

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

SUBCHAPTER 1. [(RESERVED)] INTRODUCTION

10A:2-1.1 Purpose

(a) The purpose of this chapter is to establish policies and procedures for:

1. Controlling and depositing funds held in trust for inmates;

2. Appropriating expenditures of inmate welfare funds;

3. Reporting the loss of funds by burglary, theft, embezzlement or mysterious disappearance when discovered by a correctional facility;

4. Processing inmate claims for lost, damaged or destroyed personal property;

5. Withdrawing of restitution from an inmate's account for loss or damage to State property;

6. Distributing financial aid to persons released on parole or upon expiration of sentence;

7. Receiving and giving gifts; and

8. Processing grants.

10A:2-1.2 Scope

(a) N.J.A.C. 10A:2-2, 3, 5, 6, 7 and 8 shall be applicable to the Division of Operations, New Jersey Department of Corrections.

(b) N.J.A.C. 10A:2-9 and 10 shall be applicable to all administrative units within the New Jersey Department of Corrections.

10A:2-1.3 Definitions

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

"Gift" means money or material(s) donated to a correctional facility or administrative unit for a specified or unspecified purpose by a person(s) or organization(s) without an expectation of compensation.

"Grant" means a specific amount of funds or services given to an administrative unit or correctional facility by a funding source to be used over a specific period of time for a specific purpose.

"Inmate personal property" means items owned by an inmate which have been approved for retention in his or her possession while incarcerated in a correctional facility. Inmate personal property may also be property held by a correctional facility on behalf of an inmate and handled in accordance with N.J.A.C. 10A:1-11.

"Loss of funds" means funds received by a correctional facility or an administrative unit, from any source, which are unaccounted for as a result of theft, larceny, embezzlement or mysterious disappearance.

"Restitution" means a disciplinary sanction recommended by a Disciplinary Hearing Officer, Adjustment Committee, or a court ordered indemnification which requires the inmate to compensate the correctional facility or victim(s) of a criminal act for any loss, damage or injury perpetrated by the inmate.

10A:2-1.4 Forms

(a) The following forms related to fiscal management shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY;

2. 943-II CERTIFICATION OF INMATE CLAIM;

3. 943-III REVIEW OF INMATE CLAIM;

4. 947-I MONTHLY REPORT OF GIFTS RECEIVED;

5. 947-II ANNUAL REPORT OF GIFTS RECEIVED;

6. 950-I FISCAL REPORT OF GRANTS RECEIVED;

7. 950-II REPORT OF PROGRESS OF PROJECTS FUNDED BY GRANTS.

(b) The following form related to fiscal management shall be obtained from the business office of the correctional facility:

1. STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE.

(c) The following forms related to financial aid upon release from correctional facilities shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 814.06 FINANCIAL AID PROGRAM RECEIPT;

2. 814.07 REQUEST FOR REPLENISHMENT OF FUNDS;

3. 814.08 FINANCIAL AID ACCOUNT.

10A:2-2.2 Group deposits and deductions

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

(d) Deductions **of funds either earned or unearned** from inmate accounts [may] **shall** be made by the Business Manager to pay court ordered penalty assessments, restitution, fines, or other revenue obligations as permitted by N.J.S.A. 30:4-91.4, N.J.S.A. 2C:43-3.1, N.J.S.A. 2C:46-1, N.J.S.A. 2C:46-4, or N.J.S.A. 30:4-92.

(e) (No change.)

(f) Only inmate funds in excess of a $15.00 balance can be deducted to pay court ordered penalty assessments, restitution, fines, or other revenue obligations.

10A:2-3.1 Sources of income for inmate welfare funds

(a) Money for inmate welfare funds shall be derived from the following sources:

1.-3. (No change.)

4. [Interest on] **Income from** inmate trust fund [savings] **investments**.

10A:2-3.2 Accountability and expenditure

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

(e) The [appropriate] Assistant Commissioner, **Division of Operations,** shall be contacted when there are questions regarding the use of inmate welfare funds.

[10A:2-5.1 Definition

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Loss of funds" means funds received by a correctional facility or an administrative unit, from any source, which are unaccounted for as a result of theft, larceny, embezzlement or mysterious disappearance.]

Recodify existing N.J.A.C. 10A:2-5.2 as **10A:2-5.1** (No change in text.)

10A:2-[5.3]**5.2** Reporting the loss of funds [to the Office of Institutional Support Services (O.I.S.S.)]

(a) Within 48 hours after the loss is discovered, a written report of the loss shall be submitted to the [Director, Office of Institutional Support Services (O.I.S.S.)] **Assistant Commissioner, Division of Administration,** with a copy to the Office of the Commissioner.

(b) The [Office of Institutional Support Services (O.I.S.S.)] **Assistant Commissioner, Division of Administration,** shall prepare and submit a request to the Bureau of Risk Management, Department of Treasury, for appropriate reimbursement.

[10A:2-5.4 Referral of loss to Assistant Commissioner, Division of Administration]

(c) If the loss is not covered by the Bureau of Risk Management, Department of Treasury, the loss shall be referred to the [Assistant Commissioner,] **Deputy Commissioner,** Division of Administration, who will determine the appropriate source of funds to dispose of the loss claim.

[10A:2-6.1 Inmate personal property defined

"Inmate personal property" means items owned by an inmate which have been approved for retention in his or her possession while incarcerated in a correctional facility.]

10A:2-[6.2]**6.1** Filing a claim at an adult or juvenile institution or satellite unit

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

(h) If the Superintendent recommends approving a claim, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and request that the Business Manager of the correctional facility complete [Invoice Form AR 50/54] **STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE** and have [Form AR 50/54] **said INVOICE** presented to the inmate for **his or her** signature.

(i) The signed [Invoice Form AR 50/54] **STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE** along with Forms 943-I, 943-II, 943-III and the Custody Operations' investigative report shall be submitted by the Superintendent to the [appropriate] Assistant Commissioner, **Division of Operations,** for review.

(j) The Assistant Commissioner, **Division of Operations,** shall review the claim and determine whether to approve or disapprove the claim.

(k) If the Assistant Commissioner, **Division of Operations,** disapproves the claim, he or she shall sign and date [Section V on] Form 943-III and return the entire packet of documents to the Superintendent.

(l) If the Assistant Commissioner, **Division of Operations,** approves the claim, he or she shall sign and date [Section IV on] Form 943-III and submit the entire packet of documents, listed in (i) above, to the Chief, Bureau of Accounts, to be reviewed for compliance with the requirements of this section.

(m) When a claim is not in compliance with the requirements of this section the Chief, Bureau of Accounts, shall return the entire packet to the [appropriate] Assistant Commissioner, **Division of Operations** with the reasons therefor.

(n) When a claim is in compliance with [technical] **the** requirements **of this section,** the Chief, Bureau of Accounts, shall indicate "Compliance" **on Form 943-III** and submit the entire packet to the Deputy Commissioner for approval [and payment] **or disapproval.**

(o) Claim packets approved by the Deputy Commissioner shall be returned to the Chief, Bureau of Audits and Accounts, for payment. Disapproved claim packets shall be returned to the Assistant Commissioner, Division of Operations, with the reason(s) for disapproval noted.

[10A:2-6.3 Filing a claim at a juvenile community residential center

(a) When an inmate assigned to a juvenile community residential center claims the loss, damage or destruction of personal property, other than personal property disposed of in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates, the inmate shall complete Form 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY and submit the Form to the Superintendent or his or her designee.

(b) The Superintendent or his or her designee shall designate a staff member to investigate the claim and prepare a report.

(c) Upon completion of the investigation, the Form 943-I along with a copy of the investigative report shall be submitted to the Superintendent to be denied, or recommended for approval.

(d) Claims that are denied by the Superintendent shall not be processed any further. In all cases of denial, the inmate shall be notified in writing by the Superintendent with substantiating reasons.

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I and a copy of the investigative report to the Executive Assistant of the Assistant Commissioner, Division of Operations, to be denied or recommended for approval.

(f) If the Executive Assistant denies the inmate's claim, the substantiating reasons for denying the claim shall be entered on Form 943-II CERTIFICATION OF INMATE CLAIM and returned to the Superintendent along with Form 943-I and the investigative report.

(g) If the Executive Assistant approves the inmate's claim, Invoice Form AR 50/54 and Form 943-II CERTIFICATION OF INMATE CLAIM shall be completed and Form AR 50/54 shall be forwarded to correctional facility for the inmate's signature.

(h) Upon receipt of the signed Form AR 50/54, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and submit Form AR 50/54 and Forms 943-III to the Executive Assistant. The Executive Assistant shall submit Form 943-I, 943-II, 943-III, Form AR 50/54 and the investigative report to the Assistant Commissioner, Division of Operation, for review.

(i) The Assistant Commissioner shall review the claim and determine whether to approve or disapprove the claim.

(j) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section V on Form 943-III and return the entire packet of documents to the Superintendent.

(k) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents, listed in (h) above, to the Chief, Bureau of Accounts, to be reviewed for a compliance with the requirements of this section.

(l) When a claim is not in compliance with technical requirements, the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of Operations, with the reasons therefor.

(m) When a claim is in compliance with the requirements of this section the Chief, Bureau of Accounts, shall indicate "Compliance" and submit the entire packet to the Deputy Commissioner for approval and payment.]

10A:2-[6.4]**6.2** Filing a claim at an adult community service center

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

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I, Form 943-II, 943-III, [Form AR 50/54] **and STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE** signed by the inmate and the investigative report to the Chief, Bureau of Community and Professional Services, within the Division of Operations, for review.

(f)-(h) (No change.)

(i) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section [V] **IV** on Form 943-III and return the entire package of documents to the Chief, Bureau of Community and Professional Services, who will return these documents to the Superintendent.

(j) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents listed in (e) above, to the Chief, Bureau of Accounts, to be received for compliance with [technical] **the** requirements **of this section.**

(k) (No change.)

(l) When a claim is in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall indicate "Compliance" and submit the entire packet to the Deputy Commissioner for approval [and payment] **or disapproval.**

(m) Claim packets approved by the Deputy Commissioner shall be returned to the Chief, Bureau of Audits and Accounts for payment. Claim packets disapproved by the Deputy Commissioner shall be returned to the Assistant Commissioner, Division of Operations, with the reason(s) for disapproval noted.

Recodify existing N.J.A.C. 10A:2-6.5 through 6.7 as **10A:2-6.3 through 6.5** (No change in text.)

[10A:2-6.8 Forms

(a) The following forms related to inmate reimbursement for lost, damaged or destroyed personal property shall be reproduced by each

correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY;
2. 943-II CERTIFICATE OF INMATE CLAIM; and
3. 943-III REVIEW OF INMATE CLAIM.]

[10A:2-7.1 Definition of restitution

"Restitution" means a disciplinary sanction recommended by a Disciplinary Hearing Officer or Adjustment Committee which requires the inmate to compensate the correctional facility for the cost of repairing or replacing an item that has been damaged or destroyed by that inmate.]

Recodify existing N.J.A.C. 10A:2-7.2 through 7.6 as **10A:2-7.1 through 7.5** (No change in text.)

[10A:2-8.9 Forms

(a) The following forms related to Financial Aid Upon Release From Correctional Facilities shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 814.06 FINANCIAL AID PROGRAM RECEIPT;
2. 814.07 REQUEST FOR REPLENISHMENT OF FUNDS; and
3. 814.08 FINANCIAL AID ACCOUNT.]

[10A:2-9.1 Definition

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Gift" means money or material donated to a correctional facility or administrative unit for a specified or unspecified purpose by a person(s) or organization(s) without an expectation of compensation.

10A:2-9.2 Forms

(a) The following forms related to gifts shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 947-I Monthly Report of Gifts Received; and
2. 947-II Annual Report of Gifts Received.]

Recodify existing N.J.A.C. 10A:2-9.3 through 9.5 as **10A:2-9.1 through 9.3** (No change in text.)

10A:2-[9.6]**9.4** Gifts of computers

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

(c) Each request to provide an inmate organization with a [micrcomputer] **microcomputer** and/or software, as a gift, shall be reviewed by the Institutional Computer Security Manager to ensure that the request is consistent with the rules outlined in this subchapter and internal management procedures of the Department of Corrections and the correctional facility.

(d)-(h) (No change.)

10A:2-[9.7]**9.5** Gifts of vehicles or vehicle parts

(a) Prior to accepting a gift of a vehicle or vehicle parts, the proposal [should] **shall** be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner [who is responsible for the operation of the correctional facility or administrative unit], **Division of Administration**. The vehicle and vehicle parts must benefit the Department of Corrections and funds must be designated for the costs associated with the operation and maintenance of the vehicle.

[(b) The Assistant Commissioner shall submit the proposal of a gift of a vehicle or vehicle parts and justification for the vehicle to the Director, Office of Institutional Support Services for review.]

[(c)]**(b)** Upon review of the proposal of a gift of a vehicle or vehicle parts, by the [Director, Office of Institutional Support Services, the Director] **Assistant Commissioner, Division of Administration, the Assistant Commissioner** shall approve or disapprove the proposal.

[(d)]**(c)** The written approval or disapproval of the proposal of a gift of a vehicle or vehicle parts shall be returned to the [Assistant Commissioner] **Superintendent or Administrative Unit Head.**

[(e) The Director, Office of Institutional Support Services, shall be responsible for notifying the Superintendent or Administrative Unit Head of the approval or disapproval of the proposed gift.]

10A:2-[9.8]**9.6** Gifts for capital construction

(a) Prior to accepting a gift for capital construction, the proposal of the gift shall be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner [who is responsible for the operation of the correctional facility or administrative unit], **Division of Administration.**

[(b) The Assistant Commissioner shall submit the proposal of a gift for capital construction to the Director, Office of Institutional Support Services (O.I.S.S.), for review.]

[(c)]**(b)** Upon review by the [Director, Office of Institutional Support Services (O.I.S.S.)] **Assistant Commissioner, Division of Administration**, the proposal of a gift for capital construction shall be submitted to the Commissioner, Department of Corrections, with a recommendation for approval or disapproval.

[(d)]**(c)** The Commissioner's written approval or disapproval of the proposed gift for capital construction shall be returned to the [Director, Office of Institutional Services (O.I.S.S.)] **Assistant Commissioner, Division of Administration.**

[(e)]**(d)** The [Director, Office of Institutional Support Services (O.I.S.S.)] **Assistant Commissioner, Division of Administration**, shall be responsible for notifying the Superintendent or Administrative Unit Head of the Commissioner's approval or disapproval of the proposed gift for capital construction.

10A:2-[9.9]**9.7** Gifts for research purposes

Gifts for research purposes shall not be accepted until the research project has been reviewed and approved by the Commissioner, Department of Corrections, in accordance with [the established Department procedures for evaluating research projects] **N.J.A.C. 10A:1-10, Research**.

10A:2-1[9.10]**9.8** Gifts of medical supplies or medical equipment

(a) Prior to accepting gifts consisting of medical supplies or equipment, the Superintendent or Administrative Unit Head shall submit notification of the availability of these gifts to the [Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit] **Supervisor, Health Services Unit, Office of Institutional Support Services (O.I.S.S.).**

(b) The [Assistant Commissioner] **Supervisor, Health Services Unit, O.I.S.S.** shall submit the notification regarding the gifts of medical supplies or equipment to the [Supervisor, Health Services Unit, Office of Institutional Support Services (O.I.S.S.), for review] **Assistant Commissioner, Division of Administration, for approval or disapproval.**

(c) **The written approval or disapproval of the gift of medical supplies or equipment shall be returned to the Supervisor, Health Services Unit, O.I.S.S.**

[(c)]**(d)** The Supervisor, Health Services Unit, [shall submit to the Assistant Commissioner written approval or disapproval of the acceptance of gifts of medical supplies or equipment. If the Supervisor, Health Services Unit, approves acceptance of the gifts of medical supplies or equipment, he or she] shall designate the appropriate placement of such supplies and equipment.

[(d)]**(e)** The [Assistant Commissioner] **Supervisor, Health Services Unit, O.I.S.S.** shall be responsible for accepting the gifts of medical supplies or equipment and for notifying the Superintendent or Administrative Unit Head receiving the gifts in order that arrangements for the transportation of the gifts to the correctional facility or unit may be made.

Recodify existing N.J.A.C. 10A:2-9.11 as **10A:2-9.9** (No change in text.)

10A:2-[9.12]**9.10** Use of gifts to purchase supplies or equipment

(a) (No change.)

(b) If supplies or equipment cannot be purchased from a vendor currently under State contract, the Superintendent or Administrative Unit Head shall secure competitive price quotations consistent with the current State of New Jersey procurement policy as delineated in the Department of the Treasury's [Procurement Circulars] **Circular Letters**.

Recodify existing N.J.A.C. 10A:2-9.13 as **10A:2-9.11** (No change in text.)

[10A:2-10.1 Definitions

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Grant" means a specific amount of funds or services given to an administrative unit or correctional facility by a funding source to be used over a specific period of time for a specific purpose.]

Recodify existing N.J.A.C. 10A:2-10.2 through 10.4 as **10A:2-10.1 through 10.3** (No change in text.)

10A:2-[10.5]**10.4** Reports

The Superintendent or agency head shall complete Form 950-I FISCAL REPORT OF GRANTS RECEIVED and Form 950-II REPORT OF PROGRESS OF PROJECTS FUNDED BY GRANTS and submit these forms to the [appropriate] Assistant Commissioner along with the Annual Report.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Cancellation and Nonrenewal of Homeowners' Insurance Policies

Proposed Amendments: N.J.A.C. 11:1-20.1, 20.3 and 22.1

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:22-6.14a3 and 17:29C-4.

Proposal Number: PRN 1994-587.

Submit comments by December 7, 1994 to:

Donald Bryan
Acting Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

These proposed amendments extend the provisions of N.J.A.C. 11:1-20 and 22, which presently address nonrenewal and cancellation of commercial insurance policies, to homeowners' insurance as defined at N.J.A.C. 11:2-41, proposed elsewhere in this issue of the New Jersey Register. N.J.A.C. 11:1-20 and 22 were adopted in order to respond to certain serious market problems in the 1980's that affected commercial lines insurance. Recently the homeowners' insurance market in New Jersey, particularly in the coastal areas, has experienced serious problems in the availability of coverage, which has been manifested in part by an increase in the volume of cancellation or nonrenewal of policies and significant increases in risks placed in the Fair Plan established pursuant to N.J.S.A. 17:37A-1 et seq.

The Department of Insurance ("Department") conducted a survey of admitted property and casualty insurers which transact the business of homeowners' insurance ("insurers") and has had many discussions with companies in both the primary and reinsurance market. As a result of this review and discussions, the Department has determined that the increased cancellation and nonrenewal activity is being driven by marketplace conditions similar to those that precipitated the commercial insurance crisis that spawned these rules originally. To address this, the Department proposes to amend, as set forth below, provisions of N.J.A.C. 11:1-20 and 22 to apply those subchapters to admitted insurers writing homeowners' insurance within this State.

These proposed amendments will establish requirements that insurers must meet before cancelling or nonrenewing homeowners' insurance which are identical to those requirements which have applied to commercial risks since 1987.

Social Impact

These proposed amendments apply rules in effect for commercial lines insurance to property and casualty insurers writing homeowners insurance. All insurers writing homeowners insurance shall benefit from these amendments by having published standards to assist them in the creation or modification of underwriting guidelines and direction as to the prohibition of certain cancellation and nonrenewal activities.

The public will derive a significant benefit from these amendments to the existing regulations in that the application now of these regulations to homeowners' insurance will ensure that unwarranted cancellation or nonrenewal of homeowners' insurance policies do not occur.

Economic Impact

Unwarranted cancellations and nonrenewals of homeowners insurance policies impose undue financial hardship on policyholders and precipitate an insurance availability crisis within the State. These rule amendments will prohibit such activity on the part of insurers by requiring that the standard or reason for nonrenewal or cancellation of the homeowners' insurance policy must meet applicable statutory requirements.

Insurers will incur the costs associated with the amendments of any existing underwriting guidelines where necessary and will also incur the costs of filing supporting documentation for certain cancellation and nonrenewal activity. The limitations which are imposed on an insurers' ability to terminate or modify coverage under this rule may result in an increased exposure to loss; however the Department believes that rating systems utilized by insurers contemplate such exposure.

The Department will bear the costs involved with reviewing insurer's filings which are required by these rules, and any costs associated with the enforcement of these rules.

Regulatory Flexibility Analysis

Few insurers are considered "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These proposed amendments impose additional filing requirements on insurers which write homeowners' policies in New Jersey. Insurers will be required to bear the costs of these requirements. The amendments apply to all insurers regardless of size. Any costs incurred by insurers as a result of these rules are offset by the benefits to homeowners.

The purpose of these rules is to establish standards to be applied uniformly by all insurers regardless of size. To the extent that these rules apply to small businesses, they may impose a greater impact on those businesses in that a proportionately larger staff and greater financial resources may be devoted to the implementation of these rules, than by a larger insurer.

Because the purpose of these rules is to address significant availability problems in the homeowners' insurance market, no differentiation based on the size of the insurer is appropriate. The Department notes, however, that the existing rules at N.J.A.C. 11:1-20.5 and 22.2 provide for the review of plans in which the size of the insurer (that is, financial capacity) will be considered.

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

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL **AND HOMEOWNERS'** INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after [the effective date of this subchapter] **November 7, 1986** by companies licensed to do business in this state except workers' compensation insurance, employers liability, fidelity, surety, performance and foregery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20c3 and 11:1-20.4(d), this subchapter shall not be applicable to multi-state location risks or policies subject to retrospective rating plans.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after (the effective date of these amendments).

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

11:1-20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after [60 days from the effective date of this subchapter] **January 6, 1987, and all homeowners' insurance policy forms issued on or after (60 days from the effective date of these amendments)** must contain a provision setting forth the following statement:

Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

1. (No change.)

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

11:1-22.1 Scope; definitions

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after the effective date of these amendments.

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

(a)

DIVISION OF PROPERTY AND CASUALTY
Windstorm Market Assistance Program
Proposed New Rules: N.J.A.C. 11:2-41

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:22-6.14al, 17:29A-14 and 17:29D-1.

Proposal Number: PRN 1994-586.

Submit comments by December 7, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

In accordance with N.J.S.A. 17:29D-1, the Department of Insurance ("Department") proposes these new rules which establish a regulatory framework for the New Jersey Windstorm Market Assistance Program ("Windstorm MAP"). The purpose of the Windstorm MAP is to ensure that qualified persons in the defined coastal areas of the State are able to secure homeowners' insurance coverage through an admitted voluntary market outlet.

The need for this market assistance program in New Jersey began to emerge in early 1993. At that time the Department became aware of a homeowners' insurance availability problem on the New Jersey coast, which in particular affected the barrier islands. The Department learned of this problem through complaints and inquiries from homeowners, legislators, real estate brokers, attorneys, insurance producers and other members of the public. The complaints underscored the difficulties encountered in obtaining homeowners' insurance in coastal areas.

In an attempt to address this problem, the Department initially conducted a survey of the major insurers to determine whether they had changed their underwriting practices for homeowners' insurance. The Department also arranged for the FAIR Plan, a residual market mechanism, to increase the maximum limits of the type of dwelling insurance coverage it provides. To supplement the types of coverages provided by the FAIR Plan, the Department encouraged insurers to develop "wrap-around" products that would provide FAIR Plan insureds with the range of coverage associated with typical homeowners' policies. The Department also convened a task force, comprised of industry members, to study the availability problem and to propose solutions to the problem.

In recognition of the severity of the coastal homeowners' availability problem, the Legislature enacted P.L. 1993, c.349. This law created a 90-day moratorium (which expired March 28, 1994) on the cancellation and nonrenewal of homeowners and secondary residence insurance policies based on a property's proximity to water or on the risk of windstorm related claims. This law also permitted persons whose policies had been cancelled or nonrenewed for these reasons, and who had not secured alternative coverage in the admitted voluntary market, to reapply for coverage to the insurer which terminated the coverage.

Despite these actions the Department continued to receive complaints about the availability of homeowners' coverage in coastal areas. For these reasons, the Department has undertaken a program to alleviate the problem with a three-pronged program announced in Bulletin 94-08 issued June 17, 1994. This program includes the implementation of windstorm deductibles, wrap-around policies to supplement FAIR Plan coverages and the Windstorm MAP, the subject matter of these rules. These proposed rules further the purposes expressed in Department Bulletin 94-08 in ensuring that homeowners' insurance coverage is available to qualified applicants in the coastal areas of the State.

These proposed Windstorm MAP provides for: (1) an informal referral program that includes distribution of market information to property owners; and (2) a formal assistance program to help secure voluntary market coverage for those coastal homeowners who are not able to obtain coverage after a reasonable and informed effort using the informal program.

These proposed rules establish the regulatory structure for the Windstorm MAP including: (1) administration of the Windstorm MAP by a governing committee appointed by the Commissioner; (2) enumeration of the duties of the committee; (3) a plan of operation to be submitted by the governing committee and approved by the Commissioner; (4) minimum coverages to be provided to qualified applicants; (5) qualification requirements for coverage under the Windstorm MAP; (6) procedures for reporting data necessary for the program; and (7) provisions for optional or mandatory windstorm deductibles that may be included in a member insurer's homeowners' rating system.

Social Impact

The proposed rules establish the regulatory framework for the voluntary provision through a Windstorm MAP of homeowners' insurance to qualified applicants who are unsuccessful in their attempts to secure homeowners' insurance in the marketplace. These rules will therefore benefit such applicants by establishing an alternative market mechanism. These rules will also serve to stabilize the homeowners' insurance market by providing information to applicants to assist them in obtaining insurance or, as a last resort, when applicants cannot obtain insurance through this method, by providing for the equitable apportionment of risks among member insurers that have agreed to accept risks through the Windstorm MAP.

Economic Impact

The adverse economic effects experienced by eligible homeowners in coastal areas of the State, by reason of their difficulty or inability to obtain homeowners' insurance, will be lessened or negated by their participation in this program.

Insurers which voluntarily participate in the Windstorm MAP will assume the costs associated with servicing homeowners' insurance business in exchange for the premium received.

The Department will incur the costs associated with the establishment and oversight of this program. These costs will be absorbed within the Department's existing budget.

Regulatory Flexibility Analysis

These proposed new rules will apply to property casualty insurers which are "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These insurers will be required to bear the costs associated with servicing business as a result of voluntarily participating in the Windstorm MAP. To the extent that these rules apply to small businesses insurers they may impose a greater impact in that a small business may have to devote proportionately greater staffing and financial resources.

No differentiation in compliance requirements is provided for insurers that are "small businesses." Since these proposed rules establish a market assistance program to be organized and operated by representatives of the industry in accordance with a plan of operation to be developed by those representatives, it is impractical to provide differing compliance requirements at this juncture. The Department anticipates, however, that the plan of operation will provide for different degrees of participation based upon the participating insurers' market share or some other reasonable basis related to the insurers' size. While not exactly based upon the definition of "small business," this will accommodate and minimize the burden on participating small insurers. Finally, it must be noted that participation in the Windstorm MAP to be established by these proposed rules is voluntary, and that any "small business" insurer that may find that burden too great need not participate.

Full text of the proposed new rules follows:

SUBCHAPTER 41. WINDSTORM MARKET ASSISTANCE PROGRAM

11:2-41.1 Purpose and scope

(a) The purpose of this subchapter is to establish a program to ensure that eligible property owners in the coastal areas of the State are able to obtain homeowners' insurance through voluntary market outlets by:

1. Creating an Informal Referral Program ("IRP") by which information is provided to consumers and producers about insurers which are actively writing homeowners' insurance in the coastal areas of the State;

2. Establishing the framework for a Formal Assistance Program ("FAP") among voluntary market insurers for applicants unable to secure homeowners' coverage through normal market channels or the informal referral program and for the equitable distribution of such risks to insurers that choose to accept risks; and

3. Establishing, at the discretion of the Commissioner, on a temporary or permanent basis, other committees or efforts necessary to effectuate the purpose of this subchapter.

(b) The provisions of this subchapter shall apply to all property and casualty insurers admitted to write homeowners' insurance in this State.

11:2-41.2 Definitions

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

"Coastal area" shall be those areas of the State identified by postal zip code as set forth in Appendix A to this subchapter which is incorporated herein by this reference.

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

"Department" means the New Jersey Department of Insurance.

"Homeowners' insurance" means the type of insurance provided against loss to property as defined in the standard fire policy and extended coverage endorsement thereon, the homeowner's multiple peril policy, insurance against the perils of vandalism, malicious mischief, burglary, or theft, or liability insurance, or any combiantion thereof, delivered or issued for delivery in this State, insuring a single family residence or an owner occupied one to four family unit dwelling, including any real property and any improvements thereon, and the contents thereof. These policies include, but are not limited to, coverages written under six basic forms as follows:

1. Form 1—Basic, which covers: The dwelling, other structures, and personal property against fire, lightning, the extended coverage perils, vandalism, malicious mischief, theft, and glass breakage. Loss of use and additional coverages listed below are also included in this and each of the homeowners forms.

2. Form 2—Broad, which covers: The perils listed in Form 1 above plus falling objects; weight of ice, snow or sleet; accidental discharge from a plumbing, heating, air conditioning or sprinkler system or household appliance; tearing, cracking, burning, or bulging of a steam or hot water heating system; freezing of a plumbing, heating, air conditioning or sprinkler system or a household appliance; damage from artificially generated electricity; and volcanic eruption.

3. Form 3—Special, which covers: The dwelling and other structures on an open perils basis. Coverage on personal property applies with respect to the broad named perils insured under Form 2 above, plus the peril of damage by glass or safety glazing material which is part of a building, storm door or storm window.

4. Form 4—Tenants and Renters, which primarily covers: Tenants of a rented premises and provides only personal property coverage (no coverage on dwellings or on other structures) plus a limited amount of coverage on building additions and alterations made by the insured.

5. Form 6—Condominium: This form is designed especially for residential condominium unit owners.

6. Form 8—Modified coverage: This form is designed for homes not considered eligible for replacement cost coverage.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity admitted to transact the business of homeowners' insurance in this State except any residual market mechanism created by or pursuant to statute.

"Qualified applicant" means an applicant for homeowners' or insurance whose property is located in the defined coastal area and who has applied for insurance to at least three admitted voluntary market insurers and has been denied coverage.

"Windstorm Market Assistance Program" or "Windstorm MAP" means the program created at N.J.A.C. 11:3-41.3.

11:2-41.3 Creation of the Windstorm MAP

(a) There is hereby created in the State of New Jersey a plan for the administration and apportionment of homeowners' insurance for qualified applicants to be known as the New Jersey Windstorm Market Assistance Program.

(b) The Windstorm MAP shall be administered by a governing committee appointed pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the Windstorm MAP shall be located within the State of New Jersey.

(d) All insurers admitted to transact and transacting the business of homeowners' insurance shall be members of the Windstorm MAP.

(e) The Independent Insurance Agents of New Jersey, Professional Insurance Agents of New Jersey and Insurance Brokers Association of New Jersey shall also be participants of the Windstorm MAP.

11:2-41.4 Governing committee

(a) The Windstorm MAP shall be administered by a governing committee of nine members.

1. Five members shall be salaried employees of insurers which are members of the Windstorm MAP. No more than one member shall be employed by the same insurer.

2. Three members shall be licensed producers.

3. One member shall be a public representative appointed by the Commissioner who is knowledgeable about homeowners' insurance matters but who is not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner, or his or her designated representative, shall be an ex-officio, non-voting member of the governing committee.

(b) The following insurer trade organizations shall each nominate two members to represent insurers:

1. Alliance of American Insurers;
2. American Insurance Association;
3. National Association of Independent Insurers; and
4. Association of Mutual Insurers.

(c) Insurers which are not members of the organizations identified in (b) above shall nominate two members in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate two members:

1. Independent Insurance Agents of New Jersey;
2. Insurance Brokers' Association of New Jersey; and
3. Professional Insurance Agents of New Jersey.

(e) With regard to the nomination of members set forth in (b), (c) and (d) above, in the event the Commissioner fails to appoint either of the nominees, the organization shall nominate another representative.

(f) The initial governing committee appointed pursuant to this subchapter shall serve for staggered terms of one or two years or until successors are appointed. Thereafter, all members of the governing committee shall serve for one year or until a successor is appointed. Each member may designate an alternate.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) The governing committee shall have the power and duty to:

1. Develop and submit to the Commissioner for approval a plan of operation;

2. Investigate complaints and hear appeals from members or participants about any matter pertaining to the proper administration of the Windstorm MAP;

3. Provide for the establishment of subcommittees, to which may be delegated specific tasks and the authority to act on behalf of the governing committee; and

4. Perform such other functions as may be necessary and proper in accordance with this subchapter and the approved plan of operation.

11:2-41.5 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient administration of the IRP established by the Department, and for the provision of homeowners' insurance to qualified applicants under the FAP. The plan of operation shall provide for the following:

1. The internal organization and proceedings of the governing committee;

2. The coverages to be offered through the Windstorm MAP to qualified applicants;

3. Procedures to distribute on an equitable basis risks qualified for coverage based on the voluntary commitment of insurers to accept risks;

4. Procedures by which insurers may voluntarily agree to participate and to provide coverage through the Windstorm MAP;

5. Procedures to apply for coverage, including disqualifying characteristics;

6. Procedures for handling complaints and appeals to the governing committee;

7. Procedures for the operation of the informal referral program;

8. Procedures for the payment of commissions, where practicable, to licensed insurance producers that recognize the importance of maintaining producer/consumer relationships; and

9. Such other provisions as are deemed necessary by the governing committee for the operation of the Windstorm MAP.

(b) The governing committee shall, within 30 days of the adoption of these rules, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. After approval of the plan, the governing committee may thereafter propose an amendment to the plan of operation at any time for review and approval by the Commissioner. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation within 30 days of the adoption of these rules, or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee, until such time as the governing committee submits its own plan of operation which is acceptable to the Commissioner.

3. The Commissioner may review the plan of operation at any time and may suggest amendments to the governing committee.

11:2-41.6 Informal Referral Progam ("IRP")

(a) The IRP shall provide for the distribution to the public of information about insurers offering coverage to qualified applicants that meet current underwriting guidelines.

(b) The governing committee shall provide in the plan of operation for administration of the IRP, which shall include provision for maintaining necessary records in order to confirm the applicant's qualification for the FAP pursuant to N.J.A.C. 11:2-41.7(a)2.

(c) The Windstorm MAP may revise the IRP as necessary to provide maximum assistance to property owners seeking homeowners' insurance in the coastal area.

11:2-41.7 Formal Assistance Program ("FAP") application process

(a) Any person applying for homeowners' insurance through the FAP shall demonstrate that he or she is qualified as provided in (b) below.

(b) The FAP shall arrange for coverage to qualified applicants to the extent that the Windstorm MAP has capacity to provide such coverage based upon the participation of insurers. For the purposes of this subchapter, a qualified applicant shall have:

1. His or her property for which coverage is sought located in the defined coastal area of the State;

2. Obtained and utilized the information provided through the IRP;

3. Applied for homeowners' insurance from at least three admitted voluntary insurers in this State and been denied coverage; and

4. Completed the FAP application prescribed by the Windstorm MAP in its plan of operation.

(c) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant or the producer showing (where applicable) the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;

2. Reasons for termination and effective date of termination; and

3. Claim history for the preceding three years.

(d) Those insurers that have agreed to consider risks through the FAP shall provide homeowners' insurance coverage to qualified applicants in accordance with each insurers' voluntary commitment to participate and to provide coverage.

11:2-41.8 Right to petition for appeal to the Commissioner

(a) A member or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted on the record before the governing committee in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:2-41.9 Reports

Member insurers shall, no less frequently than quarterly, submit reports relative to the amount of homeowners' insurance in force and new business written in a format which shall be prescribed by Order of the Commissioner.

11:2-41.10 Windstorm deductibles

Member insurers that demonstrate pursuant to the provisions of this subchapter proportionate Statewide and coastal area market shares, may file for approval, pursuant to N.J.S.A. 17:29A-1 et seq.,

amendments to their filed rating systems in order to offer optional and/or mandatory windstorm deductibles. In determining whether to approve such filings, the Commissioner shall consider the insurer's demonstrated participation in the homeowners' insurance market and whether approval of the filing will contribute to improve availability and affordability of homeowners' insurance in the coastal areas.

APPENDIX A

COASTAL REGION ZIP CODES

07002	07715	07753	08203	08405	08742
07008	07716	07755	08204	08406	08750
07036	07717	07756	08212	08411	08751
07064	07718	07757	08223	08721	08752
07077	07719	07758	08226	08723	08753
07201	07720	07760	08230	08724	08754
07202	07721	07762	08243	08730	08755
07206	07723	07764	08247	08731	08756
07302	07730	08005	08248	08732	08757
07304	07732	08006	08260	08734	08758
07305	07734	08008	08400	08735	08832
07306	07735	08050	08401	08736	08861
07709	07737	08087	08402	08738	08862
07711	07740	08092	08403	08739	08878
07712	07748	08202	08404	08740	08879
07713	07750				

(a)

DIVISION OF ADMINISTRATION

Insurance Producer Standards of Conduct; Marketing; Commissions and Fees; Management of Funds and Administrative Procedures and Penalties

Proposed Readoptions: N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq., 17:29B-7, 17B:30-13 and 15.

Proposal Number: PRN 1994-563.

Submit comments by December 7, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D expire on January 2, 1995. As required by the Executive Order, the Department of Insurance ("Department") has reviewed these rules and has determined that Chapters 17A, 17B, 17C and 17D are necessary, reasonable and proper for the purpose for which they were promulgated. When these rules were first adopted in December 1989, they reflected, in many instances, current standards and practices followed by insurance producers and required by the Department.

These rules provide insurance producers with a clear and easily-located compendium of performance guidelines and with standards of conduct concerning their daily operations and their interaction with the Department and the public.

N.J.A.C. 11:17A defines activities for which one must be licensed as an insurance producer or registered as a limited insurance representative; specifies certain prohibited unfair trade practices; and sets forth miscellaneous marketing and related requirements.

N.J.A.C. 11:17B deals with commissions and fees that may be paid to or charged by insurance producers and limited insurance representatives.

N.J.A.C. 11:17C sets forth standards of conduct for licensed insurance producers concerning the management of funds and general recordkeeping for insurance related transactions.

N.J.A.C. 11:17D contains procedures for imposing administrative penalties, and includes a schedule of fines for violations of certain provisions of Titles 17 and 17B of the New Jersey Statutes Annotated and any rules or orders issued by the Commissioner.

Social Impact

These rules proposed for readoption have, to a great extent, benefited insurance producers by providing them with a clear, organized and accessible set of written guidelines and standards to follow in the daily operation of their business. This, in turn, has reduced inquiries from insurance producers and reduced the time spent by Department staff in identifying and explaining standards and procedures.

N.J.A.C. 11:17A, as recently amended (see 25 N.J.R. 1078(a)), identifies those persons who are required to be licensed as insurance producers, thus eliminating or reducing many uncertainties that may have previously existed. This chapter also implements and clarifies existing law concerning rebates and inducements. It reaffirms the Department's position that rebates are improper and clarifies what the Department considers to be an impermissible inducement. This chapter also seeks to prevent service "tie-ins" by protecting insureds and purchasers of other products or services from insurance producers or limited insurance representatives who seek to force their insurance services on the consumer as a condition for securing any other insurance or non-insurance product or service. Other provisions of this chapter protect the consumer by requiring the insurance producer to witness the signature of the insured or prospective insured and to confirm in writing with the insured or prospective insured all information pertinent to the modification of an existing insurance contract or application for insurance.

N.J.A.C. 11:17B, concerning fees and commissions, codifies guidelines that existed at the time of adoption. Of primary significance to the consumer is the continuation of the requirement that insurance producers acting as a motor club representative secure a written agreement, separate and apart from the insurance contract, effecting motor club coverage. This requirement has prevented confusion and misunderstanding between insureds and insurance producers. The chapter also requires full disclosure of the terms and conditions of motor club service contracts sold in connection with auto insurance policies and imposes strict standards of conduct on insurance producers who also act as motor club representatives.

N.J.A.C. 11:17C, concerning management of funds, has had a significant impact on the consumer public, insurance producers and the Department. Generally, the consumer has been better protected since the rules now require a "paper trail" for all insurance transactions. Thus, both the consumer and the Department can hold an insurance producer accountable for his actions. The Department's enhanced ability to identify producer violations, which may result in the imposition of penalties or the suspension or revocation of a license, is of obvious public benefit. Insurance producers also benefit from the requirement that they employ a comprehensive recordkeeping system. This helps them to protect their own interests in dealing with insureds and the Department, to verify the legitimacy of their conduct when it is questioned, and to generally upgrade the level of their business operations and procedures. This is consistent with the efforts of the Legislature, the Department and the insurance producers themselves to further professionalize this industry.

Provisions in N.J.A.C. 11:17C have reduced the time period during which coverage has not been effected by requiring the timely remittance of premium funds. This, in turn, has reduced the number of uncovered losses and concomitant litigation. Requiring the establishment of a trust account in certain circumstances has encouraged adherence to standards and procedures to insure that premium funds are properly maintained and credited. These requirements protect the public and insurers from insurance producers who may misuse premium funds upon their receipt or thereafter, to the detriment of the insurer and the insured. Requiring insurance producers to issue receipts for premium payments made by personal delivery and to maintain a receipt book as a record of such payments has enabled the Department to identify violations or to verify that no malfeasance has occurred. Minimum recordkeeping requirements include maintenance of "accurate books and records reflecting all insurance-related transactions." Requiring that these records be maintained in the uniform manner set forth in N.J.A.C. 11:17C has enabled the Department to fulfill its legislative mandate to protect the public interest in this regard. Requiring that records be maintained for at least five years, and approving the use of electronic recordkeeping has insured

that the Department has the opportunity to review necessary information. Insurance producers have been encouraged to use more efficient and technologically advanced systems.

N.J.A.C. 11:17D, concerning administrative penalties, provides for hearing and penalty procedures and sets fines for certain commonly occurring violations. The publication of these procedures fully apprises insurance producers of their rights and duties under circumstances where their conduct is questioned by the Department. Furthermore, it notifies them of specific conduct that may subject them to specified fines.

Economic Impact

The Department believes that the initial economic impact of the licensure requirements set forth in the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 et seq., and N.J.A.C. 11:17A, specifically N.J.A.C. 11:17A-1.3, has already been fully absorbed by producer organizations and insurers.

By clarifying the issue of inducements and, specifically, by stating at N.J.A.C. 11:17A-2.2 that inducements do not include items of value of less than $10.00, the Department no longer has to expend its investigatory resources on matters which it does not consider offensive. At the same time it has allowed producers to participate in normal advertising practices which involve the distribution of items of limited value.

N.J.A.C. 11:17B, concerning service fees and commissions, has enabled insurance producers to increase their service fees from a maximum of $15.00 to a maximum of $20.00. The impact of this change on the public has been minimal.

The recordkeeping requirements contained in N.J.A.C. 11:17C have been beneficial to both the public and the producers in that all producers now maintain books and records on their accounts. Any costs attendant to these recordkeeping requirements have already been absorbed by the regulated community. An important benefit of these recordkeeping requirements to the Department has been a reduction in investigatory and other related costs since elements of insurance fraud and breach of a producer's fiduciary duty are now easier to detect.

N.J.A.C. 11:17D, which lists fines for certain violations, has allowed producers to know in advance what their exposure is for particular violations. The Department has been able to reduce the cost and the amount of time spent by its staff relative to the handling of administrative matters attendant to the assessment and imposition of penalties.

Regulatory Flexibility Analysis

This proposed readoption applies to "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since approximately 3,700 insurance producer businesses located in New Jersey are "small businesses."

To provide for uniform and consistant applicability of these rules and to avoid the granting of a prescribed advantage to those entities that qualify as "small businesses," no differential treatment has been accorded small businesses by these rules and no such treatment will be accorded pursuant to this proposed readoption.

No change will be incurred as a result of the proposed readoption with respect to routine reporting and recordkeeping requirements or the attendant cost factors that these rules impose on insurance producers and, to a limited extent, insurers, as described in the statements above. These tasks may continue to be accomplished by existing staff; no professional services are required.

Full text of the proposed readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Definitions; Carriers Acting as Administrators for Small Employers; Non-member Status

Proposed Amendments: N.J.A.C. 11:21-1.2, 7.4 and 8.3

Authorized By: New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11, and P.L. 1994, c.97.

Proposal Number: PRN 1994-564.

Submit written comments by October 17, 1994 to:

Kevin O'Leary, Executive Director
New Jersey Small Employer Health Benefits Program
20 West State Street, 10th Floor
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments are being promulgated in accordance with N.J.S.A. 17B:27A-51, which provides a special procedure whereby the Small Employer Health Benefits Program ("SEH") Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be provided to affected trade and professional associations, carriers, and other interested persons who may request such notice.

Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include the list of commenters, their relevant comments and the Board's responses. Due to the expedited nature of this process, a proposed rule may have been adopted before it appears as a proposal in the New Jersey Register.

The Board proposes amending N.J.A.C. 11:21-1.2, changing the definition of "health benefits plan" and adding a definition of "stop loss or excess risk insurance," and N.J.A.C. 11:21-7.4, a rule addressing situations in which carriers act as third party administrators. These regulatory amendments are proposed by the Board in an effort to implement the requirements of N.J.S.A. 17B:27A-25(c). The proposed amendment to "health benefits plans" adds to the list of excluded plans or policies "stop loss" and "excess insurance." In addition, a definition of "stop loss or excess risk insurance" is added to this definitional section. The Board developed the standards for what is meant by stop loss and excess risk insurance after a review of standards applicable in other states.

N.J.A.C. 11:21-7.4 is also proposed for amendment by removing the prohibition on carriers which are members of the SEH Program providing third party administrative services and stop loss or excess risk insurance to a small employer and group of small employers. However, the proposed amendments to N.J.A.C. 11:21-7.4 would prohibit the sale of products which fall below the standards for stop loss and excess risk insurance, set forth in the proposed amendments to N.J.A.C. 11:21-1.2, by members of the Program. The changes to N.J.A.C. 11:21-7.4 are necessary to implement N.J.S.A. 17B:27A-25(c) and, additionally, take into account comments received on a prior proposed amendment to N.J.A.C. 11:21-7.4, which proposal appeared at 26 N.J.R. 3117(a). The Board did not adopt that proposal.

The Board proposes amending N.J.A.C. 11:21-8.3 to address determinations of non-member status with respect to carriers claiming such status based on N.J.S.A. 17B:27A-25(d). This action is necessary to bring the rule in conformance with the statute and to provide the Board with articulated standards for reviewing requests for non-member certification based on N.J.S.A. 17B:27A-25(d) and filed pursuant to N.J.A.C. 11:21-8.

Social Impact

The proposed amendments to N.J.A.C. 11:21-1.2 and 7.4 will affect certain carriers that issue stop loss or excess risk insurance to cover self-funded small employer plans and provide third party administrative services to small employers. While the amendments will not prohibit carriers from providing small employers with third party administrative services and with stop loss insurance, they do prevent carriers from providing third party administrative services and coverage that is not truly stop loss or excess insurance designed to provide coverage for catastrophic or unexpected losses. These amendments will ensure the integrity of the small employer health insurance market, by prohibiting carriers from circumventing the various reforms enacted in N.J.S.A. 17B:27A-17 et seq. ("SEH Act") as amended, and thus, all carriers in the small employer market will be affected by these changes.

The proposed amendment to N.J.A.C. 11:21-8.3 will affect all carriers filing for non-member status pursuant to N.J.S.A. 17B:27A-25(d). In addition, any determination of non-member status will affect the distribution of assessments among carriers under the SEH Program.

Economic Impact

The proposed amendments to N.J.A.C. 11:21-1.2 and 7.4 will have an economic impact on certain carriers that issue coverage that while termed "stop loss" or "excess risk" insurance is not truly designed to cover catastrophic or unexpected losses. Such carriers will no longer be able to circumvent the requirements of the SEH Act as by providing this type of coverage in concert with third party administrative services.

The proposed amendment to N.J.A.C. 11:21-8.3 will have an economic impact on all carriers in the small employer market since determinations of non-member status affect the distribution of assessments under the SEH Program.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 11:21-1.2 and 7.4 are a clarification of existing regulations and would prohibit a carrier from circumventing the requirements of the SEH Act by offering coverage that is not truly stop loss or excess risk insurance for catastrophic and unexpected losses. As a prohibition on conduct, the proposed amendment does not require carriers to do anything and, therefore, does not impose an administrative burden on them.

The proposed amendment to N.J.A.C. 11:21-8.3 does not add any additional requirements, but rather clarifies an existing reporting requirement. Thus, there is no additional administrative burden on carriers seeking non-member status.

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

11:21-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

. . .

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical services corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19), or any other similar contract, policy or plan issued to a small employer not explicitly excluded from the definition of health benefits plan. For purposes of this Act, "Health benefits plan" excludes the following plans, policies, or contracts:

1. Accident only;
2. Credit;
3. Disability;
4. Long-term care;
5. Coverage for Medicare services pursuant to a contract with the United States government;
6. Medicare supplement;
7. Dental only or vision only;
8. Insurance issued as a supplement to liability insurance;
9. Coverage arising out of a workers' compensation or similar law;
10. Hospital confinement or other supplemental limited benefit insurance coverage;
11. Automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.); **and**

12. Stop loss or excess risk insurance with per person retention limits of no less than $25,000 per year and/or aggregate retention limits of no less than 125 percent of expected claims per year.

. . .

"Stop loss or excess risk insurance" means insurance designed to reimburse a self-funded arrangement of one or more small employers for catastrophic and unexpected expenses exceeding specified per person retention limits and/or aggregate retention limits, wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan.

11:21-7.4 Carriers acting as administrators for small employers

(a) A small employer carrier may act as administrator for a small employer's self-funded plan and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq. if[:

1. The] **the** small employer's self-funded plan meets the definition of an employee welfare benefit plan at [26] **29** U.S.C. 1002(1) and is not a multiple employer welfare arrangement, in whole or in part, as defined at [26] **29** U.S.C. 1002(40)[; and

2. The carrier does not issue stop loss or excess risk insurance to the small employer].

(b) A small employer carrier may act as administrator for a self-funded plan for a group of small employers and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq., if[:

1. The] **the** group of small employers meets the requirements of [26] **29** U.S.C. 1002[(4)](**40**)(B), establishing the criteria of what constitutes a control group single employer for the purposes of the federal Employee Retirement Income Security Act[; and

2. The small employer carrier does not issue stop loss or excess risk insurance to the small employer].

11:21-8.3 Non-member status

(a) (No change.)

(b) A request for non-member certification shall state that:

1. The carrier or entity neither issued nor had in force a group health benefits plan covering New Jersey small employers during the calendar year for which certification is submitted; [or]

2. **The carrier:**

i. Has issued only one group health insurance policy in New Jersey;

ii. Issued the policy exclusively to the members of an association, as defined and authorized by N.J.S.A. 17B:27-27, 28 or 29, or N.J.S.A. 17B:27-8;

iii. Issued the policy on or before November 30, 1992;

iv. Issued the policy in the name of the association; and

v. Currently insures under the policy more than 49 certificateholders who are members of the association; or

3. Other reasons which under law permit a carrier or entity to be certified a non-member.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Board Membership

Proposed Amendments: N.J.A.C. 11:21-2.1 and 2.5

Authorized By: New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11 and P.L. 1994, c.97.

Proposal Number: PRN 1994-576.

Submit written comments by December 7, 1994 to:

Kevin O'Leary
Executive Director
New Jersey Small Employer Health Benefits Program
20 West State Street, 10th Floor
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On August 11, 1994, P.L. 1994, c.97 became effective, amending the New Jersey Small Employer Health Benefits ("SEH") Act, N.J.S.A. 17B:27A-17 et seq. P.L. 1994, c.97 amends N.J.S.A. 17B:27A-29 adding seven new members to the New Jersey Small Employer Health Benefits Program Board of Directors ("SEH Board"). As a result of this legislative change, the SEH Board herein proposes amendments to its Plan of Operation to reflect the legislative changes.

Pursuant to N.J.S.A. 17B:27A-30, and concurrent with this proposal, these amendments to the SEH Program's Plan of Operation are also being submitted to the Commissioner of Insurance for review and approval. The SEH Act requires submission of any amendments to the Plan of Operation to the Commissioner, and provides that the Commissioner shall, after notice and a hearing, approve the amendments if he finds that they are reasonable and equitable and sufficiently carry out the provisions of the SEH Act. The Commissioner's hearing will be noticed, and held on or about the same date as the close of the comment period established by the Board, December 7, 1994. These amendments shall not become effective until after the Commissioner has provided written approval thereof, or shall be deemed approved if not expressly disapproved by, the Commissioner in writing within 90 days of receipt by the Commissioner. The Board proposes these amendments pursuant to the provisions of the Administrative Procedure Act as permitted by N.J.S.A. 17B:27A-51g.

The proposed amendments to N.J.A.C. 11:21-2.1(e), (f) and (g) and 2.5 are necessary to reflect the enlarged composition of the Board. Both of these regulatory provisions address the structure of the Board and must be updated to conform with P.L. 1994, c.97.

In addition, the Board proposes amendments to N.J.A.C. 11:21-2.5(j) to provide that public Board members may be compensated for reasonable and unreimbursed travel expenses. This provision does not permit any members of the SEH Board to be compensated for attendance at Board meetings or committee meetings. The Board proposes this amendment recognizing that all public members do not have the resources of a large company or organization to support their travel expenses, and recognizing that the SEH Board is best able to fulfill its obligations with all Board members participating in Board and committee meetings. Currently, the Individual Health Coverage Program Board, created at the same time as the SEH Board and charged with similar functions, provides for compensation for reasonable travel expenses to Board members pursuant to N.J.A.C. 11:20-2.5(g).

Social Impact

The proposed amendments altering the Plan of Operation provisions regarding the size and structure of the Board follow the recent legislative amendment which has the effect of expanding representation on the Board of Directors to better reflect the variety of interests involved in the sale, purchase and use of the plans. These regulatory amendments merely reflect the changes in the law set forth in P.L. 1994, c.97. Thus, these regulatory changes have no social impact independent of that resulting from the statutory changes.

The proposed amendments to N.J.A.C. 11:21-2.5(j) permitting reimbursement for reasonable travel expenses will permit public Board members to receive reimbursement for travel expenses. This is intended to increase participation by public members at all Board and committee meetings.

Economic Impact

The proposed changes to N.J.A.C. 11:21-2.1 and 2.5 conforming the Plan of Operation to P.L. 1994, c.97 are not expected to have any economic effect. The proposed changes to N.J.A.C. 11:21-2.5(j) providing for compensation for travel costs will have the effect of increasing the administrative costs of the SEH Program. However, these travel costs are expected to be de minimis for the SEH Program. Further, reimbursement for travel costs is governed by current State guidelines. As a result of these changes, Program assessments for administrative expenses will increase, thus affecting all members of the Program.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments conform the Programs Plan of Operation to legislative amendments concerning the number of Board members and provide for travel cost reimbursement to public Board members.

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

SUBCHAPTER 2. NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM PLAN OF OPERATION

11:21-2.1 Purpose and structure

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

(e) The Board shall consist of [11] **18** persons, including the Commissioners of Health and Insurance or their designees, both of whom shall serve as ex officio, and [nine persons] **10 public members** who shall be elected by the members of the Program, subject to approval by the Commissioner, **and six public members who shall be appointed by the Governor with the advice and consent of the Senate.** Initially, three of the **elected** public members of the Board shall be elected for a three-year term, three shall be elected for a two-year term, and three shall be elected for a one-year term. **The tenth elected public member, added by P.L. 1994, c.97, shall be elected for a three-year term. Initially, of the six appointed public members added to the Board by P.L. 1994, c.97, two shall be appointed for a term of one year, two for a term of two years and two for a term of three years.** Thereafter, all public members of the Board shall be elected or appointed for a term of three years. [Filling of vacancies on the Board shall be subject to the approval of the Commissioner of Insurance.] **A vacancy in the membership of the Board shall be filled for an unexpired term in the manner provided for in the original election or appointment, as appropriate.** No carrier shall have more than one representative on the Board.

(f) The following categories shall be represented among the **elected** public members:

1. Two carriers whose principal health insurance business is in the small employer market;
2. One carrier whose principal health insurance business is in the larger employer market;
3. A health, hospital or medical service corporation;
4. A health maintenance organization;
5. A risk-assuming carrier;
6. A reinsuring carrier; and
7. [Two] **Three** persons representing small employers, **at least one of whom represents minority small employers.**

(g) The following categories shall be represented among the appointed public members:

1. Two insurance producers licensed to sell health insurance pursuant to N.J.S.A. 17:22A-1 et seq.;

2. One representative of organized labor;

3. One physician licensed to practice medicine and surgery in this State; and

4. Two persons who represent the general public and are not employees of a health benefits plan provider.

11:21-2.5 Board structure and meetings

(a) The Program shall exercise its powers through a Board.

1. The Board shall be made up of the Commissioner, the Commissioner of Health, or their designees (who shall serve ex officio) and [nine additional persons] **16 public members**. The composition of the Board shall be as described in [Section 13(a) of the Act] **N.J.S.A. 17B:27A-29 as amended by P.L. 1994, c.97**. No person representing one of the public members shall serve, or continue to serve, on the Board unless such person represents one of the categories specified in [Section 13(a) of the Act (]N.J.S.A. 17B:27A-29[)] **as amended by P.L. 1994, c.97**.

2. Initially, three of the **elected** public members shall serve for a term of three years; three shall serve for a term of two years; and three shall serve for a term of one year. **The tenth elected public member, added by P.L. 1994, c.97, shall be elected for a three-year term. Initially, of the six appointed public members added to the Board by P.L. 1994, c.97, two shall be appointed for a term of one year, two for a term of two years and two for a term of three years.** Thereafter, all public members shall serve for a term of three years. [Vacancies shall be filled in the same manner as original appointments.] **A vacancy in the membership of the Board shall be filled for an unexpired term in the manner provided for in the original election or appointment, as appropriate.** The public directors shall serve their terms of office until their replacements are duly elected **or pursuant to the terms of their appointments as applicable.**

i.-vi. (No change.)

3. (No change.)

(b) The votes of the Board shall be a one person, one vote basis. [A Director] **An elected public member**, other than the [two] **three** small employer representatives provided for in Section 13 of the Act (N.J.S.A. 17B:27A-29) **as amended by P.L. 1994, c.97, and the Commissioners of Health and Insurance or their designees**, may designate a voting alternate employed by the same carrier or same State agency, as appropriate. **Appointed public members and the three small employer representatives, all of whom are appointed or elected as individuals, may not designate a voting alternate.**

(c)-(i) (No change.)

(j) Directors shall not be compensated by the Program for their services [or related personal expenses] **but may be reimbursed for reasonable unreimbursed travel expenses incurred in attending Board and committee meetings pursuant to the State Travel Guidelines issued by the Department of the Treasury.**

(a)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing

New Jersey Small Employer Health Benefits Program

Small Employer Health Benefits Program Plan of Operation

Proposed Amendment: N.J.A.C. 11:21-2.5

Take notice that, pursuant to N.J.S.A. 17B:27A-30, the Department of Insurance (Department) will hold a **public hearing** regarding an amendment proposed by the New Jersey Small Employer Health Benefits (SEH) Program Board of Directors (Board) to the SEH Program's Plan of Operation (Plan), published elsewhere in this issue of the New Jersey Register. The proposed amendment provides for expansion of the Board of Directors and the payment of expenses for public members, in implementation of P.L. 1994, c.97. The hearing shall be held by the Department as set forth below:

Date: Wednesday, December 7, 1994 at 9:00 A.M.
Location: Department of Insurance
Mary G. Roebling Building
2nd Floor
20 West State Street
Trenton, N.J. 08625

The purpose of the hearing is to receive public comment on the proposed amendment to the SEH Program's Plan (set forth at N.J.A.C. 11:21-2). The amendment was submitted to the Commissioner on October 5, 1994 pursuant to N.J.S.A. 17B:27A-30. The statute provides that the Plan and any subsequent amendment thereto shall be submitted by the SEH Program Board to the Commissioner who shall, after notice and a hearing, approve the Plan if he finds that it is reasonable and equitable and sufficiently carries out the provisions of N.J.S.A. 17B:27A-17 et seq. The Plan or any subsequent amendments shall become effective after the Commissioner has provided written approval thereof, or shall be deemed approved if not expressly disapproved by the Commissioner in writing within 90 days of receipt by the Commissoner.

The hearing shall be conducted by a hearing officer designated by the Commissioner. A verbatim transcript of the hearing shall be prepared by a certified stenographic reporter. Interested parties may obtain a copy of the transcript by ordering it directly from the reporter at the hearing or thereafter.

At the hearing, interested parties may present oral comment about the proposed amendment to the Plan. Any person intending to speak at the hearing should so advise the Department in writing, no later than December 1, 1994 by submitting a statement of their intent to speak at the SEH Program Plan Amendment Hearing along with their name and the name of the organization which they represent, if any, by mail to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, NJ 08625-0325

Oral testimony will be limited to a maximum of five minutes per person or organization. Persons who did not submit a written intent to speak will be permitted to present comments only after the presentation of testimony from persons who submitted written intent to speak in a timely manner.

Take further notice that a copy of the SEH Board's proposed amendment to its Plan may be inspected or obtained by interested parties directly from the SEH Program Board. Additionally, written comments on the proposed amendment will be accepted by the SEH Program Board until December 1, 1994. To request a copy or to submit written comments write to:

SEH Program
CN 325
Trenton, NJ 08625.

LABOR

(b)

STATE DISLOCATED WORKERS UNIT

Worker Adjustment and Retraining Notification Procedures

Proposed Readoption with Amendments: N.J.A.C. 12:40

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), P.L. 100-379 and 20 C.F.R. Section 639.6(c).

Proposal Number: PRN 1994-580.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Monday, November 28, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by December 7, 1994 to:
Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. 2101 et seq., provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State Dislocated Worker Unit, and to the appropriate local government. The regulations which implement this Federal statute are promulgated at 20 C.F.R. Part 639. The State of New Jersey has adopted separate WARN rules at N.J.A.C. 12:40 which are scheduled to expire on February 5, 1995, pursuant to Executive Order No. 66(1978). The proposed readoption with amendments deletes these separate procedures at N.J.A.C. 12:40-1.2, 1.3, 1.4, 1.5 and 1.6 and adopts the Federal regulations by reference at N.J.A.C. 12:40-1.2.

Social Impact

The proposed readoption with amendments will have a positive impact in that it will eliminate the confusion which has existed among employers with regard to WARN procedures. The existence of the Federal procedures in the New Jersey Administrative Code has resulted in the belief that a separate State WARN law exists. This has generated numerous requests to the State's Office of Employment Security and Job Training for full citation of the State plant closing and layoff law which in reality does not exist. The elimination of these procedures will have no adverse impact since the Department would continue to provide employers with the correct procedures for WARN notification as outlined in the Federal regulations.

Economic Impact

The proposed readoption with amendments will have no economic impact. It will simply continue to require that employers of 100 or more workers provide notice of plant closing or mass layoffs in accordance with the Federal procedures codified at 20 C.F.R. Part 639. These procedures include notice to the State Dislocated Worker Unit.

Regulatory Flexibility Statement

The proposed readoption with amendments does not impose any additional reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments continues to require employers of 100 or more workers within the State of New Jersey to comply with Federal procedures which require notice of a plant closing or mass layoffs in accordance with 20 C.F.R. Part 639. These procedures include notice to the State Dislocated Worker Unit.

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

CHAPTER 40
WARN NOTIFICATION PROCEDURES

SUBCHAPTER 1. PROCEDURES FOR SERVING NOTICE TO THE STATE DISLOCATED WORKER UNIT

12:40-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures for New Jersey employers to follow when submitting a notice of a plant closing or mass layoff to the State Dislocated Worker Unit.

(b) The requirements of this subchapter apply to all employers of 100 or more workers within the State of New Jersey.

[12:40-1.2 Definitions

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

"Employer" means any business enterprise that employs:

1. 100 or more employees, excluding part-time employees; or

2. 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

"Employment loss" means:

1. An employment termination, other than a discharge for cause, voluntary departure, or retirement;

2. A layoff exceeding six months; or

3. A reduction in hours of work of more than 50 percent during each month of any six-month period.

"Mass layoff" means a reduction in force which is not the result of plant closing, and results in the employment loss at a single employment site of employment, during any 30-day period, for:

1. At least 33 percent of the active employees, excluding any part-time employees, and at least 50 employees; or

2. At least 500 employees, excluding part-time employees.

"Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week, or who has been employed for fewer than six of the 12 months preceding the date on which the notice is required.

"Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more of the facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding any part-time employees.

"State Dislocated Worker Unit" means the unit or office created within the Department of Labor pursuant to 29 U.S.C.A. § 1661(b).

12:40-1.3 Notification requirements

In addition to providing at least 60 days notice of a plant closing or mass layoff to affected employees, their representatives, and to the appropriate local government officials as required by 20 C.F.R. Part 639, employers shall provide the same notice to the State Dislocated Worker Unit.

12:40-1.4 Content of notice

(a) The notice to the State Dislocated Worker Unit shall be specific and shall contain the following:

1. The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;

2. A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;

3. The expected date of the first separation and the anticipated schedule for making separations;

4. The job titles of positions to be affected, and the number of affected employees in each job classification;

5. An indication as to whether or not bumping rights exist; and

6. The name of each union representing the affected employees, and the name and address of the chief elected official of each union.

(b) The notice may include additional information useful to the employees such as a statement of whether the planned action is expected to be temporary and, if so, its expected duration.

(c) As an alternative to the notice outline in (a) and (b) above, an employer may give notice to the State Dislocated Worker Unit by providing a written notice stating the name and address of the employment site where the plant closing or mass layoff will occur; the name and telephone number of a company official to contact for further information; the expected date of the first separation; and the number of affected employees. The employer is required to maintain the other information listed in (a) and (b) above on site and readily accessible to the State Dislocated Worker Unit and to the unit of general local government. Should this information not be available when requested, it will be deemed a failure to give required notice.

12:40-1.5 Procedures for notifying State Dislocated Worker Unit

(a) Every employer who is required to serve a notification of a plant closing or of a mass layoff pursuant to the requirements of P.L. 100-379 and 20 C.F.R. § 639.6(c) shall serve notice by using

any reasonable method designed to ensure receipt of the notice at least 60 days before the separation from employment of any affected employee (for example, first class mail, personal delivery, with optional signed receipt, or facsimile notices). All notices to the State Dislocated Worker Unit shall be addressed to:

Coordinator, Department of Labor Response Team
State Dislocated Worker Unit
Labor Building, Room 1013
Trenton, New Jersey 08625
Fax (609) 396-1685

(b) The State Dislocated Worker Unit shall maintain a file of all notices and copies of all related correspondence in the employer file and information of the notices shall be provided to the following:

1. Employment and Training;
2. Employment Security;
3. Unemployment Insurance; and
4. The representative of the local Job Training Partnership Act (JTPA) Service Delivery Area(s).

12:40-1.6 Acknowledgement of notice

The Coordinator of the State Dislocated Worker Unit shall send a letter to the employer within 10 working days to confirm the date of receipt of the notification. If the employer's notice is deficient, the Coordinator shall notify the employer in the letter acknowledging receipt of the notice and shall indicate the specific deficiencies. The employer shall respond to the notification of deficiencies within 10 days of receipt of the Coordinator's letter.]

12:40-1.2 Adoption by reference

The procedures contained in 20 C.F.R. Part 639, Worker Adjustment and Retraining Notification, are adopted and incorporated herein by reference as requirements for the notification of a plant closing or mass layoff to affected employees, their representatives, local government officials and the State Dislocated Worker Unit. All notices to the State Dislocated Worker Unit shall be addressed to:

Coordinator, Department of Labor Response Team
State Dislocated Worker Unit
Labor Building, Seventh Floor
CN 058
Trenton, New Jersey 08625
Fax (609) 777-3202

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Respiratory Protection Devices

Proposed Amendment: N.J.A.C. 12:100-10.10

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:20-1, 34:1A-3(C); and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1994-581.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Wednesday, November 30, 1994
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by December 7, 1994 to:

Deidre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
13th Fl. Suite G—CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The New Jersey PEOSHA Standard at N.J.A.C. 12:100-10.10(e) requires that all employers establish and maintain a respiratory protection program, and, among other things, incorporates the requirements of American National Standards Institute (ANSI) Z88.5-1981, Practice for Respiratory Protection for the Fire Service. This rule is proposed to be amended to incorporate the ANSI requirements by reference except for ANSI Z88.5-1981, Section 3.3, Medical Limitations. In place of Section 3.3, and in response to requests to allow municipal option in this area, the Department is proposing a new provision at N.J.A.C. 12:100-10.10(e)3, referencing the Department's rule at N.J.A.C. 12:100-10.4.

Social Impact

The proposed amendment will have a positive social impact in that it will maintain requirements to determine whether fire fighters are physically able to perform their duties.

Economic Impact

The proposed amendment will have a positive economic impact in that it clearly sets the requirements in the respiratory protection program.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since only public employers are affected by the rules.

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

12:100-10.10 Respiratory protection devices

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

(e) The employer shall establish and maintain a respiratory protection program which includes [the requirements of ANSI Z88.5-1981, Practice for Respiratory Protection for the Fire Service, incorporated herein by reference, except that];

1.-2. (No change.)

3. The requirements of ANSI Z88.5-1981, Practice for Respiratory Protection for the Fire Service, are incorporated and adopted herein by reference as if fully set forth, except for Section 3.3, Medical Limitations, which is a subject of Department of Labor regulation N.J.A.C. 12:100-10.4.

(f)-(h) (No change.)

(b)

UNINSURED EMPLOYER'S FUND

Attorney Fees
Notice of Withdrawal of Proposal
Proposed Amendment: N.J.A.C. 12:235-14.7

Take notice that the Department of Labor has withdrawn the proposed amendment at N.J.A.C. 12:235-14.7 concerning attorney fees under the Uninsured Employer's Fund, published on June 6, 1994 at 26 N.J.R. 2199(b).

A public hearing on the proposed amendment was held on July 1, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, presided at the hearing and received testimony. Based on the substantial comments received in opposition to the proposal, she recommended that the proposal be reevaluated in conjunction with a complete review of the Uninsured Employer's Fund statute which is currently being conducted by various workers compensation committees. Accordingly, the Department is withdrawing the proposal at this time.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Department of Labor, CN 110, Trenton, New Jersey 08625.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Land Surveyors; Continuing Competency

Proposed New Rules: N.J.A.C. 13:40-11
Proposed Amendment: N.J.A.C. 13:40-6.1

Authorized By: Board of Professional Engineers and Land Surveyors, Arthur Russo, Executive Director.
Authority: N.J.S.A. 45:8-35.2.
Proposal Number: PRN 1994-571.

Submit written comments by December 7, 1994 to:
Arthur Russo, Executive Director
Board of Professional Engineers and Land Surveyors
Post Office Box 45015
Newark, New Jersey 07101

The agency proposal follows:

Summary

In order to implement the provisions of N.J.S.A. 45:8-35.2, the Board of Professional Engineers and Land Surveyors is proposing new rules, codified at N.J.A.C. 13:40-11, establishing continuing competency requirements for land surveyors.

The proposed new rules establish continuing professional competency standards, procedures to monitor compliance, and procedures to evaluate and grant approval to licensees or program providers who wish to obtain Board approval prior to taking or offering a course or program. As required by N.J.S.A. 45:8-35.3, the proposed standards and procedures are in conformity with a national model: that of the National Council of Examiners for Engineering and Surveying.

More specifically, licensed land surveyors will be required to submit, with each biennial renewal application beginning with the application due on May 1, 1996, evidence of having completed 24 hours of continuing professional development courses or programs within the two-year period preceding application for renewal. For the period commencing May 1, 1996, the Board will credit hours accumulated from January 1, 1993, provided they meet Board standards as outlined in the new rules. Eight hours may be carried over into a succeeding biennial renewal period.

N.J.A.C. 13:40-6.1 is proposed for amendment to include a $50.00 fee for each course for which a program provider seeks approval, and a $10.00 fee for each course for which a licensee seeks approval.

Social Impact

The proposed new rules implement the provisions of N.J.S.A. 45:8-35.2 by requiring licensed land surveyors to complete, as a condition of biennial license renewal, 24 continuing professional competency credits relating to the practice of land surveying. Mandatory continuing education benefits not only individual land surveyors but also New Jersey consumers by ensuring that licensees remain current in the field of land surveying and that responsible practice standards are maintained.

Economic Impact

The proposed new rules will have an economic impact upon approximately 2,000 licensed land surveyors (including dual license holders). Attendance at continuing competency courses or programs will be an additional cost of practicing land surveying in New Jersey. However, it is anticipated that this will not be an undue financial burden for licensees in that a wide range of approved courses is expected to be available from various sources at differing costs.

Providers who choose to seek program pre-approval or post-approval will be required to pay a $50.00 review fee, while a $10.00 review fee will be imposed upon a licensee who seeks approval of a course or program not previously submitted for approval. The Board points out that pre-approval is not necessary but that an unfavorable decision made upon application for license renewal may cause a deficiency in the required number of hours.

The Board does not anticipate that land surveyors will need to increase survey prices in order to recoup their costs of maintaining professional competency. In any event, the Board believes that the benefits of continuing competency to both the licensee and the consumer strongly weigh in favor of the rules.

Regulatory Flexibility Analysis

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

Upon license renewal, licensees must certify that they successfully completed a minimum of 24 professional development hours during the preceding biennial period. Licensees will also be required to keep, for two biennial periods after completion of the credits, records and other documents evidencing compliance with these rules. The services of other professionals are not needed in order to comply with the new reporting and recordkeeping requirements. There are no initial capital costs; annual costs of compliance will in large part be determined by the courses the licensee chooses to take and whether a pre-approval fee is involved. A licensee requesting pre-approval must file an application and other documentation with the Board evidencing that the program is consistent with the standards outlined in these new rules. Because these continuing competency requirements are intended to maintain a minimum level of proficiency among all land surveyors, no exemption after the first renewal period is possible regardless of the size of the business, except in cases of undue hardship or certified illness as outlined in the rules.

Program providers will be required to submit relevant information to enable the Board to assess program quality. In addition, certain disclosures as well as verifications of attendance must be furnished to enrollees; attendance records and outlines of course materials must be maintained for a six-year period; and a method to evaluate the program must be established.

Initial capital costs will include program development costs and amounts necessary to provide adequate physical facilities and qualified instructors according to the standards outlined in this proposal. Continuing costs of compliance include the $50.00 program review fee. The Board cannot estimate at this time either the number of providers who will apply for program approval or the capital costs to be incurred by each; capital costs will vary depending upon the nature of the course and the provider's existing facilities.

The Board does not anticipate any adverse economic impact on small businesses because in the Board's opinion the costs of compliance represent a negligible component of the total business costs of the program sponsor.

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

13:40-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

1.-8. (No change.)

9. Continuing competency program review fee:

i. For each course for which a provider seeks approval $50.00

ii. For each course for which a licensee seeks approval $10.00

Recodify existing 9.-12. as **10.-13.** (No change in text.)

(b) (No change.)

SUBCHAPTER 11. LAND SURVEYORS; CONTINUING COMPETENCY

13:40-11.1 License renewal

The Board shall not renew a land surveyor license for the biennial renewal period commencing May 1, 1996 or any following year unless the licensee submits, with the renewal application, proof that he or she has completed courses of continuing professional competency of the types and number of credits specified in this subchapter. Proof of completion of the required number of professional development hours shall be in the form outlined in N.J.A.C. 13:40-11.7.

13:40-11.2 Definitions

As used in this subchapter, the following terms shall have the following meanings:

"College/unit semester/unit quarter/hour" means the credit for an ABET (Accreditation Board for Engineering and Technology) approved course or other related college course approved in accordance with N.J.A.C. 13:40-11.6(a)1.

"Continuing education unit" (CEU) means the unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours of instruction in an approved continuing education course.

"Contact hour" means 50 minutes of in-class instruction and participation.

"Core course/activity" means any course or activity with a clear technical purpose and objective which will maintain, improve or expand skills and knowledge and develop new and relevant technical skills and knowledge in the discipline being practiced by the licensee.

"Non-core course/activity" means any course or activity whose purpose and objective is to enhance the skills and knowledge in ethical and business practices related to the discipline practiced by the licensee. Examples of qualifying non-core courses include professional conduct, business practice and quality control.

"Professional development hour" (PDH) means one contact hour of professional/technical development in seminars, conferences or workshops. A PDH is the common denominator for other units of credit.

13:40-11.3 Credit-hour requirements

(a) Each applicant for license renewal shall be required to have completed, during the preceding biennial period, a minimum of 24 professional development hours (PDHs); except that for the period May 1, 1994 to April 30, 1996, PDHs may have been accumulated from January 1, 1993.

(b) A minimum of 15 PDHs must be earned in core courses/activities.

(c) A maximum of eight PDHs may be carried over into a succeeding biennial renewal period; except that all PDHs earned between January 1, 1993 and April 30, 1994 may be carried over into the May 1, 1994 to April 30, 1996 biennial period.

13:40-11.4 Approval of course offerings

(a) A continuing competency provider may receive approval for a continuing competency course or program pursuant to the provisions of N.J.A.C. 13:40-11.11 and 11.12. Prior to the offering of the course or program, the provider may apply for approval. However, the provider may apply also after the event to eliminate the need for individual licensees to apply under (b) below.

(b) A licensee seeking to take a course or program which the provider has not had pre-approved by the Board may apply to the Board for pre-approval or post-approval of the course or program offering. The licensee shall submit information similar to that which is required to be supplied by course providers pursuant to N.J.A.C. 13:40-11.11(b).

(c) The Board shall maintain a list of all approved programs and courses at the Board offices and shall furnish this information upon request.

(d) An individual, group or association seeking course or program approval may impose a reasonable differential in course or program fees based upon membership within a group or association. However, in no event shall a sponsoring individual, group or association completely exclude from the course or program any licensee who is not a member of the group or association.

13:40-11.5 Continuing competency programs and other sources of continuing competency credits

(a) The Board shall grant credit for successful completion of the following, provided that the course or program meets the criteria of N.J.A.C. 13:40-11.11 and that any other source of credit directly and materially relates to the practice of land surveying:

1. College courses;
2. Continuing education courses;
3. Correspondence, televised, videotaped and other short courses/tutorials;
4. Seminars, in-house courses, workshops and technical programs at professional meetings and conferences;
5. Teaching or instruction in (a)1, 2 and 4 above;
6. Published papers, articles or books authored by the licensee; and
7. A land surveying examination in another jurisdiction.

13:40-11.6 Credit calculation

(a) Credit for PDHs will be granted as follows for each biennial renewal period:

1. Successful completion of approved college level courses:

i. Fifteen PDHs for each semester hour credit awarded by the college; or

ii. Ten PDHs for each quarter hour credit awarded by the college;

2. Successful completion of approved continuing education courses: 10 PDHs for each continuing education unit (CEU);

3. Successful completion of approved correspondence, televised, videotaped and other short courses/tutorials:

i. The amount of credit to be allowed for approved correspondence and individual study programs, including taped study programs, shall be recommended by the program provider based upon one-half the average completion time calculated by the provider after it has conducted appropriate "field tests." Although the program provider must make recommendations concerning the number of credit hours to be granted, the number of credit hours granted shall be determined by the Board; and

ii. Credit for approved correspondence and other individual study programs will be given only in the renewal period in which the course is completed with a successful final examination;

4. Active participation in and successful completion of approved seminars, in-house courses, workshops and technical programs at professional meetings and conferences: one PDH for each hour of attendance at an approved course. Credit will not be granted for courses which are less than one contact hour in duration. Completion of an entire course is required in order to receive any credit;

5. Teaching or instruction in (a)1, 2 and 4 above:

i. Service as an instructor, or workshop leader: one PDH for each instructional hour;

ii. The instructor or workshop leader will be given no credit for subsequent sessions in the same year involving substantially identical subject matter, except that after one year has elapsed the Board may give one additional PDH for each instructional hour of service as an instructor or workshop leader for the initial presentation, provided the original material has been updated; and

iii. The maximum credit given for service as an instructor or workshop leader may not exceed 50 percent of the required PDHs for any biennial renewal period;

6. Authoring published papers, articles or books on technical surveying subjects that contribute to the professional competence of surveyors: one PDH may be requested for each hour of preparation time on a self-declaration basis, not to exceed a total of 25 percent of the biennial requirement. A copy of the publication shall be submitted to the Board with the request for credit; and

7. Successfully passing a land surveying examination in another jurisdiction: one PDH for each hour of examination. All parts of the examination must be passed to receive credit for any part. The maximum credit given for successfully passing a land surveying examination in another jurisdiction may not exceed three PDHs for each biennial renewal period.

13:40-11.7 Reporting and documenting of PDHs

(a) At the time of application for biennial land surveyor license renewal, licensees shall provide, on forms approved by the Board, a signed statement certifying that the required number of PDHs has been completed. The statement shall include where applicable the following:

1. The dates attended;
2. PDHs claimed;
3. The title of the course and a description of its content;
4. The school, firm, or organization providing the course;
5. The instructor; and
6. The course location.

(b) Licensees shall maintain all evidence, as set forth in (e) below, of completion of PDH requirements for two biennial periods after completion and shall submit such documentation to the Board upon request.

(c) Failure to maintain records or falsification of any information submitted with the renewal application may result in an appearance before the Board and, upon notice to the licensee and the opportunity for a hearing, penalties and/or suspension of the license.

(d) The Board will review the records of licensees from time to time, on a random basis, to determine compliance with continuing competency requirements.

(e) Documentation of continuing competency requirements shall consist of the following:

1. A log showing the type of activity claimed, providing organization, location, duration, instructor's or speaker's name and credits claimed;

2. Attendance verification records in the form of college transcripts, completion certificates, paid receipts, and any other documents supporting evidence of attendance;

3. For publications, submission of the published article; and

4. For teaching, a statement of appropriate authority verifying the activity.

13:40-11.8 Waiver of continuing competency requirement

(a) The Board may, in its discretion, waive continuing competency requirements on an individual basis for reasons of hardship, such as illness or disability, or other good cause.

(b) Any licensee seeking a waiver of the continuing competency requirement must apply to the Board in writing and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide the Board with such additional information as it may reasonably request in support of the waiver request.

(c) A new licensee by way of examination shall have all continuing competency requirements waived for the first renewal period.

(d) A new licensee by way of comity shall be responsible at the first biennial renewal for one PDH for each month since the New Jersey license was issued.

(e) A licensee serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year shall have all continuing competency requirements waived for that year.

13:40-11.9 License restoration

The failure on the part of a licensee to renew his or her biennial certificate as required shall not relieve such person of the responsibility to maintain professional competence. At the time of application for restoration, the licensee shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent PDHs. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. However, an additional 24 PDHs will still be required at the next biennial renewal.

13:40-11.10 Out-of-jurisdiction resident

Licensees who are residents of jurisdictions other than New Jersey must meet the continuing professional competency requirements for their resident jurisdiction. The requirements for New Jersey will be deemed as satisfied when a licensee provides evidence of having met the requirement of his or her resident jurisdiction, provided the requirements are not less than 24 PDHs per biennial renewal period. If the licensee resides in a jurisdiction that has no continuing professional competency requirements, the licensee must meet the requirements of New Jersey.

13:40-11.11 Criteria for continuing competency programs

(a) A course of acceptable subject matter shall directly and materially relate to the practice of land surveying and shall be:

1. A formal course of learning which contributes directly to the maintenance of professional competence of a licensee;

2. At least one instructional hour in duration; and

3. Conducted by a qualified instructor or workshop leader.

(b) A program provider or a licensee seeking Board approval for a course of acceptable subject matter shall submit the following to the Board:

1. The program provider fee (for providers) or program review fee (for licensees) as set forth in N.J.A.C. 13:40-6.1; and

2. Information to document the elements of (a) above, in writing and on a form provided by the Board, including, but not limited to:

i. A detailed description of course content and estimated hours of instruction; and

ii. The curriculum vitae of the lecturer, including specific background which qualifies the individual as a lecturer of repute in the area of instruction.

13:40-11.12 Responsibilities of program providers

(a) Program providers shall:

1. Select and assign qualified instructors for the program;

2. Assure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized;

3. Disclose in advance to prospective participants the course objectives, prerequisites, experience level, content, required advanced preparation, teaching method, and number of PDH or CEU credits involved in the program;

4. Solicit evaluations from both the participants and the instructor at the conclusion of each program. Evaluations may take the form of pre-tests for advanced preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback from participants to the instructor or provider or such other mechanism as may be appropriate to an effective evaluation. Programs should be evaluated to determine whether:

i. Objectives have been met;

ii. Prerequisites were necessary or desirable;

iii. Facilities were satisfactory;

iv. The instructor was effective;

v. Advanced preparation materials were satisfactory; and

vi. The program content was timely and effective;

5. Evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors and advise instructors of their performance;

6. Systematically review the evaluation process to ensure its effectiveness;

7. Furnish to each enrollee a verification of attendance, which shall include at least the following information:

i. The title, date and location of the course offering;

ii. The name and license number of the attendee;

iii. The number of credits awarded; and

iv. The name and signature of officer or responsible party and seal of the organization;

8. Maintain and retain accurate records of attendance for a six-year period; and

9. Retain a written outline of course materials for a six-year period.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Personnel Services
Registration Requirements for Health Care Service Firms and Standards for Placement of Health Care Practitioners

Proposed Amendments: N.J.A.C. 13:45B-1.2, 2.1 to 2.8, 3.1, 4.1, 4.2, 4.5 to 4.7, 6.4, 6.6, 7.1, 8.2, 10.1, 11.1 and 12.1
Proposed Repeals: N.J.A.C. 13:45B-4.3, 5 and 9
Proposed New Rules: N.J.A.C. 13:45B-14 and 15

Authorized By: Mark Herr, Assistant Attorney General in Charge, Division of Consumer Affairs.

Authority: N.J.S.A. 34:8-54 and 56:8-1 et seq.

Proposal Number: PRN 1994-590.

Submit written comments by December 7, 1994 to:

Mark Herr, Assistant Attorney General in Charge
Division of Consumer Affairs
124 Halsey Street, P.O. Box 45028
Newark, New Jersey 07101

The agency proposal follows:

Summary

This proposal amends N.J.A.C. 13:45B, which implements N.J.S.A. 34:8-43 and 56:8-1.1 and regulates employment or personnel services or products in this State.

The purpose of the proposed amendments and new rules is threefold: (1) to establish standards that target identified evils in the placement and referral of health care practitioners, and thus provide for improved safety of those who must utilize their services; (2) to provide for less regulation of certain business-to-business relationships—temporary help service firms and consulting firms; and (3) to amend the chapter consistent with Reorganization Plan No. 002 of 1992.

I. Referral and placement of health care practitioners. Through the past experience of the Board of Nursing and the Division of Consumer Affairs ("Division"), as well as through reports appearing in the media, the Division has identified certain evils in the referral and placement of health care practitioners. These include referring non-licensees to perform work for which licensure is required; referring workers whose credentials do not match the employer's needs; referring individuals who have engaged in malpractice, negligence or other unlawful conduct; and referring individuals to home care settings without proper planning, monitoring and assurance of quality service.

Health care practitioners include primarily licensed nurses and certified homemaker-home health aides and also include, among others, physical, occupational and speech therapists, psychologists, social workers, and any individual placed for the purpose of rendering health care services who is not required under State law to possess a license in order to render services.

Pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., the Division currently registers and/or licenses, under several categories, agencies providing health care services. In order to consolidate these agencies into an appropriate category and subject them to uniform regulation, a new registration class is proposed known as "health care service firm."

The proposed amendments and new rules will directly impact on the current holders of temporary help service firm registrations (232) and non-profit health care organizations (22). The amendments and new rules require these small businesses to switch their registration category from temporary help services to health care services, which change imposes no additional registration requirements but will subject these firms to the proposed rules concerning health care practitioners.

Subchapter 14 establishes the registration requirements for health care service firms required to be licensed under the Act and identifies prohibited acts.

New standards are proposed in subchapter 15 which are applicable to a health care service firm as well as to a licensed employment agency operating as a nurses' registry under the act and a licensed employment agent who places or employs a health care practitioner (hereinafter referred to as "agencies"). The proposed new standards will require the agency to:

1. Employ at least one health care practitioner supervisor. As a physician or a registered professional nurse with a minimum of one year of experience in community health, public health or home care, such individual will assume responsibility to oversee the placement and monitoring of health care practitioners. Along with the agency, the supervisor is to be held jointly responsible for establishing necessary procedures to comply with this regulation. (N.J.A.C. 13:45B-15.3);

2. Maintain or assure the existence of malpractice insurance; cooperate in investigations and share mandated testing and immunization results for individuals to be placed. (N.J.A.C. 13:45B-15.3);

3. Refer only licensed individuals and verify licensure prior to making any referral or placement where licensure is required by law as a precondition to performing the service or function. (N.J.A.C. 13:45B-15.4);

4. Ascertain the relevant needs involved in the contemplated employment and create a job order. (N.J.A.C. 13:45B-15.5);

5. Obtain and record information intended to aid in the evaluation and verification process, including information in the areas of honesty, reliability, timeliness in reporting for work, knowledge of work performed and quality of care rendered. The applicant is to be required to sign an authorization to prior employers to release employment information and the reason for any termination. Such information must be disclosed to other agencies making appropriate inquiry. (N.J.A.C. 13:45B-15.6 and 7);

6. When an agency obtains knowledge that a practitioner has engaged in serious unlawful conduct, the agency must immediately make inquiry to determine whether reasonable cause exists to believe such conduct occurred and, if so, must immediately advise the employer and submit a confidential written report of the adverse information to the practitioner's licensing board or agency. Thereafter the agency may not refer the individual to another agency without disclosing the adverse information. (N.J.A.C. 13:45B-15.8); and

7. Prior to making any referral or placement in a home care setting the licensee must assure that an initial evaluation of the patient's needs and a plan of care to meet such needs have been performed by an appropriately licensed person and provided directly to the patient or the patient's representative. Additionally, the agency's supervisor is required to inquire at least every 30 days whether the plan of care is being discharged appropriately by the practitioner and whether the plan is adequate to meet the patient's needs. The supervisor must visit the home at least once during each 60 day period. (N.J.A.C. 13:45B-15.9)

The following amendments have also been made consistent with the new licensure category and standards of practice set forth in new subchapters 14 and 15:

1. In N.J.A.C. 13:45B-1.2, the definition of "nurses' registry" has been amended to make it more narrow in scope and to accurately reflect the legislative intent regarding the agencies to be captured under the definition of a nurses' registry. As currently defined, a nurses' registry could be deemed to include agencies providing dissimilar services. In addition, the term "broker" has been defined since it is used in new subchapter 15 and not defined elsewhere in the chapter; the term "Division" has been revised to reflect the correct address of the Division; and the definitions of "Bureau" and "Chief" have been deleted, and replaced by definitions of "Section" and "Executive Director."

2. Pursuant to N.J.A.C. 13:45B-2.1, an agency that provides health care services will be required to provide additional information on the application form. The agency will be required to identify each person with an ownership interest in the agency and the percentage of ownership held; each person who is a managing agent of the agency; and its malpractice insurance carrier and policy number. The Director believes that requiring this information is consistent with the intent of this proposal to provide sufficient oversight with regard to placement and referral of health care practitioners in order to safeguard the public health and safety.

3. N.J.A.C. 13:45B-2.6(a) and 2.7(b) have been rewritten for clarity.

4. N.J.A.C. 13:45B-2.6(b), and 2.7(d) have been deleted, and N.J.A.C. 13:45B-4.3 repealed, because these requirements concerning nurses' registries now appear in new Subchapter 15.

5. The section heading for N.J.A.C. 13:47B-4.7 has been amended to clarify that this section applies to employment agencies and not to temporary help service firms.

6. A $500.00 annual registration fee for health care service firms has been added to N.J.A.C. 13:45B-7.1.

7. The specific binding requirements at N.J.A.C. 13:45B-11.1(g) have been deleted and replaced with a cross reference to the same provisions at N.J.A.C. 13:45B-10.1(g).

II. Temporary Help Service Firms and Consulting Firms. Based upon the experience of the Office of Consumer Protection to date with regard to these firms, the Director has determined that the present level of regulation is unnecessary at this time. Temporary help service firms and consulting firms remain subject to the provisions of the Act and thus must continue to register with the Director and comply with the Act. However, amendments are proposed to subchapter 12 to exempt these firms from further regulation by the Division in the area of advertising. Since statutory registration and other statutory requirements need not be repeated in regulatory form, subchapters 5 and 9 are proposed for repeal as duplicative of the statute.

It should be noted that temporary help service firms that provide services falling within the new licensure category of health care service firm will be subject to proposed new subchapters 14 and 15.

III. Reorganization Plan No. 002, 1992. Pursuant to this Reorganization Plan, the Bureau of Employment and Personnel Services Unit and the Charities Registration Section of the Office of Consumer Protection, together with those licensing activities specified in the Consumer Fraud Act, were transferred to the Regulated Business Section of the Office of Consumer Protection. Amendments are proposed throughout N.J.A.C. 13:45B to reflect the reorganization.

Social Impact

The proposed health care service firm rules and amendments establish a new class of registration by segregating firms that provide health care services from firms that provide traditional temporary services. This enables the Division to set forth rules which target the evils previously

identified without subjecting dissimilar firms to the same standards. It is expected that this regulatory scheme will result in improved enforcement.

As to the placement of health care practitioners, the amendments and new rules will establish standards which relate to the prevention of the previously identified evils so as to assure that health care professionals placed in home or institutional settings are competent, honest and capable of discharging the important caregiving functions which the consuming public needs. It is expected that the standards will improve the quality of placements of such health care professionals and that both the industry and the public will receive positive benefits from the more precisely articulated standards.

By exempting consulting firms and temporary help service firms from complying with existing advertising regulations, the amendments will minimize the regulatory burden upon some firms as well as eliminate the Division's oversight and enforcement functions with regard to advertising placed by these firms without harm to the public.

Economic Impact

The proposed rules and amendments relating to health care service firm registration and operation are not expected to create any new or major economic impact on the firms falling within this category. Except for a higher registration fee, the registration requirements are similar to those currently in place in other regulated areas. The higher registration fee is necessary because of the increased enforcement activities expected to take place under the new rules. The regulation will cause a shift of firms from existing broad classifications to a more specific classification.

Similarly, the proposed rules concerning placement of health care practitioners are not anticipated to create significant economic impact upon agencies to which the proposal directly speaks or on individual health care practitioners, or the regulatory boards or agencies affected by the new standards. It is believed that the standards, in large part, embody sound business practices which responsible agencies are currently utilizing in one form or another.

However, in some areas increased cost will be experienced by certain agencies, such as the expense of maintaining malpractice insurance.

In other areas cost savings may be anticipated, namely, the sharing of mandatory test and immunization results for individuals to be placed. To the extent that some agencies currently do not maintain sufficient documentation incident to the proper placing of individuals, the duties to match credentials with employer need, to verify licensure, and to refer only licensed individuals may impose additional costs. As indicated previously, such practices are already commonplace among responsible agencies. Similarly, the duty to establish plans of care and appropriate monitoring are consistent with both previously required practices. Thus, for most agencies with high operating standards, pronounced economic impact should not result.

The proposed new duty to disclose adverse information in making referrals may impose slightly heightened costs upon agencies because of its information gathering and disclosure requirements. However, the providing of valuable consumer information in the placement process may avoid future costs resulting from the placement of incompetent or untrustworthy individuals. While no precise calculation as to the exact dollar amount of the above stated considerations is possible, it is anticipated that the impact upon agencies will be minimal, and well-justified by the public benefit.

Temporary help service firms and consulting firms that advertise their services may be able to reduce their advertising costs in that they will no longer be subject to the recordkeeping and other requirements set forth in subchapter 12.

Regulatory Flexibility Analysis

The proposed new rules and amendments will directly impact on the current holders of temporary help service firm registrations (232) and non-profit health care organizations (22). The new rules and amendments require these small businesses to switch their registration category from temporary help services to health care services, which change imposes no additional registration requirements but will subject these firms to the proposed rules concerning health care practitioners.

The new rules and amendments will also directly impact upon the holders of employment agency licenses operating as nurse registries (58) and those operating as temporary help services (232) and various other home health agencies (26), and will also indirectly affect the thousands of individuals holding licenses as nurses, home health aides or other health care practitioners licensed or certified by a variety of State licensing boards.

The new rules require small businesses to maintain records and to report instances of unlawful conduct by both agencies and health care practitioners to their appropriate licensing boards. The duty to refer only licensed individuals requires recordkeeping in that copies of current licenses or registrations must be retained. Records of licensure inspection are also to be noted. With regard to the duty to match credentials, the rules prescribe certain information to be recorded for job orders as well as for each applicant seeking placement or employment, so as to allow for an appropriate matching of credentials to employer need. It is believed that such recordkeeping conforms to business practices presently being following by responsible agencies.

The duty to match also contemplates as a condition for placing an applicant, verification of the applicants' work history within a one year period prior to the date of the application. A record of such verification is to be maintained and in those instances where termination, resignation or cessation of employment occurs, the new rules contemplate the creation of a record containing reasons for such termination or cessation of employment. Prepublication comments have indicated that such reasons may not, in all instances, be available, and in such case, appropriate notation of unavailability of information due to the refusal of the employer to provide the same may be entered.

The recordkeeping requirement also contemplates that a licensee shall make inquiry in those instances where a placed employee is terminated so as to determine the reason for such termination. Such information is to be made available to the employer and to other licensees making inquiry concerning such individual. The new rules also mandate that prior to placing or referring an applicant, a licensee shall secure an evaluation of the applicant's performance within five stated criteria (honesty, reliability, timeliness in reporting for assigned work, knowledge of work performed and quality of care rendered).

The duty to disclose adverse information requires recordkeeping in those instances where an agency receives information that a health care practitioner has engaged in any of ten serious acts or practices, such as gross malpractice, fraud, dishonesty, theft from a patient, etc. Upon receipt of such information, the health care practitioner supervisor must immediately make a record thereof and attempt to identify the person supplying basic information. The health care practitioner about whom the information is received is to be apprised of the complaint with the responsibility in the health care practitioner supervisor to solicit and record any response to the adverse information. Thereafter, if there is reasonable cause to believe that the stated conduct occurred, placement of the health care practitioner may be made only upon disclosure of the adverse information to the individual or entity with whom a placement or referral is contemplated. A report of the conduct is also to be filed with the health care practitioner's licensing board.

Recordkeeping is also necessary for the initial evaluation of a patient's needs and the creation of an appropriate plan of care in home care settings. Thereafter records are to be maintained which reflect ongoing assessment of the plan of care and any modifications which may be necessary to ensure appropriate patient health care within the home care setting.

It is not anticipated that any outside professional services will be necessary to comply with these amendments and new rules, nor will there be any initial capital costs. An estimate of annual compliance expenses is not possible given the variety in size and extent of licensee operations.

The Division has addressed the need to minimize the regulatory impact upon small businesses by exempting temporary help service firms and consulting firms from the advertising and recordkeeping requirements set forth in subchapter 12. However, since the standards embodied in the amendments and new rules with regard to agencies providing health care services are intended to result in the highest possible level of patient care, they cannot be altered for small businesses. Any exemptions from all or parts of those portions of the proposed new rules and amendments would endanger the public health and safety.

Full text of the proposed subchapter repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:45B-5 and 9.

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

13:45B-1.2 Definitions

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

...

"Broker" means a person who acts, works or performs duties as an agent for others, in return for a fee, charge or commission.

["Bureau" means the Bureau of Employment and Personnel Services, a component of the Division of Consumer Affairs within the Department of Law and Public Safety.]

...

["Chief" means the chief of the Bureau of Employment and Personnel Services.]

...

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, [1207 Raymond Boulevard] **124 Halsey Street,** Newark, New Jersey 07102.

...

"Executive Director" means the Executive Director of the Office of Consumer Protection.

...

"Nurses' registry" means any person who operates a [business] **firm** which directly or indirectly procures, assigns, or supplies, or offers, arranges or attempts to procure, assign or supply temporary or permanent personnel service(s) classified as **the practice of** nursing, [and/or homemaker-home health services,] and [directly or indirectly] receives or attempts to receive a payment, fee, charge or commission for such service(s). Under N.J.S.A. 34:8-43 et seq., a nurses' registry is licensed as an employment agency.

...

"Section" means the Regulated Business Section of the Office of Consumer Protection, created as a result of the transfer of the Bureau of Employment and Personnel Services Unit and the Charities Registration Section to the Office of Consumer Protection pursuant to Reorganization Plan No. 002 of 1992.

...

13:45B-2.1 Employment agency license requirements

(a) (No change.)

(b) If the employment agency provides health care services, the applicant for an employment agency license shall include the following information on the application form in addition to the information required pursuant to (a) above:

1. The name, residence and business street address, and business telephone number of each person with an ownership interest in the agency and the percentage of ownership held;

2. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors; and

3. The name and address of malpractice insurance carrier and malpractice insurance policy number.

[(b)](c) Every person, including an owner of a licensed employment agency, who places or refers jobseekers or furnishes information as to where the help or employment may be obtained, or who personally manages, operates, or carries on the business of an employment agency, shall obtain an employment agent's license by application to the [Bureau] **Section** and fulfill all requirements for such license.

[(c)](d) The holder of an employment agency license shall be under a continuing obligation to inform the [Chief] **Executive Director** of any change in information contained in a license or license application, such as change of address, change of ownership, change of contact person, conviction of a crime, etc.

[(d)](e) (No change in text.)

[(e)](f) The [Chief] **Executive Director** shall act upon any application for a license within 30 days after receiving it, except that the Director may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.

13:45B-2.2 Posting

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

(c) There shall be posted in each employment agency the agency's schedule of fees, as well as a certified abstract of the Act and these rules. Such posting shall be in a manner and place as to be readily seen and readable by persons doing business with the employment agency. The employment agency shall also have full copies of the Act and these rules available for any job seeker's or employer's review. The certified abstract shall be available from the [Bureau] **Section** for a fee of $5.00.

13:45B-2.3 Bond required

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

(e) The bond shall be retained by the [Bureau] **Section** until 90 days after either the expiration or revocation of the license.

13:45B-2.4 Records

(a) To effectuate the purposes of the Act, every holder of an employment agency license, as well as every representative authorized by the owner to supervise or conduct the operation of the employment agency, shall keep and maintain, readily available for inspection by the Director or the Director's duly authorized representative for a period of at least two years, the following:

1.-2. (No change.)

3. A record of fees charged, collected, and refunded, and such accounting record as may be necessary to enable the [Bureau] **Section** to readily verify the record of fees charged, fees collected, and refunds made;

4. All correspondence concerning references of job seekers including written records of information secured by telephone or other oral communication. In cases where the job seeker applies for a position of trust or work with a family and the employer waives references, written records of such waivers shall be kept available for inspection by the [Bureau] **Section**; and

5. (No change.)

13:45B-2.5 Agreements; fee schedules

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

(d) Upon application for licensure, an employment agency shall file with the [Bureau] **Section** a copy of the form(s) of contract used or to be used for all agreements between the employment agency and job seekers.

(e) Every employment agency shall file with the [Bureau] **Section** for the [Chief's] **Executive Director's** approval, the employment agency's proposed schedule of fees to be charged for any service rendered or product sold to job seekers. The [Chief] **Executive Director**, who shall respond within 14 days of receipt, shall not approve the fee schedule unless he or she is satisfied that the fee schedule is in a form which makes the schedule reasonably understandable by job seekers and that the fee schedule is in compliance with all applicable provisions of the Act. The schedule of fees may thereafter be changed or supplemented by filing an amended or supplemental schedule with the [Bureau] **Section**. The changes shall not become effective until approval has been granted by the [Chief] **Executive Director** and the amended or supplemental fee schedule has been posted on agency premises pursuant to N.J.A.C. 13:45B-2.2(c). The agency shall adhere to the schedule in charging for these services or products.

(f) An employment agency shall:

1. (No change.)

2. Not accept payment of a fee or attempt to collect any fee from a job seeker for a service rendered or product sold where employment has not been accepted except:

i.-ii. (No change.)

iii. Employment agencies which offer resume services or products to a job seeker may accept a fee for these services or products if the fee for such a service or product is included on the fee schedule filed with the [Bureau] **Section** and the fee is not collected prior to the delivery of the product or service;

3.-5. (No change.)

13:45B-2.6 Employment agent's license qualifications

[(a) Every applicant for an employment agent's license, before being permitted to sit for the written examination as required by the Act and by this chapter, shall, by means of affidavit of the applicant and the affidavit of the holder of the employment agency license by whom the applicant is to be employed and by such other evidence as the Director may require, reasonably satisfy the Director that the applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation. The affidavits shall also show that the applicant, for a period of at least six months, has been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made. The applicant shall also submit to the Bureau affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute afffidavits from two citizens of any state who have known the applicant for at least a year. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants.]

(a) Before being permitted to sit for the written examination as required by the Act and by this chapter, an applicant for an employment agent's license shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:

1. Affidavits of the applicant and the holder of the employment agency license by whom the applicant is to be employed, and such other evidence as the Director may reasonably require, indicating that:

i. The applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation; and

ii. The applicant has, for a period of at least six months, been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made; and

2. Affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least one year. If the applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute the following:

i. Affidavits from two citizens of any state who have known the applicant for at least one year; and

ii. An affidavit substantiating why it is impossible to obtain affidavits from two New Jersey citizens.

[(b) Whenever the application is for an employment agent's license which includes "nursing" or "nursing and/or health care services" as a type or class of services which is to be provided, the applicant shall, before the license is approved, submit to the Chief evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.]

[(c)](b) If the holder of an employment agent's license has his or her employment terminated, the licensed agency's owner shall notify the [Chief] **Executive Director** within five business days of such termination. Upon such notification, the [Chief] **Executive Director** shall cancel the employment agent's license held by that person; the person is nevertheless entitled to a new license for the unexpired term of the old license, upon payment of the transfer fee, if employed elsewhere by a properly-licensed employment agency owner. However, the Director may refuse to issue the new license for good cause consistent with the provisions of the Act.

[(d)](c) The holder of an employment agent's license shall be under a continuing obligation to inform the [Chief] **Executive Director** of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

13:45B-2.7 Employment agent's conditional license qualifications

(a) (No change.)

[(b) Before being granted an agent's conditional license, an applicant for such license shall, by means of affidavit of the applicant and upon such other evidence as the Director may reasonably require, establish that the applicant has at least one year of business experience or equivalent education. The applicant shall also submit to the Bureau:

1. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma or successful passage of the written licensing examination;

2. Two affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to obtain affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants.

3. The name, business address, and employment agency license number of the licensee who will be supervising the applicant; and

4. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.]

(b) Before being granted an agent's conditional license, an applicant shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:

1. An affidavit and such other evidence as the Director may reasonably require establishing that the applicant has at least one year of business experience or equivalent education;

2. Two affidavits attesting to the applicant's good moral character, pursuant to the provisions of N.J.A.C. 13:45B-2.6(a)2;

3. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma or successful passage of the written licensing examination;

4. The name, business address and employment agency license number of the licensee who will be supervising the applicant; and

5. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.

(c) The holder of an agent's conditional license shall be under a continuing obligation to inform the [Chief] **Executive Director** of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

[(d) Whenever the application is for an agent's conditional license which includes "nursing" and/or "health care services" as a type or class of services which is to be provided, the applicant shall, before such license is issued, submit to the Director evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.]

[(e)](d) A conditional license remains effective for one year only.

13:45B-2.8 Identification and introductory card

(a) (No change.)

(b) The employment agency shall require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference.

1. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the employment agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the employment agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the employment agency subject to examination by the [chief] **Executive Director**.

2. (No change.)

13:45B-3.1 Business locations; special permits

(a) (No change.)

(b) An employment agency license, or registration under N.J.S.A. 34:8-65 or 66, shall not authorize activities at any place other than the place designated in the license or registration except upon issuance of a special permit by the Director, as follows:

1. Where an activity is to take place away from the premises designated in the license, application for a special permit shall be made on a form supplied by the [Bureau] **Section**, which must be received by the [Bureau] **Section** no later than seven business days before the event.

2.-4. (No change.)

(c) (No change.)

(d) The following shall apply to entertainment showcases:

1. (No change.)

2. If services are offered by electronic means for a prospective employer in the home of the prospective employer, a special permit is not required. However, at the beginning of any electronic presentation, the name, address and license number of the entertainment agency and the name and address of this [Bureau] **Section** shall be displayed on an electronic screen for a minimum period of 20 seconds or, if any other type of electronic presentation is given, the above information shall be supplied in written form.

13:45B-4.1 Examination subjects

(a) Each applicant for an employment agent's license shall, in the manner and at the time and place designated by the [chief] **Executive Director,** answer written questions concerning the following:

1.-3. (No change.)

13:45B-4.2 "Aeronautical" classification

Applicants for an employment agent's license who include "aeronautical" in the type or class of occupation in which they intend to furnish help or employment shall furnish to the [Chief] **Executive Director** a written statement from the Division of Aeronautics in the State Department of Transportation certifying to the [Chief] **Executive Director** that, in the opinion of the Division of Aeronautics, the applicant has sufficient knowledge of the types of licenses required by persons to be legally engaged in the operation, maintenance or repair of aircraft.

13:45B-4.3 ["Nursing registry" and "nursing" and/or "health care services" classification] **(Reserved)**

[Applicants for an employment agent's license who include "nursing" or "nursing and/or health care services" as a type or class of services which they intend to provide shall, before being granted a license, establish to the satisfaction of the Director that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey, or that the applicant is a registered nurse with a current, valid license to practice nursing in the State of New Jersey.]

13:45B-4.5 "Career counseling" classification

(a) (No change.)

(b) To be classified as a career counseling agent, an applicant shall:

1.-2. (No change.)

3. Pass the career counseling examination administered by the [Bureau] **Section**.

(c) (No change.)

13:45B-4.6 Temporary placement operation (functioning in conjunction with an employment agency and integrated)

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

(c) Employment agencies may integrate the permanent placement and temporary placement operations, provided that:

1. (No change.)

2. An employment agency shall charge the employer or the job seeker a fee based on the fee schedule the agency has submitted to the [Bureau] **Section**;

3.-5. (No change.)

13:45B-4.7 [Temporary help service firm (operated in conjunction with an Employment Agency and integrated)] **Employment agency providing temporary help**

[A temporary help service firm integrated with an employment agency functions under the employment agency license and] **An employment agency providing temporary help** shall comply with all requirements in this chapter that apply to employment agencies. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed.

13:45B-6.4 Entertainment agency contracts

(a) (No change.)

(b) Each entertainment agency shall file a copy of the form(s) of any contract used or to be used by the agency with the [Bureau of Employment and Personnel Services, 1207 Raymond Boulevard] **Regulated Business Section of the Office of Consumer Protection, 124 Halsey Street**, P.O. Box 45028, Newark, New Jersey 07102.

(c) Copies of all executed contracts between the entertainment agency and performing artists shall be maintained by the agency in a form suitable for inspection by the [Bureau] **Section**. These copies shall be made available for inspection by representatives of the [Bureau] **Section**.

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

13:45B-6.6 Information required

(a) Information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided to the [Bureau of Employment and Personnel Services] **Regulated Business Section, Office of Consumer Protection**, 124 Halsey Street, Newark, New Jersey 07102 (Mailing address: P.O. Box 45028, Newark, New Jersey [07102] **07101**) on January 1 of each year. Where the entertainment agency begins operation after January 1, the information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the [Bureau] **Section**.

(b) (No change.)

13:45B-7.1 Fee schedule

The following fees shall be charged by the [Bureau of Employment and Personnel Services] **Office of Consumer Protection, Regulated Business Section:**

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Health care service firm annual registration, each primary location	**$500.00**
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
Examination fee	$25.00
Late fee for renewals	$25.00
Special (off-premises) permit	$10.00

13:45B-8.2 Registered agent

Each out-of-State holder of a New Jersey employment agency license, or out-of-State entity required to be registered under the Act, shall register with the [Chief] **Executive Director** the name and address of a New Jersey agent for service of process and other matters.

SUBCHAPTER 10. REGISTRATION FOR CAREER CONSULTING OR OUTPLACEMENT ORGANIZATIONS

(a) The following entities are required to be registered with the [Bureau of Employment and Personnel Services] **Regulated Business Section of the Office of Consumer Protection** in order to operate within New Jersey:

1. (No change.)

(b) An application for registration and an abstract of the law covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the [Bureau] **Section** upon request.

(c) (No change.)

(d) Upon application for registration, a prospective registrant shall file with the [Bureau] **Section** a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the [Bureau] **Section** of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) (No change.)

(g) Upon initial registration with the [Bureau of Employment and Personnel Services] **Section** and annually thereafter, every career consultant or outplacement organization and every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1.-2. (No change.)

3. The bond shall be retained by the [Bureau] **Section** until 90 days after either the expiration or revocation of the registration, as appropriate.

(h) (No change.)

13:45B-11.1 Registration process

(a) The following entities are required to be registered with the [Bureau of Employment and Personnel Services] **Section** in order to operate within New Jersey:

1. (No change.)

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the [Bureau] **Section** upon request.

(c) (No change.)

(d) Upon application for registration, a prospective registrant shall file with the [Bureau] **Section** a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the [Bureau] **Section** of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) (No change.)

(g) Upon initial registration with the [Bureau of Employment and Personnel Services] **Section** and annually thereafter, every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 **and shall be subject to all bonding requirements set forth in N.J.A.C. 13:45B-10.1(g).** [with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a bond within 10 days after such notice shall, at the discretion of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

3. The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the registration, as appropriate.]

13:45B-12.1 Advertisements and solicitations

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

(e) Copies of all advertisements and solicitations shall be maintained by the licensed or registered firm or entertainment agency in a form suitable for inspection [of the Bureau] and shall be made available for inspection by the [Bureau] **Section** for two years following publication or dissemination.

(f) A record of all advertisements and solicitations with date and place of publication or dissemination, including identification of media used, shall be maintained in a form suitable for inspection and made available upon request of representatives of the [Bureau] **Section** for two years following publication or dissemination.

(g) [In addition to complying with (a) through (e) above, a temporary help service firm shall state its trade name in all advertisements for job seekers and the words "A Temporary Help Service Firm" or "Temp-No Fee" immediately under or following the name, unless the words "temporary service" are including in the name of the firm.] **This section shall not apply to temporary help service firms or consulting firms, as defined in N.J.A.C. 13:45B-1.2.**

SUBCHAPTER 14. HEALTH CARE SERVICE FIRMS

13:45B-14.1 Authority, purpose and scope

(a) The authority for this subchapter is derived from N.J.S.A. 34:8-43 under the definition of "employment agency."

(b) Firms providing health care services are licensed and/or registered under several categories pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. In order to consolidate these

firms into an appropriate category and subject all firms operating in a similar manner to uniform regulation, the Director is hereby identifying a new class of licensure: "health care service firm."

(c) This subchapter applies to all persons operating a health care service firm, as defined by N.J.A.C. 13:45B-14.2, including persons whose residence or principal place of business is located outside of this State.

13:45B-14.2 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Health care service firm" means any person who operates a firm that employs individuals directly or indirectly for the purpose of assigning the employed individuals to provide health care services either directly in the home or at a care-giving facility, and who, in addition to paying wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation insurance; and sustains responsibility for the action of the employed individuals while they render health care services.

"Health care services" means:

1. Any services rendered for the purpose of maintaining or restoring an individual's physical or mental health; or

2. Any health related services for which licensure is required as a pre-condition to the rendering of such services.

13:45B-14.3 Initial registration requirements

(a) Except as set forth in N.J.A.C. 13:45B-14.4, each health care service firm shall register with the Division by submitting the following, on forms provided by the Director:

1. A registration form which shall include the following information:

i. The name of the health care service firm and any fictitious or trade name used in its operation;

ii. Each primary location including street and street number of the building(s) and place(s) where its business is to be conducted;

iii. The name and residence address of each officer, director, and principal;

iv. The name, residence and business street address, and business telephone number of each person with an ownership interest in the agency and the percentage of ownership held; and

v. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors;

2. A certification of each officer, director, principal or owner setting forth whether he or she has ever been convicted of a crime as set forth in N.J.S.A. 34:8-44; and

3. A bond of $10,000 to secure compliance with P.L. 1989, c.331 (N.J.S.A. 34:8-43 et seq.). The Director may waive the bond requirement for any corporation or entity having a net worth of $100,000 or more. In order to obtain a waiver, the health care service firm shall provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing a net worth of $100,000 or greater.

(c) A health care service firm shall provide the information set forth in (a)1iv and v above prior to any change in ownership or management.

(d) If any information required to be included on the application changes, the health care service firm shall provide that information to the Section, in writing, within 30 calendar days of the change.

(e) In the event an officer, director, principal or owner is convicted of a crime subsequent to filing the affidavit required by (a) above, the health care service firm shall obtain a new affidavit from that individual and shall file the affidavit with the Section within 30 days of the conviction.

13:45B-14.4 Firms registered prior to [the effective date of these regulations] and meeting the definition of health care service firm

(a) A firm registered prior to [insert date—the effective date of these rules] and meeting the definition of a health care service firm shall not be required to comply with the initial registration requirements of N.J.A.C. 13:45B-14.3(a)1 and 2. Such entity shall, however, comply with the provisions of N.J.A.C. 13:45B-14.3(a)3 by ensuring that it has filed a $10,000 bond with the Director, unless the Director has waived the bond requirement for the reasons set forth therein.

(b) The firm shall return the old certificate of registration to the Division by [insert date—within 30 days after the effective date of these rules]. The Division will issue a new certificate within 15 days after receipt of the old certificate.

13:45B-14.5 Registration renewal

(a) A health care service firm shall renew registration on or prior to July 1 of each year by submitting the following, on forms provided by the Director.

1. A renewal application which shall provide the information set forth in N.J.A.C. 13:45B-14.3(a)1 above; a certification that no new principals or owners have been added since the previous renewal; and a list of primary locations.

2. A $10,000 bond, unless the health care service firm has a perpetual bond or the Director has waived the bond requirement for the reasons set forth in N.J.A.C. 13:45B-14.3(a)3.

13:45B-14.6 Prohibited acts

(a) A health care service firm shall not:

1. Provide or offer to provide health care services without first obtaining a registration;

2. Charge a fee or a liquidated damage charge to any individual employed by the health care service or in connection with employment by the firm. If a fee or liquidated damage charge is imposed, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2;

3. Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person. If the health care service firm charges an individual pursuant to such contract a fee when the individual becomes employed by any other person, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2; or

4. Knowingly send individuals it employs to, or knowingly continue to render services to, any health care facility not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

SUBCHAPTER 15. PLACEMENT OF HEALTH CARE PRACTITIONERS

13:45B-15.1 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means a health care service firm as defined in N.J.A.C. 13:45B-14.2 or an employment agency licensed pursuant to N.J.S.A. 34:8-47 and 48 and operating as a nurses' registry. Agency also means any holder of an employment agency license who places or employs a health care practitioner.

"Health care practitioner" means an individual placed or employed by an agency for the purpose of rendering health care services, as defined in N.J.A.C. 13:45B-14.2, to an individual. Health care practitioner shall include, but not be limited to, an acupuncturist, athletic trainer, chiropractor, dentist, marriage counsellor, optometrist, orthotist, prosthetist, pharmacist, physician assistant, physician or surgeon, physical, occupational or speech therapist, podiatrist, psychologist, registered nurse, licensed practical nurse, nurse practitioner, a home health aide, or a nurse's aide, respiratory therapist or social worker. The term shall also include an individual placed by an agency for the purpose of rendering health care services where a license under State law is not required.

"Health care practitioner supervisor" means a New Jersey licensed physician, or a registered nurse in good standing holding

at least a Bachelor of Science degree, with a major in nursing and at least two years of full time or full time equivalent experience as a registered professional nurse within the five year period immediately preceding employment with an agency. One year of said experience shall have been in community health, public health or home care.

"Home care setting" means the personal residence of a patient receiving services of a health care practitioner.

"Licensed" means holding any certification, registration or license required by law as a precondition to the practice of a regulated profession or occupation.

13:45B-15.2 Application form; minimum information required

(a) An agency shall create an application form for each applicant seeking placement or employment by or through the agency. The application form shall require the following minimum information:

1. The applicant's name, address and telephone number;
2. The applicant's Social Security Number;
3. The type of license held (R.N., L.P.N., H.H.A., N.A.);
4. The license-issuing authority or board;
5. The license number;
6. The license expiration date;
7. The names and addresses of all institutions, patients and agencies worked for within the one year period preceding the date of application, a statement of reasons for leaving each employer and the name(s) of all supervisors having knowledge of the applicant's performance at each location. If the applicant has been employed by more than five employers within the stated one year period, the applicant shall be required to disclose only the five employers immediately preceding the date of application;
8. Areas of actual working experience and period of time during which experience was acquired (for example, I.C.U.—one year, med surg—one year, private residence—one year);
9. The applicant's education (diplomas/degrees held);
10. The applicant's malpractice insurance carrier (name and address); and
11. The applicant's malpractice insurance policy number.

(c) An application form shall contain the following duly executed authorization:

I, _____ (Applicant) _____, hereby authorize _____ (agency) _____ to request and receive from all prior employers within one year of the date of this application, any and all pertinent information concerning my prior employment and its termination, including the reasons for such termination.

13:45B-15.3 General duties

(a) An agency shall comply with accepted professional standards and principles that apply to furnishing services to be provided by health care practitioners.

(b) An agency shall comply with all Federal, State and local laws and shall not direct, request, condone or aid or abet any health care practitioner in the performance of an unlawful act.

(c) An agency shall employ not less than one health care practitioner supervisor who shall be licensed as an employment agent, provided, however, that a health care service firm may employ a health care practitioner supervisor who need not be licensed as an employment agent.

(d) The agency and the health care practitioner supervisor shall be jointly responsible for establishing such practices and procedures as may be necessary to assure the agency's compliance with this subchapter. The agency shall give each health care practitioner supervisor written notice of the joint responsibility imposed by this subsection.

(e) An agency shall not submit, record or convey to another agency information which the agency knows or has reason to know is false, deceptive or misleading.

(f) An agency shall make available for inspection by the Executive Director of the Office of Consumer Protection, or by his or her designated agent, any book, record or account required by law, including these regulations, to be made, maintained or kept.

(g) An agency shall retain all records required to be maintained by this regulation for a period of five years from the date on which the record is required to be made.

(h) An agency shall either maintain, or ensure the existence of, a general liability insurance policy which shall insure against any placed health care practitioner's negligence, malpractice or any other unlawful conduct occurring within the scope of the health care practitioner's placement. The policy shall be in the amount of not less than $1,000,000.

(i) An agency shall, upon receipt of a duly authorized release, provide to another agency a copy of all mandated testing and immunization results for the health care practitioner.

(j) The agency and the health care practitioner supervisor shall immediately report any violation of this subchapter to the Executive Director of the Office of Consumer Protection.

(k) The agency and the health care practitioner shall cooperate in providing information to any investigation conducted to determine whether a violation of this subchapter or any applicable statute has occurred.

(l) An agency's failure to comply with this subchapter may be deemed good cause within the meaning of N.J.S.A. 34:8-53, upon notice to the agency and an opportunity to be heard, for the suspension or revocation of licensure or for such other relief or sanctions as may be authorized by law.

13:45B-15.4 Duty to refer only licensed individuals

(a) When licensure to perform a health care service or function is required by law, an agency shall refer or place only those health care practitioners who are currently licensed or certified and in good standing with their respective New Jersey licensing or registration boards.

(b) A nurses' registry shall not furnish broker services to anyone other than a registered nurse, a practical nurse, or a nurse practitioner/clinical nurse specialist licensed by the State Board of Nursing.

(c) The agency shall, through its health care practitioner supervisor, verify the license status of each individual to be placed or referred prior to the referral or placement. Licensure shall be verified only by personally inspecting the original of the current biennial registration or license issued to the individual to be referred or placed.

(d) The agency shall maintain a copy of the license or registration with the following notation conspicuously written across the entire face of the license: "COPY OF ORIGINAL NOT VALID FOR VERIFYING CURRENT LICENSURE STATUS."

(e) The agency shall maintain a record of licensure verification in which the following information is recorded:

1. The registrant's name and address;
2. The New Jersey board or agency issuing license or registration;
3. The license or registration number;
4. The period for which licensure or registration was issued;
5. The date of license inspection; and
6. The name of the individual making the inspection on behalf of the licensee.

(f) When the agency knows or has reason to know that the license of any health care practitioner placed or referred has been suspended, revoked or otherwise limited or restricted so as to preclude the rendering of the health care service for which employment or placement was intended, the agency shall verify the licensure status at the earliest possible time. Upon a determination that the license has been suspended, revoked or otherwise limited or restricted, the agency shall directly terminate the health care practitioner's employment and notify the individual or entity currently receiving services from the health care practitioner that the practitioner's authority to practice has been suspended or revoked.

13:45B-15.5 Duty to match credentials to need

(a) An agency shall make diligent inquiry of employers and applicants for employment in order to ascertain the relevant needs of the place of employment and the applicant's qualifications. An

agency shall not place or refer an applicant whose qualifications do not reasonably match the needs and requirements of an employer.

(b) An agency shall create a job order for every position for which a referral or placement is to be made. The following minimum information shall be entered on the job order:

1. A description of setting (for example, pediatrics, I.C.U., C.C.U., med-surg, home/residence of client);
2. The hours to be worked;
3. The title of position (for example, supervising nurse, staff nurse, charge nurse, clinical specialist);
4. Duties;
5. Special skills or certifications required;
6. Special equipment to be operated; and
7. Special employer policies or limitations to be required.

13:45B-15.6 Duty to verify work history and evaluate performance

(a) Prior to placing or referring an applicant, an agency shall:

1. Verify the applicant's work history by confirming employment at all disclosed employment locations for the one year period prior to the date of the application;

2. Inquire of all employers disclosed on the application form the reason for any termination, resignation or cessation of employment; and

3. Secure an evaluation of the applicant's performance from all employers of said individual within the one year preceding the date of the application; provided, however, no such evaluation shall be secured from an employer where a current employment relationship exists without the express written consent of the applicant. The evaluation shall include the employer's comments with regard to the health care practitioner's performance in the following areas:

i. Honesty;
ii. Reliability;
iii. Timeliness in reporting for assigned work;
iv. Knowledge of work performed; and
v. Quality of care rendered.

(b) The agency shall record the information required by (a) above and the name and title of the individual providing the information.

13:45B-15.7 Duty to record and disclose to another agency reasons for employment termination

(a) Upon receiving notice that a placed or referred health care practitioner is to be terminated, the health care practitioner supervisor shall inquire as to the reason for such termination and shall record such reason in the health care practitioner's file. The name and position of the person supplying this information shall be recorded in the file.

(b) An agency shall disclose the following information to another agency:

1. The reasons for termination, resignation or cessation of employment where the agency maintained an employment relationship with a health care practitioner; and

2. Any information concerning the termination, resignation or cessation of employment where the agency placed or referred the health care practitioner.

13:45B-15.8 Duty to disclose adverse information in making referrals

(a) An agency receiving information that a health care practitioner has engaged in any of the following acts or conditions shall not refer, place or employ such practitioner without first complying with this section:

1. Gross malpractice, gross incompetence or gross neglect;
2. Repeated acts of malpractice, negligence or incompetence;
3. The use of fraud, dishonesty, misrepresentation or deception;
4. Any act of theft from a patient, a patient's household or from any work site;
5. The unlawful use or possession of any drug or other substance;
6. The use of alcohol or any drug resulting in current impairment of the ability to provide a health care with reasonable skill and safety;
7. Possessing a medical condition resulting in current impairment of the ability to provide a health care service with reasonable skill and safety. For the purposes of this subsection, a medical condition shall include physiological, mental or psychological conditions or disorders, such as, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;
8. Any diversion, misappropriation or unlawful possession of a controlled dangerous substance;
9. Any improper sexual contact with a patient;
10. Any physical abuse of a patient; or
11. Any criminal act evidenced by a conviction involving the scope of health care activity embodied within the license held by the health care practitioner or establishing a lack of good moral character.

(b) Upon receipt of any information which would cause a reasonable person to believe that any of the acts or conditions in (a) above has occurred, is occurring or will occur, the health care practitioner supervisor shall:

1. Immediately record the nature and facts of the conduct or condition and the identity of the person(s) supplying the information;

2. Apprise the health care practitioner about whom adverse information is received about the complaint; and

3. Solicit and record the health care practitioner's response to the adverse information in the complaint.

(c) If, after consideration of the health care practitioner's response, reasonable cause exists to believe that any of the conduct or conditions identified in (a) above has occurred or is continuing, the health care practitioner supervisor shall:

1. Immediatley disclose the information received and the response thereto to the agency and to the individual or entity currently receiving services from the placed health care practitioner; and

2. Not later than five days following receipt of the initial information, submit a written report of the information and the health care practitioner's response to the health care practitioner's licensing board or agency. The supervisor shall notify the health care practitioner that a report has been submitted to such board or agency, but the supervisor shall maintain the report as a confidential communication between the agency and any board or agency to which the report is submitted. The report shall be available to the health care practitioner only upon order of the licensing board or agency to which it is submitted or subsequent to the filing of a disciplinary complaint pursuant to proper discovery request made in such proceeding.

(d) The agency shall not thereafter refer or place any licensed, certified or registered health care practitioner for whom a report is submitted, or any other health care practitioner, unless prior written disclosure of the information received and the response thereto is made to any person or entity with whom a placement or referral is contemplated.

13:45B-15.9 Duties relating to placements in home care settings

(a) Prior to referring or placing a health care practitioner in a home care setting, an agency shall assure that an appropriately licensed person evaluates the patient's needs and establishes, in writing, a plan of care. The health care practitioner preparing the plan of care shall sign it and indicate thereon his or her license designation.

(b) An agency shall make referrals or placements consistent with the level of care indicated in the plan of care.

(c) Unless the circumstances of the patient's care or another specific regulatory standard requires otherwise, the health care practitioner supervisor shall, not less than once during each 30-day period during which the health care practitioner is rendering services in the home care setting:

1. Inquire of the health care practitioner and such other persons as may be necessary whether the plan of care is adequate to meet the patient's needs; and

2. Make reasonable inquiry to determine whether the plan of care is being discharged appropriately by the health care practitioner.

(d) The health care practitioner supervisor shall record the responses received.

(e) If the responses indicate that the plan of care needs to be reassessed or revised, the health care practitioner supervisor shall ensure that an appropriately licensed person immediately reassesses or revises the plan.

(f) If the responses indicate that the health care practitioner is not discharging the plan of care appropriately, the agency shall immediately take necessary corrective action.

(g) The health care practitioner supervisor shall make an on-site, in home evaluation not less than once during each 60 day period during which the agency has placed or referred a health care practitioner in the home care setting.

(h) The agency shall maintain the original of the plan of care and any revised plan of care and shall give copies to the patient or the patient's representative.

(a)

DIVISION OF CONSUMER AFFAIRS LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Rules of Legalized Games of Chance

Proposed Amendments: N.J.A.C. 13:47-1 through 4, 6 through 9, and 13 through 16

Authorized By: Legalized Games of Chance Control Commission, William J. Yorke, Executive Officer.

Authority: N.J.S.A. 5:8-6.

Proposal Number: PRN 1994-585.

Submit written comments by December 7, 1994 to:

William J. Yorke, Executive Director
Legalized Games of Chance Control Commission
P.O. Box 46000
Newark, New Jersey 07101

The agency proposal follows:

Summary

On June 30, 1994, Governor Christine Todd Whitman signed P.L. 1994, c.63 into law amending the act that created the Legalized Games of Chance Control Commission, N.J.S.A. 5:8-1 et seq., the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., and the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq. The new law, among other things, causes the Commission and its activities to be funded from revenues generated by fees. The act requires qualified organizations conducting games of chance (bingo and raffles) to register biennially with the Commission and to pay such registration and licensing fees as are set by the Commission. The law provides that persons or entities that lease, sell or provide bingo equipment to qualified organizations must be licensed by the Commission. The law permits a waiver of the bingo prize limitation where the game is conducted pursuant to rules established by the Commission and the prize awarded is based on a percentage of gross receipts from the sale of cards to participate in the game. The law permits the Commission to establish by regulation the retail value of all prizes to be offered in raffles. The Legislature granted the Commission expanded enforcement authority, including an ability to seek injunctive relief, penalties, and costs in Superior Court for violations of the Bingo and Raffles Licensing Laws. Other changes permit organizations to file reports of operation for activities conducted in a given month on the 15th day of the month following the conduct of the game rather than 15 days following each event and allows persons under the age of 18 to participate as players in non-draw raffles (carnival games) that offer merchandise as a prize.

The changes effected by this legislation require amendments and additions to the rules governing the conduct of games of chance, N.J.A.C. 13:47. This initial proposal implements the legislative direction to the Commission to set both State and municipal fees for registration and licensure and defines and prescribes the method of play for bingo games in which the prize awarded is based on a percentage of the gross receipts from the sale of cards to play. The proposal also sets the dollar limit for retail value of prizes awarded in raffles and additional requirements for suppliers of equipment used in games of chance.

Subchapter 1 has been amended to include definitions related to the new types of bingo games authorized by the law. The Commission is proposing a 50/50 bingo game and a progressive jackpot bingo game. These games award prizes based on a percentage of the gross receipts from the sale of cards to play the game.

Subchapter 2 details requirements for organizations desiring to register with the Commission in order to be considered qualified to conduct games of chance. Qualified organizations currently holding valid identification numbers issued by the Commission will be required to complete a registration form and submit the biennial registration fee of $50.00 along with any other documents requested by the Commission. N.J.A.C. 13:47-2.1 requires organizations seeking to be registered to submit the application form along with supporting documents and the $50.00 biennial registration fee to the Commission. Registrations issued by the Commission are valid for a period of two years or until suspended, modified or revoked by the Commission. The amendments also set forth the procedure for securing a duplicate certificate.

N.J.A.C. 13:47-2.9 clarifies the correct requirement that registered organizations are prohibited from conducting unlicensed and unauthorized games of chance. N.J.A.C. 13:47-2.10 reflects the enforcement authority found in the statute and iterates the civil penalties that may be imposed for violations of the law and regulations.

Changes to Subchapter 3, Applications, include specifying the number of bingo occasions that may be applied for on one license, clarifying that each type of game of chance requires a separate license, and limitations on the dates that games of chance may be conducted.

Subchapter 4, License Applications, outlines the procedure for municipal licensing. After the governing body of the municipality approves the application, the municipality shall collect its fee and the fee due to the Commission. The municipality shall then forward the fee and the application to the Commission at least 14 days prior to issuing the license. Currently, the licensing municipality is required to forward a copy of the application for license to the Commission within three days of making its findings and determination and the application must be received by the Commission no later than seven days prior to the holding of the first game authorized. The 14 day waiting period allows sufficient time for the Commission to respond to errors or omissions in the application without causing hardship to the applicant. In instances where the municipality denies the application, the applicant and the Commission shall be notified within three days of the municipality's decision. N.J.A.C. 13:47-4.3.

The amendments set the licensing fees due to the Commission for each type of game of chance. The fees are non-refundable and are payable at the time of application. N.J.A.C. 13:47-4.9(a) and (b). The fee for bingo is $10.00 for each occasion on which any bingo game or games will be conducted. The fee for an on-premise draw raffle for cash (50/50) or merchandise prizes is $10.00 for each day on which a drawing will be conducted. The fee for an off-premise draw raffle offering merchandise as a prize is $10.00 for each $1,000 or part thereof, of the retail value of the prize to be awarded. The fee for carnival games or wheels is $10.00 for each game or wheel held, operated or conducted on any one day or series of consecutive days not exceeding six in any one week at one location. The fee for an off-premise cash (50/50) raffle is $10.00 at the time of application and, if the awarded prize exceeds $1,000, $10.00 for each $1,000 or any part thereof to be paid at the time of filing the Report of Operations. There is no change to the regulation governing special door prize raffles. N.J.A.C. 13:47-4.9(c).

The amendments also set the licensing fees payable to the municipality. It provides that a municipality may set by ordinance the licensing fees in an amount necessary to defray all proper expenses incurred in the administration of the Bingo Licensing Law or the Raffles Licensing Law, but in no event may the fees set by the ordinance exceed the fees charged by the Commission for the type of game to be licensed. A municipality may by ordinance exempt all qualified organizations from payment of a municipal licensing fee. A municipality may not exempt any organization from payment of any fee due the Commission. In the absence of an ordinance, the fees due to the municipality are the same as those payable to the Commission. Any ordinance relating to fees shall be forwarded to the Commission upon adoption. N.J.A.C. 13:47-4.10.

Changes in Subchapter 6, General Conduct, include the requirement for the establishment and maintenance of a separate bank account for deposit of all proceeds from games of chance and for the payment of authorized expenses. N.J.A.C. 13:47-6.2(b). The subchapter outlines who may participate in and conduct games of chance. N.J.A.C. 13:47-6.4. The amendments implement the new legislation requiring a total ban on participation in draw raffles by persons under the age of 18. Previously, persons under the age of 18 years were barred from conducting or

assisting in the conduct of draw raffles but were permitted to purchase tickets to enter a drawing. It permits persons under 18 to participate in non-draw raffles. The amendments require the posting of a sign wherever games of chance are conducted informing players of the toll free number to call the Council on Compulsive Gambling of New Jersey, N.J.A.C. 13:47-6.6. It also requires a sign to be posted at the place where any game of chance is conducted by drawing for prizes stating that persons under 18 are not permitted to participate, N.J.A.C. 13:47-6.10. N.J.A.C. 13:47-6.12 requires that expenses be reasonable, that equipment, merchandise and services must be provided by suppliers licensed by the Commission and that such payments be made from the bank account required to be established by this subchapter.

Subchapter 7, Conduct of Bingo, is amended by defining and establishing rules for two additional bingo games that may be played on an occasion which are not subject to the prize limitations set forth in N.J.S.A. 5:8-27 and in N.J.A.C. 13:47-7.2. Both games are to be played on special cards purchased for a uniform charge not to exceed or be less than $.25. No discount or allowance for the purchase of more than one card is permitted. The amendments set forth as a regulation a long standing Commission policy of allowing legally blind or otherwise disabled persons to play bingo with their own modified cards. It sets forth the charges to be made (N.J.A.C. 13:47-7.5), conditions of use and authorizes the licensed organization to inspect and for good cause reject such a card (N.J.A.C. 13:47-7.9). The amendments clarify the policy that no card purchased after the call of the first number of a bingo game is valid for play in that game (N.J.A.C. 13:47-7.9). The amendments clarify the policy of not allowing persons under the age of 18 years to be present in the room or area where bingo is played (N.J.A.C. 13:47-7.18).

In a "50/50 bingo game," the prize awarded to one or more players equals half of the gross receipts from cards sold to participate in the game. N.J.A.C. 13:47-1.1. Rules concerning the conduct of that game include the price to play, when the game may be conducted, and procedure for verifying the winner(s). The "Progressive Jackpot Bingo Game" similarly awards prizes equal to a percentage of gross receipts from cards sold to participate in the game. The game, however, may continue over a series of occasions creating a larger "jackpot" prize. The Progressive Jackpot Bingo Game requires that a player win bingo by covering the full card within a predetermined number of calls. When no one achieves bingo within that set number, a portion (50 percent) of the proceeds from the sale of cards to play the game is rolled over into the jackpot bingo prize held on the next occasion. The players in the current game continue to play for a consolation prize (25 percent of the proceeds from the sale of cards to play that game). On the next occasion in the progression the predetermined number of calls in which bingo needs to be achieved is increased by one. If no one wins within that number of calls the game continues until the consolation prize is won and the jackpot prize (50 percent of proceeds from that occasion as well as the previous occasion) is held for the next jackpot bingo game. Pursuant to this proposal, in no event shall such a progression continue for more than ten successive occasions. Statistically, the jackpot bingo prize is expected to be awarded on the sixth or seventh occasion in a particular progression. Included in the rule for the conduct of the game are required notices, announcements, records and procedure for verifying the winner(s). N.J.A.C. 13:47-7.

The amendments increase the retail value of prizes to be offered or awarded by a licensee in a calendar year to comport with P.L. 1994, c.63. Previously, limitations of $50,000 applied to organizations without an auxiliary organization registered with the Commission. When an auxiliary organization registered with the Commission, each organization was restricted to awarding a maximum of $25,000, retail value of prizes in any one calendar year. These amendments eliminate unequal treatment of organizations based upon affiliation. The maximum amount of retail value which an organization may offer or award in any single off-premise draw raffle has been increased from $50,000 to $100,000. The amendments set the annual aggregate retail value of all prizes to be offered by an organization in all off-premise raffles at $500,000. The limits do not apply to on-premise raffles or raffles in which all of the prizes are wholly donated. N.J.A.C. 13:47-8.3 limits the retail value of a prize offered or awarded in any raffle not conducted by drawing to $500.00.

Subchapter 9, Report of Operations, has been amended to streamline the reporting requirements for organizations, relieves municipalities from the burden and responsibility to collect the reports and forward them to the Commission, and implements the legislative change in the time for filing. N.J.A.C. 13:47-9.1 requires organizations to file one copy of the report with the Commission by the 15th day of the month immediately following the month in which the activity was conducted. Organizations will no longer file the report in duplicate with the municipality. N.J.A.C. 13:47-9.6 directs an organization filing the report for the last game authorized under the license, to forward the license to the Commission along with the report. The annual report which must be filed by municipalities with the Commission is recodified from Subchapter 15 to Subchapter 9.

Subchapter 13 has been amended to include persons or entities providing equipment and supplies in connection with the conduct of bingo. Previously only those providing raffles equipment were required to be licensed. N.J.A.C. 13:47-13.1. Persons or entities licensed under the law are precluded from providing any equipment to persons not registered with the Commission for use in connection with any game licensable pursuant to the Bingo or Raffles Licensing Laws. N.J.A.C. 13:47-13.3(b).

Subchapter 14, Rental of Premises for Bingo, has been amended to reflect the new fees for a commercial renter's license. Currently, holders of a commercial renter's license pay a one time fee of $100.00 at the time the license is granted and a fee of $5.00 for each occasion the premises is used. The amendments establish an annual fee for a commercial hall license of $500.00, and the per occasion fee is increased from $5.00 to $10.00 to more accurately reflect administrative costs associated with licensing. The proposal repeals a prohibition on placing any sign mentioning the words "bingo," "keno," "lotto," "games" or "amusements" on the exterior of any commercial hall. Repeal of this provision will enable organizations that conduct their bingo games in a commercial hall the same limited opportunity for advertising that is available to organizations conducting on their own premises.

Subchapter 15, General Provisions, has been amended by recodifying N.J.A.C. 13:47-15.3 in Subchapter 9, Reports of Operations. It specifies information required to be filed with the Commission by licensing municipalities regarding licenses issued during the past 12 months. This subchapter has been further amended to require the municipal report on a calendar year basis rather than from November 1 to October 31 of the following year as it now is reported.

Subchapter 16, Forms, has been amended by repealing N.J.A.C. 13:47-16.11, form 8B-A (Report of Bingo Operations) and N.J.A.C. 13:47-16.12, form 8B-A (Report of Raffles Operation) to comport with P.L. 1994, c.63. These report forms requested per occasion information. The Commission will prepare monthly report forms and make them available to licensed organizations. Information to be included in the reports is set forth in N.J.A.C. 13:47-9.1(a), as amended.

Social Impact

The proposed amendments will have a positive social impact. The Legislature in amending the Bingo Licensing Law and the Raffles Licensing Law acknowledge the important role games of chance play in assisting qualified organizations to meet their needs and by so doing to relieve some of the burdens of government. At a time when funding for schools, volunteer fire companies, rescue squads, and veterans groups is limited, these and other groups will be able to invigorate their fundraising efforts by offering additional and exciting bingo games and more attractive prizes in raffles. Additionally, by providing expanded enforcement authority and the funds to operate the agency, the Legislature has given the Commission the tools needed to fulfill its statutory obligation to ensure that proceeds from games of chance are used for educational, charitable, patriotic, religious or public spirited purposes only, that the laws are administered uniformly throughout the State, and that games are not run for a commercial purpose or as a cloak for organized gambling and crime. N.J.S.A. 5:8-6 and 5:8-12.

Economic Impact

The proposed amendments will have an economic impact on organizations registered with the Commission. Currently approximately 32,000 organizations hold identification numbers that have been issued by the Commission since its inception in 1954. The commission estimates that approximately 50 percent of those will require continued registration. These organizations will be required to pay $50.00 every two years. Potential increases in funds to be raised through games of chance are expected to offset this cost.

The amendments also have an economic impact on persons seeking to supply equipment for bingo and raffles. (The Commission is obligated by law to ensure that real parties in interest appear on the license and that the persons involved are of good moral character and free from conviction of a crime.) Individuals who provide bingo supplies will likely

see an increase in sales based on the addition of the new bingo games. Persons providing raffles equipment may see a similar increase in sales or lease contracts.

A positive economic impact accrues to the citizens of the State in that the Commission's activities are now funded by the organizations and licensees directly involved and not from funds from the general treasury.

Regulatory Flexibility Analysis

The requirements for securing a license as a provider of services and equipment have remained essentially the same. It requires suppliers of equipment for use in the conduct of bingo, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) to obtain approval from the Commission in the same manner required of suppliers of equipment for use in the conduct of raffles. The application does not require the use of professional or other services in order to be considered. Costs associated with reports required to be filed with the Commission are expected to be minimal.

Operators of games of chance will be required to complete a registration form and pay a $50.00 registration fee. Registration must be renewed every two years by completing a form provided by the Commission. If the original registration certificate is lost, the registrant will be required to request replacement in writing and pay a $50.00 replacement fee.

In addition, each registered organization must maintain a separate bank account in which only the proceeds from the conduct of games of chance may be deposited and from which only payments for authorized expenses may be made. Costs incurred in connection with the separate bank account may include monthly charges and/or per check charges. No professional services are likely to be needed in order to comply.

Reporting requirements for operators of games of chance have been decreased, as reporting will now be on a monthly basis rather than within 15 days after each game.

Since the proposed amendments are intended to prevent the commercialization of games of chance and the influx of organized gambling and crime into this area, they must apply to all licensed persons without differentiation as to type of business.

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

13:47-1.1 Words and phrases defined

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

...

"Bingo occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed 35 in number.

"Consolation prize" means 25 percent of the gross receipts derived from the sale of cards to participate in a Progressive Jackpot Bingo Game on each occasion.

...

"50/50 bingo game" means a bingo game played on non-reusable cards that are permanently marked wherein the prizes awarded are 50 percent of the gross receipts derived from the sale of cards for participation in the game.

"50/50 bingo game prize" means 50 percent of the gross receipts from the sale of all cards to participate in the game.

["Occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed 35 in number.]

"Progressive jackpot bingo game" means a bingo game played on a non-reusable card which is indelibly marked, wherein the prize(s) is determined by a percentage of the gross receipts derived from the sale of cards to participate in the game. The jackpot prize winner is the player(s) who completes a full card pattern within a pre-designated number of numbers called. The jackpot game shall on all occasions be played to a conclusion and award a consolation prize to the player(s) who completes the full card pattern notwithstanding the number of calls in excess of the pre-designated number of calls permitted to win the jackpot prize.

"Progressive jackpot prize" means 50 percent of the gross receipts derived from the sale of cards to participate in a progressive jackpot bingo game on the occasion it is won and all previous occasions in the particular progression.

...

"Raffle" means a specific kind of game of chance played by drawing for prizes or the allotment of prizes by chance, by the selling of shares or tickets or rights to participate in such game. Nothing contained in this chapter shall be deemed to authorize as a raffle the playing for money or other valuable thing at [roulette wheels, at cards, dice or other game with one or more dice, having one or more figures or numbers, or at billiards, pool, tennis, bowls, or shuffleboard, or at A.B.C. or E.O. table, or other tables or at a faro bank, or other bank of a like nature by whatever name known; or with any slot machine or device in the nature of a slot machine or with any other instrument, engine, or apparatus or device having one or more figures or numbers thereon] **any game not specifically authorized by the Control Commission.**

...

"Raffle occasion" means the day upon which the drawing or allotment of prize(s) takes place.

...

"Successive occasion" means the next occasion in the sequence of occasions for which the license is issued.

13:47-2.1 General provisions

(a) Every organization desiring to apply for a license to conduct bingo[,] or raffles **or to allow its members to assist a licensed affiliated organization, as described in N.J.A.C. 13:47-6.4** shall, before making any such application **or allowing any assistance**, register with the Control Commission and secure an identification number.

(b) An identification number issued by the Control Commission shall be valid for a period of two years or until modified, suspended or revoked by the Control Commission.

13:47-2.3 [Copies of form] **Application for registration: renewal; fees**

(a) Each applicant for registration shall remit by check payable to the Legalized Games of Chance Control Commission, a non-refundable fee of $50.00 together with proof of eligibility as set forth in (b) below.

[(a)](**b**) Each organization requesting registration shall submit a written request signed by an **elected** officer **of the organization** together with sufficient proof of **the organization's** eligibility for registration. Such proofs shall include at least;

1. The by-laws and constitution or any other written authority under which the applicant organization operates;

2. A detailed financial summary, showing all sources and amounts of income and expenditures, including the amounts, recipients and the purpose for which the expended funds were used, for a period of not less than one year [from] **prior** to the date of application;

3. A complete list of the organization's members, including the name, address and age of each member; and

4. If incorporated, a copy of the applicant organization's articles of incorporation which have been filed with the Secretary of State of New Jersey.

[(b)](**c**) (No change in text.)

(d) Each registered organization requesting renewal of its registration with the Control Commission shall apply for renewal on the form provided by the Commission. The renewal form shall report any changes in the information previously supplied or shall confirm that the information previously supplied to the Commission has not changed.

(e) Each registered organization requesting renewal of its registration with the Control Commission shall remit by check payable to the Legalized Games of Chance Control Commission, a non-refundable fee of $50.00 together with any additional information requested by the Control Commission.

13:47-2.8 [(Reserved)] **Duplicate registration certificate**

(a) Upon loss of its original registration certificate a registered organization shall obtain a duplicate registration certificate by filing a written request with the Control Commission which is signed by an elected officer of the registered organization. The request shall state the followng:

1. The reason the request is being made;

2. The approximate date upon which the original certificate was lost;

3. The name and address of last person known to have possession of the original certificate;

4. The name and address of the person to whom the duplicate registration form is to be sent; and

5. The name, address, signature of and office held by the officer making the request on behalf of the organization.

(b) The signature and statement of the elected officer making the request must be notarized.

(c) The request must be forwarded to the Control Commission together with a non-refundable fee of $50.00, by check payable to the Legalized Games of Chance Control Commission, together with any additional information requested by the Control Commission.

13:47-2.9 License to conduct games of chance

(a) No registered organization shall conduct bingo, any type of raffle, or other forms of games of chance, except a special door prize raffle, without having first obtained a license to conduct the same from the municipality in which the game or games are to be held, operated or conducted.

(b) No registered organization shall conduct any unauthorized **bingo,** raffle or **other** game of chance.

13:47-2.10 Suspension; revocation; **penalties; other sanctions**

[Every organization having secured an identification number which shall] **(a) Any registered organization that** violates any provision of the Legalized Games of Chance Commission Law, N.J.S.A. 5:8-1[,] et seq., the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., the Raffles Licensing Law, N.J.S.A. 5:8-50[,] et seq., or the rules and regulations promulgated by the Control Commission shall be subject to suspension or revocation of the identification number **or other sanction** in the same manner as established under [Subchapter 10 (Suspension and Revocation of Licenses; Penalties) of this Chapter] **N.J.A.C. 13:47-10.**

(b) Only the Control Commission shall conduct proceedings to suspend or to revoke an organization's identification number.

(c) Any person violating any provision of any law or regulation administered by the Control Commission shall in addition to any other sanctions provided in section 7 of P.L. 1954, c.6 (N.J.S.A. 5:8-30) or section 8 of P.L. 1954 c.5 (N.J.S.A. 5:8-57) be liable to a civil penalty of not more than $7,500 for the first offense and not more than $15,000 for the second and each subsequent offense.

13:47-3.4 Exhibits required for filing **application for municipal license**

No application shall be accepted unless the applicant at the time of filing the application exhibits [its registration card] **a valid registration certificate issued to it by the Control Commission** bearing its identification number which shall be entered on the application.

13:47-3.6 Separate application and license

(a) An application and license to conduct Bingo may include up to 72 occasions, provided the application does not include:

1. More than six occasions in any one calendar month;

2. Dates of occasions for a period of more than one year; or

3. A date of an occasion beyond the date upon which the applicant's registration with the Control Commission expires.

[(a)](**b**) A separate application and license shall be used for each of the following types of raffles and shall, in each instance, specify the particular type of raffle as follows:

1. On-premise draw raffle **offering merchandise as a prize;**
2. On-premise 50-50 raffle **offering a cash or money prize;**
3. Off-premise draw raffle **offering a merchandise prize;**
4. Non-draw raffles **(carnival games and wheels);** and
5. Off-premise 50-50 raffle **offering a cash or money prize.**

[(b)](**c**) In the case of a special door prize raffle, see N.J.A.C. 13:47-3.11, Notice to clerk, and N.J.A.C. 13:47-8.15, Special door-prize raffle.

(d) No application for a license to conduct any type of game of chance shall be accepted if the application includes:

1. Dates that exceed a period of one year;

2. Dates in a specific time period in excess of the maximum allowable frequency with which that type of game of chance may be held, operated or conducted as set forth in N.J.A.C. 13:47-6.11;

3. A date beyond the date upon which the applicant's registration with the Control Commission expires; or

4. A date in a period during which the applicant organization's registration has been suspended by the Control Commission.

(e) No application shall be accepted if the applicant organization's registration has been revoked by the Control Commission.

13:47-4.3 Duties of municipal clerk; computation of fees; notice of denial; **license issuance**

(a) Upon receiving the finding and determination of the governing body the municipal clerk shall, if the license is granted, compute the fee payable by law, [and, upon payment of same shall issue the license] **collect any fee due the municipality or the State from the applicant organization and forward any fee due the State together with the application to the Control Commission.**

(b) At least 14 days shall have elapsed between the time the municipality forwards the application and licensing fee to the Control Commission and the license is issued by the municipality.

(c) If the license is denied, the municipal clerk shall **forward a copy of the application marked denied, together with a copy of the findings and determinations of the governing body to the Control Commission and** notify the applicant by regular mail. **The notification of the Control Commission and the applicant shall be made within three days of the governing body's decision to deny the license.**

13:47-4.4 Form of license issuance

(a) (No change.)

(b) In the case of Raffles licenses [for an on-premise raffle], the license must show the specific type **and number** of raffle **games or allotment of prizes by chance** [and the number of raffles] to be conducted under the license.

13:47-4.7 Duration of license

No licenses for the holding, operating and conducting of any game of chance shall be effective for a period of more than one year **or for a date beyond the date upon which the organization's registration with the Control Commission expires.**

13:47-4.9 [Fees payable by law] **Licensing fees payable to the Control Commission**

(a) All licensing fees are to be paid by check made payable to the Legalized Games of Chance Control Commission at the time the application is filed with the municipality, except as set forth in (b)5 below.

[(a)](**b**) The **licensing** fees payable by law [are:] **to the Control Commission which are set forth in this chapter are non-refundable.**

(c) The licensing fees payable the Control Commission are:

1. Bingo: $10.00 for each occasion on which any game or games of bingo are to be conducted under the license[. Five dollars of the fee shall be remitted to the municipality in which the application is filed and the remaining $5.00 for each such occasion shall be forwarded to the Control Commission by check payable to the Treasurer of the State of New Jersey];

2. On-premise draw raffle for cash (50/50) or merchandise prizes: [$5.00] **$10.00** for each day on which a drawing is to be conducted under the license[, payable to the municipality in which the application is filed];

3. Off-premise draw raffle awarding merchandise as a prize: $10.00 for each $1,000 or part thereof of the retail value of the awarded prize(s) to be awarded;

[3.]**4.** [Non-draw raffle $5.00] **Carnival games or wheels: $10.00** for [all non-draw raffles] **each game or wheel** [concurrently] held on any one day, or any series of consecutive days not exceeding six in any one week at one location[, payable to the municipality in which the application is filed];

[4. Off-premise draw raffle for merchandise prizes: $5.00 for each day on which a drawing is to be conducted under the license, payable to the municipality in which the application is filed, plus $10.00 for each $1,000 or part thereof of the retail value of the prize or prizes

above the original $1,000 value of the prizes awarded. Five dollars of the latter fee shall be remitted to the municipality in which the application is filed and the remaining $5.00 for each $1,000, or part thereof, of retail value of the prize or prizes above the original $1,000 value of prizes awarded shall be forwarded to the Control Commission by check payable to the Treasurer of the State of New Jersey;]

5. Off-premise cash (50-50) raffle: [$5.00 for each day on which a drawing is to be conducted under the license, payable to the municipality in which the application is filed] **A $10.00 fee shall be paid at the time the application is filed. In the event the awarded prize exceeds $1,000 then an additional fee of $10.00 for each $1,000 or part thereof in value of the awarded prize shall be forwarded to the Control Commission by check made payable to the Legalized Games of Chance Control Commission together with the Report of Operations as required by N.J.A.C. 13:47-9;**

6. (No change.)

13:47-4.10 Licensing fees payable to the licensing municipality

(a) Where no specific ordinance setting fees due the licensing municipality exists, the licensing municipality shall charge a fee in an amount equal to the amount charged by the Control Commission.

(b) Each licensing municipality may set by ordinance a licensing fee in an amount necessary to defray all proper expenses incurred by the municipality in the administration of the Bingo Licensing Law, the Raffles Licensing Law and the regulations governing the conduct of any game or games held, operated or conducted under any license issued by it. No municipal licensing fee shall be set at an amount in excess of the amount charged by the Control Commission.

(c) A municipality may by ordinance exempt all qualified organizations from the payment of any municipal licensing fee.

(d) No municipal ordinance shall exempt any organization from payment of any fee due the Control Commission.

(e) Each licensing municipality shall forward a copy of any such ordinance to the Control Commission immediately upon adoption.

13:47-6.1 Member in charge of conduct of games

(a) (No change.)

(b) The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required **report of operations** thereof.

(c) (No change.)

13:47-6.2 Member in charge of proceeds; **separate bank account**

(a) The officers of a licensee shall designate an officer or member to be in full charge of, and responsible for, the proper utilization of the entire net proceeds of the games of chance in accordance with the law and the rules and regulations of this Chapter.

(b) Each registered organization shall establish, keep and maintain a bank account in a State or Federal chartered banking institution in which only the proceeds derived from the conduct of games of chance shall be deposited and from which only payments for authorized expenses and utilization of net proceeds for authorized purposes shall be made.

13:47-6.4 Conduct by active members exclusively

[(a) A licensee in holding, operating and conducting a game of chance, must hold, operate and conduct the game exclusively by its active members with such assistance as allowed by law and the rules and regulations of this Chapter.]

(a) No person shall assist in the holding, operating or conducting of a game of chance except active members of the licensee, active members of its parent organization, active members of an auxiliary organization, active members of an organization of which the licensee is an auxiliary or active members of an organization having a common parent organization, provided that the assisting organization is registered with the Control Commission.

(b) Before members of an affiliated organization assist the licensee in the conduct of a game of chance, the affiliated organization shall register with the Control Commission and secure an identification number.

(c) Bookkeepers and accountants who assist by rendering their professional services need not be within the categories stated in (a) above, provided the professional services of bookkeepers and accountants are limited to making bookkeeping entries for the operation of games of chance on any one day, preparing reports of operations required by this chapter for any game of chance, opening books for a games of chance account, or supervising bookkeeping and accounting systems for the operation of games of chance.

(d) No bookkeeper or accountant shall receive or handle any of the proceeds of a game of chance during the conduct of the game of chance or be present in the money room or other place on the licensed premises where the proceeds of the game of chance are received by the member of the licensee designated to be in charge of and primarily responsible for the proceeds.

(e) No bookkeeper or accountant shall assist in the holding, operating or conducting of a game of chance except as specified in (c) above.

(f) No person who has participated as a player in any game of chance held, operated or conducted concurrently with the holding, operating or conducting of bingo, including, but not limited to, participating in the playing of bingo shall hold, operate or conduct or assist in the holding, operating or conducting of any game of chance conducted on that occasion.

(g) No person who has held, operated or conducted or assisted in the holding, operating or conducting of any game of chance held, operated or conducted concurrently with the holding, operating or conducting of bingo shall participate as a player in any game of chance held, operated or conducted on that occasion including, but not limited to, the playing of bingo.

13:47-6.6 Display of license; **other notice**

(a) Each license issued for the conduct of a game of chance shall be conspicuously displayed at the place where the game of chance is being conducted at all times during the conduct of the game.

(b) Whenever an organization shall conduct a game of chance it shall display, adjacent to the wheel or the place of the allotment of prize(s) by chance, a sign as follows: "Is gambling a problem for you or someone in your family? Dial 1-800-GAMBLER." The sign shall be provided by the Control Commission.

13:47-6.10 Player age limitation

(a) No person under the age of 18 years shall be permitted to participate as a player in any game of bingo [or in any non-draw raffle nor shall such person conduct or assist in the conduct of the playing of any game of chance].

(b) No person under the age of 18 years shall participate in any manner in any draw raffle.

(c) No person under the age of 18 years shall hold, operate or conduct or assist in the holding, operating or conducting of any game of chance held, operated or conducted under any license issued pursuant to the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq. or the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq., and the rule set forth in this chapter.

[(b)]**(d)** Whenever an organization shall conduct a [non-draw] **draw** raffle, it shall cause a sign to be displayed adjacent to the [wheel or] the place of the allotment of prize(s) by chance as follows: "Persons under the age of 18 years are not permitted to participate in this game of chance (N.J.S.A. 5:8-59." Said sign shall not be smaller than 144 square inches and shall be posted in such a location as to be in the view of all persons who shall desire to participate [in said game of chance].

13:47-6.12 Expenses

(a) No item of expense shall be incurred or paid in connection with the holding, operating, or conducting of a game of chance, except such expenses as are bona fide items of reasonable amount for goods, wares and merchandise furnished or services rendered, which are reasonably necessary to be purchased or furnished for the holding, operating or conducting of the game of chance.

(b) No item of expense shall be incurred or paid for any goods, wares, merchandise, service, equipment or premises provided for use in or in connection with the holding, operating, or conducting of

any game of chance that is not provided by a person approved by the Control Commission.

(c) No expense other than cash prizes, incurred in the holding, operating or conducting of any game of chance shall be paid from any source other than the account required by N.J.A.C. 13:47-6.2.

13:47-7.1 [Personnel] **(Reserved)**

[(a) No person shall assist in the holding, operating, or conducting of a bingo game under any license except active members of the licensee, active members of an organization which is an auxiliary to the licensee, active members of an organization of which the licensee is an auxiliary, or active members of an organization which is affiliated with the licensee by being with it auxiliary to another organization. Before the members of any organization assist the licensee in the conduct of a game of chance, such organization must register with the Control Commission and secure an identification number.

(b) Bookkeepers or accountants who assist by rendering their professional services need not be within the categories stated in subsection (a) of this section; provided, however, the professional services of bookkeepers and accountants are limited to making bookkeeping entries for the operation of bingo games on any one day, preparing reports of operations for any one bingo game, opening books for a bingo account, and supervising bookkeeping and accounting systems for the operation of bingo games.

(c) No bookkeepers or accountants shall assist in the holding, operating, or conducting of a bingo game except as specified in subsection (b) of this Section. A bookkeeper or accountant shall not receive or handle any of the proceeds of a bingo game or during the conduct of bingo games on a licensed occasion, be physically present in the money room or other place on the licensed premises where the proceeds of the bingo games are received by the designated member of the licensee responsible for the proceeds of the games of chance.

(d) Where a licensee is conducting bingo games in a premises rented from a commercial rentor approved by this Commission, a violation of this Section shall constitute cause for suspension or revocation of the Commercial Rentor's License as an approved rentor.

(e) No person who has conducted or assisted in the holding, operating or conducting of bingo on an occasion shall participate as a player on that occasion.

(f) No person who has participated as a player on an occasion when bingo is played shall conduct or assist in the holding, operating or conducting of bingo on that occasion.]

13:47-7.2 Amount of prize limitation

(a) No prize may be offered or awarded in excess of the sum or value of $250.00 for a single game, nor may the aggregate of all prizes offered and awarded in all games held on one occasion exceed $1,000[.00], **except as provided in (b) below.**

(b) No prize awarded in a progressive jackpot bingo game or a 50/50 bingo game shall be subject to the limitations set forth in (a) above.

(c) No prize shall be offered or awarded in any bingo game in any manner that is not specifically authorized by this subchapter.

13:47-7.4 Equipment, **premises:** limitation

[No bingo game shall be conducted with any equipment that is not owned absolute or used without payment of any compensation therefor by the licensee.]

(a) No licensee shall use any equipment or premises for the holding, operating or conducting of bingo unless:

1. The equipment or premises is wholly owned by the licensee;

2. The equipment or premises is provided by a person, and at a rate approved by the Control Commission; or

3. The equipment or premises is loaned free of charge to the licensee by another qualified organization that is registered with the Control Commission.

(b) Any premises used for the holding, operating or conducting of bingo shall be used in accordance with the provisions of N.J.A.C. 13:47-14.

13:47-7.5 Charge for playing bingo

(a) A charge [must] **shall** be made for the playing of bingo. No more than $1.00 and no less than $0.50 [may] **shall** be charged for admission to a room or place in which bingo is to be held, operated or conducted. This fee shall entitle a person to one card allowing him to participate without additional charge in all regular games to be played on that occasion. [The minimum charge for extra cards for participation in all regular games to be played on that occasion shall be the sum of $0.25.]

(b) No charge in excess of [$1.00] **$0.25** may be made for a single opportunity to participate in [all] **any** special game[s] to be played on an occasion.

(c) No more than $1.00 and no less than $0.25 may be charged for any extra card with which a player may participate in all regular games on an occasion.

(d) All charges to participate in a bingo game shall be paid in cash. No check shall be accepted or extension of credit allowed as payment of a charge to participate in a bingo game. Extension of credit shall include, but not be limited to, purchases on account or through the use of a credit card or a bank card.

(e) No charge to participate in a bingo game shall be made to or accepted from any person under the age of 18 years.

(f) All cards shall be sold for a uniform unit price without any discount or allowance for the purchase of more than one card.

(g) Legally blind or otherwise disabled players may use their personal bingo card(s) or licensees may provide such players with modified bingo card(s) to participate in any bingo game upon payment of an amount equal to that paid by players using traditional cards.

(h) Legally blind or otherwise disabled players using modified card(s) to participate in a special bingo game shall purchase traditional special cards and keep them as proof of purchase until the game is won, at which time the member in charge of the occasion shall cause the paper special cards to be destroyed.

13:47-7.7 Notice

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

(e) The notice shall include the statement "Is gambling a problem for you or someone in your family? Dial 1-800-GAMBLER." The notice shall be provided by the Control Commission.

13:47-7.9 Equipment; general operation of bingo

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

[(f) All cards shall be sold for a uniform unit price without any discount or allowance for the purchase of more than one card.]

(g) No licensed organization shall reserve or allow to be reserved, any bingo card for use by players except modified cards for use by legally blind or otherwise disabled players.

(h) Legally blind or otherwise disabled players may use bingo cards provided by the licensed organization or their personal cards when the licensed organization does not provide such cards.

(i) A legally blind or otherwise disabled player may use a hard braille card in place of a disposable paper card in the manner set forth in N.J.A.C. 13:47-7.5(g).

(j) Modified cards used by legally blind or otherwise disabled players shall be commercially produced by a manufacturer approved by the Control Commission.

(k) A licensed organization shall have and exercise the right to inspect, accept or reject, with due cause, any personal bingo card used by a legally blind or otherwise disabled player.

(l) A card to participate in any bingo game shall be purchased prior to the call of the first number in the game.

(m) Any card to participate in a regular bingo game purchased after the call of the first number in the game shall not be valid until the commencement of the next regular bingo game.

13:47-7.15 One day time limit

[On any occasion when bingo is played, all cards shall be purchased or other wagers placed, all winners determined, and all prizes awarded within the same day.]

(a) All cards to participate in a bingo game shall be purchased within the same occasion that the game is played.

(b) All prizes shall be awarded immediately upon verification of a winner.

13:47-7.18 Physical presence

(a) In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(b) No seat or place shall be reserved in any room or area where bingo is held, operated or conducted for any person who is not physically present in that room or area.

(c) No person shall be admitted to the room or area where bingo is held, operated or conducted, except a person who has paid the charge for admission or a person authorized to conduct or assist in the conduct of the game.

(d) No person under the age of 18 years shall be physically present in any room or area where bingo is held, operated or conducted.

13:47-7.24 Progressive jackpot game; authorization

In addition to the schedule of regular and special games played within the prize limits set forth in N.J.A.C. 13:47-7.2(a), it shall be lawful for a licensee to hold, operate and conduct a progressive jackpot bingo game as defined in this chapter, in the manner described in N.J.A.C. 13:47-7.25 through 7.36.

13:47-7.25 Progressive jackpot game; arrangement of numbers

No arrangement of numbers other than a full card pattern shall be required to win a progressive jackpot prize or a consolation prize.

13:47-7.26 Progressive jackpot game; schedule of play

The progressive jackpot game shall not be played as the last game of an occasion.

13:47-7.27 Progressive jackpot game; use of disposable cards; indelible marking

No progressive jackpot game shall be played on other than a non-reusable card which shall be indeliby marked by the player who purchased the card.

13:47-7.28 Progressive jackpot game; charge to play; uniform charge to play

(a) No charge in excess of or less than $0.25 shall be made for each card with which a player participates in a progressive jackpot game.

(b) All cards shall be sold at a uniform price with no discount or allowance for the purchase of more than one card.

(c) All cards shall be sold prior to the drawing of the first number in the game.

13:47-7.29 Progressive jackpot game; notice to be posted at game

(a) Whenever a progressive jackpot game is conducted the licensee shall conspicuously post a notice stating:

1. The date of each potential successive occasion in the particular progression being conducted;

2. The maximum number of calls in which a player must complete a full card pattern in order to win the jackpot prize on each occasion; and

3. The prize amount offered to the winner of the progressive jackpot and the consolation prize on that occasion.

13:47-7.30 Progressive jackpot game; announcement; amount of prize; number of calls

(a) On each occasion, prior to the drawing of the first number of the progressive jackpot game the caller shall announce to all players:

1. The maximum number of numbers to be called within which a player must achieve bingo in order to win the jackpot prize on that occasion; and

2. The dollar amount to be awarded to the winner of the jackpot game prize and the consolation prize on that occasion.

13:47-7.31 Progressive jackpot game; number of calls; number of successive occasions

(a) On the first occasion of a progressive jackpot bingo game, a player shall not be required to attain bingo in less than 50 numbers called in order to win the progressive jackpot prize.

(b) The number of allowable calls required in order to win the progressive jackpot prize shall be increased by one number on each successive occasion in a particular progression.

(c) The progressive jackpot prize must be offered at each successive occasion in a particular progression.

(d) No progression shall continue for more than 10 successive occasions.

(e) If the progressive jackpot prize has not been awarded by the tenth successive occasion in a particular progression, a progressive jackpot winner must be determined and the progressive jackpot prize must be awarded regardless of the number of calls necessary.

13:47-7.32 Progressive jackpot game; award of prizes; exclusion

(a) The progressive jackpot prize shall be awarded to the player or players who complete the full card pattern in the predesignated number of numbers called, except in the case of the tenth successive occasion of a particular progression when it shall be awarded to the player or players who first complete the full card pattern.

(b) A consolation prize shall be awarded on each occasion at which a progressive jackpot bingo game is played including an occasion upon which the progressive jackpot prize is won.

(c) The consolation prize shall be awarded to the player or players who complete the full card pattern on each occasion, notwithstanding the number of numbers called in excess of the predesignated number of numbers allowed to be called in order to win the progressive jackpot prize.

(d) On an occasion when the jackpot prize is awarded, the game shall continue and the consolation prize shall be awarded to the player or players who next complete the full card pattern.

(e) No card that has been determined to be a winner of a progressive jackpot prize shall be eligible to win any portion of the consolation prize.

(f) Any card determined to be a winner of a consolation prize shall contain the last number called in the game prior to the player declaring "Bingo."

13:47-7.33 Progressive jackpot game; verification prior to award of prize

(a) When a player claims to be a winner of a progressive jackpot game prize, prior to awarding the prize, the member in charge of the occasion shall make a verification of all of the numbers on all of the objects drawn from the receptacle and shall inspect the objects in the presence of at least one player other than the player claiming to be the winner of the prize and determine that:

1. The numbers appearing on the card presented as a winner correspond with numbers on the objects drawn from the receptacle;

2. The numbers on all objects drawn from the receptacle were announced and displayed correctly;

3. The actual number of numbers called did not exceed the maximum number of numbers allowed to be called in order to win the progressive jackpot prize; and

4. The color of the card and the serial number printed on the card presented as a winner are identical to the color of the cards and the serial number of the series of cards sold for the progressive jackpot game on that occasion.

(b) No progressive jackpot prize shall be awarded unless a verification of the card presented as a winner and the numbers on the objects drawn from the receptacle is made in accordance with the provisions of (a) above.

13:47-7.34 Progressive jackpot game; license expiration

When a license expires prior to the tenth occasion of a particular progression, all winners shall be determined and all prizes awarded on the last occasion authorized under the license.

13:47-7.35 Progressive jackpot game; emergency termination of progression; notification

(a) In the event a progression cannot be completed due to an emergency condition, the licensee shall give written notification to the Control Commission and the licensing municipality no later than the close of the business day next following the day upon which the licensee has knowledge of its inability to complete the progression.

(b) The notification shall be made on LGCCC Form 7-A, and shall contain at least the following information:

1. The reason for the cancellation;

2. The name, address and telephone number of the member in charge of the operation of the game and of the member responsible for the proceeds held as the progressive jackpot prize;

3. The name, address of the bank and the number of the account in which the progressive jackpot prize is deposited;

4. The dollar amount of the progressive jackpot prize held in the account; and

5. The time, date and location where the progression will continue.

13:47-7.36 Progressive jackpot game; maintenance of progressive jackpot prize

(a) All proceeds from the sale of cards to participate in the progressive jackpot game shall be held in the licensed organization's bank account required by N.J.A.C. 13:47-6.2(b) for the duration of the progression.

(b) All proceeds must be deposited in the bank account no later than the close of the business day next following the day upon which they were received or made available as a prize.

13:47-7.37 50/50 bingo game; authorization

In addition to the schedule of regular and special games played within the prize limits set forth in N.J.A.C. 13:47-7.2(a), it shall be lawful for a licensee to hold, operate and conduct a bingo game known as a 50/50 bingo game as described in N.J.A.C. 13:47-1.1.

13:47-7.38 50/50 bingo game; division of prizes

If the prize pool is to be divided into multiple sections, the schedule of games shall indicate the percentage of the prize pool to be awarded to the winner(s) of each section.

13:47-7.39 50/50 bingo game; schedule of play

The 50/50 bingo game shall not be played as the last game of an occasion.

13:47-7.40 50/50 bingo game; use of disposable cards; indelible marking

No 50/50 bingo game shall be played on other than a nonreusable card which shall be indelibly marked by the player who purchased the card.

13:47-7.41 50/50 bingo game; charge to play; uniform charge to play

(a) No charge in excess of or less than $0.25 shall be made for each card with which a player participates in a 50/50 bingo game.

(b) All cards shall be sold at a uniform price with no discount or allowance for the purchase of more than one card.

(c) All cards shall be sold prior to the drawing of the first number of the game.

13:47-7.42 50/50 bingo game; amount of prize; announcement

On each occasion, prior to the drawing of the first number of the 50/50 bingo game the caller shall announce to all players the dollar amount of the prize to be awarded to the winner(s) of the game.

13:47-7.43 50/50 bingo game; verification prior to award of prize

(a) When a player claims to be a winner of a 50/50 bingo game prize, prior to awarding the prize, the member in charge of the occasion shall make a verification of all of the numbers on all of the objects drawn from the receptacle and shall inspect the objects in the presence of at least one player other than the player claiming to be the winner of the prize and determine that:

1. The numbers appearing on the card presented as a winner correspond with numbers on the objects drawn from the receptacle;

2. The numbers on all objects drawn from the receptacle were announced correctly; and

3. The color of the card and the serial number printed on the card presented as a winner are identical to the color of the card and the serial number of the series of cards sold for the 50/50 bingo game on that occasion.

(b) No 50/50 bingo game prize shall be awarded unless a verification of the card presented as a winner and the numbers on the objects drawn from the receptacle is made in accordance with the provisions of (a) above.

13:47-8.1 [Personnel] **(Reserved)**

[(a) No person shall assist in the holding, operating or conducting of any raffle under any license except active members of the license and active members of an organization which is an auxiliary to the licensee.

(b) Before the members of any organization assist the licensee in the conduct of a game of chance such organization must register with the Control Commission to secure an identification number.

(c) Bookkeepers or accountants who assist by rendering their professional services need not be within the foregoing categories.]

13:47-8.3 Amount of prize limitation

(a) (No change.)

(b) The aggregate retail value of all prizes to be offered or awarded by a licensee in any one calendar year shall not exceed [$50,000] **$500,000** except that [in the case of licensees having one or more auxiliary organizations, the principal licensee shall not offer or award prizes having a total retail value in excess of $25,000 and the auxiliary licensee shall not offer or award prizes having a total retail value in excess of $25,000] **no licensee shall offer or award a prize or prizes of a sum or value greater than $100,000, in any one raffle conducted by drawing.**

[(c) In lieu of the limits set forth in (a) above, a licensee may offer or award as a prize one article of merchandise having a retail value in excess of the applicable limits. Any licensee that avails itself of this option shall not be permitted to conduct any other raffle subject to the limits herein prescribed in the same calendar year.]

[(d)](**c**) The limit of the aggregate retail value of the prizes which may be awarded in any one calendar year shall not apply to on-premise [draw] raffles **or** where all of the prizes are wholly donated[, nor shall it apply to any one-premise 50/50 cash raffle].

[(e)](**d**) No prize having a retail value greater than [$250.00] **$500.00** shall be offered or awarded in [a non-draw raffle] **any raffle not conducted by drawing.**

13:47-8.7 Contents of ticket; off-premise raffle awarding merchandise as a prize

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

(c) The stub [or counterpart] of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license issued for the occasion and the identification of the licensed organization.

(d) (No change.)

13:47-8.8 Contents of ticket; off-premise raffle awarding cash or money as a prize

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

(c) The stub [or counterpart] of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license issued for the occasion and the identification of the licensed organization.

(d) (No change.)

13:47-9.1 Form; time

(a) The report of operation shall be [in] **on the form provided by the Control Commission.** [and] **The report shall** contain the **following** information [required by form 8B-a for Bingo and 8R-A for Raffles, hereby adopted.]**:**

1. Gross receipts derived from each game;

2. Expenses incurred or paid, to whom paid and a description of the merchandise purchased or the services rendered therefor;

3. Net profit from each game and the uses to which the net profit has been or will be applied; and

4. A list of prizes offered or given and their respective values.

(b) The licensee shall file [two copies] **one copy** of the report with the [municipal clerk within 15 days of the holding of each game, as required by law] **Control Commission no later than the 15th day of the calendar month immediately following the calendar month in which the licensed activity was held, operated or conducted.**

[(c) The municipal clerk shall forward a copy of each report to the Control Commission within three days.]

13:47-9.3 Separate report form; special door prize raffle

(a) In the case of Raffles, a separate report form shall be used for each [kind] **type** of raffle for which a license [may issue] **is issued.**

(b) [Form 8R-A] **A monthly report** need not be submitted for a special door prize raffle. An organization conducting any special door prize raffle shall submit annually in writing **to the Control Commission a report containing the following information** [and in duplicate a report to the municipal clerk of the municipality in which the special door prize raffle has been held of the following]:

1.-3. (No change.)

4. Purposes to which the net proceeds of each occasion were applied[.]; **and**

5. The name of the municipality in which a special door prize raffle drawing was held.

[(c) The municipal clerk shall forward the duplicate of the report required in subsection (b) of this Subsection to the Control Commission within seven days of its receipt.]

13:47-9.4 Report; No game held

When [no] **a** game is **not** held on any date when a license authorizes it to be held, a report to that effect shall nonetheless be filed with the [municipal clerk] **Control Commission.**

13:47-9.6 Expiration

Upon the filing of the report for the last game authorized in the license, the license shall be attached to the report **of operations filed with the Control Commission** [and so returned to the municipal clerk who shall mark it "expired"].

13:47-9.7 Annual report by municipality

(a) The municipal clerk of a municipality which has adopted the Bingo Licensing Law or the Raffles Licensing Law or both shall submit to the Control Commission annually for the 12 month period ending December 31, each year on or before January 31 of the following year, a report containing the following information as to the operation of both bingo and raffles within the municipality for the preceding 12 month period:

1. The number of licenses issued pursuant to each law;

2. The names and addresses and identification number issued by the Control Commission, of each licensee;

3. The aggregate amount of municipal license fees collected;

4. The name and address of all persons detected in violation of the laws or regulations; and

5. The names and address of all persons prosecuted for such violations, the result of each prosecution and the penalty imposed.

(b) The report may contain recommendations for the improvement of the Bingo Licensing Law or the Raffles Licensing Law or the administration thereof.

SUBCHAPTER 13. QUALIFICATIONS OF RAFFLES **OR BINGO** EQUIPMENT [LESSOR] **PROVIDER**

13:47-13.1 Application

(a) Persons desiring to [furnish] **provide equipment for use in or in connection with the holding, operating or conducting** raffles **or bingo** [equipment for rent or must] **shall** first be approved by the Control Commission.

(b) Any person desiring such approval shall apply to the Control Commission, in writing and in duplicate, on Form 11 which is hereby adopted, **and shall provide the Control Commission with any additional information requested.**

(c)-(f) (No change.)

13:47-13.3 Approval

(a) If, upon considering such application the Control Commission shall be satisfied that the applicant (or its officers and stockholders of [ten] **10** percent or more of its stock when the applicant is a corporation) is of good moral character and has not been convicted of crime, it shall enter its approval in its records, shall notify the applicant accordingly, and shall issue its certificate with an identifying number.

(b) No person approved by the Control Commission to provide equipment for use in or in connection with any game licensable pursuant to the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., or the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq., shall provide any such equipment to a person not registered with the Control Commission.

SUBCHAPTER 14. RENTAL OF PREMISES FOR BINGO

13:47-14.2 Applications and licensing

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

(h) When the Commission is satisfied that the applicant possesses the qualifications to receive a license, the Secretary shall issue and deliver a license to an applicant as an approved rentor of specified premises upon the payment by the applicant of [a] **an annual** license fee in the amount of [$100.00] **$500.00**. Such payment shall be made by certified check payable to the order of the [State of New Jersey] **Legalized Games of Chance Control Commission.**

(i)-(j) (No change.)

(k) The Commission may issue a temporary permit to an applicant pending final action on the application. Any such temporary permit shall be valid for a period not in excess of [30] **180** days.

(l)-(m) (No change.)

13:47-14.3 Regulations concerning rentals

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

[(h) No rentor or owner of premises used for the conduct of bingo shall use the word "bingo", "keno", "lotto", "games", "amusement", or other word whose meaning is capable of conveying the suggestion that bingo, as defined in these rules and regulations, is or will be conducted or played, either as part of the name of the rentor or as the name of the premises or place within which the premises to be rented or used for the conduct of playing of bingo are located.]

[(i)](**h**) (No change in text.)

[(j)](**i**) A [$5.00] **$10.00** fee, in the form of a certified check payable to the [State of New Jersey] **Legalized Games of Chance Control Commission,** shall be forwarded by the renter to the Commission for each occasion on which bingo games are held, pursuant to N.J.S.A. 5:8-[49.7] **24 et seq.** Payment of this fee shall be made no later than the 10th day of the month immediately following the month in which [payment is received for the rental or use of the premises for the conduct of playing] **the premises was used for the holding, operating or conducting of** bingo together with a statement disclosing:

1.-3. (No change.)

4. Date when bingo was conducted; **and**

5. [Filing number of agreement for the rental or use of premises.] **The commercial renter's license number issued by the Control Commission for the premises.**

Recodify existing (k)-(r) as **(j)-(q)** (No change in text.)

[13:47-15.3 Reports

(a) Each municipal clerk of a municipality which has adopted the Bingo Licensing Law or the Raffles Licensing Law or both shall submit to the Control Commission annually for the 12-month period ending October 30th, each year on or before November 15th a report containing the following information as to the operation of both bingo and raffles within the municipality for the preceding 12-month period:

1. Number of licenses issued;

2. Names and addresses of licensees;

3. Aggregate amount of license fees collected;

4. Names and addresses of all persons detected of violation of the Laws and Rules and Regulations;

5. Names and addresses of all persons prosecuted for such violations and the result of each such prosecution and the penalties imposed.

(b) Such reports may contain any recommendations for the improvement of the Bingo Licensing Law and Raffles Licensing Law and the administration thereof which the governing body of the municipality shall deem desirable.]

13:47-16.11 [LGCCC 8B-A] **(Reserved)**

[(a) Form LGCCC 8B-A is as follows:

LGCCC 8B-A
REPORT OF BINGO OPERATIONS

License No. ..... Identification No. .....

Prepare 2 copies: to Municipal Clerk

Insert name of Municipality .....
Name of licensee .....
Address .....

Gross Receipts

Admission charges and first regular card	$	
Receipts from extra regular cards	.....	
Receipts from cards for special games	.....	
Sale of supplies	.....	
Other receipts	.....	
	Total receipts $.....	

Expenses (See N.J.A.C. 15:5-1.1)

Purchases of Goods, Wares and Merchandise	.....
A. Amount or cost of prizes	.....
B. Equipment	.....
C. Other	.....

Services Rendered

A. Rental of premises	.....
B. Other	.....
Total expenses $.....	
Net Proceeds $.....	

Total number of players at this occasion .....

Hours of play: Began ..... Ended .....

Number of games played ..... Date of Occasion .....

Place where played .....

Schedule of Prices

Game No.	Regular or Special	Description of Prize	Amount of Value

Total Amount or Value.....

Special Games

Game No.	1	2	3	4	5	6	7	8	9	10
Number of Specials Sold										
Price										
Gross Sales										

Total Gross Sales.....

Cards for Special Games Supplied by:

Name .....

Address .....

Schedule of Expenses

Description of Item (Goods, Wares and Merchandise)	Name and address of supplier of items purchased or services rendered	Amount
1. Total Prizes		
2. Equipment		
a.		
b.		

Services Rendered

1. Rental of premises	
2. Bookkeeper or Accountant	
3. Other	
a.	
b.	
c.	
Total Expense.....	

Schedule of Members

1. Name and address of member in full charge of and primarily responsible for conduct of the games on this occasion:

   Name ..... Tel. No. ..... Age.....

   Address .....

2. Other members assisting member in charge on this occasion:

Name	Address	Tel. No.	Age
.....			
.....			
.....			

3. Name and address of member calling numbers (give age):

   .....
   .....

Note: This section may be completed by having each member sign in as he or she reports for duty on the occasion.

Schedule of Use of Net Proceeds

Unexpended balance of net proceeds shown on last report	$	
Entire net proceeds from this occasion	.....	
Total net proceeds	$	

Utilization of net proceeds since last report and to date of this report:

	Date	Description of Use and Check No.	Amount
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....

Total utilized $ .....

Unexpended balance of net proceeds $ .....

Bank where unexpended balance is deposited .....

Name of member in charge of and responsible for use of proceeds .....

Certificate

We hereby certify that the foregoing report is true.

.....
Officer of Applicant, and Title

.....
Member in Charge of Game

Sworn to and subscribed before me this ..... day of ..... , 19.....

.....
A Notary Public
(Seal of Notary)

See N.J.A.C. 15:5-9.1 et seq.]

13:47-16.12 [LGCCC 8R-A] **(Reserved)**

[(a) Form LGCCC 8R-A is as follows:

LGCCC 8R-A
REPORT OF RAFFLES OPERATIONS

License No. ..... Identification No. .....
Prepare 2 copies: to Municipal Clerk

Insert name of Municipality .....

Name of licensee .....

Address .....

Gross receipts from sale of chances ..... $ .....
Other receipts (including value of donated prizes) .....
Total receipts $ .....

Expenses (See N.J.A.C. 15:5-1.1)

Purchase of Goods, Wares and Merchandise
A. Cost of Purchased Prizes Awarded ..... $ .....
B. Equipment ....
C. Other ....

Services Rendered
A. Rental of Equipment ....
B. Other ....
Value of Donated Prizes Awarded ....
Cash Prizes Awarded ....
Total expenses $ .....
Net Proceeds $ .....

If any chances were sold to persons not present at the place of the drawing, list the serial numbers of all unsold tickets and attach certificate of printer. (See N.J.A.C. 15:5-8.7.)

Hours of Occasion: began ..... ended .....
Date of Occasion: .....
Place where drawing was held:

Schedule of Prizes

Kind of Raffle	Description of Prize	Donated or Purchased	Amount or Retail Value

Total amount of retail value $.....

Schedule of Expenses

Description of Item (Goods, Wares and Merchandise)	Name and address of supplier of items purchased or services rendered	Amount
1. Total Prizes		
2. Equipment		
a.		
b.		
c.		
3. Other		
a.		
b.		
c.		

Services Rendered
1. Rental of Equipment
2. Bookkeeper or Accountant
3. Other
   a.
   b.
   c.

Total Expense .....

Schedule of Members

1. Name and address of member in full charge of and primarily responsible for conduct of the games on this occasion:

   Name ..... Tel. No. ..... Age .....

   Address .....

2. Other members assisting member in charge of this occasion:

Name	Address	Tel. No.	Age

Note: This section may be completed by having each member sign in as he or she reports for duty on the occasion.

Schedule of Use of Net Proceeds

Unexpended balance of net proceeds shown on last report ..... $ .....
Entire net proceeds from this occasion ....
Total net proceeds $ .....

Utilization of net proceeds since last report and to date of this report:

	Date	Description of Use and Check No.	Amount
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....

Total utilized $ .....

Unexpended balance of net proceeds $ .....

Bank where unexpended balance is deposited .....

Name of member in charge of and responsible for use of proceeds .....

Certificate

We hereby certify that the foregoing report is true.

.....
Officer of Applicant, and Title

.....
Member in Charge of Game

Sworn to and subscribed before me this ..... day of ..... , 19.....

.....
A Notary Public
(Seal of Notary)]

(a)

DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES

Notice of Extension of Time for Public Comment

Proposed New Rules: N.J.A.C. 13:47A-1.10A, 2.6A, 13 and 14

Authorized By: A. Jared Silverman, Chief, Bureau of Securities.
Authority: N.J.S.A. 49:3-67(a).
Proposal Number: PRN 1994-513.

Take notice that on September 19, 1994, the Division of Consumer Affairs, Bureau of Securities published at 26 N.J.R. 3814(a) proposed new rules. Written comments from the public were to be submitted by October 19, 1994 to:

A. Jared Silverman, Chief
Bureau of Securities
P.O. Box 47029
Newark, New Jersey 07101

Take further notice that in response to requests from the public for additional time to submit comments, the Bureau of Securities has decided to extend the time for written submission of comments on the proposed new rules to Monday, November 21, 1994. Comments should be submitted to the above address by that date.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Collins Avenue-Nixon Drive (under State jurisdiction) Mount Laurel Township, Moorestown Township and Maple Shade Township in Burlington County

Proposed New Rule: N.J.A.C. 16:28-1.61

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Proposal Number: PRN 1994-583.

Submit comments by January 4, 1995 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing a new rule at N.J.A.C. 16:28-1.61 that will establish certain "speed limit" zones along Collins Avenue-Nixon Drive (under State jurisdiction) in the Townships of Mount Laurel, Moorestown and Maple Shade in Burlington County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

A letter from the Township of Mount Laurel's Director of Public Safety dated March 31, 1994 requested speed limits be established along these roadways which are under State jurisdiction. As part of a review of current conditions and the request from the Township, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that establishing certain "speed limit" zones along Collins Avenue-Nixon Drive was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish "speed limit" zones along Collins Avenue-Nixon Drive (under State jurisdiction) in the Townships of Mount Laurel, Moorestown and Maple Shade in Burlington County, for the 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 installment of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28-1.61 [(Reserved)] **Collins Avenue-Nixon Drive**

(a) The rate of speed designated for Collins Avenue-Nixon Drive (under State jurisdiction) described in this subsection shall be established as the maximum legal rate of speed thereat for both directions of traffic:

1. In Burlington County:

i. In Mount Laurel Township, Moorestown Township and Maple Shade Township:

(1) Zone 1: 30 miles per hour between Route 73 and Lenola Road.

(2) Zone 2: 35 miles per hour between Lenola Road and the State of New Jersey-Township of Mount Laurel jurisdictional line (Nixon Drive and Route I-295 Ramps).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 70

Cherry Hill Township and Pennsauken Township in Camden County

Proposed Amendment: N.J.A.C. 16:28A-1.37

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-582.

Submit comments by January 4, 1995 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C 16:28A-1.37 to establish no stopping or standing zones on Route N.J. 70 in Cherry Hill Township and Pennsauken Township in Camden County. The provisions of the proposed amendment will improve the flow of traffic and enhance safety along the highway system.

The amendment is being proposed at the request of the local governments of the Township of Cherry Hill in Resolution No. 94-9-2 adopted on September 12, 1994, and the Township of Pennsauken in Resolution No. 94-257 adopted on July 20, 1994. As part of the Department's ongoing review of current conditions, the traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing zones along Route N.J. 70 in Cherry Hill Township and Pennsauken Township were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions zones along Route N.J. 70 in Cherry Hill Township and Pennsauken Township in Camden County, to improve traffic flow and enhance safety. 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 appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.

1.-5. (No change.)

6. No stopping or standing in Cherry Hill Township, Camden County.

i.-ii. (No change.)

iii. Along both sides:

[(1) From Lexington Avenue Extension-Cuthbert Boulevard to Haddonfield-Stoys Landing Road.]

(1) From the Pennsauken Township-Cherry Hill Township corporate line to Haddonfield-Stoys Landing Road, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

(2) (No change.)

7.-8. (No change.)

9. No stopping or standing in Pennsauken Township, Camden County.

i. Along both sides:

(1) For the entire length within the corporate limits of Pennsauken Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(b) (No change.)

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Applications

License and Registration Requirements

Internal Controls

Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines

Proposed New Rules: N.J.A.C. 19:41-1.1, 1.1A, 1.2, 1.2A and 1.6

Proposed Amendments: N.J.A.C. 19:41-1.3, 1.8 and 19:45-1.12

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a-c, 70e, 89, 90 and 91.

Proposal Number: PRN 1994-577.

Submit written comments by December 7, 1994 to:

Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino employee licenses and position endorsements had been the subject of a previous proposal for a new rule N.J.A.C. 19:41-1.6 (see

26 N.J.R. 910(a)). Because a reorganization of the substance of that proposal was deemed necessary, the subject matter is now incorporated into two new rules in this proposal; N.J.A.C. 19:41-1.2 and 1.2A, which supersede the previous proposal. Several comments had been received in response to the publication of the original proposal. Those comments accepted by the agency have been incorporated into this proposal. Adamar of New Jersey, Inc. (Tropworld) commented that the proposal should be amended to delete reference to "scheduling" as a function of casino operation which would require a casino employee license with a "gaming endorsement" because the scheduling of personnel hours is an appropriate function for the casino hotel employee registrant. That comment was accepted and this proposal has eliminated "scheduling" from functions which would require a casino employee license. Also, several comments were received from Boardwalk Regency Corporation (Caesar's) and two were accepted and appropriate amendments were incorporated into this proposal. "Preparing capital and operating budgets" has been eliminated from the listed functions of an accountant/auditor and clarifying language has been added to describe the analysis functions of a casino employee relative to player rating, that is "to determine the issuance of complimentaries or credit worthiness." Other comments submitted were not accepted by the Commission and in order to receive additional agency response to substantive issues now included in this proposal, additional comments should be submitted by interested parties. The rule proposed to be codified as N.J.A.C. 19:41-1.6 in this proposal concerns different subject matter from the previous proposal.

The Casino Control Act, N.J.S.A. 5:12-1 et seq. ("Act"), provides that no person shall be employed as a casino key employee or a casino employee unless he or she holds a valid casino key employee license or casino employee license endorsed with the particular positions that the employee licensee is qualified to hold, N.J.S.A. 5:12-90a and d, N.J.S.A. 5:12-89a and c. In order to provide guidance to casino licensees and casino employees as to the appropriate credential required for a particular position, the proposed new rules, N.J.A.C. 19:41-1.1, 1.1A, 1.2, and 1.2A, describe duties and responsibilities and the corresponding level of credential and the endorsement required. N.J.A.C. 19:41-1.1 and 1.2 describe the functions which require a casino key employee license or a casino employee license. N.J.A.C. 19:41-1.1A and 1.2A describe the appropriate position endorsement for specific duties and responsibilities and provide authorization for a licensee with a specific endorsement to perform the duties and responsibilities of a position requiring a lower level license endorsement, that is, to "work down" or be employed in a position which requires a lesser credential than is actually held. In order to allow casino management greater discretion in the experience or education required for certain key level positions, six previously required special key level endorsements are not codified in the new casino key endorsement rule, N.J.A.C. 19:41-1.1A. Vice President of Casino Operations, Credit Executive, Compliance Officer, Collection Manager, Purchasing Agent, and Coin Cage Supervisor have either been consolidated with other special endorsements or eliminated in favor of such persons holding the Executive Employee endorsement. These new rules supersede the language that is proposed for deletion from N.J.A.C. 19:45-1.12(a), Persons assigned to the operation and conduct of gaming and slot machines and N.J.A.C. 19:41-1.3, Employee licenses. Proposed new rule N.J.A.C. 19:41-1.6 provides general requirements for casino hotel employee registrants and cross-references the amended subsection and new rule concerning casino key employee licensees and casino employee licensees.

Also proposed for amendment is N.J.A.C. 19:41-1.8, Experience and training requirements, to provide cross-references to the proposed new rules on casino key employee and casino employee license and endorsement requirements.

Social Impact

The proposed amendments and new rules implement the legislative requirement that the Casino Control Commission regulate all individuals who are casino key employees, casino employees and casino hotel employees. However, neither the proposed new rules nor the proposed amendments are expected to significantly change the number of individuals required to hold employee licenses or registrations pursuant to the Act. The new rules merely clarify which duties and responsibilities require a casino employee license, casino key license or casino hotel employee registration.

Economic Impact

Since the proposed new rules provide specific guidance as to functions to determine the level of credential required, upon a review of actual job responsibilities, a casino employee or casino key employee may be able to downgrade or may be required to upgrade the license he or she holds with a commensurate change in the cost of the license. The elimination of some special key level endorsements will simplify the endorsement procedure to some extent. No significant change in the level of licenses held by individuals, nor any significant increase or decrease in the licensing fees paid by individuals, or fees collected by the regulatory agencies is anticipated.

Regulatory Flexibility Statement

The new rules affect casino licensees or applicants and individuals who hold casino key employee licenses, casino employee licenses, or casino hotel employee registrations, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:41-1.1 Persons required to obtain a casino key employee license

(a) Any natural person who will be employed by a casino licensee in a position that includes any responsibility or authority listed below, regardless of job title, shall be required to hold, prior to such employment, a current and valid casino key employee license issued in accordance with N.J.S.A. 5:12-89:

1. The supervision of specific areas of casino or simulcasting operations;

i. Such positions shall include, without limitation, persons who function as a shift manager, pit boss, poker shift supervisor, slot shift manager, chief slot technician, surveillance supervisor, security supervisor, cage manager, cage shift manager, cage supervisor, supervisor of the hard count or soft count room, supervisor of the patron check collection unit, simulcast counter shift supervisor and keno supervisor;

2. The authority to develop or administer policy or long-range plans or to make discretionary decisions regulating casino or simulcast facility operations;

i. Such positions shall include, without limitation, persons who function as an officer or comparable non-corporate employee of the casino licensee, a manager or assistant manager of a mandatory casino department, a simulcast counter manager, a keno manager, a marketing manager, an equal opportunity officer, a casino administrator, and a junket representative; or

3. The authority to develop or administer policy or long-range plans or to make discretionary decisions regulating the management of an approved hotel;

i. Such positions shall include, without limitation, persons who function as a hotel manager, an entertainment director, a food and beverage director and a human resource manager.

(b) In addition to the persons required to hold a casino key employee license pursuant to (a) above, any natural person who will be employed in a position designated by the Commission, for reasons consistent with the policies of the Act, as a casino key employee in the jobs compendium of a casino licensee shall be required to hold, prior to such employment, a current and valid casino key employee license issued in accordance with N.J.S.A. 5:12-89. Such positions shall include, without limitation, any employee of a casino licensee who:

1. Is required to be qualified pursuant to N.J.S.A. 5:12-85c;

2. Will be in a position with an annual salary range that has an upper limit of $85,000 or more;

3. May reasonably be anticipated to receive total annual compensation, including salary and bonuses, commissions, stock options or incentive payments, that will be greater than $85,000;

4. Will provide legal representation for the casino licensee in matters before the Commission or provide legal counsel regarding compliance with the Act or the rules of the Commission;

5. Will purchase or contract for goods and services involving an annual expenditure of $10,000 or more;

6. May authorize the issuance of patron credit;

7. May authorize the issuance of cash complimentaries in the amount of $10,000 or more in accordance with N.J.A.C. 19:45-1.9B;

8. Will serve as a compliance officer in accordance with N.J.A.C. 19:45-1.11;

9. Will manage capital construction projects; or
10. Will supervise an employee who is required to be licensed as a casino key employee.

19:41-1.1A Casino key employee license endorsements required for particular positions; other positions that may be held without additional endorsement

(a) No holder of a casino key employee license shall perform any duty or responsibility on behalf of a casino licensee unless and until he or she demonstrates to the Commission that he or she is qualified to perform such duty or responsibility by applying for and obtaining the appropriate position endorsement required by this section and the approved jobs compendium of the casino licensee.

(b) A casino key employee licensee shall, except as otherwise provided in this section, obtain the specific position endorsement identified in (b)1 through 20 below prior to performing the corresponding duties or responsibilities indicated for that particular position endorsement:

1. A "casino manager" supervises and manages the operation of the table games department in accordance with N.J.A.C. 19:45-1.11(b)4 and 1.12(b)9;

i. A "casino manager" may also perform as a "shift manager" in accordance with (b)2 below;

2. A "shift manager" supervises the operation of the table games department during a shift in accordance with N.J.A.C. 19:45-1.12(b)8;

3. A "pit boss" supervises, in accordance with N.J.A.C. 19:45-1.12(b)6, the operation and conduct of a particular table game or games as to which he or she has been qualified by obtaining the required game endorsement on his or her license;

i. A "pit boss" qualified in blackjack, baccarat/minibaccarat, roulette, pai gow poker or pai gow may also perform as a "dealer" or "floorperson" in accordance with N.J.A.C. 19:41-1.2A(b) in the specific core game endorsed on his or her license and in any variation game of the core game specified in N.J.A.C. 19:41-1.5A(b)2; and

ii. A "pit boss" qualified in craps may also perform as a "dealer," "boxperson" or "floorperson" in accordance with N.J.A.C. 19:41-1.2A(b) in craps or as a "dealer" or "floorperson" in any variation game of craps as specified in N.J.A.C. 19:41-1.5A(b)2;

4. A "poker shift supervisor" supervises the operation and conduct of poker during a shift in accordance with N.J.A.C. 19:45-1.12(b)7;

i. A "poker shift supervisor" may also perform as a "dealer" or "floorperson" in poker in accordance with N.J.A.C. 19:41-1.2A(b) and in any variation game of poker as specified in N.J.A.C. 19:41-1.5A(b)2;

5. A "slot department manager" supervises and manages the operation of the slot department in accordance with N.J.A.C. 19:45-1.12(h)5;

i. A "slot department manager" may also perform as a "slot shift manager" in accordance with (b)6 below; and

ii. A "slot department manager" may also perform as a "slot attendant supervisor" in accordance with N.J.A.C. 19:41-1.2A(b);

6. A "slot shift manager" supervises the operation of the slot department during a shift in accordance with N.J.A.C. 19:45-1.12(h)4;

i. A "slot shift manager" may also perform as a "slot attendant supervisor" in accordance with N.J.A.C. 19:41-1.2A(b);

7. A "chief slot technician"supervises the repair and maintenance of slot machines and bill changers;

i. A "chief slot technician" may also perform as a "slot technician" or "slot attendant supervisor" in accordance with N.J.A.C. 19:41-1.2A(b);

8. A "surveillance director" supervises and manages the operation of the surveillance department in accordance with N.J.A.C. 19:45-1.11(b)1;

i. A "surveillance director" may also perform as "surveillance supervisor" in accordance with (b)9 below; and

ii. A "surveillance director" may also perform as a "surveillance employee" in accordance with N.J.A.C. 19:41-1.2A(b);

9. A "surveillance supervisor" supervises surveillance investigations or the operation of the surveillance department during a shift;

i. A "surveillance supervisor" may also perform as a "surveillance employee" in accordance with N.J.A.C. 19:41-1.2A(b);

10. A "security director" supervises and manages the operation of the security department in accordance with N.J.A.C. 19:45-1.11(b)7;

i. A "security director" may also perform as a "security supervisor" in accordance with (b)11 below;

11. A "security supervisor" supervises security investigations or the operation of the security department during a shift;

12. A "controller" administers policies and procedures concerning the financial functions of the casino licensee or supervises and manages the operation of the accounting department in accordance with N.J.A.C. 19:45-1.11(b)8;

i. A "controller" may also perform as a "cage manager," "cage shift manager" or "cage supervisor" in accordance with (b)13, 14 or 15 below; and

ii. A "controller" may also perform as an "accountant/auditor" in accordance with N.J.A.C. 19:41-1.2A(b);

13. A "cage manager" supervises the operation of the cashiers' cage in accordance with N.J.A.C. 19:45-1.11(b)8 or 9, or, if the casino licensee operates independent table games and slot machine cages, supervises the operation of either the table games cage or the slot machine cage;

i. A "cage manager" may also perform as a "cage shift manager" or "cage supervisor" in accordance with (b)14 or 15 below;

14. A "cage shift manager" supervises the operation of the cashiers' cage during a shift or, if the casino licensee operates independent table games and slot machine cages, supervises the operation of either the table games cage or the slot machine cage during a shift;

i. A "cage shift manager" may also perform as a "cage supervisor" in accordance with (b)15 below;

15. A "cage supervisor" directly supervises the operation of a cashiers' cage, table games cage or slot machine cage or trains persons who are employed in the cashiers' cage, table games cage or slot machine cage;

16. A "credit manager" supervises and manages the operation of the casino credit department in accordance with N.J.A.C. 19:45-1.11(b)6;

17. An "audit department executive" supervises and manages the operation of the internal audit department in accordance with N.J.A.C. 19:45-1.11(b)2;

i. An "audit department executive" may also perform as a "cage manager," "cage shift manager" or a "cage supervisor" in accordance with (b)13, 14 or 15 above; and

ii. An "audit department executive" may also perform as an "accountant/auditor" in accordance with N.J.A.C. 19:41-1.2A(b);

18. An "equal opportunity officer" organizes and implements the equal employment and business opportunity program of a casino licensee in accordance with N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53-1.4;

19. A "junket representative" performs the functions of a junket representative as defined in N.J.S.A. 5:12-29.2 and N.J.A.C. 19:49-2.1; and

20. An "executive employee" performs any duty or responsibility that is not otherwise described in this subsection but is assigned to a position that requires a casino key employee license pursuant to N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1, and shall include, without limitation, persons who:

i. Function as an officer or comparable noncorporate employee of the casino licensee, a simulcast counter manager, a simulcast counter shift supervisor, a keno manager, a keno supervisor, the supervisor of the hard count or soft count room, the supervisor of the patron check collection unit, a marketing manager, a casino administrator, a hotel manager, an entertainment director, a food and beverage director or a human resource manager; or

ii. Hold any position that is described in N.J.A.C. 19:41-1.1(b)1 through 10.

(c) Notwithstanding (b) above or any other provision of this chapter, any casino key employee licensee who has obtained any casino key employee position endorsement that is identified:

1. In (b)1 through 19 above may also perform as an "executive employee" in accordance with (b)20 above; or

2. In (b)1 through 20 above may also perform as:

i. A "junket representative" in accordance with (b)19 above;

ii. A "gaming employee" in accordance with N.J.A.C. 19:41-1.2A(b);

iii. A "non-gaming employee" in accordance with N.J.A.C. 19:41-1.2A(b); or

iv. A casino hotel employee in accordance with N.J.S.A. 5:12-8 and N.J.A.C. 19:41-1.6.

19:41-1.2 Persons required to obtain a casino employee license

(a) Any natural person who will be employed by a casino licensee in a position, regardless of job title, that directly involves the conduct of casino or simulcasting operations or that predominantly involves the maintenance or operation of gaming activity or equipment and assets associated therewith, shall be required to hold, prior to such employment, a current and valid casino employee license issued in accordance with N.J.S.A. 5:12-90 unless a casino key employee license is otherwise required by N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1. Such positions shall include, without limitation, persons who:

1. Function as a dealer, boxperson, floorperson, accountant/auditor, surveillance employee, slot technician or slot attendant supervisor in accordance with N.J.A.C. 19:41-1.2A;

2. Participate in the operation of simulcast wagering or keno wagering;

3. Identify patrons or groups of patrons to receive complimentaries based on actual patron play, authorize such complimentaries or determine the amount of such complimentaries;

4. Analyze casino operations data relating to, without limitation, casino marketing, complimentaries, junkets, gaming, casino simulcasting, keno wagering, special events, promotions and player ratings to determine the issuance of complimentaries or credit worthiness;

5. Enter data in gaming-related computer systems or develop, maintain, install or operate gaming-related computer software systems;

6. Collect and record, pursuant to N.J.A.C. 19:45-1.29, patron checks and personal checks which are dishonored and returned by a bank;

7. Develop marketing programs to promote casino gaming including, without limitation, coupon redemption and other complimentary distribution programs;

8. Assist in the operation of a casino including, without limitation, persons who hire, coordinate and train personnel or participate in the preparation of the casino budget;

9. Distribute, redeem, account for or inventory coupons which are considered in the calculation of gross revenue;

10. Process or maintain information on credit applications or the collection of patron checks;

11. Process coins, currency, gaming chips, gaming plaques, slot tokens or cash equivalents;

12. Process, analyze, verify or control active accounting documents related to casino assets;

13. Repair or maintain the closed circuit television system equipment that is required by N.J.A.C. 19:45-1.10 as an employee of the surveillance department;

14. Are being trained to become a surveillance employee pursuant to N.J.A.C. 19:41-1.2A(b);

15. Provide physical security in a casino, casino simulcasting facility or restricted casino area;

16. Assist in the operation of slot machines and bill changers, including, without limitation, persons who participate in manual jackpot payouts and fill payout reserve containers;

17. Control and maintain the slot machine inventory, including replacement parts, equipment and tools used to maintain slot machines; and

18. Supervise a person required to be licensed as a casino employee.

(b) Any natural person who will be employed by a casino licensee in a position, regardless of job title, that does not directly involve the conduct of casino or simulcasting operations, but regularly requires work in a restricted casino area or access to records maintained within the mandatory casino departments required by N.J.A.C. 19:45-1.11 shall be required to hold, prior to such employment, a current and valid casino employee license issued in accordance with N.J.S.A. 5:12-90 unless a casino key employee license is otherwise required by N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1. Such positions shall be referred to as non-gaming employees and shall include, without limitation, persons who:

1. Perform secretarial support for supervisors of mandatory casino departments;

2. Repair gaming equipment other than slot machines;

3. View player rating information systems, but do have the authority to enter data, develop, maintain, install or operate the systems; and

4. Perform responsibilities associated with the installation, maintenance or operation of computer hardware for casino computer systems.

19:41-1.2A Casino employee license endorsements required for particular positions; other positions that may be held without additional endorsement

(a) No holder of a casino employee license shall perform any duty or responsibility on behalf of a casino licensee unless and until he or she demonstrates to the Commission that he or she is qualified to perform such duty or responsibility by applying for and obtaining the appropriate position endorsement required by this section and the approved jobs compendium of the casino licensee.

(b) A casino employee licensee shall, except as otherwise provided in this section, obtain the specific position endorsement identified in (b)1 through 9 below prior to performing the corresponding duties or responsibilities indicated for that particular position endorsement:

1. An "accountant/auditor" performs, under the supervision of an "audit department executive" or "controller" (see N.J.A.C. 19:41-1.1A(b)), the duties and responsibilities of the internal audit department or casino accounting department in accordance with N.J.A.C. 19:45-1.11, including, without limitation, overseeing the review, verification and recordation of casino revenue journal entries; the supervision of personnel in the internal audit or casino accounting departments; the monitoring of compliance with regulations and internal controls, and the evaluation of the adequacy of accounting and administrative controls;

2. A "surveillance employee" conducts surveillance investigations and operations in accordance with N.J.A.C. 19:45-1.11(b)1;

3. A "dealer" directly operates a particular game as to which he or she has been qualified by obtaining the required game endorsement on his or her license;

i. A "dealer" in craps may also perform as a stickperson in accordance with N.J.A.C. 19:45-1.12(b)3;

4. A "boxperson" directly supervises, under the supervision of a "pit boss" (see N.J.A.C. 19:41-1.1A(b)) and "floorperson" (see (a)5 below), the operation of a craps game by the "dealer" and stickperson and participates in the conduct of the game, including the placement and payoff of wagers;

i. A "boxperson" may also perform as a "dealer" in craps in accordance with (b)3 above or as a "dealer" or "floorperson" (see (b)5 below) in any variation game of craps specified in N.J.A.C. 19:41-1.5A(b)2;

5. A "floorperson" directly supervises, under the supervision of a "pit boss" (see N.J.A.C. 19:41-1.1A(b)) and in accordance with N.J.A.C. 19:45-1.12, the operation of a particular game or games as to which he or she has been qualified by obtaining the required game endorsement on his or her license;

i. A "floorperson" qualified in craps may also perform as a "dealer" or "boxperson" in craps in accordance with (b)3 or 4 above or as a "dealer" or "floorperson" in any variation game of craps specified in N.J.A.C. 19:41-1.5A(b)2; and

ii. A "floorperson" qualified in blackjack, baccarat/minibaccarat, roulette, pai gow poker or poker may also perform as "dealer" in accordance with (b)3 above in the specific core game endorsed on his or her license and in any variation game thereof specified in N.J.A.C. 19:41-1.5A(b)2;

6. A "slot technician" repairs and maintains slot machines and bill changers in accordance with N.J.A.C. 19:45-1.12(h)1;

7. A "slot attendant supervisor" supervises slot attendants and the operation of slot machines and bill changers in accordance with N.J.A.C. 19:45-1.12(h)3;

8. A "gaming employee" performs any duty or responsibility that is not otherwise described in this subsection but is assigned to a position that requires a casino employee license pursuant to N.J.S.A. 5:12-7 and N.J.A.C. 19:41-1.2(a), and shall include, without limitation, any position that is described in N.J.A.C. 19:41-1.2(a)2 through 17; and

9. A "non-gaming employee" performs any duty or responsibility that is not otherwise described in this subsection but is assigned to a position that requires a casino employee license pursuant to N.J.S.A. 5:12-7 and N.J.A.C. 19:41-1.2(b), and shall include, without limitation, any position that is described in N.J.A.C. 19:41-1.2(b)1 through 4.

(c) Notwithstanding (b) above or any other provision of this chapter, any casino employee licensee who has obtained any casino employee position endorsement that is identified:

1. In (b)1 through 7 above may also perform as a "gaming employee" in accordance with (b)8 above;

2. In (b)1 through 8 above may also perform as a "non-gaming employee" in accordance with (b)9 above; or

3. In (b)1 through 9 above may also perform as a casino hotel employee in accordance with N.J.S.A. 5:12-8 and N.J.A.C. 19:41-1.6.

19:41-1.3 Employee [licenses] **licensee and registrant age requirements; eligibility to work in the United States**

[(a)] No natural person shall be employed [in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity or be empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations or the management of an approved hotel] **as a casino key employee pursuant to N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1 or as a casino employee pursuant to N.J.S.A. 5:12-7 and N.J.A.C. 19:41-1.2** unless he or she is [over] 18 years of age[,] **or older, and** is a citizen of the United States or is authorized pursuant to Federal law to work in the United States[, and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1. Pit bosses;
2. Shift bosses;
3. Credit executives;
4. Casino cashier supervisors;
5. Casino managers;
6. Casino assistant managers;
7. Managers of casino security employees;
8. Supervisors of casino security employees;
9. Any employee of a casino licensee empowered to procure or purchase or contract for any entertainment, food, beverages, supplies, equipment, furnishings or any other goods or services whatsoever involving an annual expenditure of $500.00 or greater;
10. Junket representatives, as defined in section 102 of the Act; and
11. Any other employee of a casino licensee so designated by the Commission for reasons consistent with the policies of the Act.

(b) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age, is a citizen of the United States or is authorized pursuant to Federal law to work in the United States, and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1. Boxpersons;
2. Dealers;
3. Croupiers;
4. Floorpersons;
5. Waiters and waitresses who access restricted casino areas;
6. Any natural person employed by a casino or its agent to provide physical security in a casino hotel;
7. Casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility; and
8. Any employee whatsoever of a casino licensee so designated by the Commission.

(c)]. No natural person shall be employed [to perform services or duties in the conduct of the business of an approved hotel which are not included within the definition of casino employee or casino key employee] **as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and N.J.A.C. 19:41-1.6** unless he or she **has attained the age required for employment by the laws of the state in which he or she will be employed, and** is a citizen of the United States or is authorized pursuant to Federal law to work in the United States [and holds a current and valid casino hotel employee registration. The following positions, without limitation, require a casino hotel employee registration:

1. Bartenders;
2. Waiters;
3. Waitresses;
4. Maintenance personnel;
5. Kitchen staff, and
6. Any employee whatsoever of a casino licensee so designated by the Commission].

19:41-1.6 Persons required to obtain casino hotel employee registration

Any person who will be employed by a casino licensee to perform any duty or responsibility in the conduct of the business of its approved hotel but who is not required to obtain a casino key employee license pursuant to N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1 or a casino employeee license pursuant to N.J.S.A. 5:12-7 and N.J.A.C. 19:41-1.2 shall be required to obtain, prior to such employment, a current and valid casino hotel employee registration in accordance with N.J.S.A. 5:12-8 and 91 and N.J.A.C. 19:41-7.1B.

19:41-1.8 Experience and training requirements

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

(e) In addition to any other requirement set forth in this subchapter, no **person shall be employed by a casino licensee to perform the duties and responsibilities of a "casino manager," "shift manager," "surveillance director," "surveillance supervisor" or "surveillance employee" as set forth in N.J.A.C. 19:41-[1.6 and 1.7] 1.1, 1.1A, 1.2 and 1.2A** unless he or she demonstrates knowledge of the basic rules of each authorized game offered by the casino licensee, evidenced by either:

1.-2. (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) Each casino licensee shall be required to employ the personnel herein described in the operation of its casino and casino simulcasting facility, regardless of the position titles assigned to such personnel by the casino licensee in its approved jobs compendium. Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions[, or by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to supervise persons performing such functions, subject to the limitations imposed by N.J.A.C. 19:45-1.11(a)]. Each casino licensee shall at all times maintain a level of staffing which ensures the proper operation and effective supervision of all table games in the casino and casino simulcasting facility.

(b)-(j) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Pai Gow Poker; Additional Wager
Proposed Amendments: N.J.A.C. 19:46-1.13B; 19:47-11.8, 11.8A and 11.8B
Proposed New Rule: N.J.A.C. 19:47-11.13

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99(a) and 100.
Proposal Number: PRN 1994-579.

Submit written comments by December 7, 1994, to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

These proposed amendments and new rule would permit casino licensees to offer an additional wager in the game of pai gow poker. The additional wager was suggested by ShuffleMaster, Inc., the creater of an automatic card shuffler and random number generator which can be used in the play of the game.

The additional wager is made by betting which number between 1 and 7 will be selected by the random number generator at the beginning of a round of play. That number is also used to determine which player position will be the first to receive cards for that round of pai gow poker, pursuant to N.J.A.C. 19:46-1.13B(e).

New rule N.J.A.C. 19:47-11.13 defines the additional wager and describes the procedure for making the wager. N.J.A.C. 19:47-11.13(b)6 prescribes the payoff odds, which must be at least 5½ to 1 but not more than 6 to 1, and also notes that all payoffs would be rounded down to the nearest dollar. The amendment to N.J.A.C. 19:46-1.13B describes the layout requirements for the wager. As the amendments to N.J.A.C. 19:47-11.8, 11.8A and 11.8B indicate, the additional wager would be made, determined and paid before any card is dealt to any player at the table, and the wager would have no bearing upon any other pai gow poker wager made by a player during that round of play.

Because of the nature of the wager, the additional wager may be offered only at a pai gow poker table which uses a random number generator, rather than a shaker and dice, to determine the first player position to receive cards. See N.J.A.C. 19:47-11.13(a).

Social Impact

The proposed amendments and new rule are not expected to have any social impact beyond that created by the authorization of an additional wager at an authorized game. The amendments and new rule do not reflect any social judgments made by the Commission. The implementation of this additional wager may generate patron interest in the game of pai gow poker, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City casinos as a result of the introduction of the additional wager.

Economic Impact

The implementation of this additional wager will require casino licensees to incur some costs, such as preparing new table layouts and obtaining approved random number generators, in preparing to offer the wager to the public. These costs may be offset by increased casino revenues which may be generated by the wager. If the wager generates increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues that would be collected. However, any attempt to quantify the effects of the introduction of the additional wager upon casino revenue would be highly speculative at this time.

Regulatory Flexibility Statement

The proposed amendments and new rule would only affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act," N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:46-1.13B Pai gow poker table; pai gow poker shaker; physical characteristics; computerized random number generator

(a) (No change.)

(b) Each pai gow poker layout shall be approved by the Commission and shall contain, at a minimum, the following:

1. (No change.)

2. Two separate areas located below each betting area which shall be designated for the placement of the high and second highest or low hands of that player; [and]

3. If the casino licensee offers the additional wager authorized by N.J.A.C. 19:47-11.13, a separate area for each player, designated for the placement of that additional wager by each player, as well as the payout odds for the additional wager; and

[3.]**4.** (No change in text.)

(c)-(e) (No change.)

19:47-11.8 Procedures for dealing the cards from a manual dealing shoe

(a) (No change.)

(b) The dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for dealing the cards. **If the casino licensee offers the additional wager authorized by N.J.A.C. 19:47-11.13, all such additional wagers shall be determined and paid and the procedures in N.J.A.C. 19:47-11.13 shall be completed, before any card is dealt to any player at the table.**

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

19:47-11.8A Procedures for dealing the cards from the hand

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

(e) Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack, the dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for delivering the stacks of cards. **If the casino licensee offers the additional wager authorized by N.J.A.C. 19:47-11.13, all such additional wagers shall be determined and paid and the procedures in N.J.A.C. 19:47-11.13 shall be completed, before any stack of cards is dealt to any player at the table.**

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

19:47-11.8B Procedures for dealing the cards from an automated dealing shoe

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

(c) The dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for delivering the stacks of cards. **If the casino licensee offers the additional wager authorized by N.J.A.C. 19:47-11.13, all such additional wagers shall be determined and paid and the procedures in N.J.A.C. 19:47-11.13 shall be completed, before any stack of cards is dealt to any player at the table.**

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

19:47-11.13 Permissible additional wager

(a) If a casino licensee, pursuant to N.J.A.C. 19:47-11.8C, uses a random number generator to determine the starting position for the dealing of cards or the delivery of stacks of cards, the casino licensee may in its discretion offer to every player at the pai gow poker table the option to make an additional wager as to which one of the numbers 1 through 7 will be selected and displayed by the random number generator at the beginning of a round of play.

(b) The following procedures shall be observed by any casino licensee offering the additional wager authorized by this section:

1. Prior to the activation of the random number generator at the beginning of a round of play, any player who has made a pai gow poker wager pursuant to N.J.A.C. 19:47-11.7 may, at the same time, make the additional wager authorized by this section. A player may make an additional wager on more than one number during each round of play.

2. A player shall make an additional wager by placing gaming chips, and if permitted by the casino licensee, a match play coupon, on the number selected by the player in the area designated for additional wagers on the pai gow poker table layout. No verbal additional wagers or cash additional wagers shall be permitted.

3. An additional wager shall win if the number selected by the player in (b)2 above is the same number selected and displayed by the random number generator as the first player position to receive cards during that round of pai gow poker. All other additional wagers shall lose.

4. After the dealer announces "No more bets" and the random number generator selects and displays the position number for that round of play, any losing additional wagers shall be immediately collected by the dealer.

5. Any winning additional wagers shall be paid immediately after collection of any losing additional wagers, and prior to any card being dealt to any player at the table.

6. A casino licensee shall pay off winning additional wagers at odds of no less than 5½ to 1 and no more than 6 to 1, and in accordance with the payout odds imprinted on the pai gow poker table layout; provided however, that payouts for any additional winning wagers shall be rounded down to the nearest whole dollar.

(c) Any additional wager made pursuant to this section shall have no bearing upon any other wager made by a player at the game of pai gow poker.

(a)

CASINO CONTROL COMMISSION

Persons Doing Business with Casino Licensees General Provisions; Definitions; Gaming-related Casino Service Industry License Requirements

Proposed Amendments: N.J.A.C. 19:51-1.1 and 1.2

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 70i, 92 and 94.

Proposal Number: PRN 1994-578.

Submit written comments by December 7, 1994 to:
Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act, N.J.S.A. 5:12-1 et seq. ("Act") and Casino Control Commission ("Commission") rules require that casino service industries offering goods or services directly related to casino or gaming activity, including gaming equipment manufacturers, suppliers and repairers, be licensed as gaming-related casino service industries. N.J.S.A. 5:12-92a(1) and N.J.A.C. 19:51-1.2.

N.J.A.C. 19:51-1.2(b)1i through iii provides criteria for evaluating whether an enterprise manufactures, supplies or distributes devices, machines, equipment, items or articles which are so utilized in gaming as to require that the enterprise be licensed as gaming-related. However, the present criteria fail to address equipment which is gaming-related because of its relationship to gross revenues. "Gross revenue," defined at N.J.S.A. 5:12-24, is the total of all sums received by a casino licensee from gaming operations after monies are paid out as winnings to patrons and deductions for certain uncollectible gaming receivables. The State has a financial stake in gross revenue, and because the integrity of gross revenue is considered integral to the integrity of the gaming industry, N.J.A.C. 19:51-1.2(b) is proposed to be amended to specifically include criteria concerning equipment related to gross revenue.

Also, these proposed amendments address the related issue of a "servicer of gaming equipment" which requires a gaming-related casino service industry license. N.J.A.C. 19:51-1.2(b)2 is proposed to be amended to refer to the definition of gaming equipment servicer in N.J.A.C. 19:51-1.1. The definition of "gaming equipment servicer" is proposed to be amended to include, in addition to the service of gaming equipment, the service of any device governed by N.J.A.C. 19:51-1.2(b)1 and to require that the type of service which requires a gaming-related license be such maintenance, service or repair that would have the capacity to affect play or outcome or gross revenue. These changes would amend the rules concerning the "service of gaming equipment" to be consistent with existing rules concerning "gaming equipment."

Social Impact

The proposed amendments implement the legislative requirement that the Commission regulate the participation of casino service industries in the gaming industry. The proposed amended definition and rule are not expected to significantly change the number of gaming-related or nongaming-related casino service industries but do codify standards to determine the type of casino service industry license required with greater specificity.

Economic Impact

The proposed amendments are expected to assure that enterprises which manufacture, supply or distribute gaming equipment or provide services or repairs to gaming equipment are appropriately licensed. The specificity provided by the amendments may require the upgrading or allow the downgrading of certain casino service industry licenses. The amendments are not expected to significantly increase or decrease the number of gaming-related or nongaming-related casino service industry licenses or the licensing fees paid by casino service industries or the fees collected by the regulatory agencies.

Regulatory Flexibility Analysis

The proposed amendments affect casino service industries and their employees, some of which may be "small business" as defined in N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose reporting, recordkeeping or compliance requirements on these businesses. The amendments make clear that it is the nature of the work performed that serves as the basis in determining the license that is issued. Therefore business size cannot be used nor differing standards offered. The criteria provided is expected to assure that the appropriate type of casino service industry license, gaming-related or nongaming-related, is required based on the service or goods provided. The specificity provided by the amendments may require the upgrading or allow the downgrading of certain casino service industry licenses.

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

19:51-1.1 Definitions

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

...

"Gaming equipment servicer **or repairer**" means any person who [maintains, services or repairs gaming equipment] **provides maintenance, service or repair of gaming equipment or devices, machines, equipment, items, or articles governed by N.J.A.C. 19:51-1.2(b) in any manner which has the capacity to affect the play or outcome of an authorized game or simulcast wagering or the storage, collection, control, disbursement or distribution of gross revenue.**

...

19:51-1.2 Gaming-related casino service industry license requirements

(a) (No change.)

(b) In determining whether an enterprise shall be licensed pursuant to this section, the Commission shall consider, without limitation, whether the enterprise satisfies one or more of the following criteria:

1. Whether the enterprise manufactures, supplies or distributes devices, machines, equipment, items or articles which:

i. (No change.)

ii. Are needed to conduct an authorized game or simulcast wagering; [or]

iii. Have the capacity to affect the play or outcome of an authorized game or simulcast wagering; **or**

iv. Have the capacity to affect the storage, collection, control, disbursement or distribution of gross revenue.

2. Whether the enterprise [provides maintenance, service, or repair pertaining to simulcast wagering equipment, devices, machines, equipment, items, or articles governed by (b)1 above] **is a gaming equipment servicer or repairer;**

3.-4. (No change.)

(c) (No change.)

NOTES

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Governmental Unit Deposit Protection Public Funds Exceeding 75 Percent of Capital Funds

Adopted Amendment: N.J.A.C. 3:1-4.5

Proposed: July 18, 1994 at 26 N.J.R. 2832(a).
Adopted: October 17, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: October 18, 1994 as R.1994 d.558, **without change.**

Authority: N.J.S.A. 17:9-43.

Effective Date: November 7, 1994.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

3:1-4.5 Public funds exceeding 75 percent of capital funds

A public depository which receives and holds on deposit for any period exceeding 15-calendar days public funds of a governmental unit or units which in the aggregate exceed 75 percent of the capital funds of the public depository as reported on the last valuation date shall file a certified statement with the Commissioner indicating the amount of such excess and a description of the eligible collateral pledged to secure said excess. Such collateral shall have a market value at least equal to the amount of such excess and shall be in addition to the five percent security required to be maintained and as noted in the last semi annual certified statement. For purposes of this section, the capital funds of a public depository located in New Jersey which has branches located outside New Jersey shall be its total capital funds multiplied by the percentage of deposits located in New Jersey to total deposits of the depository.

(b)

DIVISION OF REGULATORY AFFAIRS

Mortgage Commitments; Mortgage Bankers; Advertising

Adopted Amendments: N.J.A.C. 3:1-16.2 and 16.5; 3:2-1.4; and 3:38-1.3, 1.9 and 5.1

Proposed: August 15, 1994 at 26 N.J.R. 3234(a).
Adopted: October 17, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: October 18, 1994 as R.1994 d.559, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3) **and with the amendments at N.J.A.C. 3:38-1.6 not adopted.**

Authority: N.J.S.A. 17:1-8.1, 17:11B-13, 17:16F-13 and 17:16H-3.

Effective Date: November 7, 1994.
Expiration Dates: January 4, 1996, N.J.A.C. 3:1;
April 12, 1995, N.J.A.C. 3:2;
November 1, 1998, N.J.A.C. 3:32.

Summary of Public Comments and Agency Responses:
Comments were received from the following persons:

1. Edward V. Moro, President, Atlantis Mortage Co. Inc.
2. Anthony A. Accavallo, President, Federal Mortgage & Investment Corp.
3. Arthur Aranda, Garden State Mortgage.
4. Bruce Rimmer, Vice President, Genesis Mortgage Services.
5. Howard Drager, Island Mortgages of New Jersey.
6. JoAnne M. Maluchnik, President, JDJ Mortgage.
7. Harold J. Poltrock, General Counsel, League of Mortgage Lenders.
8. Ann F. Bavaria, Assistant Vice President, Meridian Bancorp, Inc.
9. James R. Silkensen, Executive Vice President, New Jersey Savings League.
10. Edward Morba, President, Northern Jersey Mortgage Corporation.
11. John M. Dodzak, Quest Mortgage Services.
12. Barry J. Zadworny, Senior Vice President, Roma Federal Savings Bank.
13. Frank V. Pellitere, President, Star Mortgage Corp.

COMMENT: Most of the comments concerned the proposed increase in the surety bond to $150,000. The comments indicated that the increase would have a disproportionate effect on small business. Since bonding companies frequently require cash collateral in the amount of the bond, this provision would severely hinder the cash flow of small business. Further, many small companies would be unable to obtain a surety bond in the increased amount. Further, the surety bond will be expensive, costing as much as $3,000 per year.

RESPONSE: Based on these comments and after meeting with representatives of the mortgage banking industry, the Department has decided not to adopt the increased bond requirement. An increase in the bond would provide greater protection to consumers. However, in light of the severe negative effects which the industry projects from such a requirement, the Department will first seek alternative methods to reduce problems in the mortgage banking industry so that consumers can receive better service. For example, it has been suggested that there be an education and experience requirement for licensure, and that solicitors be licensed rather than registered. The Department will work with representatives of the mortgage banking industry in an effort to reach a satisfactory solution.

COMMENT: Since the Department has been ordering restitution for years, either the restitution provision is unnecessary or the Department has been acting without proper authority.

RESPONSE: The Department currently has implied statutory authority to order restitution incidental to its regulatory authority over the industry. Codifying this requirement is to alert the industry and counsel of this long standing practice.

COMMENT: If a commitment is assigned to another licensed lender, then the obligation for compliance should be on the assignee, not the licensee who committed to make the loan.

RESPONSE: The Department will, in general, look to the lender who closes the loan for compliance with the terms and conditions of the commitment. However, if the closing lender is unavailable due, for example, to bankruptcy or is beyond the regulatory authority of the Department, it will look to the commiting lender. Accordingly, if a lender intends to commit loans but allow other lenders to close them, it should assign the commitment only to lenders which have a track record of regulatory compliance.

COMMENT: The way to reduce the problems is enforcement of existing laws. In addition, it is suggested that loan solicitors be licensed, and that education and experience requirements be added for solicitors and licensees.

RESPONSE: Enforcement of existing laws is ongoing and the department will continue to work with the industry to initiate necessary changes in the law to ensure that persons engaging the mortgage banking industry have the necessary qualifications and experience.

COMMENT: The five year record retention period for mortgage documentation is excessive and should be reduced to two to three years.

RESPONSE: The Department agrees that a five-year record retention schedule is too long for all lenders. Accordingly, the Department has made a minor substantive change upon adoption that requires lenders to maintain these records according to the lender's record retention schedule. Since mortgage bankers by statute are required to maintain records for five years, this will represent no change. See N.J.S.A. 17:11B-10. However, for other lenders, this will represent a relaxation in the recordkeeping requirement.

COMMENT: The responsibility for maintaining complete documentation on mortgage loans vests with the ultimate lender. However, when the committing lender assigns the loan and the assigned lender closes the loan, only certain documentation should be maintained by the committing lender.

RESPONSE: The Department never intended for the committing lender to be required to maintain all documentation unless the lender closed the loan. This is clarified in the adoption by the deletion of language referring to other documentation and the deletion of the cross reference to N.J.A.C. 3:1-2 which is erroneous as it is not a reference to record retention provisions.

COMMENT: The proposal requires licensees to disclose the name, address and telephone number of the licensee in each advertisement of a mortgage loan or mortgage loan services. This is a burdensome requirement for a holding company with lenders in several states. Generic advertising for lenders in several states would require the address and telephone number of several offices.

RESPONSE: To monitor compliance with the licensing requirements, the Department deems it necessary for a licensee to include this basic information in an advertisement. Accordingly, no change is made on adoption.

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

3:1-16.2 Fees

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

(d) The Commissioner is authorized to order any person to make restitution for fees charged which are impermissible or improperly charged, or to make refunds when required, under these rules. Nothing in this subsection is deemed to set a limit on the amount of fees a lender may charge on a mortgage loan.

3:1-16.5 Commitment process

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

(e) A lender who commits to make a mortgage loan may assign the commitment to another lender authorized to make mortgage loans in this State, or allow another such lender to close the loan, provided that:

1. The lender who committed to make the mortgage loan shall obtain and maintain *[for five years]* ***in accordance with its record retention schedule*** a copy of the mortgage note and the closing statement *[along with other documents required by N.J.A.C. 3:1-2]*; and

2. The lender who committed to make the mortgage loan shall remain responsible for ensuring that the ultimate lender closes the loan in accordance with the terms and conditions of the commitment and applicable New Jersey and Federal laws and regulations.

3:2-1.4 Violations of the Act

(a) (No change.)

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1.-5. (No change.)

6. The advertisement of a mortgage loan or mortgage loan services by a mortgage banker or mortgage broker without including in the advertisement or broadcast announcement, the name, address and telephone number of the licensee and the words "licensed mortgage banker-N.J. Department of Banking", "licensed mortgage banker n.s.-N.J. Department of Banking" for a non-servicing mortgage banker or "licensed mortgage broker-N.J. Department of Banking," whichever the case may be; and

7. (No change.)

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

3:38-1.3 Applications

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

(g) A licensee shall submit the following to convert from a mortgage banker to a mortgage banker non-servicing or from a mortgage banker non-servicing to a mortgage banker;

1. The original license, the licenses of all branch offices, and the licenses of all licensed individuals;

2.-3. (No change.)

4. A conversion fee of $200.00 plus $25.00 for each additional branch office and for each licensed individual.

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

3:38-1.6 Bonds

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

(c) The minimum amount of the bond posted *[prior to July 1, 1995]* shall be:

1.-6. (No change.)

*[(d) For all new applicants after the effective date of this rule, and for all licensees after June 30, 1995, the minimum amount of the bond shall be:

1. For a mortgage broker: $50,000;

2. For a mortgage banker non-servicing or a mortgage banker: $150,000.

(e) The Commissioner may increase the required amount of the bond based on the following factors:

1. Volume of applications;

2. Number of complaints received by the Department against the licensee;

3. Financial responsibility of the applicant or licensee, including the ability of the applicant or licensee to provide funding for loans;

4. Number of branches and licensed individuals; and

5. Violations of statutes or regulations disclosed in Departmental examinations.]*

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

3:38-1.9 Office requirements

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

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

3:38-5.1 Necessity for license

(a) No person shall act as a mortgage banker or a mortgage broker without first obtaining a license therefor, but a person licensed as a mortgage banker may act as a mortgage broker. A person who originates or brokers mortgage loans secured by New Jersey real estate from outside New Jersey must obtain a license under the Act. A mortgage banker non-servicing shall not service mortgage loans for more than 90 days in the regular course of business.

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

(a)

DIVISION OF REGULATORY AFFAIRS
Insurance Premium Finance Companies
Adopted New Rules: N.J.A.C. 3:22

Proposed: July 5, 1994 at 26 N.J.R. 2697(a).

Adopted: October 17, 1994 by Elizabeth Randall, Commissioner, Department of Banking.

Filed: October 18, 1994 as R.1994 d.562, **without change.**

Authority: N.J.S.A. 17:16D-8.

Effective Date: November 7, 1994.

Expiration Date: November 7, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 22
INSURANCE PREMIUM FINANCE COMPANY ACT

SUBCHAPTER 1. PREMIUM FINANCE AGREEMENT

3:22-1.1 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, addition or change, in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to insurance premium finance companies doing business or authorized to do business in the State of New Jersey.

(a)

DIVISION OF REGULATORY AFFAIRS

Proposed Interstate Acquisition Determination of Eligibility

Adopted New Rules: N.J.A.C. 3:33

Proposed: August 15, 1994 at 26 N.J.R. 3235(a).
Adopted: October 17, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: October 18, 1994 as R.1994 d.560, **without change.**

Effective Date: November 7, 1994.
Expiration Date: November 7, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

The rules found at N.J.A.C. 3:33 expired on September 18, 1994 pursuant to Executive Order No. 66(1978). The rules are now therefore being adopted as new rules but with no changes in the prior text. The rules become effective upon publication, November 7, 1994, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the readoption as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:33.

COMMUNITY AFFAIRS

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Reductions for Substantial Compliance; Zoning for Inclusionary Development

Adopted New Rule: N.J.A.C. 5:93-3.6

Adopted Amendment: N.J.A.C. 5:93-5.6

Proposed: June 20, 1994 at N.J.R. 2514(a).
Adopted: September 8, 1994 by the New Jersey Council on Affordable Housing, Christiana Foglio, Chairperson.
Filed: October 18, 1994 as R.1994 d.563, **with substantive changes** not requiring public notice and comment (See N.J.A.C. 1:30-4.3).

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

Effective Date: November 7, 1994.
Expiration Date: June 6, 1999.

Summary of Public Comments and Agency Responses:

The Council received comments from the following four individuals:

Regina M. Estela, Assistant Director, Eastern Paralyzed Veterans Association, Jackson Heights, New York

John W. Kellogg, Director, Hunterdon County Planning Board, Flemington, New Jersey

William G. Dressel, Jr., Assistant Executive Director, New Jersey State League of Municipalities, Trenton, New Jersey

Thomas Gambino, Mayor, Township of Cranbury, Cranbury, New Jersey

1. COMMENT: In addition to regional market forces and economic conditions affecting affordable housing, the actual construction has also been impeded by the inability to secure necessary permits and approvals in a timely manner. To encourage municipalities to move the development process in an expedited manner, would the Council consider expanding the actual construction requirement of the proposed rule? Would the Council consider adding that the rule would apply if site plan approval has been granted prior to the date of petitioning for substantive certification and certificates of occupance were issued prior to COAH's granting of substantive certification for the 1993-1999 obligation?

RESPONSE: The purpose of N.J.A.C. 5:93-3.6 is to recognize the actual production of low and moderate income housing. The actual production of a housing unit is a clear standard that is readily understandable. The Council does not believe it is appropriate to alter the standard established by the rule. Therefore, the requested changes have not been made.

2. COMMENT: The reduction of the 1987-1999 fair share obligation is based solely on the percentage of new low and moderate income units constructed within the municipality. Why are units constructed within a receiving municipality as a result of a regional contribution agreement not included in the percentage of units completed for the sending municipality when they do contribute to the stock of built units?

RESPONSE: The purpose of the Supreme Court *Mount Laurel* Decisions was to create low and moderate income housing in municipalities that had precluded its construction through their ordinances and land use practices. The regional contribution agreement, although an acceptable tool in addressing the housing obligation, often results in the creation or rehabilitation of housing in areas of the State that have accepted a disproportionate share of the State's low and moderate income population. Thus, the Council believes that focusing on the activity in the sending municipality is consistent with the spirit of the *Mount Laurel* Decisions.

3. COMMENT: The reduction schedule as it appears in the proposed new rule should be more specific with regard to the Percentage of Units Completed column. For example, if 86 percent of a municipality's 1987-1993 housing obligation has been constructed, is the 10 percent reduction applied or can this figure be rounded up to 90 percent and the 20 percent reduction applied? Perhaps a range would help clarify the table.

RESPONSE: The rule provides a 10 percent reduction when 86 percent of the units have been constructed. In response to this comment, the Council has amended the reduction schedule at N.J.A.C. 5:93-3.6(a), specifying that the reductions correspond to a range of the percentage of affordable units completed within the municipality. In adopting the rule, the Council has provided the range requested by the commenter.

4. COMMENT: Municipalities that continue in the Council's program after their initial substantive certification period expires should be given the benefit of the bonus in order to encourage them to move the housing along in the same fashion as those that have already moved the housing along during the 1987-1993 period. If it does not, the proposed bonus provides no incentive for many municipalities unless the municipality has a substantial period of its substantive certification to run.

RESPONSE: The Council will evaluate the effectiveness of this rule in stimulating the actual production of low and moderate income units. This evaluation could result in future rule making.

5. COMMENT: The first line of the proposed rule should be amended to clarify that the proposed reduction shall be applied to the inclusionary component of the calculated need. Such a change would be consistent with other language in the rule proposal.

RESPONSE: The commenter is correct. The Council has made the suggested language change at N.J.A.C. 5:93-3.6(a) clarifying that reductions apply to the inclusionary component of the calculated need and not the municipality's total fair share obligation. This is consistent with the language contained in N.J.A.C. 5:93-3.6(b).

6. COMMENT: If a municipality received a judgment of repose in court that is expiring and the municipality petitions for substantive certification before the Council on Affordable Housing, may it receive the benefit of the rule proposal?

RESPONSE: Yes.

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

5:93-3.6 Reductions for substantial compliance

(a) A reduction of the 1987-1999 *[fair share obligation]* ***inclusionary component of the calculated need*** shall be granted according to the following schedule when the Council determines that a municipality has substantially complied with the terms of its substantive certification, and has actually created, within the municipality, a substantial percentage of the new units that were part of the municipal 1987-1993 housing obligation within the period of substantive certification (as extended by a grant of interim substantive certification pursuant to N.J.A.C. 5:91-14.1(a)):

Percentage of Units Completed	Reduction
90*+*	20 percent
80*-89*	10 percent
70*-79*	5 percent

This reduction shall be based solely on the percentage of new low and moderate income units constructed within the municipality that received substantive certification. The percentage of units completed shall be determined by dividing the number of new low and moderate income units actually constructed within the municipality by the number of low and moderate income units designated for construction within the municipality in the 1987-1993 fair share plan.

Example: If the municipal housing element and fair share plan that received substantive certification designated 100 units to be constructed in the municipality and another 75 units to be transferred to a receiving municipality via a regional contribution agreement, the reduction shall be based on the percentage of the 100 units that were to be constructed within the municipality that received substantive certification.

(b) The reduction in (a) above shall only be applied to the inclusionary component of the 1987-1999 calculated need, as determined by the Council. This reduction shall be applied to the remaining inclusionary component after the Council has accepted all other reductions and credits (including any rental bonus).

Example: A municipality has a 1987-1999 precredited need of 200. It had a 1987-1993 inclusionary component of 100. All 100 new units were actually constructed within the municipality. The reduction for substantial compliance is 20 percent. The remaining calculated need is 100. However, the rehabilitation component is 20, leaving an inclusionary component of 80. The 20 percent reduction is applied to the 80 remaining new units, leaving an inclusionary component of 64.

5:93-5.6 Zoning for inclusionary development

(a) (No change.)

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

1. (No change.)

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre with a 17.5 percent set-aside and six (6) units per acre or more with a 20 percent set-aside. The Council shall determine set-asides for densities between four (4) and five (5) and between five (5) and six (6) through a process of interpolation.

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

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY HISTORIC TRUST

Historic Preservation Bond Program

Adopted Amendments: N.J.A.C. 7:4A-2.3 and 7:4B-3.1

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

Proposed: August 15, 1994 at 26 N.J.R. 3253(b).

Adopted: September 28, 1994 by the New Jersey Historic Trust, Arijit De, Chairman.

Filed: October 6, 1994 as R.1994 d.541, **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. 13:1B-15.111 et seq. and P.L. 1992, c.88.

DEP Docket Number: 36-94-07.

Effective Date: November 7, 1994.

Expiration Date: September 16, 1999, N.J.A.C. 7:4A;
December 6, 1998, N.J.A.C. 7:4B;
November 7, 1999, N.J.A.C. 7:4C.

Summary of Public Comments and Agency Responses:

The New Jersey Historic Trust received two written comments from the commenters listed below during the public comment period.

1. Charles R. Newcomb, Assistant Director, Office of State Planning, Department of Treasury

2. Terry Karschrer, Acting Administrator, Historic Preservation Office, Department of Environmental Protection

A summary of the comments timely submitted and the Trust's responses follows. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The commenter requested that the goals, strategies and policies of the New Jersey State Development and Redevelopment Plan that addresses historic preservation (Statewide Policies, No. 10 Historic, Cultural and Scenic Resources, pp. 59-61) be included in N.J.A.C. 7:4C-3.2 as part of the evaluative criteria for review and ranking of historic preservation grant applicants. (1)

RESPONSE: The Trust recognizes the need for consistency and support among governmental programs whose activities affect historic preservation within the State. The policies set forth in the State Plan are consistent with the review and ranking criteria set forth by the Trust, and may provide additional guidance to groups regarding the decision to initiate an application. The Trust will incorporate reference to the New Jersey State Development and Redevelopment Plan, Statewide Policies, No. 10 Historic, Cultural and Scenic Resources, at N.J.A.C. 7:4C-3.2(a)6iii.

COMMENT: The commenter expressed general support for the Trust's new rules and suggested several areas he believed would benefit from clarification. It was suggested that the Economic Impact could have noted that projects funded under this program may increase surrounding property values. A revision to the definition of Deputy State Historic Preservation Officer was suggested as well as the suggestion that funding limitations be expressed in more positive terms. The commenter expressed concern regarding the allocation limitation in N.J.A.C. 7:4C-3.1(d) and requested clarification of the meaning of the phrase "preservation programs." The commenter also noted that the rules were unclear as to the length of time a project sign was required to remain up.

RESPONSE: The Trust appreciates the commenter's suggested clarifications and will be incorporating the following changes in the proposal: (1) under N.J.A.C. 7:4C-1.3, the "Deputy State Historic Preservation Officer" is now defined as "the person(s) designated in writing by the Commissioner of DEP to administer the State Historic Preservation Program to identify and nominate eligible properties to the National Register of Historic Places;" (2) under N.J.A.C. 7:4C-3.1(c) and (d), "Up to twenty-five percent" and "Up to ten percent" are substituted for the phrase "Not more than;" and (3) under N.J.A.C. 7:4C-5.1(d), "The project sign will remain prominently located and maintained on the project site until the project is administratively closed-out by the staff of the New Jersey Historic Trust," has been added for further clarification. With regard, however, to the allocation limitations set forth in

N.J.A.C. 7:4C-3.1, these provisions are taken directly from the Bond Act legislation and the Trust is charged with meeting the Legislature's mandate. The phrase "preservation programs" is also founded in the Bond legislation and is meant to refer to Main Street Programs, Certified local government programs, etc. which manage projects for historic districts and the like.

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

7:4A-2.3 Historic preservation activities eligible for funding

(a) (No change.)

(b) Costs incurred in the following activities are not eligible for funding by the historic preservation grant program:

1.-2. (No change.)

3. Administrative or operational costs of the agency receiving funding except as specified in N.J.A.C. 7:4C-2.3(a)7. Administrative costs shall include:

i. Salary and payroll expenses including full-time, part-time, and temporary workers;

ii. Leasing or rental expense;

iii. Office supplies or equipment;

iv. Insurance;

v. Utilities;

vi. Travel;

vii. General maintenance; or

viii. Miscellaneous.

4.-23. (No change.)

7:4B-3.1 Procedures

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

(c) The applicant shall include this following information in the application:

1.-10. (No change.)

11. A resolution of the governing body of the applying county or municipality, or a resolution of the board of directors of the applying nonprofit organization, recommending the historic preservation project for funding under the Program;

12. All applicants shall:

i. Purchase and arrange for delivery to the trust directly from a recognized, independent credit reporting agency an up-to-date credit report for the entity seeking the loan; or

ii. Submit a check for $100.00 to the Trust to cover the expense of any reports. Any application submitted under (c)12i above shall be deemed complete only when the report is received by the Trust directly from the reporting agency; and

13. (No change in text.)

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

CHAPTER 4C
HISTORIC PRESERVATION BOND PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:4C-1.1 Purpose

This chapter constitutes the rules of the New Jersey Historic Trust in the Department of Environmental Protection for the Historic Preservation Bond Program for the award of grants on a competitive basis for the restoration, restoration or rehabilitation of historic properties owned by State, county and municipal government agencies or entities and by tax-exempt nonprofit organizations in accord with the "New Jersey Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L. 1992, c.88.

7:4C-1.2 Severability

If any portion of this chapter is declared invalid by a court of competent jurisdiction, the remainder of this chapter is not to be affected.

7:4C-1.3 Definitions

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

"Act" means the "New Jersey Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992," P.L. 1992, c.88.

"Applicant" means the State, county and municipal government entity or agency, or nonprofit organization that submits an application for an historic preservation grant.

"Approved project period" means the amount of time prescribed in the "project agreement" during which the grant recipient must complete satisfactorily the approved historic preservation project to be eligible for the full funding authorized for the project.

"Deputy State Historic Preservation Officer" means the *[Administrator, Historic Preservation Office, Department of Environmental Protection,]* ***person(s)*** designated ***in writing*** by the Commissioner of the Department of Environmental Protection to administer the State Historic Preservation Program to identify and nominate eligible properties to the National Register of Historic Places.

"Grant recipient" means the applying State government agency, county or municipal government entity or agency, or nonprofit organization names in a project agreement executed with the Trust which has been selected to receive grant funds for a historic preservation project.

"Historic" as applied to any property, structure, facility or site means any area, site, structure or object approved for listing or which has been certified as meeting the criteria for listing in the New Jersey Register of Historic Places as set forth at N.J.A.C. 7:4.

"Historic preservation grant" means monies approved by the New Jersey Historic Trust to fund an historic preservation project.

"Historic preservation project" means work directly related to the restoration, preservation or rehabilitation of an historic property, structure, facility or site.

"National Register of Historic Places" means the national list of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture maintained by the Secretary of the United States Department of the Interior under authority of the National Historic Preservation Act, as amended (16 U.S.C. §§470 et seq.)

"Nonprofit organization" means a corporation organized under the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq. and qualified for tax-exempt status under the Internal Revenue Code of 1986 (26 U.S.C. §501(c)).

"Preservation" means the act or process of applying measures necessary to sustain the existing form, integrity, and material of an historic property.

"Project agreement" means a document executed by the New Jersey Historic Trust and a grant recipient which provides a specified amount of grant assistance for an historic preservation project approved by the Trust and subject to conditions to assure benefit to the public and continued preservation of the property, structure or site.

"Property" means the historic site, structure or facility which is the subject of the historic preservation project.

"Reconstruction" means the act or process of depicting, by means of new construction, the form, features, and detailing of a nonsurviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specified period of time and in its historic location.

"Rehabilitation" means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural or architectural values.

"Restoration" means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

"Secretary of the Interior's Standards" means the Standards for the Treatment of Historic Properties (Revised 1992) adopted by the Secretary of the United States Department of the Interior, as from time to time modified, changed or amended, incorporated herein by reference.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished where the location itself maintains historic or archaeological value regardless of the value of any existing structure.

"State Historic Preservation Officer" means the Commissioner of the Department of Environmental Protection designated by the Governor to administer the State Historic Preservation Program to identify and nominate eligible properties to the National Register of Historic Places. The State Historic Preservation Officer establishes the procedures and criteria under N.J.A.C. 7:4 for receiving and processing nominations and approving areas, sites, structures and objects, both publicly and privately owned, for listing in the State Register of Historic Places.

"State Register of Historic Places" means the New Jersey Register of Historic Places consisting of areas, sites, structures and objects significant in American history, architecture, archaeology and culture which the Commissioner of the Department of Environmental Protection is authorized to maintain and expand under the "New Jersey Register of Historic Places Act," N.J.S.A. 13:1B-15.128 et seq.

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

"Structure" means a work constructed by humans and made up of interdependent and interrelated parts in a definite pattern or organization.

"Trust" means the New Jersey Historic Trust, a body corporate and politic with corporate successor established in the Department of Environmental Protection under N.J.S.A. 13:1B-15.111 et seq.

SUBCHAPTER 2. APPLICATION PROCEDURE AND ELIGIBILITY FOR HISTORIC PRESERVATION GRANTS

7:4C-2.1 Eligible applicants

State, county, and municipal government agencies or entities, and tax-exempt nonprofit organizations that own or lease on a long-term basis a historic structure, facility, or property, are eligible to submit applications for historic preservation grants.

7:4C-2.2 Eligible property

(a) At the time of the Trust's receipt of the application, the specific property for which the application is submitted must be:

1. Owned in fee simple by the applicant; or

2. If the property is not owned in fee simple by the applicant, the applicant must have possession and sufficient control over the property under a long-term lease to guarantee the continuing preservation, on-going maintenance and public access requirements for the historic property under this chapter. No historic preservation project proposed for leased property shall be approved for funding unless:

i. The lease cannot be revoked at will by the lessor;

ii. The unexpired term of the lease is 20 years or more as of January 1, 1993; and

iii. The application for the historic preservation grant is endorsed by all owners, lessors, and lessees, of the leased premises as the case may be; and

3. The property is:

i. Listed individually in the National or State Register of Historic Places as set forth in N.J.A.C. 7:4;

ii. Located within an historic district listed in the National or State Register of Historic Places and identified in the nomination of the district as contributing to its significance; or

iii. The State Historic Preservation Officer certifies that the property, structure, facility or site is approved for listing or meets the criteria for listing in the State Register of Historic Places as set forth in N.J.A.C. 7:4.

7:4C-2.3 Activities eligible for funding

(a) The following activities are eligible for funding by the program:

1. Preservation;

2. Rehabilitation;

3. Restoration;

4. Non-construction activities related directly to the development, implementation, operation and monitoring of historic preservation projects may be funded in an amount not to exceed 25 percent of the total approved historic preservation grant. Non-construction activities eligible for reimbursement are:

i. Architectural plans, designs, specifications, cost estimates, reports and other contract documents;

ii. Feasibility studies;

iii. Historic structure reports;

iv. Historic landscape reports;

v. Archaeological investigation and reports;

vi. Engineering reports;

vii. Historic research reports;

viii. Project completion reports;

5. Project signs, required under N.J.A.C. 7:4C-5;

6. Interpretive signs, plaques, or literature approved or required by the Trust for funding as part of an historic preservation grant; and

7. Expenses for materials or professional services incurred in the preparation of a grant application by nonprofits which receive grants of $50,000 or less through this program. Reimbursable costs for this activity may not exceed $1,000 and are subject to the limits for non-construction costs as specified in N.J.A.C. 7:4C-2.3(a)4.

(b) Costs incurred in the following activities are not eligible for funding by the historic preservation grant program:

1. Acquisition of real or personal property;

2. Reconstruction;

3. Administrative or operational costs of the agency receiving funding except as specified in (a)7 above. Administrative costs shall include:

i. Salary and payroll expenses including full-time, part-time and temporary workers;

ii. Leasing or rental expenses;

iii. Office supplies or equipment;

iv. Insurance;

v. Utilities;

vi. Travel;

vii. General maintenance; or

viii. Miscellaneous;

4. Ceremonial expenses;

5. Expenses for publicity, with the exception of the required project sign, and interpretive expenses stipulated by the grant agreement;

6. Bonus payments of any kind;

7. Charges for contingency reserves;

8. Charges in excess of the lowest bid, when competitive bidding is required by the State or the recipient, unless the Trust agrees in advance to the higher cost;

9. Charges for deficits or overdrafts;

10. Interest expense;

11. Damage judgements arising from construction, or equipping a facility, whether determined by judicial process, arbitration, negotiation, or otherwise;

12. Services, materials, or equipment obtained by a local or county entity or agency or nonprofit under any other State program;

13. Costs of discounts not taken;

14. Contract cost overruns, not approved, which exceed the allowable amount under contract specifications;

15. Fund raising including grant application expenses, except as noted in (a)7 above;

16. Lobbying;

17. Work including construction, research, and preparation of plans and reports performed outside the approved project period;

18. Work including construction, research and preparation of plans and reports not included in the scope of work set forth in the project agreement;

19. Work which does not comply with the Secretary of the Interior's Standards;

20. Work performed for the State, a county or a municipal government which has not been awarded in compliance with the State Contracts Law, N.J.S.A. 52:32-1 et seq. or the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

21. Work performed for a nonprofit corporation which has not been awarded in compliance with bidding requirements if the aggregate cost of contract for the historic preservation project funded with a historic preservation grant exceeds $50,000;

22. Routine maintenance work; or

23. Relocation of structures, buildings or objects except that this activity may be eligible for an historic preservation grant if the following conditions are met:

i. Relocation of the structure, building or object is necessary for its preservation;

ii. The relocation re-establishes the historic orientation, the immediate setting, and general environment of the property; and

iii. The State Historic Preservation Officer determines that the property, as relocated, will continue to meet the criteria for listing in the State Register.

7:4C-2.4 Procedures

(a) Announcement of grant rounds and the opening and closing dates for submission of historic preservation grant applications shall be published by the Trust in the DEP Bulletin, major daily papers, and periodicals circulated to the historical and preservation community.

(b) The following three basic steps constitute the historic preservation grant application procedure:

1. The applicant must submit a separate written application for each historic preservation project.

2. A notice of receipt for each application will be sent by the Trust to each applicant.

3. If the application is approved and funds are appropriated by law, funds are to be distributed in accord with a project agreement between the Trust and the applicant which specifies, among other things:

i. Amount of grant;

ii. Project period;

iii. Project scope; and

iv. Special requirements.

(c) Each project application must contain sufficient information to ensure that the Trust is able to conduct an adequate and thorough review. Applications shall be on forms provided by the Trust and must contain at least:

1. A statement of the significance and condition of the property;

2. A description and justification for the proposed project;

3. Cost estimates for proposed work;

4. Photographic documentation;

5. Evidence of matching funds commitment as specified at N.J.A.C. 7:4C-2.5;

6. Long-range plans for the future use and preservation of the property;

7. The names and addresses of all owners, all parties with an ownership interest, and evidence of ownership or an interest in ownership of the historic property for which a grant is requested;

8. As applicable, the names of lessors and lessees, and a copy of a long-term lease meeting the requirements of N.J.A.C. 7:4C-2.2(a)2;

9. If the property for which a grant is requested is not listed in the State or National Register of Historic Places, a certification by the State Historic Preservation Officer that, as of the date of the Trust's receipt of the application, the historic property for which a grant is requested is approved for listing or meets the criteria for listing in the State Register of Historic Places as set forth in N.J.A.C. 7:4; and

10. A copy of a resolution of the governing body of the applying county or municipal government agency or entity; or a resolution of the board of directors of the applying nonprofit organization; or the signature of the head of the applying State agency recommending the historic preservation project for funding under the Historic Preservation Grant Program.

(d) Applications not funded in a given grant round shall not receive further consideration for funding by the Trust in that grant round; however, revised or new applications can be submitted in subsequent grant rounds.

(e) Application materials for projects not funded are to be retained by the Trust for 90 days following the announcement of grant awards, and are to be returned if an applicant submits a written request to the Trust within the 90 day period. After 90 days the Trust may discard all application materials for nonfunded projects.

7:4C-2.5 Matching funds

(a) To be eligible for a grant for a historic preservation project, the applying State, county or municipal government entity or agency shall, as part of the application for a historic preservation grant, demonstrate the ability to match the grant requested by generating $1.00 in funds for every $1.00 of grant money requested in the application.

(b) Tax-exempt, nonprofit organizations awarded grants up to $100,000 are eligible for a 3:2 funding match in which the Trust may provide up to 60 percent of project funding while the grant recipient is responsible for generating a minimum of 40 percent of project funding.

(c) Funds derived from the sale of debt of the State of New Jersey or special appropriations by the State Legislature shall not be used as the matching share of projects costs by tax-exempt nonprofit organizations or county or municipal government entities or agencies.

(d) Funds raised by the applicant up to two years prior to August 20, 1992, as well as after that date, for ongoing historic preservations projects, and of which the project described in the application is a significant and substantial part, may satisfy the matching funds requirement enumerated in (a) above if:

1. As part of the application, the applicant submits evidence of payment, plans and specifications or other items documenting the expenditure of funds by the applicant and describing the work performed; and

2. The Trust determines that the work performed is part of the historic preservation project described in the application and the work was performed in accordance with the Secretary of the Interior's Standards.

(e) An applicant matching share shall consist only of cash raised by the applicant except as provided in (c) above or funds spent by applicant on an on-going historic preservation project as provided in (d) above. If matching funds have not been spent or are not in hand at the time of application, applicants must describe in detail plans for procuring matching funds.

SUBCHAPTER 3. ALLOCATION OF HISTORIC PRESERVATION GRANT FUNDS

7:4C-3.1 Allocation of historic preservation grant funds

(a) In each round historic preservation grant funds are to be allocated in accord with a ranking of applications received by the Trust in a given grant round, subject to availability and appropriation of funds under the Act. The ranking of applications is to be established by the Trust based on criteria set forth in N.J.A.C. 7:4C-3.2.

(b) The Trust reserves the right to limit funding to less than that requested in application.

(c) *[Not more than]* ***Up to*** 25 percent of monies made available for historic preservation projects under this act is to be awarded to State agencies or entities.

(d) *[Not more than]* ***Up to*** 10 percent of monies may be awarded by the New Jersey Historic Trust to be utilized for historic preservation projects or programs that aid designated districts, municipalities, or geographic areas, including, but not limited to, certified local governments and Main Street New Jersey communities.

7:4C-3.2 Criteria for review and ranking of applications for historic preservation grants

(a) To determine priority for funding, all applications for eligible historic preservation projects in a given grant round are to be ranked on the basis of the following competitive criteria:

1. Significance of resource which shall involve consideration of the following:

i. The degree to which a property is historically, archaeologically, architecturally, or culturally significant in the State, according to the evaluation criteria for the National Register of Historic Places;

2. The physical condition of property, including any immediate threat of collapse, demolition or inappropriate use or development; notice of code violations; and deterioration requiring stabilization;

3. The overall quality of the work proposed for funding based on the following:

i. The quality of preliminary planning or contracts documents submitted, including degree to which documents comply with the Secretary of the Interior's Standards;

ii. The credentials and experience of project team; and

iii. A realistic and feasible budget and schedule for work proposed for funding;

4. The availability of funds to match the requested grant;

5. The ability of applicant to carry out the proposed work, develop programs to sustain and interpret the property, and provide for the long-term protection of the property;

6. The impact of the project based on the following:

i. The ability of the project to create jobs or training opportunities;

ii. The potential of the project to promote other preservation activity;

iii. The relationship of the proposed project to other State, county, municipal, or organizational planning initiatives or programs which will aid community revitalization, or protect and preserve the built or natural environment, or improve or promote heritage education ***including the policies set forth in the New Jersey State Development and Redevelopment Plan, Statewide Policies No. 10, Historic, Cultural and Scenic Resources***; and

iv. The proposed use and interpretive program for site;

7. The financial plans for the continued preservation of the historic structure after the expenditure of historic preservation grant money;

8. The degree to which the proposed project represents innovative design or programming for a historic site and the degree to which the project reaches new audiences; and

9. The distribution of funds to achieve a geographical balance as well as a balance between sizes and types of projects, diversity of audiences served by projects, and diversity of historical or cultural periods.

7:4C-3.3 Grant payment

(a) After funds have been appropriated and the project agreement has been fully executed, subject to its approval of documents submitted pursuant to (b) below, the Trust will reimburse the grant recipient for expenditures incurred by the recipient for historic preservation activities which are eligible for funding under N.J.A.C. 7:4C-2.3 and within the scope of the historic preservation project described in the project agreement. Total reimbursements cannot exceed the amount of the grant.

(b) Reimbursement is to be made under (a) above based on itemized invoices and canceled checks approved by the Trust and referenced to completed tasks within the scope of the historic preservation project described in the project agreement. The Grant recipient must submit itemized invoices to the Trust for approval prior to reimbursement. Invoices must itemize cost of labor and materials and describe the work performed for which reimbursement is requested. Invoices are to be submitted for each billing period set forth in the project agreement and shall be accompanied by any other documentation defined in the project agreement.

(c) Five percent of the total amount of each grant is to be retained by the Trust. The Trust is to deduct as retainage an amount equal to five percent of each payment approved under (b) above. The retainage is to be kept by the Trust until the historic preservation project has been completed and met all financial and project requirements, including submission of required reports.

7:4C-3.4 Grant amount

The minimum grant awarded for a historic preservation project shall be $20,000; the maximum amount of grant funds that may be allocated to any one historic property, structure or site is $1,250,000.

SUBCHAPTER 4. EASEMENT

7:4C-4.1 Easement on the historic property

(a) To assure the continued preservation of grant-assisted historic properties and to assure that public benefit continues from the use of public funds after the expenditure of the grant moneys, the Trust will not make grant assistance available until an easement agreement between the Trust and the grant recipient and all other parties having an ownership interest in the historic property is recorded. The easement agreement must include:

1. Provision for the continued preservation of the historic property;

2. Limitations on the right to change the use, alter, demolish or convey the property; and

3. Provisions for public access to the historic property.

(b) The period of the easement is to be determined by the aggregate total of grant assistance made available under these regulations:

1. From $20,000 to $50,000—Five years;
2. From $50,001 to $100,000—10 years;
3. From $100,001 to $250,000—15 years;
4. From $250,001 to $500,000—20 years; and
5. From $500,001 and above—20 years or such additional period as the Trust may reasonably require.

SUBCHAPTER 5. PROJECT SIGNS

7:4C-5.1 Project signs

(a) Once a grant agreement has been executed for a project funded by historic preservation grant, a sign acknowledging that the project is funded with grant assistance from the New Jersey Historic Preservation Grant Program administered by the New Jersey Historic Trust in the New Jersey Department of Environmental Protection shall be located prominently and maintained on the project site.

(b) The project sign shall be fabricated and erected by the grant recipient in accord with specifications contained in the project agreement.

(c) The costs of making and erecting the project sign are eligible for funding under N.J.A.C. 7:4C-2.3(a)5. The costs of replacing or maintaining the sign are not eligible for funding.

(d) The project sign shall remain prominently located and maintained in the project site until the project is administratively closed out by the staff of the New Jersey Historic Trust.

SUBCHAPTER 6. FEES

7:4C-6.1 Fees

(a) To help defray costs of monitoring easements which are held on properties assisted through this program, an easement monitoring fee of $250.00 for each year of the term of the easement will be added to the recommended grant award for each project. The following is a schedule of easement fees:

1. Five years for a total of $1,250;
2. Ten years for a total of $2,500;
3. Fifteen years for a total of $3,750;
4. Twenty years for a total of $5,000;
5. Twenty-five years for a total of $6,200; and
6. Thirty years for a total of $7,500.

(a)

POLICY AND PLANNING/OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Mercury Emissions

Adopted New Rules: N.J.A.C. 7:27-27

Adopted Amendments: N.J.A.C. 7:27A-3.10

Proposed: February 22, 1994 at 26 N.J.R. 1050(a).
Adopted: September 28, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: October 3, 1994 as R.1994 d.537, **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. 13:1B-3 and 26:2C-1 et seq., in particular N.J.S.A. 26:2C-8.
DEP Docket Number: 04-94-01/125.

Effective Date: November 7, 1994.
Operative Date: November 27, 1994.
Expiration Date: Exempt, N.J.A.C. 7:27.
December 4, 1994, N.J.A.C. 7:27A.

The New Jersey Department of Environmental Protection (the Department) hereby adopts new rules and amendments for the purpose of reducing the amount of mercury emitted into the environment. The new rules at N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, and related amendments to N.J.A.C. 7:27A-3.10, Civil administrative penalties and requests for adjudicatory hearings (the Penalty Code), apply to municipal solid waste (MSW) incinerator owners and operators. The purpose of these new and amended rules is to reduce the amount of mercury emitted into the environment by the incineration of solid waste through the establishment of emission standards for MSW incinerators. The Department is also reserving four sections of the new rules at N.J.A.C. 7:27-27.5 through 27.9, for future regulation of hospital waste incinerators, sewage sludge incinerators, hazardous waste incinerators and coal burning boilers.

Mercury, in all its chemical forms, has long been known to be toxic to humans and other species, especially with respect to adverse effects on mammalian nervous systems. Although natural processes contribute mercury to the environment (for example, volcanic eruptions and degassing of mercury from the earth's crust and the oceans), the predominant contributor to global emissions is human activities (anthropogenic). The combustion of MSW and coal have been identified as the largest sources of atmospheric mercury in New Jersey.

In February 1992, Scott A. Weiner, then Commissioner of the Department, formed the Task Force on Mercury Emissions Standard Setting (Task Force), a body made up of representatives from the Department, environmental organizations, the regulated industry, county government, and other interested parties, to assist in the development of a statewide mercury emissions standard for MSW incinerators. The Task Force met numerous times over an 18-month period and produced a final report entitled "Task Force on Mercury Emissions Standard Setting, Final Report on Municipal Solid Waste Incineration." Acting Commissioner Jeanne M. Fox accepted the final report on July 30, 1993. The Task Force recommended that the Department set a stringent mercury emission standard of 28 micrograms per dry standard cubic meter (ug/dscm), corrected to seven percent oxygen, for all MSW incinerators in New Jersey, to be achieved by the year 2000, with an interim standard of 65 ug/dscm, corrected to seven percent oxygen, to be met by the year 1996. The Task Force recommended that the standard be achieved through a minimum of 80 percent mercury emissions control at MSW incinerator facilities and 80 percent source reduction and source separation programs for mercury containing waste materials. The report recommended that the Department adopt regulations that require operators of MSW incinerators to install additional air pollution control devices that would significantly reduce mercury emissions. Also the Department should ensure the implementation of programs for source reduction and source separation of mercury containing waste materials, such as batteries, fluorescent light bulbs, and thermometers, prior to incineration of MSW. The recommendations of the Task Force applicable to MSW incinerator facilities are reflected in these rules.

Summary of Hearing Officer's Recommendations and Agency Responses:

Richard V. Sinding, former Assistant Commissioner for Policy and Planning, served as the hearing officer at the March 29, 1994 public hearing held at the Department in Trenton, New Jersey.

In an effort to reduce additional sources of mercury emissions, the former Assistant Commissioner recommended that (1) for the rules to be most effective, a cooperative effort is required among industry, the public and county and State governments to encourage source separation before mercury enters the waste stream; (2) the Department should continue to investigate all the sources of mercury, both from within the State and, in cooperation with neighboring states, regional sources beyond New Jersey; and (3) the Department should investigate and proceed to develop appropriate measures that will reduce or control mercury emissions from other stationary sources including hazardous waste incinerators; sewage sludge incinerators; hospital waste incinerators; and coal burning power plants.

After reviewing the oral testimony presented at the public hearing (and the written comments submitted directly to the Department), former Assistant Commissioner Sinding recommended that N.J.A.C. 7:27-27 and amendments to N.J.A.C. 7:27A-3.10 be adopted as proposed with the following modifications: (1) the rule requiring reagent injection optimization tests should be clarified; (2) the rule should clarify that small incinerators combusting less than 9.6 tons of waste per day are required to meet the control efficiency and emission limits but are not specifically required to install control devices; and (3) the method for determining compliance should be reevaluated in light of the oral testimony. The Department accepts the recommendations.

Interested persons may inspect a copy of the hearing record (DEP Docket 04-94-01/125) , or obtain a copy for a fee, by contacting:

Janis Hoagland, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
401 E. State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The public comment period closed on April 12, 1994. The Department received written comments from 37 persons. Ten persons presented both written and oral comments, and four persons presented only oral testimony at the public hearing. The commenters, and their affiliations, if any, are listed below:

1. Jane Nogaki, New Jersey Environmental Federation
2. Frank Ferraro, Integrated Waste Services Association
3. Francis A. Ferraro, Wheelabrator Environmental Systems, Inc.
4. David Davies, New Jersey Environmental Federation and Mercer Environmental Coalition
5. Jeffrey Callahan, Union County Utilities Authority
6. Reverend Joseph Parrish, Saint John's Church, Elizabeth, N.J.
7. Madilyn Hoffman, Grassroots Environmental Organization
8. C. Stephen Krivanek III, Independent Consultant
9. Marjorie Clarke, INFORM of N.Y.
10. Michael J. Cooper, Foster Wheeler Environmental Services
11. Raymond Tulli, Ogden Martin Systems, Inc.
12. Sharon Finlayson, South Jersey Work on Waste
13. Joan Leonard, South Jersey Work on Waste
14. Mark Lohbauer, South Jersey Work on Waste
15. Delores Phillips, New Jersey Environmental Federation
16. Michael Borger
17. Jennifer Garback
18. Nicole R. Piazza
19. Tracy L. Bartelt
20. Kristina Bianchi
21. Karen E. Roberts
22. Alfonse G. Maylivic
23. Deborah M. McGuire
24. Matt McGee
25. Inz Shanks
26. Richard G. Van Noy, Mercer County Improvement Authority
27. Jackie DelVecchio
28. Robert Dabrowski
29. John G. Waffenschmidt, American Ref-Fuel
30. Gary Garetano, Hudson Regional Health Commission
31. Bart Carhart, Pollution Control Financing Authority of Warren County

32. Wynne Falkowski, Coalition Against Toxics
33. Sally Schleckser
34. John Pylaras
35. Jonathan Kiser, Integrated Waste Services Association
36. Gary L. Smith, Cummings & Smith, Inc.
37. Arnold Cohen, Ironbound Committee Against Toxic Wastes
38. Frank E. Giordano, Pollution Control Financing Authority of Camden County
39. H. Ryan Richardson, New Jersey Council, Trout Unlimited
40. Faith Teitelbaum and Martin Sayne, Sierra Club, Solid Waste Committee of the New Jersey Chapter
41. Pat Meloni, Public Policy Research Project

The following is a summary of the comments received on the proposed new rules and amendments, and the Department's responses. The number(s) in parentheses after each comment corresponds to the commenter number(s) above.

1. COMMENT: The public should be made more aware of the levels of mercury in the environment since public awareness would help decrease the severity of the problem. (22, 27, 28)

RESPONSE: The Department agrees with the need to make available to the public information on mercury in the environment. In 1993 the Department held a public hearing on the development of its Task Force Report on Mercury Emissions Standards and in 1994 held a hearing on these proposed regulations. The Department has also published and widely distributed the following reports: (1) Task Force on Mercury Emissions Standard Setting, Final Report on Municipal Solid Waste Incineration (July 1993), Volumes I, II, & III, New Jersey Department of Environmental Protection and Energy, and (2) Preliminary Assessment of Total Mercury Concentrations in Fishes from Rivers, Lakes and Reservoirs of New Jersey, Report No. 93-15F, prepared for the New Jersey Department of Environmental Protection by the Division of Environmental Research, Academy of Natural Sciences of Philadelphia, Pennsylvania, February 10, 1994.

2. COMMENT: The Department should issue warnings of the level of mercury in the environment to at-risk groups and educate the public as to the effects of mercury. (17, 19, 28)

RESPONSE: The most significant source of environmental exposure to mercury is fish consumption. The Department is developing advisories for consumption of New Jersey fish. These advisories will be directed to pregnant women and women who are likely to become pregnant in the course of a year. This is the population most at-risk from mercury exposure. The advisories will also provide consumption guidance for the general public. One important goal of these advisories will be to educate the public about the adverse effects of mercury exposure.

3. COMMENT: The Department could have done a better job explaining the sources of mercury that may have caused elevated levels of mercury in the fish studies. (10)

RESPONSE: The identification of the various sources of mercury in the New Jersey environment which have resulted in elevated mercury levels in freshwater fish is a major goal of the Department. Understanding the fate and transport of mercury in the environment and using this information to trace the sources of mercury in waterbodies is currently a major area of national scientific research. At the present time, the state of scientific understanding does not generally allow the identification of specific sources of the contamination in a given waterbody, only the possible contributing sources.

4. COMMENT: Evening hours should be used for public hearings, and speakers should be given a time limit during public hearings. (12, 37)

RESPONSE: At public hearings on Department rule proposals, speakers are usually given a time limit. Constraints on time allotted often depend on the number of persons who request the opportunity to provide oral comment. Pre-registered speakers are offered the opportunity to specify a time slot. The Department tries to accommodate those requests whenever possible. Although the hearing for this rule proposal was held during the day, the Department does schedule public hearings in the evening. In addition, when a permit or issue pertains to a specific region or area, a hearing is held in that location. The Department will consider this comment when scheduling future hearings.

5. COMMENT: The Department should work to develop a cooperative attitude, rather than an "us" and "you" mentality. (4)

RESPONSE: The Department agrees. The Task Force was just such an effort, involving cooperation among environmental groups and business representatives and the Department.

6. COMMENT: The Department allows industry to regulate itself and does not encourage an open, cooperative process with the public. Further, the Garbage Incinerator Task Force represents industry and has shaped policy on penalties and fines. (7, 37)

RESPONSE: The Department undertook an active public participation process to assist in the development of a Statewide standard for mercury emissions. In February 1992, the Mercury Emissions Standard Setting Task Force, composed of representatives of the Department, regulated industry, county government, environmental organizations and other interested parties, was established to assist in the development of a statewide mercury emission standard for municipal solid waste incinerators. N.J.A.C. 7:27-27.10, adopted herein, requires that any owner or operator who fails to comply with any applicable provision of the subchapter will be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties. The penalties at N.J.A.C. 7:27A-3.10(l)27 are based on existing penalties for comparable air pollution control violations.

7. COMMENT: The Department has not adopted policies that are protective of the environment and public health. Further, the Department's permitting process is suspect. (7)

RESPONSE: The Department adopts policies and determines permit conditions affecting the environment and public health based on its authority under State and Federal statutes, available data (scientific, state-of-the-art and other available information) and public policy considerations.

8. COMMENT: The establishment of the Regional Advisory Committee on Mercury is a distraction, since a similar committee (that is, the Task Force) already exists and has reviewed research and made recommendations. New Jersey should pursue a comprehensive program to control mercury emissions which includes all sources. (5, 7, 11, 31, 37, 38)

RESPONSE: The Department believes there is a need to expand the mercury study to sources of emissions other than municipal solid waste incinerators. Therefore, there is a need to expand the advisory group to include other individuals, organizations, and states. Since issues such as fish advisories and air pollution transcend state boundaries, a regional perspective is important. The Regional Advisory Committee on Mercury was established by Commissioner Shinn to begin to address, on a regional level, issues such as fish advisories and strategies for controlling other sources of mercury emissions. The Commissioner invited environmental officials from Maryland, Delaware, Pennsylvania, New York, and Connecticut along with representatives from Regions I, II, and III of the United States Environmental Protection Agency (EPA) to participate in this committee. Members of the committee have been invited to attend a symposium on mercury issues, open to the public and hosted by the Department, on October 6, 1994 in Princeton, New Jersey and plan an organizational meeting following the symposium.

9. COMMENT: The commenters commend the Department for taking action regarding the mercury issue. Several commenters also stated that they support the rule. (5, 9, 12, 21, 22)

RESPONSE: The Department thanks the commenters for their support.

10. COMMENT: The commenter expressed support for the work performed by the Task Force on Mercury Emissions and felt that the standards are credible, with some exceptions. (11)

RESPONSE: The Department thanks the commenter for the support.

11. COMMENT: The commenter stated that the Department has kept the public informed through the Task Force and is in general agreement with the proposed rules, although modifications are in order. (26)

RESPONSE: The Department agrees that involvement of the public is an important element of the rulemaking process.

12. COMMENT: The fish studies and effects of mercury on human health justify controlling mercury emissions, and the proposed rule is needed. Several commenters support the rule, with modifications. (1, 14, 18, 20, 41)

RESPONSE: The Department agrees the rule is justified and appreciates the support.

13. COMMENT: The commenter supports the work of the Task Force. Its work should be acknowledged and acted upon. (7)

RESPONSE: These rules are a direct result of the Task Force's work and recommendations, as was noted in the Summary to the rule proposal.

14. COMMENT: Mercury emissions from MSW incinerators will be reduced through a combination of mercury reduction in products, implementation of other rules that encourage source reduction, source separation, and mercury control technology. (5)

RESPONSE: The Department agrees and has begun implementation of all three programs: source reduction of mercury in batteries and packaging, source separation of waste materials, and development of regulations to control mercury emissions.

15. COMMENT: The goals of the Department should include reducing, controlling and even prohibiting mercury emissions. Not enough is being done to protect citizens from mercury, and the Department should not ignore the problem of mercury emissions. (7, 14, 17, 19)

RESPONSE: The goals of the Department are to reduce and control mercury emissions to the maximum extent practical. The Department plans to review additional sources of mercury emissions (such as coal burning facilities) and to make recommendations, where possible, to control and reduce those emissions. The Commissioners of the Departments of Health and Environmental Protection have charged the Toxics in Biota Committee (a committee made up of representatives from the New Jersey Departments of Health, Agriculture and Environmental Protection) with the task of preparing a report on fish advisories and other issues relevant to mercury.

16. COMMENT: Although the rule will help reduce mercury emissions, it will not be enough to protect the environment. (23)

RESPONSE: The Department is just beginning to restrict mercury emissions in New Jersey through regulations such as this one. As information becomes more refined in the future about other sources of mercury emissions and improved methods to reduce or eliminate those emissions, the Department will continue to take the steps necessary, including the regulation of other sources, to better protect the environment from mercury emissions.

17. COMMENT: The rule is not enough to protect human health. (24, 27, 34)

RESPONSE: The emission standard is based on state-of-the-art technology. Independent efforts to determine an "acceptable daily intake" (ADI) of methylmercury and an evaluation of the transport of mercury through the environment via different pathways of exposure to humans support the Department's conclusion that the rules will limit human exposure to mercury in emissions from municipal solid waste incinerators to a negligible amount.

18. COMMENT: The rule contains several flaws, which, unless changed, will result in far less stringent control than already achieved elsewhere. (9)

RESPONSE: Since the proposed modifications or recommendations to the rule were not outlined by the commenter, the Department cannot provide a response.

19. COMMENT: The Department should adopt the proposed rule, but the rule lacks significant control measures and cannot control the true problems. The State is trying to reduce mercury emissions, but the effort is not enough. It is time for the average person to contribute. (16, 28)

RESPONSE: The Department agrees that the entire scope of the problem of mercury in the environment is not within New Jersey's jurisdiction and must be addressed at the regional and even global levels as well. The implementation of source reduction and source separation programs will enable individuals to participate in the effort to control mercury emissions.

20. COMMENT: The rule falls short by focusing on MSW incinerators. (3)

RESPONSE: The Department intends to regulate other sources of mercury emissions in the future and to make recommendations, where possible, to control and reduce those emissions. The Department has reserved sections of the rule to address coal burning boilers, hospital waste, sewage sludge and hazardous waste incinerators. Because of the extensive and up-to-date data available on municipal solid waste incinerators, the Department limited its initial study and rulemaking to that source of mercury emissions.

21. COMMENT: The rule is overly complex. (29, 35)

RESPONSE: The rules are based on the recommendations of the Mercury Emissions Standard Setting Task Force. The expected reduction in mercury emissions is based on a combination of source reduction and separation of mercury containing waste materials and the installation and operation of mercury controls at incinerator facilities. Since these rules apply to the operation of MSW incinerator facilities, the provisions of N.J.A.C. 7:27-27 must detail the responsibilities of MSW incinerator operators.

22. COMMENT: New Jersey's rule is not the "strictest in the world" because Minnesota has adopted an 85 percent reduction rule, based on four tests. Based on data from MSW incinerators located in Camden, New Jersey, and Stanislaus, California, Minnesota determined, statistically, that at the 85 percent removal mark, there is a significant possibility for noncompliance. At the 80 percent removal mark, there is a very small possibility of failure to comply. Other commenters stated that New Jersey's rule must be the most stringent rule, free of loopholes, since it will set an example for other states and nations. (1, 8,11, 12)

RESPONSE: The Minnesota rule has different requirements than the New Jersey rules as follows:

Minnesota	New Jersey
Applies to MSW incineration facilities charging more than 200 tons per day (TPD) of MSW.	Applies to all sizes of MSW incinerators.
Does not mandate installation of mercury air pollution control technology.	Mandates incinerators charging 9.6 TPD or more MSW to install mercury air pollution controls designed for minimum 80 percent reduction of mercury emissions by December 31, 1995.
Emission standard is 60 ug/dscm corrected to seven percent oxygen or 85 percent removal efficiency to be achieved by August 26, 1996.	Emission standard is 65 ug/dscm corrected to seven percent oxygen or 80 percent removal efficiency to be achieved by January 1, 1996, and 28 ug/dscm corrected to seven percent oxygen or 80 percent removal efficiency to be achieved by December 31, 2000.
Does not require optimization of mercury emission control.	Requires optimization of mercury emission control to maximize control efficiency in order to minimize mercury emissions.

The Department expects that the actual operating efficiency of a mercury control system will be substantially better than 80 percent. However, the efficiency may vary due to variations in the waste feed. The control efficiency may decrease when the amount of mercury in the waste decreases. This was the case when a carbon injection system was tested at a resource recovery facility in Stanislaus County, California. Based on test results, it was determined that an 80 percent minimum control efficiency would be a reasonable requirement for a facility to comply with throughout its years of operation, including the future when there will be lower mercury levels in the waste. The 28 ug/dscm standard is the most stringent standard promulgated anywhere in the world to date. This standard can be readily achieved by installing mercury control technology and reducing the mercury content of the waste.

23. COMMENT: The Department uses 700 ug/m^3 as an average mercury inlet value. An 80 percent reduction would result in an effluent concentration of 325 ug/m^3, rather than the proposed 65 ug/m^3. The option to reduce mercury emissions by 80 percent in lieu of achieving the numerical standard should not be adopted since this would result in actual emissions higher than the numerical limit, and would not be protective of human health and welfare. The numerical limits are achievable, based on data obtained from Camden and other facilities. (1, 6, 8, 9, 11, 12, 14, 15, 16, 23, 24, 29, 32, 34)

RESPONSE: The numerical standards promulgated in these rules will be achieved by (1) installing mercury control equipment at municipal solid waste incinerators to reduce the mercury emissions by at least 80 percent, and (2) removing mercury containing materials from the municipal solid waste stream to reduce mercury emissions by 80 percent from 1990 levels. Overall, implementation of (1) and (2) will reduce mercury emissions by at least 96 percemt, which will reduce mercury emissions from 700 ug/dscm to 28 ug/dscm. Promulgation of these rules will accomplish item (1). To accomplish item (2), New Jersey is currently implementing programs designed to reduce the quantity of mercury in the solid waste stream as required pursuant to the Dry Cell Battery Management Act, N.J.S.A. 13:1E-99.59 et seq., and the Toxic Packaging Reduction Act, N.J.S.A. 13:1E-99.47 et seq. Successful implementation of these statutes, along with additional mercury reduction programs, should result in greater than 80 percent reduction of mercury in the MSW stream by the year 2000. Furthermore, consistent with the recommendations of the Mercury Emissions Standard Setting Task Force, the Department is requiring the counties to incorporate waste separation and recycling measures for mercury and other heavy metals in their solid waste management plans. These actions are expected to result in the achievement of the 28 ug/dscm at seven percent oxygen mercury emission standard before the year 2000.

24. COMMENT: The rule is not stringent enough. One commenter gives a lengthy description of the effects of mercury emissions from a Japanese corporation that was not regulated strictly by the government. (6, 15, 25)

RESPONSE: Based on the Acceptable Daily Intake (ADI) derived for methylmercury in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the Task Force report suggested that there should be no significant increase in exposure of the pregnant and potentially pregnant population to methylmercury. Using the Department's fate and transport model, the reduced emissions resulting from the standard will not result in a significant increase in methylmercury exposure in the population consuming freshwater fish. Thus, based on the best estimates available to the Department, the proposed standards do not appear to be insufficiently stringent to protect public health. The bioaccumulation of methylmercury in fish in Japan was the result of large industrial discharges of mercury into nearby surface waters. The extreme health effects experienced by the exposed population in Minimata, Japan resulted from exposures to methylmercury far higher than any which can be envisioned under any set of circumstances in New Jersey.

25. COMMENT: The Department should not approve any new sources of mercury emissions, particularly MSW incinerators. The emissions are not safe. (1, 6, 7, 9, 15, 37, 40, 41)

RESPONSE: The Department issues permits within the scope of its statutory authority. There is presently no basis or statutory authority for a total ban on potential sources of mercury emissions. The Department, however, intends to expand the scope of its study on sources of mercury and the impact of those sources. This information will assist the Department in making a determination on what additional steps should be taken to control or restrict sources of mercury emissions.

26. COMMENT: Counties with incinerators, in order to control mercury emissions, should be limited to burning only their own garbage. (37)

RESPONSE: The Department requires that the implementing agency for each solid waste district must develop a weighing/composition study as part of its overall solid waste management plan during the site selection and technology selection phase for a district's solid waste facilities. This study is performed to evaluate, at a minimum, the quantity of solid waste generated, recycled and disposed throughout the year, the types and components of solid waste; the physical and chemical properties of these types and components; and how these properties vary over the year. These studies indicate that while there are variations between counties in terms of the quantity and types of solid waste, the composition of municipal solid waste on a per capita basis between districts or counties is statistically similar.

The more beneficial approach would be to source separate those items from the municipal solid waste steam being processed by a MSW incinerator. Those discarded products which contain significant quantities of mercury and contribute to mercury emissions, regardless of the county or district within which they are generated, should be managed separately from the processing stream of a MSW incinerator. As mentioned in the Summary of the proposal, the Department will be developing regulations for a mercury-containing discarded-product source separation program. Currently, all districts with MSW incinerators have incorporated, within their district solid waste management plan, provisions to establish source separation programs for special wastes such as mercury containing discarded products. These programs will be applicable to districts which host a MSW incinerator, as well as those districts which send their solid waste to another district MSW incinerator.

The Solid Waste Management Act, N.J.S.A. 13:1E-21 et seq, allows for the establishment of a "regional" or cooperative approach for solid waste management between two or more solid waste districts. To prohibit, by regulation, the regionalization of solid waste management or any component of any overall system would not be consistent with the statutory basis of solid waste management.

27. COMMENT: Any further emissions should be avoided because of the health hazards. (9)

RESPONSE: One of the goals of the proposed emissions standards is to prevent significant increases in human exposure to methylmercury. The Department's data indicates that emissions consistent with the proposed standards will meet this goal.

28. COMMENT: Even with the proposed standards, any new sources permitted to emit mercury will significantly add to what is currently emitted. (1, 7)

RESPONSE: The Environmental and Health Issues Subcommittee of the Task Force on Mercury Standard Setting determined that the contribution of mercury from a new incinerator subject to the proposed standard will be insignificant. This conclusion was based on modeling incinerator emissions, estimating an "acceptable daily intake" of methylmercury based on the latest toxicological data, and evaluating the transport of mercury through the environment to different pathways of exposure to humans.

29. COMMENT: The standards will not be implemented in a timely fashion. In the meantime, more mercury will be emitted into the environment, endangering health and the environment. (1, 7, 13, 15, 21, 34)

RESPONSE: The Department is implementing the timetable outlined in the July 1993 Task Force Report on Mercury Emissions Standard Setting, which requires mercury emission standards for MSW incinerators of 65 ug/dscm commencing on January 1, 1996, and 28 ug/dscm by January 1, 2000. The Department also intends to propose rules to implement the Dry Cell Battery Management Act, N.J.S.A. 13:1E-99.59 et. seq., and the Toxic Packaging Reduction Act N.J.S.A. 13:1E-99.47 et. seq., in order to further reduce mercury emissions.

30. COMMENT: The Camden incinerator needs to be "conquered." (22)

RESPONSE: The Department is not sure what the commenter means by this reference to the Camden incinerator. The Department responds, however, by noting that the Camden incinerator owner/operator is required to comply with all applicable laws, regulations, and permit requirements.

31. COMMENT: Incinerators are not sufficiently tested for safety and are harmful to human health. (6)

RESPONSE: New Jersey requires that the potential environmental and health impacts of a proposed solid waste facility be fully evaluated during the permit process. As set forth in the Environment and Health Impact Statement (EHIS) requirements of the solid waste management rules at N.J.A.C. 7:26-2.9(c)9, all applicants for a MSW permit, in addition to developing a detailed environmental impact evaluation of the proposed facility, must perform a detailed evaluation of the potential impacts of the proposed facility on human health resulting from ground or surface water discharges and air emissions. This evaluation must include the following:

1. A description and discussion of the health risk assessment methodology;
2. A discussion of the level of uncertainty in the assessment;
3. A listing of all potential contaminants which may be expected to be released for the facility in terms of amount, concentrations and pathways;
4. A listing of all contaminants utilized to assess health risks;
5. A toxicity profile of the contaminants including their chemical nature, as well as any available data regarding environmental fate, acute and chronic effects and epidemiology of the contaminants;
6. A quantification of the potential health impacts; and
7. A detailed description of the mitigation techniques proposed to address any potential health impacts.

The EHIS health risk analysis of the proposed facility is performed within the context of a multi-source inhalation health risk assessment. The multi-source assessment evaluates the proposed facility's emissions along with existing emissions sources in the surrounding area. This multi-source assessment is performed in order to better understand any potential cumulative health risks in the area around a proposed facility. Further, the health risk assessment is evaluated against environmental and ambient air quality criteria and standards. It should be noted that in all cases, the environmental and ambient air quality criteria and standards are more stringent than the permissible exposure limits (PEL) set by the Occupational Safety and Health Administration (OSHA) or the threshold limit values (TLV) set by the American Conference of Governmental Industrial Hygienists (ACGIH). The PEL and TLV are established for worker health and safety.

In addition to the requirements of the EHIS, the facility is also required to conduct stack emission testing to ascertain compliance with the emission limits established in the facility's air pollution control Permit to Construct and Certificate to Operate.

32. COMMENT: Incinerators in general are an unnecessary source of pollution and a moratorium on new construction should exist. One commenter feels that all incinerators should be closed completely, permanently, and immediately. One asserts that the benefits from incineration (reducing waste volume by 65 percent) do not outweigh the negative environmental impact from ash disposal, which is more toxic than the original garbage, and the inefficient use of virgin materials. (6, 7, 13, 40)

RESPONSE: The selection of a specific solid waste technology and the location of that facility are functions expressly delegated to the solid waste management implementing agencies within a district or county pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et. seq.. The Solid Waste Management Act specifically recognizes waste to energy or resource recovery facilities as an acceptable technology in developing a framework for the implementation of an efficient and environmental effective alternative to reliance on landfills. A moratorium on the construction of MSW incinerators would not be consistent with the statute. MSW incinerators operate under the regulatory authority of the Department as set forth in the facilities' permits. If these facilities cannot meet or operate within their specific permit limits, the Department has the enforcement option of requiring the facility to cease operations.

Further, simply closing an MSW incinerator does not eliminate solid waste air emissions. In a mass balance or life cycle analysis of the entire system, other disposal or recycling options would also generate air emissions. If the solid waste from the MSW incinerator were redirected for disposal in a sanitary landfill, there would still be air emissions, since sanitary landfills are a nonpoint source of air emissions such as the greenhouse gases carbon dioxide (CO_2) and methane (CH_4), volatile organics and even mercury. Discharge from landfills can also be a threat to surface and ground water resources. If the solid waste from the MSW incinerator were redirected for composting and recycling, there would be air emissions generated. In addition, the air emissions from electricity generation to replace the energy generated by the MSW incinerators would have to be included in the mass balance or life cycle analysis. The more beneficial approach would be to source separate these special wastes, that is, discarded products that contain heavy metals such as cadmium, mercury and lead which cannot be source reduced to background or trace levels, from the municipal solid waste disposal stream. This would make the entire system operate in a more environmentally sound manner.

33. COMMENT: Incinerators should not be located in highly industrialized areas, in poor neighborhoods, and specifically in Elizabeth and Linden. Nor should they be located in Camden County because of existing incinerators and other industrial plants, which already unduly impact a small area. (6, 13)

RESPONSE: As stated in the response to Comment 32 above, the selection of a solid waste technology and location for a specific facility is the responsibility of the solid waste management district's implementing agency pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et. seq. As part of the application for a solid waste facility (SWF) permit, an applicant must submit an Environmental and Health Impact Statement (EHIS) to meet the requirements of N.J.A.C. 7:26-2.9(c). In the EHIS, the applicant must describe the proposed facility in relationship to Federal, State, county and local land-use/environmental plans and policies. These requirements include, at N.J.A.C. 7:26-2.9(c)5, the following: (1) a description of present land use for the site and the area within two miles of the facility's perimeter; (2) a description of how the facility will conform or conflict with objectives of any applicable Federal, State or local land use and environmental requirements; and (3) where potential for land use or environmental conflicts exists, a description of methods that will be used to mitigate these conflicts to meet the intent of the applicable land use or environmental requirements. This information is part of the administrative record upon which the Department bases its decision to grant or deny a SWF permit.

34. COMMENT: The commenter opposes the permits granted to Ogden Martin to operate the Union County incinerator in Rahway and the Mercer County incinerator without mercury controls. (7)

RESPONSE: A permit for the Union County Resource Recovery Facility was granted on December 29, 1989, without mercury controls. The county voluntarily proposed an interim mercury reduction plan on April 21, 1994. The Department approved the plan on May 5, 1994. The interim mercury controls on all three incinerators became operational in September 1994, and will remain in operation until permanent mercury controls are installed by December 1995. The difference between the permanent and temporary systems is primarily how the carbon is stored. The interim system uses bags. The permanent system will have a storage silo. The Mercer County incinerator was granted a permit in June 1994 with mercury control requirements. An activated carbon injection system will be used at the facility.

35. COMMENT: One commenter, representing the operator of two New Jersey MSW incinerators, stated that the standards developed, with some exceptions, are very credible. Mercury in New Jersey is not the result of one source or one class of sources but is a combination of many factors, both within and outside the State's boundary. The commenter stated that his company has volunteered to go forward with mercury controls and fully supports the goal of reducing mercury in the environment. The MSW industry and others support the Department's goal of reducing mercury in the environment and hopes that the Department will continue its efforts by reviewing additional in-State and out-of-State mercury sources with the same vigor used to regulate the municipal waste combustion industry. (5, 11, 18, 31, 36, 37)

RESPONSE: The Department agrees that environmental mercury is not the result of one source but is the result of many sources both within and outside New Jersey. The Department believes there is a need to expand the study of mercury to sources of mercury emissions other than municipal solid waste incinerators and also intends to involve other individuals, organizations, and states in this effort. The Department plans to conduct or evaluate a number of research efforts that will assist in identifying environmental health issues pertaining to mercury. The Department is reserving sections of N.J.A.C. 7:27-27 for future rulemaking with respect to hospital waste incinerators, sewage sludge incinerators, hazardous waste incinerators, and coal burning boilers.

Because coal facilities were identified as a significant source of mercury by the Task Force, the Department intends to focus on establishing standards for coal-fired boilers after obtaining sufficient test data. The Department has requested that the effectiveness of carbon injection technology be tested at the Crown Vista Energy Facility, West Deptford Township, when this facility is constructed. The Department plans to request that New Jersey utilities evaluate mercury emission potential and the feasibility of reducing emissions. The Department expects to form a work group to further address mercury emissions from coal-fired boilers.

Since the transport of mercury from outside of New Jersey could also have a significant impact on mercury contamination within the state, the Department is also interested in national and regional strategies to address environmental mercury. Commissioner Shinn has asked the surrounding states of Maryland, Delaware, Pennsylvania, New York and Connecticut to nominate representatives to serve on a Regional Mercury Advisory Committee in order to develop regional standards for mercury emissions and fish advisories, as well as to establish a database for mercury emissions and other analytical data collected in the region.

36. COMMENT: The comments presented by industry are an attempt to cloud how a violation is defined in order to keep their records clean. (7)

RESPONSE: The Department cannot speak for industry, but responds that N.J.A.C. 7:27-27.10 requires that any owner or operator who fails to comply with any applicable provision of the subchapter is subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties. The penalties proposed at N.J.A.C. 7:27A-3.10(l)27 are based on existing penalties for comparable air pollution control violations.

37. COMMENT: Not enough enforcement actions have been taken against the Newark incinerator, which violated its permit 10 out of 15 times. (7)

RESPONSE: The Department disagrees with the commenter. The Department has taken enforcement action against the operator of the Newark incinerator for violations of the allowable standard for mercury in the air pollution control permit and certificate for the facility and has assessed appropriate penalties for the violations.

38. COMMENT: All MSW incinerators should install and use control technology to reduce mercury emissions. (18)

RESPONSE: These rules require all MSW incinerators charging 9.6 tons per day (TPD) or more of MSW to install and operate mercury emission controls by December 31, 1995. They also require all MSW incinerators, including the incinerators at apartment buildings charging less than 9.6 TPD of MSW, to comply with the mercury emissions standard. However, most smaller incinerators would not be able to comply with the numerical standards without installing mercury control devices. The Department expects the smaller MSW incinerators will elect to shut down rather than install a control device. Only specialized incinerators, with virtually no mercury in the waste, will not require installation of mercury control devices.

39. COMMENT: Ogden Martin should be required to install the most effective control technologies on the incinerators which it operates in Warren County. Ogden Martin has instead chosen the least expensive technology. (7)

RESPONSE: N.J.A.C. 7:27-27.4(h), adopted herein, requires any facility (including the Warren County facility) which has to alter any

equipment or control apparatus in order to comply with the subchapter to apply to the Department for a preconstruction permit in accordance with N.J.A.C. 7:27-8.3. Pursuant to N.J.A.C. 7:27-8.4(b), the Department, during the permit review process, will ensure that the equipment incorporates advances in the art of air pollution control developed for the type and amount of air contaminant emitted and is designed to comply with the requirements of these rules. To date, no preconstruction permit applications for mercury control technology for the Warren County Resource Recovery Facility have been submitted to the Department.

40. COMMENT: The State should explore more effective mercury control technologies, including technologies from other countries, specifically the Belco wet scrubber, which would also control other pollutants.

RESPONSE: The Department established the Task Force on Mercury Emissions Standard Setting in April 1992. Between April 1992 and July 1993, the Task Force undertook an extensive review and analysis of the literature concerning mercury control. The Department also invited several vendors, including Belco, Von Roll, AS-NIRO Inc., Beltran and DeGussa to make presentations on various mercury control technologies. The Task Force concluded that a significant reduction in mercury emissions is technologically and practically achievable by installing new mercury control technology.

The rules establish mercury emissions standards, but do not direct owners or operators to use specific control technologies to achieve these standards. Wet scrubber technology may be proposed for use at a facility, provided the applicant demonstrates it would comply with the requirements of the rules. However, it should be noted that wet scrubbers generate wastewater and sludge, and concerns with respect to reintroduction of mercury into the environment in the wastewater and sludge have not been adequately addressed.

41. COMMENT: Several commenters questioned whether carbon injection and wet scrubbing are effective enough technologies to reduce mercury to acceptable levels. A more effective control technology should not be eliminated from consideration solely due to its cost. (22, 33, 34)

RESPONSE: According to the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), carbon injection has been installed at 12 MSW facilities in Europe and pilot tested at two MSW facilities in the United States. The results indicate that activated carbon injection can be guaranteed to reduce mercury emissions by greater than 80 percent, and may actually achieve greater than 95 percent reduction for most MSW combustion.

Wet scrubbers have been tested in Europe at three facilities and were found to achieve mercury removal efficiencies in the range of 60 to 95 percent.

As to eliminating a more costly technology, the commenter may be referring to the use of carbon beds, which are significantly more expensive than carbon injection and scrubbing, and can achieve about 99 percent control efficiency based on limited testing. The Task Force on Mercury Emissions Standard Setting did not eliminate any technology from consideration based on its cost. The standard recommended by the Task Force was based on the technical feasibility and availability of the control technologies, as well as protection of the environment. Subsequently, the Task Force determined that the anticipated cost of achieving the mercury emissions standard is reasonable in relation to the environmental and health benefit expected to be realized.

42. COMMENT: By setting stricter standards, the State would force more effective control technologies to be developed and would force manufacturers to reduce the mercury content in products. A comprehensive program is needed to control mercury, including increased reuse, recycling, and composting, source reduction, source separation, effective air pollution control technologies, and a goal of zero discharge with strict interim standards. More must be done to remove mercury from the waste stream, and pressure should be put on manufacturers to eliminate mercury in their products. (1, 2, 15, 32, 39, 40)

RESPONSE: When a standard is established by rule it must be achievable by the compliance deadlines set forth in the rule or else the standard and the rule are not enforceable. It is unreasonable to establish a standard based on a control technology when it is not known whether the technology will be available by the required compliance date. The mercury emission standards promulgated herein are the most stringent standards in the world.

New Jersey has worked cooperatively with product manufacturers to reduce or eliminate the amount of mercury in their products. The Dry Cell Battery Management Act, N.J.S.A. 13:1E-99.59 et. seq., required the reduction of mercury in alkaline batteries from the pre-1992 level of one to two percent mercury by weight to 250 ppm (0.025 percent mercury by weight) by January 1, 1992. By January 1, 1996, the mercury level in alkaline batteries must be reduced from 250 ppm to one ppm (0.0001 percent mercury by weight) or "no added mercury." It should be noted that because of the Department's and other states' cooperative efforts with battery manufacturers, alkaline battery manufacturers are, on average, two years ahead of schedule in manufacturing the "no added mercury" alkaline battery.

The Dry Cell Battery Management Act further banned the sale of all consumer mercury oxide (button) batteries as of January 1, 1994, and prohibited the sale of institutional mercury oxide batteries after October 20, 1993, unless the manufacturer established an approved battery management plan. The mercury oxide battery management plan was required to detail the source separation and collection of the institutional mercury oxide batteries apart from the solid waste disposal stream and to document the financial liability of institutional mercury oxide battery manufacturers for managing this collection program. The plans were to be submitted to the Department for approval by mercury oxide battery manufacturers by October 20, 1992; however, no institutional mercury oxide battery manufacturers chose to submit such plans. Instead, most manufacturers informed the Department that they were discontinuing the production of mercury batteries and were offering for sale mercury-free alternative batteries such as the zinc-air battery. One battery manufacturer opted to discontinue the sale of mercury oxide batteries in New Jersey, rather than submit a plan. Since no mercury oxide battery manufacturer chose to submit a mercury oxide battery management plan, no mercury oxide batteries are legally available for sale in New Jersey. The quantity of mercury in the solid waste disposal stream from these discarded products should be declining rapidly as the current stock of these batteries is used up and goes unreplaced. (It should also be noted that it is a violation of the solid and hazardous waste statutes and regulations for generators of institutional mercury oxide batteries to dispose of these batteries in the solid waste stream.) The Dry Cell Battery Management Act required the same kind of management plan submittal for rechargeable nickel-cadmium batteries. Manufacturers did submit rechargeable battery management plans and a program is currently in place for the source separation of rechargeable batteries. Based on New Jersey's program, the rechargeable battery manufacturers are developing a national program. Currently, Federal legislation is being developed which would establish a national program similar to the one in place in New Jersey.

The Toxic Packaging Reduction Act, N.J.S.A. 13:1E-99.47 et seq., required packaging manufacturers to reduce the total level of cadmium, chromium, lead and mercury in their products and components as follows: (1) to 600 ppm by weight by January 1, 1993; (2) to 250 ppm by weight by January 1, 1994; and (3) to 100 ppm by weight by January 1, 1995.

This program is self-certifying in that the manufacturer certifies that the packaging material complies with requirements of the law. Sixteen other states have implemented this same legislation. The effectiveness of this program is being evaluated by the Coalition of Northeastern Governors—Source Reduction Council (CONEG-SRC) and the results will appear in its report entitled "Model Toxics in Packaging Legislation 42-Month Effectiveness Report," tentatively scheduled for release by the end of 1994. CONEG has established a Toxics in Packaging Clearinghouse (TPCH) to monitor and evaluate this toxics reduction program.

Finally, the Department is actively working with fluorescent light bulb manufacturers, mercury switch manufacturers, CRT and TV tube manufacturers, consumer appliance manufacturers and paints and coatings manufacturers to establish various voluntary programs for the source separation of these special wastes or problem discarded products in the solid waste disposal stream. One of the key components of these programs is that a fully functional permanent household hazardous waste (HHW) facility must be located within the district or be available regionally to manage these wastes.

43. COMMENT: The commenter submitted a paper discussing three mercury control technologies: carbon injection, sodium sulfide injection, and wet scrubbing. The commenter is concerned that setting low standards for mercury, but not for products of incomplete combustion (PIC), may allow facilities to use units with poorer combustion characteristics to generate carbon in order to meet mercury standards without specifically adding control technology. (8)

RESPONSE: Pursuant to N.J.A.C. 7:27-27.4(a), adopted herein, all MSW incinerators capable of incinerating 9.6 tons per day (TPD) or

more of MSW must install and operate mercury emissions controls by December 31, 1995. Increasing PIC emission would not be allowed. As part of the permitting process under N.J.A.C. 7:27-8, the control emissions technology on large incinerators in New Jersey must meet state-of-the-art requirements. This will ensure stringent emission limits for carbon monoxide, which will ensure low PIC emissions.

44. COMMENT: One commenter presented data from facilities that already emit less than 28 ug/dscm mercury to show that carbon beds are the most efficient technology to remove mercury, followed by wet scrubbers and carbon injection. (9)

RESPONSE: The Department reviewed the paper submitted by the commenter regarding four MSW facilities having fixed carbon bed installations in Europe which were tested to determine mercury emissions. The tested mercury emissions ranged from less than 0.13 to 39 ug/dscm corrected to seven percent oxygen. While the paper contained useful information, it did not indicate the stack test methods used or the duration of the stack tests. Except for one facility, no data on inlet mercury concentration were provided. Based on available data, it could not be determined with certainty that fixed carbon beds would perform consistently at a higher control efficiency than activated carbon injection, and what that efficiency would be.

The paper did not discuss retrofitting existing facilities with fixed activated carbon beds. An incinerator processing MSW at 820 tons per day would require a filter bed of approximately 40,000 cubic meters (Warren Mercury Study Report, September 1990). Existing facilities may not have been designed to accommodate that size fixed carbon bed, as well as other operating requirements. Practical considerations may thus preclude the use of this type of control technology at existing facilities in New Jersey.

The paper also did not contain information on how long a fixed carbon bed would last, how much waste would be generated, provisions for proper disposal, and whether there might be reintroduction of mercury back into the environment. In some cases, spent carbon from the bed was burned off in the incinerator, which would release any mercury collected on it and hence defeat the purpose of using the fixed carbon bed.

In the case of carbon injection, there are sufficient data available to determine the control efficiencies that can be consistently achieved, the retrofit potential of the technology at the facilities that exist in New Jersey, the amount of waste that would be generated, and that residual mercury that is removed is not released back into the environment. If the issues of retrofitting existing facilities and the disposal of the quantity of waste carbon generated without reintroducing mercury into the environment are addressed, the use of activated carbon beds may be a viable option. However, the Task Force did not have sufficient information to recommend a lower mercury emissions standard for the purposes of these rules based on the use of fixed carbon beds.

45. COMMENT: The Camden County facility has not made data on a recently conducted mercury control pilot test available to the public. (34)

RESPONSE: The pilot tests conducted at the Camden County facility were designed to control mercury emissions by injecting powdered activated carbon. These tests were conducted by the U.S. Environmental Protection Agency (EPA) in May 1992. The Agency's detailed report, "Field test of carbon injection for mercury control at Camden County Municipal Waste Combustors," was published (EPA-600/R-93-181) in September 1993. A copy of the document may be obtained from the National Technical Information Service, Springfield, Virginia 22161.

46. COMMENT: The commenter is concerned about the effect of oxides of nitrogen (NO^x) control technology, specifically ammonia injection, on the efficiency of mercury control technology. (11)

RESPONSE: The U.S. EPA conducted mercury control pilot tests at the Stanislaus County MSW incineration facility in California, which is equipped with an ammonia injection system to control NO_x emissions. During the tests, the effect of ammonia injection on mercury control efficiency was evaluated. The impact of ammonia injection on mercury removal, both with and without carbon injection, appeared to be minor. The limited data obtained under these conditions did not permit a statistically strong verification of this finding.

47. COMMENT: The commenter is concerned about the limited data set used to set the standard and the variability of that data. Specifically, the data collected at the Stanislaus facility comprised about 20 test runs, and each run changed a different variable (for example, type of carbon, injection location). (11)

RESPONSE: The mercury emission standard is not based solely on the test data from the Stanislaus and Camden facilities. After the Task Force's Final Report on Municipal Solid Waste Incinerators (July 1993) was issued, data from four other facilities (Huntington, NY; Kent County, MI; Marion County, OR; Hennepin, MN) became available to the Department, which confirmed that greater than 80 percent mercury removal efficiency is achievable. It was found that mercury removal efficiencies ranged from 88 to 99 percent, with an average of 91 percent. The Department also reviewed stack test reports and the operating experience for several European facilities where mercury controls are operating. Based on this information, the Department determined that a mercury control efficiency rate of greater than 80 percent is consistently achievable. The final standard of 28 ug/dscm will require successful implementation of source reduction and separation programs for waste products containing mercury, as well as the installation of new air pollution control equipment.

48. COMMENT: Several commenters are concerned with the control technology generating another waste for which disposal is required. (8, 13, 14, 16, 25, 33, 41)

RESPONSE: The Task Force evaluated the wastes that would be generated by the different types of mercury control technologies (Task Force on Mercury Emissions Standard Setting, Final Report on Municipal Solid Waste Incineration, Chapter 6, Vol. III, 1993). The Task Force concluded that carbon injection would slightly increase the quantity of ash generated, and this material would be disposed of as MSW incinerator ash. Fixed carbon beds would require the disposal of a large carbon bed. Wet scrubbers would generate wastewater and sludge. As with any control technology, disposal of generated waste materials is one issue which will have to be considered when choosing a control technology. For further discussion of the issue of disposal of waste products generated from the use of other mercury control technologies, see the responses to Comments 40 and 44 above.

49. COMMENT: Capturing mercury from the flue ash of an MSW incinerator merely transfers the mercury to the ash. While such mercury laden ash is thermally stable, the permanency of this capture when co-disposed with MSW is unknown. The commenter also stated that co-disposal of mercury captured on activated carbon in the residual ash stream with MSW is directly contrary to the recommendations of the activated carbon manufacturers. (8)

RESPONSE: New Jersey solid waste regulations at N.J.A.C. 7:26-2A do not specifically allow or prohibit the co-disposal of MSW incinerator residual ash with MSW in a sanitary landfill. However, New Jersey's two MSW incinerator residual ash disposal sections within the Warren and Gloucester sanitary landfills are currently designed, constructed and operated as monofills, meaning the sections are hydraulically isolated from the landfilled and nonprocessible MSW in the remainder of the landfills.

The U.S. Congress is evaluating the statutory requirements for ash disposal. Further, the United States Environmental Protection Agency (USEPA) is evaluating landfill design and construction regulations for residual ash disposal. The Department will evaluate the need for and propose revisions to its sanitary landfill rules at N.J.A.C. 7:26-2A in response to changes made to the Federal law and rules, as appropriate.

50. COMMENT: It should be up to the county whether to achieve the standard through mercury reduction at the front end or through carbon injection (through overfeeding). The way the rule is structured allows counties the flexibility to achieve the standard in the most cost effective way for that county (whether through additional carbon injection or increased recycling, etc.). (10)

RESPONSE: The Department does not agree that counties should be allowed to choose either mercury reduction or the installation of control technology to achieve compliance with the standard. Based on the findings and recommendations of the Mercury Emissions Standard Setting Task Force, the Department has determined that the optimum method to achieve a reduction in mercury emissions from municipal solid waste incinerators is by (1) installation of mercury emissions controls at the incinerator facility, as these adopted rules require, and (2) implementation of the Task Force recommendations on source reduction and separation programs for mercury containing waste materials. N.J.A.C. 7:27-27.4(a) specifically requires any incinerator capable of incinerating 9.6 TPD or more of MSW to install and operate mercury emissions control apparatus.

51. COMMENT: The mercury originally comes from consumers and businesses and there is a need for a public/private partnership in order to achieve the proposed standards. More effort is needed to remove mercury from the waste stream at the front end. (2)

RESPONSE: The Department agrees. In 1992, the Department established the Mercury Emissions Standard Setting Task Force, compris-

ing of representatives from the Department, environmental groups, industry, county governments and other interested parties. The Department, at the recommendation of the Task Force, has begun implementation of three programs: source reduction of mercury in batteries and packaging, source separation of waste materials; and promulgation of rules to control mercury emissions.

52. COMMENT: Cooperation is the key to a successful program, but it does not preclude the need for a strict regulation. (4)

RESPONSE: The Department agrees, and believes the rules adopted herein and the Task Force recommendations exemplify the type of program suggested by the commenter.

53. COMMENT: Several commenters point out the dangers of mercury to human health, including nerve disorders, fetal development, development of children, and tumors, and also state that these effects are unacceptable. (6, 21, 25, 37, 39)

RESPONSE: The Department agrees in general that significant health hazards are associated with exposure to methylmercury. However, the Department takes issue with the specific assertions that mercury poses a significant risk of cancer, or that inhalation of mercury vapor by pregnant women is associated with the adverse fetal developmental effects associated with the ingestion of methylmercury. The potential for mercury to cause cancer has not been established. A U.S. EPA study on the health effects of mercury (Health Effects Assessment for Mercury, U.S. EPA Office of Health and Environmental Assessment, EPA/540/1-86-042, September 1984) reported that there is very little supporting evidence to classify mercury as a carcinogen and indicated that the Carcinogen Assessment Group of the U.S. EPA has designated mercury a Group D—Not Classified chemical. Neither the International Agency for Research on Cancer (IARC), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), nor the American Conference of Governmental Industrial Hygienists (ACGIH) classify mercury as a carcinogen.

54. COMMENT: The commenter quotes a newspaper as stating that only one form of mercury is dangerous. The commenter reiterates that the rule states all forms of mercury are toxic to humans and other species and would like this to be made more clear to the public. (12)

RESPONSE: The Department agrees that all forms of mercury are toxic, not only methylmercury. However, in assessing health risk, it is important to consider relative toxicity and relative exposure potential. As pointed out in Volume II, Environmental and Health Issues, of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), mercury exists in a number of different forms, and all forms of mercury are toxic to humans. These forms differ with respect to absorption, distribution, biotransformation, and excretion in the body. Also, the World Health Organization points out that, for equal ingestion exposures, methylmercury is absorbed 95 percent more efficiently than inorganic mercury, and this is why more attention is focused on methylmercury.

55. COMMENT: Methylmercury is the most dangerous form of mercury and eventually all mercury becomes methylmercury in nature. Certain fish species, such as tuna and swordfish, are more likely to contain high levels of methylmercury; therefore, there is reason for concern with incineration. (39)

RESPONSE: The Department disagrees with the statement that eventually all mercury becomes methylmercury. There is no evidence for this. In fact, the great majority of mercury in the oceans and in fresh water is in the inorganic form. While it is true that swordfish, and to a lesser extent tuna, have elevated levels of methylmercury, the relationship between methylmercury levels in these fish and municipal solid waste incinerator mercury emissions is extremely indirect.

56. COMMENT: Workers exposed to airborne inorganic mercury in the ug/m^3 range experienced a significant increase in the incidence of tumors of the central nervous system, and laboratory workers exposed to concentrations of 10 to 50 ug/m^3 of inorganic mercury experienced proteinuria during exposure. Workers exposed to mercury concentrations averaging 26 ug/m^3 experienced hand tremors. The commenter is concerned because these effects were observed at concentrations below the standard being proposed by the Department. The commenter also relates that other countries are banning the use of mercury in dental work. Finally, the commenter states there is no justification for human exposure to mercury in any form. (6)

RESPONSE: As discussed in the response to Comment 53, the potential for mercury to cause cancer has not been established, nor is the supporting data strong. The Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) estimated the potential for non-carcinogenic health effects from inhalation of inorganic and elemental mercury and found that the measured levels of exposure from operating MSW facilities were orders of magnitude below those identified by the U.S. EPA as maximally acceptable.

57. COMMENT: Garbage incinerators are a major source of mercury emissions, which threaten infants and pregnant women. (37)

RESPONSE: The Department agrees that MSW facilities are a significant source of mercury emissions. The Department also agrees that, in the absence of emissions reductions consistent with those required under the rules adopted herein, emissions from MSW facilities have the potential to result in methylmercury exposures to pregnant women, and the exposure level may not provide an adequate margin of safety against adverse effects.

58. COMMENT: The commenter is disappointed that the Department has highlighted health effects based upon a portion of the Task Force report which was rejected by peer review. (3)

RESPONSE: The peer review comments concerning the health effects portion of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) were divided on the validity of the conclusions regarding the acceptable daily intake (ADI) of methylmercury. While the Department recognizes that these conclusions are not unequivocal, it nonetheless believes that they are reasonable and consistent with good public health policy. Furthermore, the Department notes that a similar ADI is already employed by the U.S. EPA in its Guidance for Assessing Chemical Contamination Data for Use in Fish Advisories, as well as by several states including California, Minnesota, Idaho and North Carolina in setting fish consumption advisories.

59. COMMENT: The rule will not have a positive impact on human health because it does not prevent further emissions or remove mercury from the environment. The rule unnecessarily endangers health by being less stringent than it should be. (9)

RESPONSE: While the rules will not result in the removal of all mercury from the environment, they will result in the substantial reduction of the mercury entering the environment from a significant source. This will ultimately reduce the amount of overall levels of mercury in the environment.

60. COMMENT: One commenter states that health and the cost of health care are intricately woven with industry and the economy and the original mercury control resolution for Camden County was prompted by health concerns. (12)

RESPONSE: The Department agrees that regulations dealing with emission of toxics and reductions in those emissions ultimately speak to issues of health.

61. COMMENT: The Department should further study human exposure to mercury. (1, 15)

RESPONSE: The Department is funding a study of methylmercury exposure in pregnant women in New Jersey's population which will provide information on rates of intake and on dietary and geographic factors which correlate with exposure.

62. COMMENT: Several commenters reference the results of the fish studies as support for enacting a strict regulation. (1, 12)

RESPONSE: While the Department shares the commenters concerns with the levels of mercury found in New Jersey freshwater fish, it is not currently clear how, if at all, these levels relate to mercury emissions in New Jersey. The observed levels appear reasonably consistent with those observed in other parts of the country and therefore do not necessarily reflect sources of mercury specific to New Jersey. The Department intends to continue investigating the sources of mercury in freshwater fish.

63. COMMENT: The commenter would like a comparison made of the level of mercury in fish to the proposed acceptable daily intake (ADI), and would like the Department to determine how many fish would have to be consumed in order to exceed a safe level. (12)

RESPONSE: The Department is currently working on a fish consumption advisory for mercury. This advisory will provide guidance on the public health implications of the mercury levels found in New Jersey fish.

64. COMMENT: The ADI developed by the Task Force indicates that at least a 95 percent reduction in the level of mercury is necessary to protect human health. (8, 12)

RESPONSE: Based on the Task Force report, the Department agrees that, from a public health standpoint, it is advisable to reduce mercury emissions. The Department believes that the reductions required by the rules adopted herein will result in such a reduction.

65. COMMENT: The commenter supports the presence of the ADI in the regulation and believes it proves the proposed rule is a health-based regulation. (14)

RESPONSE: The Department agrees with the commenter that it is appropriate to reference the ADI in the Summary of the proposed rule as an indication of the underlying health basis of the rule, although the rules themselves do not incorporate or refer to the ADI.

66. COMMENT: The ADI is directly applicable to the level of mercury found in fish, and the fate and transport model is relevant to land application of sewage sludge. The commenter hopes these analyses will not be restricted to MSW incinerators since that would indicate the Department is solely concentrating on a particular industry, rather than all sources of mercury emissions. (8)

RESPONSE: The Department intends to review and determine the need and method for controlling other sources of mercury emissions. MSW incinerator facilities were initially selected for mercury emissions regulation since they are a relatively new source of such emissions in the State. The Department also has up-to-date data on the waste stream and on the operation of MSW incinerator facilities.

67. COMMENT: The commenter stated the language pertaining to the ADI should be deleted from the Summary of the rule proposal because its accuracy has not been verified by independent review and the ADI is not directly considered part of the rulemaking. (2)

RESPONSE: As discussed in the response to Comment 58 above, the Department believes that while the evidence supporting the proposed ADI is not unequivocal, the ADI is reasonable, consistent with good public health practice and consistent with ADI values used by other states. The ADI is not, however, as the commenter points out, incorporated or referenced in the rules themselves.

68. COMMENT: The commenters suggested that mercury-containing products, such as batteries and light switches, should be disposed of separately from regular trash. This would help decrease the level of mercury emissions. (1, 12, 14, 25, 27, 28, 33, 39, 40)

RESPONSE: The Department agrees. The Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) highlights this issue in the Executive Summary and in Chapter 2 of Volume III. The Task Force recommended that counties which own or operate a MSW incinerator or send their solid waste for processing to a MSW incinerator modify their solid waste management plan to include source separation of mercury-containing products from the waste stream. The Task Force recommended the following schedule for development of source separation programs for mercury-containing discarded products: (1) by January 1, 1994 for batteries; (2) by January 1, 1995 for fluorescent lights, and (3) by January 1, 2000 for other products such as mercury switches and thermostats.

The Department has notified all five counties in which a MSW incinerator is located that they must submit plans and specific timetables for the removal of the materials of concern from the incoming processible solid waste stream. At a minimum, the plan must address the following:

- Efforts already being taken by the county for the removal of discarded products which contain hazardous substances or constituents from the waste stream, particularly mercury.
- Specific plans and timeframes for the removal and separate management of dry cell batteries, fluorescent light bulbs, thermometers, mercury switches, CRT and TV tubes, and thermostats, all of which contain mercury and other heavy metals, particularly cadmium and lead.
- An inventory of potential generators of the above materials, such as jewelers, hospitals and large commercial/institutional/industrial buildings, and plans for education and separate collection/drop-off of these materials.
- Specific plans and timeframes for developing comprehensive recycling waste diversion programs which prohibit the incinerator from accepting paints, tires, electronics and vehicular materials, such as batteries, from the residential, commercial, institutional and industrial sectors to further reduce the potential for toxic materials entering the facility.
- Specific plans and schedules for expanding existing household hazardous waste (HHW) collection programs and/or the development of a permanent household hazardous waste collection facility and management program for the county.

69. COMMENT: Some sort of source reduction/source separation program needs to be implemented, specifically, a program including curbside collection for all sources of mercury such as batteries, mercury switches, and medical equipment. This program, which would include the reduction of mercury- bearing components in the waste stream, should be implemented as an amendment to the State Recycling Act. Another commenter supports a non-burn plan that would include source reduction, reuse, recycling, and composting, rather than permitting incinerators with nebulous mercury emissions standards. Source reduction reduces the amount of waste generated by removing excessive packaging, eliminating toxic components, and producing longer-lasting products. Incentives should be used to encourage those who produce less trash (for example, a pay per bag fee structure). The commenter suggests establishing a private or county-owned reuse center for resale of second-hand goods, such as old appliances and furniture. Counties should implement recycling programs that pool recyclables to ensure a steady supply of material for recyclers, use products made of recycled rather than virgin materials, and educate the public about recycling and recycled products. Recycling mechanisms should be provided to apartment houses, townhouses, and condominiums. (1, 12, 14, 25, 33, 39, 40)

RESPONSE: The Department does agree that source reduction, source separation, and recycling programs should be implemented. However, the Department disagrees with the comment that these components should be collected curbside. Mercury switches and other mercury-containing devices are not amenable to curbside collection. The Department is currently evaluating the establishment of alternative collection methods for these types of recyclables. As discussed in the response to Comment 68 above, implementation of a source separation program is currently being required as an amendment to the district solid waste management plans. Specifically in regard to medical devices, the Department is working with the New Jersey Hospital Association to develop a cost effective and efficient method for inclusion in its "Hospital Waste Reduction Manual." This manual will include a source reduction and source separation program for mercury containing medical devices.

70. COMMENT: The commenter questions how waste reduction and recycling programs, which are necessary to the success of the regulation, will be ensured by the State. If a county is unable to maximize reduction of mercury sources in the waste stream, the commenter questions whether citizens will be exposed to higher levels of mercury which could be mechanically removed prior to incineration. The commenter also questions whether incineration of landfilled waste will go through some sort of mechanical separation step prior to burning. (12)

RESPONSE: The Department agrees that an evaluation method which monitors the effectiveness of the counties' source separation programs needs to be developed. This monitoring program will be incorporated as part of the solid waste management rules for source separation of mercury-containing discarded products. As discussed in Chapter 2, Volume III of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), this task can be accomplished in either of two ways: (1) By monitoring and tracking the quantity of discarded products that would be handled in a source separation program. Data are available that establish the quantity of these products in the solid waste stream. These data can be used to evaluate the efficiency and effectiveness of a district's source separation program. This type of monitoring program is currently in place for the rechargeable battery manufacturer source separation program. (2) By monitoring the total metals concentration in the residual ash. As discussed in chapter 2, Volume III of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), this method could be used to evaluate the efficiency and effectiveness of the overall mercury control technologies at MSW incinerators, including the source separation programs.

The Department will be developing these methods of evaluating the effectiveness of the districts' source separation programs over the next three years and will be able to track progress towards achieving the 28 ug/dscm requirement by January 1, 2000.

Landfill mining of solid waste is underway in other states including New York, Pennsylvania and Florida. These states and the U.S. EPA have evaluated the products, cost and system developed to mine landfills. The studies developed by these states and the U.S. EPA have evaluated the environmental concerns and impacts of landfill mining, including the heavy metals in mined products and residual. The U.S. EPA project in Florida and the New York State Energy Research Development Authority (NYSERDA) project reported heavy metals at or below background soil concentration levels. Currently, waste mined from landfills and burned as fuel is mechanically separated. Unprocessed bulky waste is removed first, then processed through a series of trommels, vibratory screens and magnetic scalpers. From this processing the mined solid waste streams are separated into ferrous metal, soil and processed fuel. If landfill mining were to be utilized in New Jersey facilities, some degree of mechanical separation would be employed.

71. COMMENT: The Department must ensure that Essex County implements a better source reduction program. (37)

RESPONSE: The Department requires all districts with an MSW incinerator to develop, as part of their district solid waste management plans pursuant to the Solid Waste Management Act, source separation programs for special or problem wastes. Further, the district solid waste management plan requires the development of a source reduction program. However, it should be noted that, in order to be effective, source reduction must be implemented by the product manufacturers rather than by the county or districts.

72. COMMENT: Separate collection of consumer alkaline cells is not cost effective because of the reduction in mercury content and the advent of recharging technology and should be eliminated. Programs aimed at specific mercury sources, such as in Camden County, should be continued. Separate collection of mercury oxide batteries, such as button cells and high mercury medical batteries, should continue. (8)

RESPONSE: The Department agrees with the comment in part. The Dry Cell Battery Management Act, N.J.S.A. 13:1E-99.59 et seq., requires that the mercury content in the D, C, AA, AAA and 9V alkaline and carbon zinc batteries sold in New Jersey must not contain more than one ppm or 0.0001 percent mercury by weight as of January 1, 1996. This means that no mercury will be added in the manufacture of these types of batteries; the only mercury present will be trace amounts (background concentrations) in the zinc, which on average, is approximately one ppm. For alkaline button batteries, the allowable level of mercury will be 25 mg of mercury per battery. As discussed in the response to Comment 42, the alkaline battery manufacturers have committed to meeting this goal two years ahead of schedule.

It should be noted that the Act restricts the mercury content of batteries manufactured as of January 1, 1996. There is a two to three year lag between when a battery is manufactured, distributed, sold, and used and when it is finally disposed of. As discussed in Chapter 2 of Volume III of the Mercury Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the "no added mercury" alkaline batteries (one ppm mercury) will not make up the majority of alkaline battery types in the disposal stream until 1996 or 1997. Until that time, mercury from alkaline batteries will still represent the largest segment of mercury in the municipal solid waste stream. Alkaline batteries, along with specific institutional sources of mercury oxide batteries, cannot legally be disposed of as solid waste and must be source separated from the disposal stream. Beyond 1996 or 1997, the Department agrees with the commenter's statement that source separation of alkaline batteries will not be a cost effective means of mercury control. However, with the significant reduction of mercury in batteries by that time, alkaline batteries will be more suitable for recycling.

The Department agrees that mercury oxide batteries should be source separated from the solid waste disposal stream. However, under the Dry Cell Battery Management Act as of January 1, 1994, no mercury oxide batteries are permitted to be sold or disposed of in the State. It is a violation of New Jersey's solid and hazardous waste statutes and regulations for an institutional generator of mercury oxide batteries to dispose of these batteries in the solid waste stream. Fines for violations could be $1,000 per day for each violation. As discussed in Chapter 2, Volume III, of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), mercury in solid waste from mercury oxide batteries will diminish and approach zero over the next three years because of the impact of the Act. Overall, mercury in the municipal solid waste stream from batteries will approach background levels by 1997. At that time, mercury from electrical switches and fluorescent light bulbs will become the larger sources of mercury in the municipal solid waste disposal stream.

The Department agrees that programs designed to control specific sources of mercury, such as the Camden county MSW incinerator, should continue to be implemented. N.J.A.C. 7:27-27, as adopted herein, regulates MSW incinerators. Also, sections N.J.A.C. 7:27-27.5 through 27.9 have been reserved for hospital waste incinerators, sewage sludge incinerators, hazardous waste incinerators and coal burning boilers.

73. COMMENT: Because it is not clear that the mercury content of incoming waste will be reduced by 80 percent, operators should be required to monitor the inlet concentration of the waste stream and take additional measures, such as ferrous metal separation, to ensure a reduction of the inlet waste stream prior to incineration. (9)

RESPONSE: Implementation of the Dry Cell Battery Management Act and the Toxic Packaging Reduction Act should reduce the mercury content of the current municipal solid waste stream by at least 80 percent from the 1992 level in the solid waste disposal stream. The Department is expecting to propose a solid waste rule at N.J.A.C. 7:26 to require monitoring of the solid waste residual stream in order to evaluate the effectiveness of source separation/source reduction programs. It is anticipated that the rule will be proposed in the spring of 1995.

In regard to ferrous metal separation to ensure reduction of the inlet waste stream prior to incineration, as discussed in Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) (Chapter 11 of Volume III) the Task Force evaluated the results of the National Recovery Technologies, Inc. study, prepared for the U.S. Department of Energy entitled "Effects of MSW Preprocessing on Thermal Conversion of MSW in Massburn Incineration" (December 31, 1987). The study determined that preprocessing of solid waste to remove metals and batteries prior to incineration can result in a significant reduction in heavy metal air emissions. Although the data indicated that mercury emissions were reduced, the report did not conclusively document that processing of solid waste would result in a reduction of mercury containing discarded products or the mercury content of the processed solid waste prior to incineration. The report attributed the mercury emissions reduction to the removal of batteries from the solid waste stream prior to processing in the MSW incinerator. While some benefits could be attributed to processing of the solid waste prior to incineration, the issue raised in the Task Force's report was the cost of this mercury control option compared to a source separation program for mercury containing discarded products. In order to effectively accomplish ferrous metal recovery from municipal solid waste, the solid waste must first be screened and size reduced. This initial screening and size reduction might shred or break the mercury switches or thermostats, thereby emitting mercury into the atmosphere. The Department's position, as stated in the Task Force's report, is to establish source reduction and source separation programs for these types of special waste. However, the Department would evaluate a preprocessing option if it were submitted to the Department as part of a mercury control system.

The Department is currently working with the counties, product manufacturers and their various trade associations, and electric utility companies and their subsidiary companies to develop cost effective and environmentally efficient programs for the collection and management of mercury containing discarded products. These programs are currently being developed as pilot programs at the county level to be established over in the next three years. The key to their establishment is the enactment, on the Federal level, of the universal waste rule (40 CFR Part 273) and the development of this regulatory program at the State level. The universal waste rule would exempt certain types of waste, including rechargeable batteries, from the hazardous waste regulations provided that they are managed by a solid waste permit system. The Department is already committed to assisting in the establishment of these types of programs in sufficient time to evaluate their effectiveness prior to the year 2000 and the 28 ug/dscm standard.

74. COMMENT: Test data show the 65 ug/dscm standard, based on the average of 12 compliance tests, is achievable through the application of control technology alone. Proprietary tests, which have been withheld from the Department, support this conclusion. (8)

RESPONSE: The Department has not seen data that would demonstrate that all facilities would achieve 65 ug/dscm at seven percent oxygen by installing mercury emission control technology alone, without reducing the mercury content of the waste. However, if such is the case, since all MSW incinerators charging 9.6 tons/day or more MSW are required under these rules to install effective mercury air pollution controls, it can be expected that mercury emissions of less than 65 ug/dscm could be achieved because of the combined impact of mercury source separation, and emissions meeting the 28 ug/dscm standard could be achieved sooner than 2000.

75. COMMENT: The Department has overestimated the effect of source reduction programs, making compliance with the final 28 ug/dscm standard unlikely by 2000. The 28 ug/dscm standard should be deleted until more data on the decrease of mercury content in MSW is collected. (8)

RESPONSE: The source reduction efforts of product manufacturers have reduced and will continue to reduce the mercury content of solid waste. The most notable of these efforts is the reduction of mercury in alkaline batteries. Furthermore, most mercury oxide battery manufacturers—Eveready, Duracell and Panasonic—have decided to discontinue the production of mercury oxide batteries. The remaining mercury oxide battery manufacturers can no longer sell their batteries in New Jersey. Proposed Federal legislation on dry cell batteries, modelled on New

Jersey's program, would discontinue the production of all mercury oxide batteries. The source reduction impacts of the Dry Cell Battery Management Act will decrease the mercury content in the municipal solid waste stream by 80 percent from the 1992 level.

The Department has been working with the National Electrical Manufacturers Association members, specifically Phillips Lighting in New Jersey, to track voluntary efforts to reduce mercury in these products. The Manufacturers Association has stated that the mercury content in fluorescent lights, will, on average, be reduced by approximately 50 percent by 1995, and that level will further be reduced by approximately 50 percent by 2000. (Currently, on average, each four foot fluorescent bulb contains 40 mg mercury. There are approximately 500,000,000 fluorescent bulbs sold annually in New Jersey.) The Department has also been working with Comus International, a switch manufacturer, to track its replacement of some mercury switches with mechanical switches. This represents another voluntary source reduction effort on the part of industry. These combined efforts will significantly reduce the amount of mercury in the products eventually discarded in the municipal solid waste stream.

In addition to these efforts on source reduction, the Department is working to establish source separation programs for discarded products containing mercury. As stated in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the Department is working to develop a fluorescent light bulb source separation program. The Department is assisting Union County and Burlington County to establish their pilot programs for source separation of fluorescent light bulbs. The Union County program should be operational on an interim basis by the end of this summer, with the full program to be developed soon thereafter based on the information obtained from the interim program. The Department will use the information developed in the pilot programs to assist other counties in establishing their own programs.

In states which have already implemented similar source reduction programs, the results indicate a cost efficient and environmentally effective program can be developed to meet the source reduction goals set forth in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). Most notable are the programs operating in Florida and Minnesota. As mentioned in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the mercury content of the solid waste stream and in MSW incinerator emissions is declining and this downward trend will continue. The programs being developed for the source separation of mercury containing discarded products will greatly assist in this downward trend and help facilitate achievement of the required emissions reduction.

76. COMMENT: Several commenters stated economics should not be a reason to prevent promulgation of the rule or to less stringently control mercury emissions. Other commenters stated that the cost effectiveness of each technology should be reviewed. (4, 24, 25, 33)

RESPONSE: As part of the rulemaking process, the Department must address the economic impact of a rule and compare the health and environmental benefits gained to the costs associated with implementation of that rule. N.J.A.C.7:27-27 was based on information contained in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). The Task Force on Mercury Emissions Standard Setting was comprised of representatives from the Department, environmental organizations, the regulated community, county governments and other groups. The Department believes that the costs of implementing these rules, adopted herein, will be minimal in comparison to the health and environmental benefits achieved by these new rules. For further discussion of the economic impact of these rules, see the responses to Comments 77, 78 and 79 below.

77. COMMENT: The economic impact of the regulation, when spread over the residents who ultimately pay the tipping fees, is minimal ($2.00 to $10.00/family/year) when compared to the health benefits. (1)

RESPONSE: The Department agrees. As outlined in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the Department estimates that the cost of complying with these rules is closer to the lower range of $1.00 to $5.00 per ton. The cost increase will ultimately be passed on to residents but the Department feels that the increase is minimal compared to the health and environmental benefits gained.

78. COMMENT: An economic analysis of incinerator contracts was not part of the scope of the Task Force's work, but the Department should recognize the rule's fiscal consequences and take steps to offset any additional financial burden to the taxpayers. The commenter stated that tipping fees already exceed originally proposed figures and a determination of the economic risks borne by the vendor versus the taxpayer must be made. The commenter anticipates petitions for rate increases to cover the costs of retrofits at Resource Recovery Facilities (RRFs) and hopes that additional regulations governing the appropriateness of rewards to vendors are developed. (41)

RESPONSE: The Department agrees that the rule proposal Summary and the recommendations of the Task Force do not provide a complete economic analysis of all of the costs of operating incinerator facilities and of how those costs should be apportioned. These rules address only the installation and operation of mercury control equipment to achieve specific emission levels. Pursuant to N.J.S.A. 48:13A-1 et seq., the Department must approve proposed adjustments to disposal rates. The Department closely scrutinizes rate petitions in order to ensure that rate payers are not saddled with the costs incurred by a disposal utility which result from a failure to comply with regulatory requirements. The Department recognizes certain categories of passthrough costs, including, but not limited to, property taxes, insurance, residue hauling and disposal and host community benefit payments. Administrative and/or criminal fines and penalties are not recognized as allowable passthrough costs and the Department will not approve an adjustment which includes those costs in the rate.

79. COMMENT: The cost to dispose of contaminated carbon reagent must be considered. Would the ash be considered hazardous after the addition of carbon? The commenter questions whether mixing reagent with ash will alter disposal contracts and cost. (12)

RESPONSE: This issue is discussed in Chapter 11 of Volume III of the Task Force's Final Report on Municipal Solid Waste (July 1993). As mercury air pollution control technology increases the efficiency of mercury removal from the flue gas stream, the quantity of mercury contained in the solid waste stream processed by MSW incinerators will be reduced by source reduction/source separation programs by greater than 80 percent. Therefore, the total mercury content in the residual ash will decrease over time, even with the institution of additional mercury air pollution control technology.

Based on the review of MSW incinerator residual ash test data, residual ash does not fail the Toxicity Characteristic Leaching Procedure (TCLP) test and so is not classified as hazardous waste. In regard specifically to mercury, the residual ash significantly passes the TCLP test for the mercury regulatory threshold of 0.02 mg/l. This characteristic and classification of the residual ash will not change with the additional use of mercury air pollution control technology since the total mercury content in the solid waste and in the residual ash after incineration will be decreasing.

In terms of cost, the addition of mercury air pollution control technology and the disposal of the reagent will not be significant. As evaluated in Volume III of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), usage of activated carbon under testing scenarios ranged from three to 12 pounds per hour at the Stanislaus facility. A usage of twelve pounds per hour of activated carbon will generate approximately 288 pounds or 0.14 tons of additional residual ash per day. At the average New Jersey MSW incinerator throughput rate of 1280 tons per day, this would represent an increase of 0.05 percent over the current average quantity of MSW incinerator residual ash. For the average New Jersey sanitary landfill tipping fee of $70.00 per ton, this would represent an additional cost of $9.80 per day.

80. COMMENT: The potential closure of small MSW incinerators could affect the waste flow and capacity at MSW incinerators that would receive those wastes in the future. (5)

RESPONSE: The Department does not believe that these rules have a negative impact on solid waste flow issues. First, the Department expects that apartment incinerators will have to shut down because they will likely be unable to afford to comply with the rules; their waste might then be diverted to various MSW incinerators; however, given the small number of apartment incinerators operating in the State, the Department feels that this additional waste will be minimal. Second, the rules do not affect hospital incinerators. Even if the 30 hospital facilities registered with the Department shut down, the average impact across the State, in terms of a change in solid waste flow, would be relatively small. These 30 small-scale hospital incinerators represent a maximum capacity of 300 tons per day across the state. This quantity would result in an average increase in solid waste flow capacity to a district facility of 14.3 tons per day. Based on the average capacity of New Jersey's district MSW incinerators of 1280 tons per day, this represents about a one percent increase in capacity statewide.

81. COMMENT: The commenter suggested that the Task Force seriously look at the persistence of mercury in the environment. (13)

RESPONSE: Data on some New York State lakes in which fish have been studied over time suggests that mercury levels in fish decrease over the course of decades if mercury inputs to the lakes decline. This is consistent with theoretical predictions that environmental mercury will eventually combine with various compounds and be precluded from entering the food chain or being emitted into the atmosphere. There are however, few data on this important question. The Department plans to continue its study of the fate and transport of mercury in the environment.

82. COMMENT: Even if all mercury emissions were to stop, the problem of mercury in the environment would persist for the next 75 to 100 years. The key to this regulation is to protect future generations. (14)

RESPONSE: The Department agrees that even if all mercury emissions were to cease, elevated mercury levels would persist in fish for some extended period of time. It is not clear however, that 75 to 100 years is the best estimate of that persistence. Since the Department does not have the authority to stop all processes which discharge mercury, and cannot prevent mercury from being transported into the State from areas outside of its jurisdiction, the Department is regulating sources within its authority and mandating as much emissions control as technology allows, so that new sources of mercury emissions and existing sources with add-on mercury emissions controls will release insignificant amounts of mercury into the environment.

83. COMMENT: Bioaccumulation of mercury in the environment, particularly in fish, is complicated and will not be avoided simply by reducing or even eliminating emissions from MSW incinerators. Not only are there other sources of mercury to be addressed, but remediation of current levels of mercury in fish to below levels of concern probably is not achievable. (8)

RESPONSE: The fate of mercury in the environment is a complex issue, particularly its bioaccumulation in fish. These rules may not result in a measurable decrease in mercury levels in fish in New Jersey. However, the rules will prevent any significant increase in mercury levels potentially contributed by uncontrolled municipal solid waste incinerators. New Federal and State programs will impose similarly strict emissions standards on other sources in the future.

84. COMMENT: The commenter quoted an article from Science News (March 9, 1991) that stated that low levels of mercury in rain can cause dramatic surface water contamination. A report by the Electric Power Research Institute (EPRI) indicated that mercury in industrial fallout (as low as a few ppt) could add as much as 0.3 grams of mercury per year to a 25-acre lake, which the article stated could account for the levels of mercury being seen in fish and other biota. (40)

RESPONSE: Some of the most recent information available indicates that a significant portion of the mercury in lakes may come from atmospheric deposition. The degree to which that mercury is methylated and stored in fish, posing a potential risk to humans, seems to be influenced by lake characteristics such as pH and levels of dissolved organic carbon, chlorophyll, sulfate, chloride, calcium, and other nutrients (EPRI Journal, April/May 1994). A substantial portion of the deposited mercury settles and is bound in the sediment, and ultimately is not available to the food chain (Fitzgerald, The World and I, Oct. 1993, pp. 192-199). Because of this settling, it would take more than 0.3g of mercury to contaminate a whole lake.

85. COMMENT: The commenter expressed concern over the levels of mercury in groundwater. The source of mercury has not been found, but the commenter suggests it may be deposition from incinerators and coal-fired plants. (1)

RESPONSE: The groundwater study to which the commenter is referring was conducted by the Department and the Skidaway Institute of Oceanography and is discussed briefly on page 107, Volume II of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). Some of the wells sampled were contaminated with mercury. These wells have been disconnected and the residents' homes hooked up to public water. In other instances, treatment systems were installed in the homes to remove the contamination. A follow-up study has been designed by the U.S. Geological Survey and the Department to examine existing data regarding mercury contamination in southern New Jersey to determine potential sources. This study is discussed in Volume II, page 108, of the Task Force report and is not yet complete. Preliminary results indicate that while atmospheric deposition may contribute to mercury levels in groundwater, such deposition is considered to be a minor source.

86. COMMENT: A report prepared by the Division of Environmental Research of the Academy of Natural Sciences of Philadelphia, titled Preliminary Assessment of Total Mercury Concentrations in Fishes From Rivers, Lakes, and Reservoirs of New Jersey (February 10, 1994), states that fish bioaccumulate mercury mainly in the form of methylmercury. The report further states that the rate of bioaccumulation varies depending on a number of environmental factors, which are not fully understood, and indicates that further study is needed in order to develop fish consumption advisories. The commenter is concerned that the regulation calls for the expenditure of millions of dollars without a predicted benefit and without addressing the entire mercury problem. (38)

RESPONSE: Although the details of mercury accumulation in fish are not well-understood at this time, it is clear that high levels of mercury in fish do exist in this State and now is the time for the Department to begin to take action. The "entire mercury emissions problem" cannot be addressed by the Department alone. It will probably take an international effort involving many years and many dollars worth of study and controls. However, it is prudent to do what is currently feasible to control emissions of mercury into the environment. The rules adopted herein limit emissions to an amount that is predicted to be insignificant based on the current models of mercury fate and transport.

87. COMMENT: The definition of mercury is overly broad and inaccurate, and should be defined as those constituents collected and analyzed by the compliance test method. Since a specific test method is required, the definition of mercury must match the test method. Otherwise, any future problems with the test method would invalidate previous test results. (26)

RESPONSE: As proposed, N.J.A.C. 7:27-27.4(f) requires prior approval by the Department of a test protocol for the compliance testing required pursuant to N.J.A.C. 7:27-27.4. The rules also require, at N.J.A.C. 7:27-27.4(g), that the Department will not approve any proposed test protocol submitted pursuant to N.J.A.C. 7:27-27.4(f) unless the test method proposed was EPA Reference Method 29, or an equivalent method demonstrated, to the satisfaction of the Department, to be as conservative and reliable as EPA Reference Method 29 for measuring mercury.

The Department does not agree that the definition of mercury is overly broad and inaccurate; however, the Department does agree that the definition of mercury must match the test method specified in the rule. Although the definition of mercury is not being revised, clarifying language is being added, on adoption, to the compliance requirements at N.J.A.C. 7:27-27.4(b) and (c) to address the commenter's concerns that only those constituents analyzed, according to the test protocol approved by the Department, are relevant in determining if the standard is achieved. Also, N.J.A.C. 7:27-27.4(f) is being modified on adoption to clearly state that a test protocol must be approved by the Department before the owner or operator can conduct compliance testing. N.J.A.C. 7:27-27.4(g) is also being modified to more completely identify and facilitate access to EPA Reference Method 29.

88. COMMENT: The term "Municipal Solid Waste Incinerator" should also be defined in the rule. (5)

RESPONSE: The term "municipal solid waste" is defined under Division of Solid Waste Management rules at N.J.A.C. 7:26-1.4 and this definition has been used in N.J.A.C. 7:27-27 to maintain uniformity. The term "incinerator" is defined under the Air Pollution Control rules at N.J.A.C. 7:27-8.1 and this definition has been used in N.J.A.C. 7:27-27 to maintain uniformity with existing air pollution control regulations.

The Department agrees with the commenter that, since the term municipal solid waste incinerator is used throughout the rules, it should be defined. Accordingly, the Department is adding on adoption a separate definition of "municipal solid waste incinerator," defined as an incinerator which burns municipal solid waste, at N.J.A.C. 7:27-27.1.

89. COMMENT: Municipal solid waste (MSW) incinerator should be defined as including apartment building incinerators and units at small commercial facilities used to incinerate refuse generated on site. (30)

RESPONSE: As discussed in the response to Comment 88 above, the terms "municipal solid waste," "incinerator" and "municipal solid waste incinerator" are defined at N.J.A.C. 7:27-27.1. The definition of MSW includes residential and commercial solid waste generated within a community. The waste generated in an apartment building is MSW, and an apartment building incinerator is a MSW incinerator. Similarly, waste generated at a commercial facility is also MSW, and any incinerator which burns this waste is also considered a MSW incinerator. N.J.A.C. 7:27-27.2, Applicability, has been revised on adoption to clarify that the subchapter is applicable to MSW incinerators at apartment buildings and commercial facilities.

90. COMMENT: Several commenters suggest adding a definition for "Annual Average," defined as the arithmetic average of the source emission tests (compliance testing) conducted during the calendar year. (2, 3, 29, 35)

RESPONSE: N.J.A.C. 7:27-27.4(b)1 as proposed and adopted herein, specifies that compliance with the numerical emissions standards must be based on an annual average, and N.J.A.C. 7:27-27.9(c), as proposed and adopted herein, requires the annual average mercury emissions to be reported each year in order for the Department to determine compliance. In response to this comment, a definition of "annual average" has therefore been added on adoption at N.J.A.C. 7:27-27.1.

91. COMMENT: The amount of airborne mercury contributed by MSW incinerators is only one percent to 10 percent of the total airborne mercury. The rule will not be effective unless other sources of mercury are also controlled. Other sources of mercury emissions should be studied and/or regulated by the Department, specifically medical and hazardous waste incinerators, sewage sludge incinerators, and coal burning boilers. Coal burning power plants add a significant amount of mercury to the environment, are the largest source of mercury emissions, and should be regulated as soon as possible. The Department should not stop with the proposed regulation, since that would make the MSW industry the scapegoat for the mercury problem, and mislead the public into thinking the mercury problem is solved. (1, 5, 6, 7, 10, 11, 12, 14, 18, 23, 31, 36, 37, 38)

RESPONSE: The Department agrees that other sources of mercury must be addressed. The Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) recommended that the Department evaluate and develop standards for other sources of mercury emissions, including hospital waste, hazardous waste and sewage sludge incinerators and coal-fired boilers. The Department also agreed to perform or evaluate a number of research efforts that will assist in identifying environmental health issues germane to mercury which will enable the Department to take further action to control mercury emissions. The Department has reserved the following sections of Subchapter 27 for future rulemaking: N.J.A.C. 7:27-27.5, Hospital waste incinerators; 7:27-27.6, Sewage sludge incinerators; 7:27-27.7, Hazardous waste incinerators; and 7:27-27.8, Coal burning boilers.

For further discussion of other sources of mercury emission and the Department's plans for future regulation and control of mercury emissions, see the response to Comment 35.

92. COMMENT: Under Minnesota's "Waste Combustor Rule," adopted at MN 7011.1201 through 1285, mercury emissions from MSW incinerators would be reduced by 20 pounds in a State that has identified 11,000 pounds of mercury emission per year. (11)

RESPONSE: Preliminary data from the Minnesota Air Pollution Control Agency indicates that, after installing control technology, mercury emissions from one Minnesota MSW incinerator dropped from approximately 395 pounds per year to less than ten pounds per year. Unlike Minnesota's rule, which would apply to MSW incinerator facilities charging more than 200 tons per day, N.J.A.C. 7:27-27 applies to all sizes of MSW incinerators. A detailed discussion of the difference between Minnesota's rule and New Jersey's rules as adopted herein is set forth in the response to Comment 22 above.

93. COMMENT: The commenter called to the Department's attention a remark attributed to Commissioner Shinn in the March 24, 1994 edition of the Gloucester County Times. A reporter questioned the Commissioner about the issue of protecting the public from mercury. The Commissioner suggested that God was one of the biggest violators because volcanos and ocean gases cause 40 percent to 65 percent of the mercury emissions problem and so the Department would not be able to address those emissions. (7)

RESPONSE: Commissioner Shinn's remark reflected the fact that various scientific studies estimate that 40 to 65 percent of worldwide mercury emissions can be attributed to natural sources such as volcanoes, oceans, vegetation, rocks, soils and wildfires, which obviously cannot be controlled or mitigated through the rulemaking process.

94. COMMENT: The commenter supports the Department's plans to regulate other sources of mercury, including medical and hazardous waste incinerators, sewage sludge incinerators, and coal-burning power plants. The commenter also urges the Department to look at land composted sludge and to research pathways of mercury contamination. (12)

RESPONSE: As stated in the response to Comments 8, 15 and 20 above, the Department plans to expand the scope of the mercury study and will be reviewing information on other sources. During that process the Department will make a determination as to what further actions should be taken to reduce mercury in the environment. The Department has requested the participation of governmental agencies in nearby states.

95. COMMENT: The commenter urges immediate stringent mercury controls for every source of mercury, including crematoriums and industrial sources. (6)

RESPONSE: The Task Force evaluated mercury emissions from crematoriums and industrial sources. However, crematoriums and industrial sources were not identified as major mercury emitting sources. As listed in the Task Force's Final Report on Municipal Solid Waste (July 1993) (Chapter 1, Vol. III, Technical and Regulatory Issues), crematoriums emit approximately 90 pounds per year of mercury and industrial sources emit approximately 200 pounds per year of mercury; together these sources contribute approximately 4 percent of the anthropogenic mercury emissions in New Jersey. These sources were not evaluated in detail by the Task Force. Pollution prevention efforts may result in reduction of mercury use at industrial facilities. After mercury emissions are reduced from larger sources, these smaller source categories can be addressed, unless they have voluntarily reduced mercury emissions in the meantime.

96. COMMENT: Apartment incinerators should be phased out. It is economically feasible to phase out apartment incinerators. The Department should urge the legislature to phase out apartment and small incinerators, since they are usually uncontrolled, poorly designed, operated, and maintained, and emit high concentrations of pollutants in close proximity to people. (1, 9)

RESPONSE: Owners and/or operators of MSW incinerators must meet the standards set forth in these rules or else they can opt to cease operation of the MSW incinerators. There are approximately 100 operating apartment incinerators in New Jersey. The Department expects that the number will decline to fewer than 20 within the next 18 months and eventually decline to zero as the result of enforcement actions and the cost of compliance. All incinerators that are due for a five year renewal of a Certificate to Operate are being required to perform stack tests for mercury emissions as a condition of renewal. Rather then stack test and install air pollution control equipment, most small apartment incinerator owners and operators are electing to cease operation. They then develop recycling programs and contract for waste collection by private haulers.

97. COMMENT: It is not clear whether the rule is applicable to small incinerators, such as apartment incinerators. The rule should be clarified. It is technologically feasible for small incinerators to meet the rule requirements, as well as large incinerators. (5, 9, 12, 16, 17, 37)

RESPONSE: Pursuant to N.J.A.C. 7:27-27.2, all municipal solid waste incinerators are subject to the emission standards and testing requirements, regardless of the size of the incinerator. As per N.J.A.C. 7:27-27.4(a), any MSW incinerator capable of incinerating 9.6 tons per day or more of MSW is specifically required to install and operate mercury emissions control apparatus.

As discussed in the response to Comment 89 above, apartment incinerators are classified as MSW incinerators under these rules, and hence are required to comply with the emission standards adopted herein. However, the Department expects that these incinerators will be shut down because the cost of compliance (including testing, installation and operation of control equipment, reporting and recordkeeping) cannot be spread out over large amounts of MSW as would be the case for large facilities.

N.J.A.C. 7:27-27.2 is being modified to clearly state that the rules apply to all MSW incinerators, including those located at apartment buildings and commercial facilities.

N.J.A.C. 7:27-27.4(b) is being modified by the addition of the phrase "of any size" to similarly clarify that the emissions standards apply generally to all MSW incinerators. Because the phrase "subject to the requirements of this subchapter" at N.J.A.C. 7:27-27.4(a) and (b) is potentially misleading, it is being deleted upon adoption.

98. COMMENT: The commenter questioned whether a large (greater than 9.6 tons per day) incinerator could comply with the rule without installing mercury control apparatus. The commenter is concerned that the standard could be met without additional equipment, and because of the requirement for such potentially unnecessary equipment, the cost of the specified control equipment may result in closing of facilities. (5)

RESPONSE: A MSW incinerator would not be able to comply with the numerical limits of the rules consistently without installing mercury control apparatus. According to the Executive Summary of the Task

Force's Final Report on Municipal Solid Waste Incineration (July 1993), in 1990, 700 ug/dscm was the estimated annual average for uncontrolled mercury emissions. As a result of the implementation of the Dry Cell Battery Management Act and the Toxic Packaging Reduction Act, a reduction in the mercury concentration in emissions of approximately 70 to 85 percent is expected by 1995, bringing the average annual emissions down to about 210 ug/dscm. Assuming an additional 50 percent of mercury could be removed by other air pollution controls, about 105 ug/dscm would be achieved, which is still above the 65 ug/dscm standard. Therefore, the mercury control apparatus is clearly required. Only specialized incinerators which do not combust mercury-containing material would not require controls.

Based on the information submitted by the five existing MSW incinerators in New Jersey, charging greater than 9.6 tons per day of MSW, the cost ($1.00 to $5.50 per ton of MSW processed) of achieving the recommended level of mercury emission reductions is considered reasonable when compared to total per ton tipping fees. This cost is expected to drop as the technology becomes more competitive. The Minnesota Pollution Control Authority in its recent report, entitled "Technical Work Paper on Mercury Emissions from Waste Combustors" (December 1992), estimated the cost of a carbon injection system at approximately $0.63 per ton of MSW processed for an 800 tons per day MSW incinerator.

99. COMMENT: The Department should give design approvals prior to construction, and this approval should be considered compliance with N.J.A.C. 7:27-27.4(a). One commenter questioned the need for a preconstruction permit. (10, 29, 35)

RESPONSE: N.J.A.C. 7:27-27.4(h) requires that a preconstruction permit pursuant to N.J.A.C. 7:27-8.3 be obtained prior to installation of any mercury control apparatus. This will enable the Department to review the design specifications of the proposed mercury control equipment and to determine compliance with N.J.A.C. 7:27-27.4(a). After permit approval, the permittee must purchase and install mercury control equipment designed in accordance with the approved specifications. The final design of the equipment will be compared to the approved specifications to determine compliance with the permit and N.J.A.C. 7:27-27.4(a).

100. COMMENT: Several commenters do not believe there is only one design capable of achieving an 80 percent reduction of mercury from an inlet concentration of 140 ug/dscm. Others stated that the 80 percent control efficiency may not be achieved in the future unless the mercury concentration in the flue gas is reduced through the separation of mercury containing materials from municipal solid waste. Others commented that to determine compliance with N.J.A.C. 7:27-27.4, which requires that mercury control apparatus be capable of reducing the mercury concentration in the flue gas from 140 ug/dscm to 28 ug/dscm corrected to seven percent oxygen, would be difficult because there are few facilities operating with mercury controls, and there are insufficient data to show that at low mercury concentrations an 80 percent control efficiency could be achieved. (2, 3, 5, 10, 11, 26, 29, 35, 36)

RESPONSE: The Department expects applicants to propose designs similar to, or better than, those at facilities with high demonstrated mercury removal rates. The pilot test data from Hennepin Energy Resource Company located in Minneapolis, Minnesota, showed that at inlet mercury concentrations between 112 and 166 ug/dscm, the mercury removal efficiency ranged between 98 and 99 percent at various carbon injection rates. The rules require a minimum of 80 percent removal efficiency from a 140 ug/dscm inlet mercury concentration to achieve the 28 ug/dscm at seven percent oxygen standards by the year 2000. Therefore, the promulgated standards are clearly achievable.

101. COMMENT: Mercury emissions should be eliminated completely. (1, 6, 7, 24)

RESPONSE: The Department agrees that it is preferable to eliminate mercury emissions completely, but this is not possible. Through the implementation of pollution prevention measures, including the Dry Cell Battery Management Act and the Toxic Packaging Reduction Act, the use of mercury in batteries and packaging and, thereby, mercury emissions from MSW incinerators will be significantly reduced. These efforts, along with the mercury emissions control required under these rules, should reduce actual mercury emissions by 96 to 99 percent from 1990 levels, making MSW incineration a minor source of mercury emissions in New Jersey.

102. COMMENT: The numerical standards of 65 ug/dscm by 1996 and 28 ug/dscm by 2000 must be achieved, but the goal is to get as close to zero emissions as possible. (37)

RESPONSE: The Department agrees with the commenter. Hence, all MSW facilities are required to conduct optimization studies to get substantially greater than 80 percent control, if financially reasonable. Also, the Department expects to achieve better than 80 percent reduction of mercury levels in the MSW. Assuming a 90 percent reduction of mercury for both of these components, average annual mercury emissions should actually be less than 10 ug/dscm.

103. COMMENT: Lower emission standards should be established based on test results from the Camden facility that resulted in effluent concentrations between nine and 21 ug/dscm. Emissions would be lowered by injecting more activated carbon. (1, 6, 12)

RESPONSE: The Task Force reviewed the results of pilot tests conducted at MSW incinerators located in Camden, New Jersey and Stanislaus, California. The results of the testing is summarized in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). The Camden tests were designed to evaluate the impact of carbon surface area and consumption. During the Camden carbon injection tests the outlet mercury concentrations varied from 17 to 131 ug/dscm. The Stanislaus, California facility tests evaluated the effect of increased carbon injection rate on the control efficiency. It was determined that up to a certain level, the mercury control efficiency increased as the carbon injection rate was increased, but beyond that level, the mercury control efficiency did not increase when the carbon injection rate was further increased.

Therefore, based on available data, including the Camden facility data, the Department has determined that while lower emissions are possible, a lower emission standard cannot be established with reasonable certainty of continuous compliance. N.J.A.C. 7:27-27.4(i) as amended and adopted herein requires that the owner or operator of a MSW incinerator utilizing a reagent based mercury emission control system must determine the optimum carbon injection rate that minimizes mercury emissions without wasting carbon.

104. COMMENT: A recent permit issued to the Mercer County incinerator includes the 80 percent reduction "up to a maximum of 230 ug/dscm of emissions," which would be in effect even after the year 2000. This limit is beyond what was determined to be protective of human health and allowing the 80 percent reduction to preclude plants from meeting a strict numerical limit is a problem. (14)

RESPONSE: N.J.A.C. 7:27-27 is based on the findings and recommendations of the Mercury Emissions Standard Setting Task Force, and the Department believes that by implementing recommendations of the Task Force, the rule would protect human health and the environment. The Mercer County incinerator permit was issued before adoption of this rule. Like other MSW incinerators operating in New Jersey (all of which were permitted before adoption of this rule), the Mercer County incinerator is subject to the requirements of this rule as adopted. N.J.A.C. 7:27-27 requires all MSW incinerators charging greater than 9.6 ton per day of MSW to install mercury emission control technology. The subchapter also requires all MSW incinerators, of any size, to perform compliance testing in order to meet the emission standards or control efficiency. Mercury emissions are also expected to be reduced through source reduction and source separation programs.

105. COMMENT: The emissions limits are more strict than required based on epidemiological data used to develop the health risk standard and this conservative approach will result in unnecessary costs to citizens. Numerous health risk assessments have shown no significant health risk from mercury emissions from MSW incinerators. The standards should be reconsidered. (36)

RESPONSE: The Department believes that epidemiologic studies which have examined the health risk of emissions from MSW incinerators are useful in providing information on the potential health effects of methylmercury, as discussed in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). This position is supported by methylmercury advisories issued by the U.S. EPA's Office of Water as well as by other states. The Department believes that the toxicologic and fate and transport analysis presented in the Task Force report provide adequate rationale for the reductions in mercury emissions in the proposed rules.

106. COMMENT: Several commenters requested that the numerical limits and the control efficiency requirements be based on annual averaging because quarterly averaging is inconsistent with the recommendations of the Task Force and the determination of compliance would be confusing. (2, 3, 5, 11, 26, 29, 35)

RESPONSE: The Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) recommended that the Department adopt regulations which would require owners and/or operators of MSW incinerator facilities to install additional air pollution control apparatus in order to significantly reduce mercury emissions, and also stated that the

control apparatus be operated under optimal conditions in order to achieve a standard of 65 ug/dscm by 1995 and 28 ug/dscm by the year 2000, or a control efficiency of at least 80 percent. In keeping with the Task Force's recommendation, N.J.A.C. 7:27-27.4(i) as amended and adopted herein requires the owner or operator of any MSW incinerator equipped with a reagent based mercury emissions control system to perform optimization testing in order to minimize the emission of mercury below the specified emissions standard. Based on data presented in Vol. III, Technical and Regulatory Issues, of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), and preliminary control efficiency data from MSW incinerator facilities operating in New Jersey and other states, the Department feels that the 80 percent control efficiency standard can be achieved and that compliance with this standard should be determined quarterly.

N.J.A.C. 7:27-27.4(c) as adopted herein requires the owner or operator of any MSW incinerator to perform quarterly compliance testing. N.J.A.C. 7:27-27.9(a) as adopted herein requires that the results of quarterly compliance testing be reported to the Department's Bureau of Technical Services, for verification of the data, within 60 calendar days after completion of compliance testing required for that quarter. Under N.J.A.C. 7:27-27.4(d), the owner or operator must comply with either the numerical standards of N.J.A.C. 7:27-27.4(b)1 or the 80 percent control efficiency standard of N.J.A.C. 7:27-27.4(b)2. Under N.J.A.C. 7:27-27.9(c), if an owner or operator anticipates the incinerator will meet the numerical standard of N.J.A.C. 7:27-27.4(b)1, the owner or operator must report to the Department's Assistant Director of Air and Environmental Quality Enforcement at the end of the calendar year the annual average mercury emissions for that incinerator. If an owner or operator anticipates the incinerator will meet the control efficiency standard of N.J.A.C. 7:27-27.4(b)2, the owner or operator must report to the Department's Assistant Director of Air and Environmental Quality Enforcement the quarterly average control efficiency within 60 calendar days after that quarter. The owner or operator may submit both quarterly and annual compliance reports under N.J.A.C. 7:27-27.9(c).

107. COMMENT: Several commenters questioned whether the 80 percent control efficiency requirement would vary from year to year. One questioned whether the incinerator owners and operators could choose the test results that they would submit to the Department. (8, 12)

RESPONSE: The rules require that all MSW incinerators capable of incinerating 9.6 tons per day or more of MSW instal mercury air pollution control equipment designed to reduce mercury emissions by at least 80 percent (N.J.A.C. 7:27-27.4(a)), achieve a mercury emissions concentration no higher than 65 ug/dscm by 1996 and 28 ug/dscm by 2000 or reduce the emissions of mercury by at least 80 percent (N.J.A.C. 7:27-27.4(b)). Any MSW incinerator capable of incinerating 9.6 tons per day or more of MSW equipped with a reagent based mercury emission control system shall optimize the mercury control equipment to maximize the actual operating control efficiency to higher than 80 percent (N.J.A.C. 7:27-27.4(i)-(k)). These requirements, including the 80 percent control efficiency requirement, will not vary from year to year.

When the optimization tests are conducted, a minimum reagent injection rate must be determined for each incinerator. The minimum reagent injection rate is the rate at which the mercury reduction efficiency would be maximized, such that reagent injection rates higher than this rate would not appreciably improve the mercury reduction efficiency.

The minimum reagent injection rate would thereafter be an operating requirement for the MSW incinerator. However, the control efficiency achieved at this minimum injection rate does not displace the 80 percent control efficiency requirement promulgated in these rules. Optimization will ensure low emissions, and should provide for a significant margin below the allowable emissions level for operation of the incinerator in compliance with the rules.

The MSW incinerator owners and/or operators are required to conduct compliance testing consisting of no less than three test runs quarterly on each incinerator. The results of all quarterly source emission tests (compliance testing) must be reported to the Department within 60 days of completion of the source emission tests (compliance testing). No test results may be excluded from the report.

108. COMMENT: Several commenters stated the language in N.J.A.C. 7:27-27.4 is subject to misinterpretation. It was suggested that N.J.A.C. 7:27-27.4(b)2 should be reworded as follows: "On or after January 1, 1996, the emissions limitations in 7:27-27.4(b)1.i and 1.ii. shall not apply to any MSW incinerator if the emissions of mercury in the flue gas for that MSW incinerator is less than 20 percent of the concentration at the inlet to the air pollution control apparatus, on an annual average basis." At N.J.A.C. 7:27-27.4(b)1ii, the "or" should be deleted. At N.J.A.C. 7:27-27.4(d), the word "or" should be deleted since it is redundant when used in conjunction with the "or" in N.J.A.C. 7:27-27.4(b)1ii. (2, 3, 11, 29, 35)

RESPONSE: N.J.A.C. 7:27-27.4(b), as proposed and adopted herein, allows the operator of an MSW incinerator to comply with either the numerical standard specified in N.J.A.C. 7:27-27(b)1 or the 80 percent control efficiency standard specified in N.J.A.C. 7:27-27.4(b)2. If an incinerator operator were in compliance with one standard, enforcement action would not be taken on the other standard since N.J.A.C. 7:27-27.4(b) and (d) require that either one or the other must be met. The suggested language for N.J.A.C. 7:27-27.4(b)2 is equivalent to the language proposed except that N.J.A.C. 7:27-27.4(b)2 requires that the 80 percent control efficiency standard be based on a quarterly average. For further discussion on quarterly and annual averaging, see the response to Comment 106.

109. COMMENT: If the Department recommends that a Department-supervised evaluation of carbon feed rate determination is required, then facilities should be allowed the first six months of 1996 to shakedown the system without being subject to enforcement actions. In this case, systems would be operational by January 1, 1996 and subject to enforcement for the annual period between July 1, 1996 and June 30, 1997. The Department should clarify how compliance will be determined during the first quarter of 1996 during optimization testing, and explain the Department's approval process, including the 60 day interval prior to submittal for the optimal feed rate. (3, 5, 8, 10)

RESPONSE: Pursuant to N.J.A.C. 7:27-27.4(a), MSW incinerators are required to install and operate mercury control equipment by December 31, 1995. The first quarterly compliance testing must be conducted no later than March 31, 1996. The data collected during these quarterly tests will then be used to determine if either the emission standard or the control efficiency standard has been met.

Pursuant to N.J.A.C. 7:27-27.4(i), optimization tests must be performed to maximize the control efficiency of mercury air pollution control equipment and to establish the operating parameters (such as carbon injection rate if carbon injection is used) which will achieve that efficiency. Until optimization tests are concluded and the operating parameters are established, enforcement efforts will be limited to emission limits and control efficiency.

110. COMMENT: Proposing a concentration-based rule rather than a mass-based rule is a major flaw. The rule should be rewritten to regulate mass, as well as concentration. (6)

RESPONSE: A mass based emission limit is inappropriate because different MSW incinerators have different waste feed rates. For example, two incinerators having identical levels of emissions control and the same concentration of mercury emissions might have different mass based emission rates depending on the total waste feed rates. Hence, limiting two differently sized facilities at the same mass emission rate would be inequitable.

111. COMMENT: The numerical standards should become effective more quickly. One commenter suggests the 65 ug/dscm standard become effective in 18 months, while the 28 ug/dscm become effective by 1998. Other commenters recommended that the Department should wait before setting a standard for the year 2000 until 1998, when more data will be available from a variety of operating full-scale facilities. The reduction in the mercury content of the waste stream will be documented by then, as well as the reduction capabilities of the control devices to reduce concentrations in the flue gas. At that time, if the standard is deemed infeasible for technical or health reasons, it can be adjusted prior to promulgation. (5, 6, 15, 26)

RESPONSE: Compliance dates in the rules are based on the time required to propose and adopt the rules; the time needed to review and grant a permit for a MSW incinerator to install mercury control technology; the time needed to design, purchase, and install mercury control technology; and the time needed to implement source reduction and separation programs for mercury-containing waste products.

While the Department expects that the 28 ug/dscm (at seven percent oxygen) standard will be achieved before the year 2000, the compliance date is not set sooner because of the uncertainty in the timing of further mercury-in-waste reduction measures. Conversely, a compliance date set further off is also not reasonable because the Department believes the rules provide sufficient time for an 80 percent reduction of mercury in the waste stream to be achieved, based on the recommendations on pages 17 and 19, Vol. I, of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). The Task Force process and recommendations reflect the cooperative effort between the Department, environmentalists and industry. If changes in technology or source reduc-

tion measures occur in the future, the Department can amend the rules accordingly.

112. COMMENT: The commenter noted that the rule proposal states that the risk assessment was not sufficiently accurate to determine the exact amount of emission reduction that should be required. The commenter cited an incinerator evaluation conducted by the U.S. Fish and Wildlife Service in Florida that stated an incinerator actually reduced emission levels of mercury when compared to direct disposal in a landfill. (26)

RESPONSE: The Department agrees that additional information is needed on risk assessment. However, based on available technology, the ability for controlling and reducing mercury emissions from a relatively new source in New Jersey, and the minimal cost for those controls, the Department believes that the rule is a reasonable step toward reducing overall mercury emissions. The Department based the rule on recommendations contained in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). The Task Force Recommended that the Department adopt rules to reduce mercury emissions from MSW incinerators. The Task Force also recommended that the Department continue to identify, evaluate and develop standards for other sources of mercury emissions. The Department plans to continue evaluating other sources of mercury emissions and develop regulations, where applicable, to control mercury emission to further protect human health and the environment.

113. COMMENT: Members of the Task Force concerned with environmental and health topics were never in agreement with the 80 percent reduction option because it was unclear how much mercury is going into the incinerators. (13)

RESPONSE: Chapter 2, Vol. III of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) documents in detail the quantity of mercury in the solid waste stream. These figures were calculated based on the U.S. EPA report entitled "Characterization of Products Containing Mercury in Municipal Solid Waste in the United States 1970 to 2000" (April 1992), data published by the U.S. Bureau of Mines in the Mineral Yearbook "Metals and Minerals", and weighing/composition studies and data on mercury content in MSW incinerator residual ash from New Jersey's solid waste management districts. Based on this data, a very good approximation of the quantity of mercury in solid waste can and was calculated and evaluated in the Task Force Report.

There was much discussion by the Task Force over the issue of setting a stringent standard versus requiring a percent reduction. The Task Force members agreed that a reduction of emissions from municipal solid waste incinerators will occur through a public/private cooperative effort. Technology and pollution control equipment must be coupled with source separation and source reduction programs for mercury containing waste materials to achieve, in particular, the standard of 28 ug/dscm. This rule holds the incinerator owners and/or operators responsible for installing controls at their facilities. The 80 percent reduction requirement is linked to an analysis in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) (pp. 16 and 17 of Volume I) which states that an 80 percent mercury emissions reduction at the incinerator facility coupled with an 80 percent source reduction or separation program for mercury containing waste materials will achieve an emissions standard of 28 ug/dscm.

114. COMMENT: The 80 percent reduction expected in the mercury content of municipal solid waste was based on 1992 levels. Substantial reduction in the mercury content of batteries has already occurred; hence, the expectation for a further 80 percent reduction is double counting. (26)

RESPONSE: Implementation of the Dry Cell Battery Management Act should result in a 70 percent to 80 percent reduction of mercury in the MSW burned at incinerators by 1995. Overall reduction in the mercury content of MSW could be as much as 95 percent of the 1992 levels with implementation of additional mercury waste separation programs. Management of discarded mercury containing products will be addressed by the Department in a future rule proposal, and a baseline year will be established in order to measure, monitor and evaluate the effects and impact of source reduction and source separation programs. The Mercury Emissions Standard Setting Task Force, while identifying the potential ability to reduce mercury levels in solid waste by 95 percent, recognized that this might not be achieved in practice unless there is a concerted public and private effort to achieve this goal. Consequently, the Department based the mercury emissions standard on 80 percent source reduction and separation programs, in combination with an 80 percent emissions control program. It is correct that mercury levels in certain batteries have already been reduced since 1992. However, the 80 percent emissions reduction is not based on the concentration of mercury in today's batteries, but on 1992 levels. Therefore, there has been no double counting.

115. COMMENT: Three stack tests quarterly for mercury represents an economic hardship on smaller jurisdictions, such as Warren County. (8)

RESPONSE: Prior to proposing the rules, the Department considered the economic impact of the rules on each facility, including the cost of quarterly compliance testing. As concluded in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993)(Vol. I., Executive Summary), and as outlined in the Economic Impact section of the proposal, the cost of achieving the recommended levels of mercury emissions reduction is reasonable when compared to the total per ton tipping fees received by incinerators in the size range of the Warren County facility. Also, N.J.A.C. 7:27-27.4(e) does provide for a reduced testing frequency after two years of compliance with the specified emissions standards.

116. COMMENT: Facilities should submit information on inlet and outlet temperatures and combustion conditions during test periods and during times outside the test periods to determine the quality of operation during tests and other times. Facilities should be required to submit information on reagent feed rates during all test periods (not just the initial tests) and during the time outside the test period. (9)

RESPONSE: Compliance testing protocols approved pursuant to N.J.A.C. 7:27-27.4(f) will require facilities to submit information on reagent feed rates, inlet and outlet temperatures and combustion conditions during all test periods. The compliance testing report submitted pursuant to N.J.A.C. 7:27-27.9 must contain necessary information on operating parameters. In review of the compliance testing reports, the Department will ensure that all necessary parameters, including reagent feed rate, injection temperature, and so on are provided. For non-test periods, monitoring, recording, and reporting of the relevant operating parameters, such as temperatures and reagent feed rates, are required as conditions of the incinerator's operating permit.

117. COMMENT: The commenter expressed support for the use of continuous emission monitoring system (CEMS) equipment. One commenter requested the addition of a new rule section to require measurement of mercury at the inlet and outlet using CEMS when such a system will be developed, as follows: **New Section 7:27-27.4(new h)**—When a CEMS for mercury is developed anywhere in the world, the Department shall test same to determine if it is accurate. If found to be viable, the Department shall certify the CEMS and shall require it to be used to monitor mercury at the inlet and outlet at all times.

The commenter stated that CEMS will better measure compliance with numerical standards and can serve as an indicator of the mercury content of the incoming waste stream. (9, 15)

RESPONSE: The Department agrees that the use of a CEMS is preferable for determining continuous compliance. Also, a CEMS might be used as an accurate indicator of the mercury content of the incoming waste stream. However, the Department did not include a requirement in the rules to install CEMS equipment to continuously monitor mercury emissions because certifiable mercury CEMS are not yet available at this time. If acceptable mercury CEMS equipment become available in the future, the Department will consider requiring their installation.

118. COMMENT: Facilities should be allowed to demonstrate compliance by testing only one unit during each test. If other units operate at the same reagent conditions, they should be deemed in compliance as well. The testing requirement is inconsistent with certain facilities' permit conditions and reducing the testing requirement to one unit will reduce testing costs by $32,000 after the first year. Quarterly testing the first year, semi-annual testing the second year, and annual testing thereafter, should compliance be maintained, is adequate to demonstrate compliance. This method would save $48,000 during the second year for each incinerator. Several commenters support the provision that allows facilities to reduce compliance testing to once per year after two years of demonstrated compliance with the emissions standards. (2, 3, 5, 11, 26)

RESPONSE: The Department reviewed mercury emission test results from the Essex, Gloucester, and Warren County Resource Recovery Facilities. These facilities all have multiple incinerators that are identical in design and size. The stack emission test data indicate that the mercury emissions may vary between identical units. However, once separation of mercury from waste and mercury emission controls are implemented,

emissions variances between identical incinerators may even out. The Department will review the first two years of mercury emissions compliance testing results from all identical units. If the results show consistency between the identical MSW incinerators during the first two years, the Department may consider amending the rules to allow for the testing of only one of the identical units at a MSW incinerator facility.

119. COMMENT: Several commenters suggested changing the reference in N.J.A.C. 7:27-27.4(c) to "three source emissions tests" to "a compliance test" (where compliance test would be defined as a minimum of three test runs) or to "a minimum of three source emission test runs." The clarification should also be made in N.J.A.C. 7:27-27.4(e) by changing the references to "emission" testing to "compliance" testing. (2, 3, 29)

RESPONSE: The rules as proposed required owners and operators to conduct "three source emissions tests" in order to measure mercury in the gas stream. EPA method 101A and EPA Reference Method 29 define a test as consisting of three test runs. The question arose as to whether the Department was intending to required three "test runs" or "three tests" which would then constitute nine test runs. The proposed definition of "source emission testing" did not indicate the number of tests runs that would constitute a valid source emission test.

The Department is modifying the rules on adoption to reflect its intent that an emission test consists of a minimum of three test runs. In N.J.A.C. 7:27-27.4, the phrase "three source emission tests" is being replaced with "compliance testing" and a definition of "compliance testing" and "test run" are being added at N.J.A.C. 7:27-27.1. Compliance testing consists of a minimum of three test runs. The use of the term "test run" is consistent with existing air pollution regulations at N.J.A.C. 7:27B-3.1. As a result of the change in terminology, the words "source emission" is being deleted, on adoption, from N.J.A.C. 7:27-27.4(f) and wording rephrased in order to correct grammar and promote readability. Also as a result of this change, the words "source emission" is being deleted from N.J.A.C. 7:27-27.4(g) in order to clearly state that a test protocol for compliance testing is to be submitted to the Department for review and approval. Similar modifications are being made to the reporting and recordkeeping requirements of this subchapter to clearly indicate that the results of all compliance testing, including the results of all test runs which, by definition, are a component of compliance testing, shall be reviewed, certified, maintained, and submitted in accordance with the provisions of N.J.A.C. 7:27-27.9. The penalty provision at N.J.A.C. 7:27A-3.10(l)27 is also being modified on adoption to reflect this change in terminology. The language adopted herein will prevent confusion and allow for clear and concise reference to either a test run or compliance testing.

120. COMMENT: The two compliance options give the Department and the incinerator owner or operator too much uncertainty as to when to exert a compliance action, which places the public at risk. A whole year of noncompliance could occur before action would be taken by the Department. The commenter suggests that the enforcement method include in the standard a requirement for monthly compliance monitoring, monthly tests to determine the amount of mercury in the ash when generated and, subsequently, a quarterly waste stream composition analysis to determine the amount of mercury in the waste stream prior to incineration. Enforcement action would occur whenever a monthly test shows an exceedance of the 65 ug limit.

Another commenter supported averaging 12 compliance tests per year to reduce the effects of the truly occasional spike to a negligible level. Several commenters object to the provision that allows facilities to reduce compliance testing to once per year after two years of demonstrated compliance with the standards. One stated that testing should reflect changes in climate and waste flow, while another stated that testing signifies compliance and also that control equipment is functioning. (1, 9, 12, 41)

RESPONSE: The Mercury Emissions Standard Setting Task Force indicated that, given the current technology, at the present time it would not be possible for MSW incinerator facilities to achieve the mercury emissions standard. The Task Force indicated that source reduction and source separation programs would have to be implemented in order to achieve the numerical standards. The Task Force recommended that MSW incinerator facilities be allowed to meet an 80 percent control efficiency standard until source reduction and source separation programs reduced the amount of mercury in the waste stream. The rules also require the owner and or operator of an MSW incinerator to conduct optimization testing on reagent based mercury emissions control apparatus and to operate the facility under optimum conditions to ensure greater than 80 percent control efficiency. The Department believes that by the year 2000, MSW incinerator facilities will be in compliance with the 28 ug/dscm standard and the control efficiency issue will become a moot point. However, the Department believes that in the meantime, it is prudent to allow MSW incinerator facilities the option of complying with either the numerical standard or the control efficiency standard in order to begin limiting the amount of mercury emitted into the environment. In any case, if an MSW incinerator facility fails to comply with either the numerical standard or the control efficiency standard, the Department will take the necessary action to ensure compliance.

Once a facility successfully demonstrates compliance for two successive years, it is fair and a prudent use of public resources (required to review testing reports) to reduce the testing frequency from once each quarter to once in the first quarter of each year. It should be noted that, pursuant to N.J.A.C. 7:27-27.4(e), if a facility is on the once-per-year testing schedule and cannot demonstrate compliance during the first quarter of the calendar year, the facility must revert to a minimum of three source emission tests (compliance testing) every quarter for at least two more years. Also, after the optimization tests required pursuant to N.J.A.C. 7:27-27.4(i), the facility will be required to operate within certain specified parameters such as a minimum reagent feed rate, which will be continuously monitored and recorded to ensure the control equipment operates at its maximum efficiency. Accordingly, the Department feels that reducing the frequency of testing from a minimum of three source emission tests (compliance testing) quarterly to three source emission tests (compliance testing) performed in the first quarter of each year is appropriate.

121. COMMENT: A risk results when an exceedance in the first quarter cannot be addressed by the Department until testing is complete for the year. (5)

RESPONSE: The Department based the rule on recommendations of the Mercury Emission Standard Setting Task Force, which was comprised of representatives from the Department, environmental groups, the regulated community, county governments, and other groups. As discussed in the response to Comment 120 above, the Department and the Task Force believe that at the present time, it would not be possible for MSW incinerators to meet the 28 ug/dscm standard. Because the content of mercury in solid waste can vary so greatly, the Department feels that quarterly compliance testing will provide the MSW incinerator owner or operator and the Department with information on the performance of the facility's air pollution control apparatus and compliance with the standards, and enable the facility to take the necessary steps in order to come into compliance.

The rules also require the owner or operator of an MSW incinerator equipped with a reagent based mercury emissions system to perform optimization testing and to operate the equipment at a Department-approved optimized reagent feed rate. This will ensure maximum control efficiency and reduce emissions to a minimum, thereby reducing the risk to public health and the environment.

Achieving the numerical standards of the rule requires not only that MSW incinerators install control equipment, but also requires strict enforcement of the Dry Cell Battery Management Act (N.J.S.A. 13:1E-99.59 et seq.) and the Toxic Packaging Reduction Act (N.J.S.A. 13:1E-99.44 et seq.), as well as implementation of additional source reduction and separation programs for a variety of other products which contain mercury and which have the potential to become part of the municipal solid waste stream.

122. COMMENT: The testing, reporting, and penalty provisions should allow for immediate retesting without penalty in the event of a quarterly test failure, until a statistically defensible test is developed. (36)

RESPONSE: The results of a test run can only be excluded from the average if the test run is confirmed by the Department to be invalid for a specific reason. In such a case, the test run or test series would be repeated. Pursuant to N.J.A.C. 7:27-27.4(c), a MSW incinerator operator must conduct source emission (compliance) testing each quarter and report the results to the Department's Bureau of Technical Services pursuant to N.J.A.C. 7:27-27.9(a). N.J.A.C. 7:27-27.4(d) provides that compliance with the mercury emission standard will be determined annually based on the arithmetic average of all source emission (compliance) testing performed in a year and compliance with the control efficiency standard will be determined quarterly based on the arithmetic average of source emission (compliance) testing performed in that quarter. The Department maintains that this testing and reporting scheme is necessary to ascertain compliance and that the penalties of N.J.A.C. 7:27A-3.10(l)27 are appropriate for violations.

123. COMMENT: The commenter asks how often inspections will occur and how violators will be punished if fines are passed on to taxpayers. (33)

RESPONSE: In addition to scheduled inspections for emissions testing, on a quarterly and yearly basis, the Department may enter and inspect a facility at any time to ascertain compliance with air pollution control rules and regulations (N.J.A.C. 7:27-8.25). The Department feels that the penalties adopted for violations of N.J.A.C. 7:27-27 provide a significant deterrent to potential violators.

Under N.J.S.A. 48:13A-1 et seq., in accordance with its solid waste management oversight responsibilities, the Department must approve, by administrative order, every proposed adjustment to disposal rates. The Department closely scrutinizes each rate petition in order to ensure that the rate payer is not saddled with the costs incurred by a disposal utility which result from a failure to comply with regulatory requirements. While the Department does recognize certain categories of passthrough costs, including, but not limited to, property taxes, insurance, residue hauling and disposal and host community benefit payments, administrative and/or criminal fines and penalties are not recognized as allowable passthrough costs and the Department will not approve an adjustment which includes those costs in the rate.

124. COMMENT: Spot checks should be performed in addition to scheduled tests for compliance. (12, 20, 25)

RESPONSE: As explained in the response to Comment 123 above, the Department is not limited to scheduled tests in order to conduct inspections of a facility to ascertain compliance with air pollution control rules and regulations. In addition to conducting quarterly and yearly inspections, the Department may enter and inspect a facility at any time.

125. COMMENT: The Essex County incinerator, operated by American Ref-Fuel, violated its permit 10 times between July, 1991 and March, 1993 and was fined only $10,000. The commenter questions whether such penalties are an economic disincentive. The incinerator has the second highest mercury readings, but has not had a test in six months and the commenter questions why this is so. The commenter also questions whether the facility is committed to installing mercury controls. (37)

RESPONSE: American Ref-Fuel Company has entered into an Administrative Consent Order (ACO) with the Department which contains penalties for past mercury emission violations as well as stipulated penalties for further excess mercury emissions and contains a commitment by American Ref-Fuel Company to install mercury controls. Additional emissions testing for mercury is also required under this ACO.

On January 14, 1994, American Ref-Fuel submitted an air pollution control permit application to construct, install, and operate carbon injection technology to control emissions of mercury. This application is currently under review by the Department. The permits for the installation of mercury control equipment are expected to be issued by September 1995.

126. COMMENT: The numerical limit is most easily enforced and should be tested on a monthly, not quarterly basis. (1)

RESPONSE: The Department estimates that the cost of compliance testing is approximately $2,000 per test run. Owners/operators of MSW incinerators served by mercury emissions control apparatus are required to conduct source emission (compliance) testing quarterly, with a minimum of three inlet and three outlet test runs performed each quarter for each incinerator. Testing on a monthly basis could become quite costly. The Department maintains that the testing frequency set forth in N.J.A.C. 7:27-27.4(c) is sufficient to ensure that MSW incinerators comply with the mercury emission standards.

127. COMMENT: Compliance with the percent removals should be by mass average and not the average of individual removal rates. (8)

RESPONSE: The percent removal calculated by mass average of all test runs is mathematically the same as the average of all individual removal rates. The owner or operator of a MSW incinerator may choose to either calculate percent removal efficiency for each emission test run and then calculate the average control efficiency of all test runs in each quarter or calculate first the average of inlet and outlet mass emission rates in each quarter and then calculate mercury control efficiency.

128. COMMENT: The 80 percent removal requirement should be based on an annual average, comparable with the numerical limits, not a quarterly basis. The mercury problem is a long term bioaccumulation contaminant and environmental burden issue. The health basis of the regulations, including the acceptable daily intake (ADI), was based on an accumulation time of 25 years in sediment. Enforcing two emission limits at different averaging periods, one short term and one long term, does not reflect the Task Force recommendations for this long term contaminant. The different compliance methodologies constitute a "double jeopardy" situation since both are based on the same base emissions. (10)

RESPONSE: The Department disagrees that the acceptable daily intake (ADI) was in any way based on a mercury accumulation time of 25 years. While in the generic fate and transport model presented in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the Department did assume a most likely accumulation time in sediment of 25 years for calculating mercury accumulation in fish, the accumulation time in sediment does not correspond to the ADI. The frequency of compliance testing is not intended to be linked directly to chemical and biological changes in the environment but is intended to identify and address compliance problems before they can have an environmental effect. For additional discussion on quarterly versus annual compliance determination, see the response to Comment 106.

129. COMMENT: The commenter requested the following change to N.J.A.C. 7:27-27.4(e): In the first sentence, delete the word "all" and replace with the words "any one" and delete the "s" from the word "incinerators." (11)

RESPONSE: The intent of the rule is to reduce the frequency of source emission (compliance) testing from a minimum of three tests every quarter to a minimum of three tests per year in the first quarter of each year, if all MSW incinerators located at a facility show compliance for two successive years of quarterly testing. The wording in N.J.A.C. 7:27-27.4(e) reflects that intent.

130. COMMENT: Several commenters proposed adding the following to N.J.A.C. 7:27-27.4(e): "However, if the results of this source emission test fail to meet the provisions of N.J.A.C. 7:27-27.4(b), then the frequency of the source emission testing shall revert to that indicated in N.J.A.C. 7:27-27.4(c) above." The wording would clarify that a facility is not out of compliance by failing to meet the limitation of subsection (b) for the first test, but has the opportunity to demonstrate compliance with the limitation through all four quarters of testing. Another commenter indicated that the facility should be allowed to test in any quarter of each calendar year, not necessarily the first, to allow mercury testing to become part of the overall annual compliance testing. (10, 29, 35)

RESPONSE: N.J.A.C. 7:27-27.4(e) provides that a MSW facility owner or operator may reduce the frequency of testing from a minimum of three source emission tests (compliance testing) conducted quarterly to a minimum of three source emission tests (compliance testing) performed in the first quarter of each year if two consecutive years of compliance with the numerical emissions standard or control efficiency standard has been demonstrated. If the facility fails to show compliance with either standard during the first quarter, then the facility must continue compliance testing during the remaining three quarters of that year to show compliance based on the annual average mercury emissions of all four quarterly tests. Therefore, compliance testing must be done during the first quarter of the year. N.J.A.C. 7:27-27.4(c) and (e) are being reworded on adoption to clarify this point.

131. COMMENT: A test protocol should be accepted on an annual basis, rather than every quarter. Another commenter suggested the following addition to N.J.A.C. 7:27-27.4(f): "Once a protocol has been approved, the protocol will remain on file at the Department and will be used for all future testing until such time that either the Department or the operator request revision of the protocol. If revision is requested, a revised protocol will be submitted for approval pursuant to this paragraph." The commenter believes this change will preclude the need to submit and approve redundant paperwork every 90 days. (2, 3, 11)

RESPONSE: It is the Department's intent to require owners or operators to obtain prior approval, from the Department, of a test protocol before conducting compliance testing. Referencing a protocol previously approved by the Department would be less burdensome on the owner and/or operator and reduce, on the part of the Department, the time and associated expense of reviewing the protocol each quarter. The Department agrees that annual submission of the protocol is sufficient, unless the Department or the owner or operator requests revisions prior to that time. The owner or operator may reference the previously approved protocol for the annual submission rather than resubmit and the Department will approve the protocol if warranted.

To clarify the intent of the rule, the Department has revised the last sentence of N.J.A.C. 7:27-27.4(f) on adoption to provide that an owner or operator must submit for review and approval a proposed test protocol each year no less than 90 calendar days prior to conducting first quarter compliance testing.

132. COMMENT: The commenter requested that the numerical standards be reconsidered, claiming they are below the limits of reliable

measurement using the testing method (EPA Reference Method 29). The commenter submitted a paper ("How Good Are Today's Mercury Test Methods and Controls?" by Dr. H. Gregor Rigo) which suggests Method 29 may not reliably measure concentrations below 160 ug/dscm, and stated that all facilities will at some point fail to meet the limits as a result of testing variability. Another commenter stated that the efficiency of mercury removal depends on the test method (for example, European methods versus EPA Method 29) because of the speciation of mercury and the possible effects of the method that could cause skewing of the efficiency. Several commenters suggested that references to EPA Method 29 should be removed or changed since the method has not been finalized and could change significantly. The commenter suggested deleting the reference to "Method 29" and replacing it with "Method 101a. (a method already promulgated by EPA)"; possibly adding an additional sentence stating that the Department will retain the right to revise the required test method should a suitable replacement of Method 101A be issued by the U.S. EPA; replacing Method 29 with "USEPA test method applicable to MSW incinerators" (because by not specifying the method, the Department retains flexibility to change it if necessary); inserting "EPA Reference Method 101A or draft" before "Reference Method 29" or inserting "version dated June 30, 1992, or as finally promulgated in the Code of Federal Regulations" after "draft Method 29"; revising the section to include "or other method approved by the Department."

One commenter is concerned that the emissions standards may not be achievable since Method 29 was not used to develop the background data. Before promulgating both standards and method, the Department must ensure they are consistent with one another. Another commenter stated that the Department should not promote "conservative" test methods if they overstate emissions. This is just as wrong as understating emissions. (2, 3, 5, 10, 11, 29, 36)

RESPONSE: EPA Reference Method 29, as published in 40 CFR 266, Appendix IX, Section 3.1, has an in-stack detection limit (DL) of 5.6 ug/dscm. The actual DL will be determined based on actual source sampling parameters and analytical results. The DL can be made even more sensitive for a particular test protocol if necessary (see Sections 2.3.3 through 2.3.6 of the method).

Method 29 is currently used by the MSW incinerator operators in New Jersey. It has been shown to have a greater precision than Method 101A (though not statistically significant at the 90 percent confidence level) in an EPA study, "Evaluation of Two Methods for the Measurement of Mercury Emissions in Exhaust Gases from a Municipal Waste Combustor" (March 1992). Speciation of mercury is not an issue, since Method 29 measures all mercury. Speciation also does not affect efficiency, since the same method will be used on the inlet and the outlet. Regarding method flexibility, N.J.A.C. 7:27-27.4(g)2 already gives the Department flexibility by allowing the consideration of an equivalent alternative.

On adoption, the Department is adding language to N.J.A.C. 7:27-27.4(g)1 to more precisely identify the method and how it is referenced by U.S. EPA.

133. COMMENT: Several commenters were concerned over the short time frame (30 days) given under N.J.A.C. 7:27-27.4(h) to file an application for a preconstruction permit. Several commenters were concerned about the risk of noncompliance if the Department fails to act in a timely manner and one suggested that if the Department does not approve or deny the application within 90 days of submittal, the application should be deemed complete and the permit issued. Several commenters stated the time period is too short to complete all necessary tasks (i.e., RFP, bid award, preliminary engineering) and suggest the submittal period be extended to 90 days. One commenter suggested the section should be removed completely since compliance will still be required by January 1, 1996.

One commenter stated the time frame only leaves about three to six months to complete the permitting process and suggests exempting the process from the public hearing process since the potential negative environmental effects of installing and operating mercury controls are negligible. The implementation of stricter environmental standards via the regulatory process allows ample opportunity for public review and comment; the permit application process for specific facilities should be exempt from public comment, which is consistent with N.J.A.C.7:27-8.5. (2, 3, 5, 10, 29, 35, 36, 38)

RESPONSE: The preconstruction permit is required pursuant to N.J.A.C. 7:27-8.3(a) which requires any person to obtain a permit prior to constructing and installing any air pollution control apparatus. Given the few facilities affected by this subchapter and the involvement of the operating facilities in the rule development process, 30 days from the operative date of the rules allows sufficient time to submit an application for the installation of mercury controls. Some applicants have already filed their applications with the Department in anticipation of this rule adoption. The Department does not intend to require a public hearing or public comment on permit applications for the installation of mercury controls, because of the extensive public involvement in development of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993) as well as this rule.

134. COMMENT: One commenter stated that N.J.A.C. 7:27-27.4(i) is inappropriate because it assumes that activated carbon injection will be the control technology. (35)

RESPONSE: The rule requires the owner or operator of any MSW incinerator capable of charging 9.6 tons per day or more of MSW to install mercury emissions control apparatus but does not mandate the use of specific mercury emissions control technology. The rule does require that owners or operators of MSW incinerators equipped with a reagent based mercury emissions control system conduct optimization testing, submit the results of optimization testing to the Department for review and approval and operate each MSW incinerator at or above the approved optimized reagent feed rate. N.J.A.C. 7:27-27.4(i) through (k) are being revised on adoption to clarify this requirement. For other types of control equipment, optimization tests may be specified as a permit condition if appropriate for maximizing the efficiency of mercury emissions control.

135. COMMENT: The Department should not require optimization tests to set a minimum carbon injection rate to minimize emission of mercury, but should allow the counties and operators to comply with the rule in the most cost effective manner. Several commenters questioned why optimization tests are required to establish a minimum reagent feed rate since stack emission testing (compliance testing) will be conducted to determine compliance. (2, 3, 10, 29, 35)

RESPONSE: In the Executive Summary (Vol. I) of the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), the Task Force concluded that mercury emissions, deposition and bioaccumulation are major aspects of the mercury problem, resulting in potentially harmful background levels. The Task Force also recommended that mercury emissions from MSW incinerators should be minimized and reduced by greater than 95 percent of current levels and recommended that MSW incinerators be required to conduct testing to determine the operating parameters for their mercury emissions control systems. Therefore, it is imperative not only to meet the rule limits, but also to further minimize mercury emissions to the extent practicable by injecting additional reagent, if reasonable reductions of mercury are achievable beyond the minimum standards specified in the rules.

136. COMMENT: Optimized reagent injection cannot be established based on three source emission test runs. This will not ensure that the required efficiency will be achieved. (2, 3, 10, 35)

RESPONSE: N.J.A.C. 7:27-27.4(i) requires MSW incinerator operators to conduct optimization tests during the first quarter of 1996. However, the Department does not mandate that the optimization tests be limited to three source emission tests (compliance testing). The operator of the facility should design an appropriate optimization test protocol that will ensure the determination of an optimum reagent injection rate that maximizes control efficiency beyond the minimum 80 percent control efficiency specified.

137. COMMENT: Several commenters expressed concern that a minimum feed rate will encourage minimum compliance since at increased carbon injection rates, the control efficiency will be higher, and therefore the abilities of the control equipment should be maximized. (1, 6, 12)

RESPONSE: The Department agrees with the commenter that the abilities of the control equipment should be maximized. Carbon injection tests conducted by U.S. EPA at Stanislaus, California showed that mercury removal efficiency increases with an increased carbon injection rate. However, beyond a certain carbon injection rate, increasing the carbon feed did not increase the mercury removal efficiency any further. The goal of optimization testing is to determine the carbon injection rate that gives maximum mercury removal without wasting carbon. Once the carbon injection rate is reached at which further carbon injection does not reduce mercury emissions, that carbon injection rate will be the one required for continuous operation of this system. Language has been added on adoption to N.J.A.C. 7:27-27.4(j) to reflect that the optimized reagent feed rate is that rate such that a higher reagent feed rate would not appreciably reduce mercury emissions compared to the amount of additional reagent.

138. COMMENT: Based on data available from facilities in Camden County, New Jersey, and Stanislaus County, California, a minimum reagent injection rate could be established in lieu of requiring MSW incinerators to conduct separate optimization tests. (2, 3, 10, 35)

RESPONSE: When the standard was proposed, only five MSW incinerators charging greater than 9.6 tons per day of MSW were permitted to operate in New Jersey. Each of these five facilities has a different design which may result in differences in performance of the mercury control apparatus at each facility. Optimization tests are required for each incinerator separately. However, one facility may have several identical units. In that case, pursuant to N.J.A.C.7:27-27.4(i)2, the operator may conduct the optimization tests on any one incinerator at that facility and apply the results to other identical incinerators operating at the same facility. The data from the Camden and Stanislaus facilities and other carbon injection tests could be used to help determine the range of carbon injection that should be tested at each facility. The original intent of the Department was, as recommended in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), to require optimization testing of each MSW incinerator. Since an owner or operator may have more than one identical incinerator operating at a facility, it would be burdensome to the owner or operator to require additional testing on equipment with the same design; however, since each facility is designed differently, the Department never intended to allow owners or operators to apply the results of optimization testing conducted on one incinerator at one facility to an identical incinerator operating at another facility. To clarify the Department's original intent with regard to how optimization test results can be applied to identical incinerators, N.J.A.C. 7:27-27.4(i)2 is being modified on adoption to specifically state that the optimization test results for one incinerator may be applied to identical incinerators at the same facility.

139. COMMENT: If the facility is operating at or above a Department-approved carbon injection rate, but is not meeting the emission requirements, would compliance be based on the injection rate or the standards. How will compliance be determined? (10)

RESPONSE: The purpose of the optimization tests is to minimize mercury emissions by specifying an optimum reagent feed rate. However, operating at the optimized reagent feed rate does not relieve the facility operator from having to comply with the standards. If the optimization tests are well designed and performed, the optimum reagent injection rate will ensure compliance with the standards. The Department expects most carbon injection systems to achieve greater than 95 percent mercury removal. To better ensure compliance with the standards, the operator may inject reagent at a higher rate, provided the higher injection rate is not used only during compliance testing.

140. COMMENT: The results of optimization tests to determine optimal feed rates should not be indicative of all similarly designed facilities. Each facility should conduct its own performance test. (41)

RESPONSE: Each MSW incinerator owner or operator is required to conduct optimization tests on each incinerator pursuant to N.J.A.C. 7:27-27.4(i). However, the Department intended that if the owner or operator operates more than one identical incinerator at the same facility, then, pursuant to N.J.A.C. 7:27-27.4(i)2, the optimization tests may be performed on any one incinerator and the results applied to other identical incinerators at the same facility. As explained in the response to Comment 138 above, N.J.A.C. 7:27-27.4(i)2 is being modified on adoption to reflect this intent.

141. COMMENT: Technology exists to dispose of sewage sludge and medical waste at existing resource recovery facilities, which are being retrofitted with mercury controls. Separate incinerators should not be used to incinerate sewage sludge since the form of mercury prevalent in their flue gas is more difficult to capture. Land application of sewage sludge represents a large mercury impact to the environment. (8)

RESPONSE: This rule adoption does not address the incineration of sewage sludge. The Department intends to continue to evaluate and develop standards for other sources of mercury emissions, including sewage sludge incinerators, and has reserved N.J.A.C. 7:27-27.6 for that purpose. The Department acknowledges the comment but is not prepared to address its substance in the context of this rule adoption.

142. COMMENT: Concentrations of mercury currently emitted by MSW incinerators are quite low when compared to the concentrations in the sewage sludge that is allowed to be applied directly to the land. Sewage sludge should not be applied to land. (10)

RESPONSE: At the public hearing, held on March 29, 1994, the hearing officer, former Assistant Commissioner Richard V. Sinding, specifically addressed the issue of land application of sewage sludge (pages 230 through 233 in the transcript of proceedings of the Proposed New Rule on Control and Prohibition of Mercury Emissions, DEP docket number 04-94-01/125). Mr. Sinding indicated that the Department plans to address the environmental impact of sewage sludge, not just in regard to mercury but all metals, and intends to adopt the U.S. EPA 503 standard and promulgate its own standards for land application of sewage sludge. In response to several comments made at the public hearing, Mr. Sinding clarified that at the present time very little sewage sludge is being land applied. Although land applications of sewage sludge are not regulated by N.J.A.C. 7:27-27, sewage sludge may, in the future, be diverted away from land applications and disposed of in sewage sludge incinerators. Based on the recommendations contained in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), and in order to address public concern with respect to disposal of sewage sludge, the Department has reserved N.J.A.C. 7:27-27.6 for future regulations concerning sewage sludge incinerators.

143. COMMENT: Coal burning power plants add a significant amount of mercury to the environment, are the largest source of mercury emissions, and should be regulated as soon as possible. (6, 7)

RESPONSE: The Department plans to review additional sources of mercury, including coal-fired facilities, to determine if controls or restrictions should be applied to those sources. N.J.A.C. 7:27-27.8 has been reserved specifically for rules regarding mercury emissions from coal burning boilers.

144. COMMENT: The Department should specify acceptable formats for keeping required records. (41)

RESPONSE: When a "Permit to Construct, Install or Alter Control Apparatus or Equipment" application is approved with conditions requiring the applicant to keep records, the Department may specify what records the applicant is expected to keep and the format of those records, as well as the length of time the applicant is required to keep such records. It is unlikely that two facilities would have the exact same design and operate under the exact same conditions. Therefore the information contained in a Permit to Construct, Install or Alter Control Apparatus or Equipment would be unique to a facility and the Department believes that it is more responsive, on the part of the Department, to specify the information contained in the Permit to Construct, Install or Alter Control Apparatus or Equipment on a case by case basis.

145. COMMENT: Facilities should be required to make emissions test results available to the public as well as the Department. (9)

RESPONSE: After a permittee obtains approval from the Department of a test protocol, a representative of the Department will be on site to oversee compliance testing conducted at the facility. Once the results are submitted to the Department, they are available for public review through the Division of Enforcement Field Operations on request in writing to the Department.

146. COMMENT: Records should be kept on site a minimum of 10 years, in designated archives, for the economic life of the facility. (41)

RESPONSE: The Department feels that five years is an appropriate period of time for maintaining records since this time period is consistent with recordkeeping required by other air pollution control permits (Permit to Construct, Install or Alter Control Apparatus or Equipment) issued by the Department. Compliance testing data are submitted to the Department and noncompliance may be subject to immediate enforcement action.

147. COMMENT: It is unduly burdensome to require reports to be submitted to three different offices within the Department. The commenters suggest consolidating reporting in one office or Bureau of the Department. (2, 3, 5)

RESPONSE: Submitting a document directly to the Bureau responsible for reviewing it avoids unnecessary paper handling and shortens the response time of the Department, improving overall efficiency. This is part of the ongoing effort to streamline reporting processing by the Department. Thus, the compliance testing report is required to be submitted to the Bureau of Technical Services, the optimization test report to the Bureau of Air Quality Engineering and the compliance reports to the Air and Environmental Quality Enforcement program.

148. COMMENT: Several commenters were concerned with the time frame for reporting compliance test results and several requested extension of the time limit specified in N.J.A.C. 7:27-27.9 for reporting results, due to the length of time needed for analyzing flue gas samples for mercury. (5, 11, 29, 35)

RESPONSE: Analysis and the compilation of data regarding mercury is more time consuming than for other air pollutants regulated by the Department. Therefore, the Department agrees that more time should

be given to owners and operators to submit to the Department the results of mercury flue gas samples. Accordingly, the time limit to submit the completed compliance test report pursuant to N.J.A.C. 7:27-27.9(a) is being extended on adoption to 60 days. The deadline for submitting the annual mercury emissions report, which is based on the results of the quarterly compliance testing, pursuant to N.J.A.C. 7:27-27.9(c) is being extended from January 30 to February 28, and the deadline for submitting the quarterly average control efficiency pursuant to N.J.A.C. 7:27-27.9(c) has likewise been changed to 60 days after the close of the quarter.

149. COMMENT: The commenter questions whether quarterly compliance reporting is required when a facility does not meet the 80 percent control efficiency in a quarter. Since compliance would shift to an annual basis, it would appear that any remaining quarterly compliance reports would not be required, although quarterly stack test reporting would be required. (5)

RESPONSE: N.J.A.C. 7:27-27.9(a), as amended and adopted herein, requires reports of compliance testing conducted in a quarter to be submitted to the Department within 60 days of the completion of compliance testing for that quarter. In order for an MSW incinerator owner or operator to demonstrate compliance with the annual emissions standard, N.J.A.C. 7:27-27.9(c) as amended and adopted herein requires that the annual average mercury emissions for the preceding calendar year be reported to the Department's Assistant Director of Air and Environmental Quality Enforcement by February 28 of each year. To demonstrate compliance with the quarterly average control efficiency standard, N.J.A.C. 7:27-27.9(c) as amended and adopted herein requires an MSW incinerator owner or operator to report to the Department's Assistant Director of Air and Environmental Quality Enforcement the quarterly average control efficiency within 60 calendar days after completion of quarterly compliance testing.

150. COMMENT: The commenters suggest that N.J.A.C. 7:27-27.9(d), which requires source emissions (compliance) testing reports be certified by a licensed professional engineer or a certified industrial hygienist (CIH), be deleted, stating that the tester is a third party and certification of the report by the tester should be sufficient to ensure the report has been prepared following applicable quality assurance/quality control procedures. (29, 35)

RESPONSE: This requirement is consistent with the existing provision at N.J.A.C. 7:27-8.4(c)6 which requires the test report from any source emission (compliance) testing be reviewed and certified by a licensed professional engineer or a certified industrial hygienist (CIH) before the Department will approve or review an operating certificate for air pollution control equipment. Certifications by such professionals help ensure the validity of data.

151. COMMENT: Every month in which there is an exceedance there should be a fine, similar to water discharge permits. (1)

RESPONSE: Since stack testing can be an expensive procedure, the Department believes that monthly testing would be excessive. In order to calculate annual average emission rates the rules require that quarterly testing be performed and the annual average emissions be calculated from all source emission (compliance) testing results performed in a calendar year. There would be a violation if the annual average exceeded the emission standard, or if the results of quarterly compliance testing exceeded the standard set forth in N.J.A.C. 7:27-27.4(b)2 for each quarter. The assessment of penalties, if applicable, will be determined according to N.J.A.C. 7:27A-3.10(l)27, which sets forth penalty amounts consistent with penalties already established for comparable violations of other existing air pollution regulations.

152. COMMENT: All fines and penalties should be eliminated, except for cases of willful violation, for at least the first year after adoption of the rule. Such a compromise would cause industry to abandon the percentage removal alternative. A second commenter would consider the elimination of all fines and penalties, except for cases of willful violation, for the first year that the standard was implemented, if the strict 65 ug/dscm limit were promulgated and the 80 percent efficiency provision was deleted. Another commenter stated that the proposed penalties put pollution control authorities at a severe disadvantage in negotiating environmental guarantees for mercury control systems, particularly due to the infancy of the technology. Service contracts typically contain severe revenue penalties in the event of permit revocation. Without guarantees, pollution control authorities would have to pay operators for lost revenue and for bypass disposal. (5, 8, 15)

RESPONSE: According to the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), carbon injection equipment has been installed and operational on a permanent basis at 12 MSW facilities in Europe for the last eight years and has been successfully pilot tested at at least six MSW facilities (three facilities reported in the Task Force Report and another three facilities tested more recently) in the United States. With well designed and well operated mercury control equipment, the Department anticipates that MSW incinerators will achieve the standards and, therefore, would not be subject to enforcement action.

Penalties constitute a deterrent. The Department believes that penalties are appropriate and justified for the effective implementation of the rule. The penalties specified at N.J.A.C. 7:27A-3.10(l)27 (recodified on adoption from N.J.A.C. 7:27-3.10(e)27) are similar to existing penalties for comparable air pollution control violations.

153. COMMENT: The Department should formulate a calculation for offsets of any economic benefit a violator may have realized as a result of noncompliance. (41)

RESPONSE: In accordance with N.J.A.C. 7:27A-3.12, the Department may include in a civil administrative penalty, the economic benefit (in dollars) which a violator has realized as a result of not complying with or by delaying compliance with the requirements of the Air Pollution Control Act, or any rule, administrative order, operating certificate or permit issued pursuant thereto. This penalty may be assessed in addition to any other civil administrative penalty assessed pursuant to N.J.A.C. 7:27A-3.

154. COMMENT: The Department should formulate for air pollution control enforcement mandatory penalty provisions parallel to the civil administrative penalties in the amendments to the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-10.1 (minimum mandatory penalties to be assessed for a violation that causes the violator to be a "significant noncomplier"); criminal penalties in WPCA, N.J.S.A. 10A-10(f) (crimes that range in seriousness from first degree to fourth degree); nonexclusive enforcement options in WPCA, N.J.S.A. 58:10A-10 (civil action for penalties, initiation of criminal action, assessment of costs of investigation, inspection, litigation, remedial action and natural resource damages); civil/administrative penalties in the amendments to the Spill Act, N.J.S.A. 58:10-23.11 et seq. (penalties for intentional or unintentional acts of omissions which proximately result in discharge of hazardous substances); and provisions under ISRA, N.J.S.A. 13:1K-13(b) (establishes personal liability for an officer or management official of an industrial establishment, who knowingly directs or authorizes a violation of the regulations) and the WPCA, N.J.S.A. 58:10A-3 (definition of "person" as any responsible corporate official for the purpose of enforcement action). (41)

RESPONSE: The Department is adopting amendments to the existing penalty provisions in N.J.A.C. 7:27A-3 for violations of N.J.A.C. 7:27-27. Failure to comply with any provision of the subchapter will subject the owner/operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and any applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

155. COMMENT: Several commenters expressed concern over the possible revocation of the Certificate to Operate or Operating Permit for the first violation at any level. One commenter feels revocation is a severe penalty that should only be imposed when dictated by imminent public health concerns or flagrant violators. To impose such a penalty on a first violation, especially if the violation is less than 25 percent over the allowable level, is inappropriate. The Department should reconsider this approach and only apply severe penalties for egregious violations (that is, multiple offenses or levels far in exceedance of the standard). Another commenter stated the penalty is too severe because the control technology is fairly new and has not been adequately demonstrated to achieve the stringent standards. Some exceedances may occur while plant personnel become familiar with the operational characteristics of the technology. In addition, the penalty is more severe when the standard changes to 28 ug/dscm, which has little data to suggest it can be met. Certain circumstances could result in noncompliance due to the split compliance condition, and the compliance averaging time should be modified to avoid such a severe penalty. The facilities provide a vital service to the public for environmentally responsible disposal of municipal solid waste, so violations should be limited to fines. Delete references to revocation of operating permits. (5, 26)

RESPONSE: The recent adoption of N.J.A.C. 7:27-22, Operating Permits, resulted in changes to N.J.A.C. 7:27A-3.10. Regarding the possible revocations of Certificates to Operate, N.J.A.C. 7:27A-3.10(k) (recodified from N.J.A.C. 7:27A-3.10(e) on adoption), provides that the Department has the discretion to revoke the violator's Operating Permit,

Certificate or Variance and is most likely to do so for those violations so indicated in the penalty table. Furthermore, the Department has maintained consistency in N.J.A.C. 7:27A-3 among the penalties for comparable violations of the rules in N.J.A.C. 7:27.

Based on information presented in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993), compliance with the new standard can be achieved through a combination of source reduction and the installation of air pollution control devices. The commenter's concern over the severity of the proposed penalty when the standard changes in the year 2000 to 28 ug/dscm is not warranted, since it is the standard that will become more stringent, not the penalty.

Finally, the Department asserts that it is the responsibility of the owner/operator to ensure that plant personnel become familiar with the operational characteristics of the technology.

156. COMMENT: The comments and suggestions made by the Task Force on the 80 percent reduction in the draft rule did not appear in peer review comments. (12)

RESPONSE: The Department drafted the proposed rule based on the recommendations contained in the Task Force's Final Report on Municipal Solid Waste Incineration (July 1993). The Department believes that establishing an 80 percent reduction in mercury emissions through emissions controls at MSW incinerator facilities and an 80 percent reduction in mercury emissions through waste source separation and reduction programs is appropriate at this time. The rules require owners and operators of MSW incinerators to conduct compliance testing in order to monitor mercury emissions and to report the results of monitoring to the Department.

157. COMMENT: Can the Department identify one point source for the levels of mercury found in the Atlantic City Reservoir fish? (12)

RESPONSE: The Department is concerned with the particularly elevated levels of mercury found in fish in the Atlantic City reservoir and is actively attempting to determine the source or sources of the mercury entering this waterbody. At the present time, the Department has not identified a specific source.

Summary of Agency-Initiated Changes:

Since the rules were proposed, the name of the Department of Environmental Protection and Energy was changed to the Department of Environmental Protection. Accordingly, the words "and Energy" are being deleted throughout the rule in reference to the Department.

The word "Hygienist" is replaced with the word "Hygiene" in N.J.A.C. 7:27-27.9(d) in order to correct a typographical error.

The words "for the preceding calendar year" have been added to N.J.A.C. 7:27-27.9(c) to clarify that annual average mercury emissions are to be reported on an annual basis. The alternative, "or (e)" has been added in the first sentence of N.J.A.C. 7:27-27.9(c), since compliance may be based on annualized average of the first quarter compliance testing pursuant to N.J.A.C. 7:27-27.4(e) if an owner or operator has demonstrated compliance with the standard in two consecutive years. This parallels the second sentence of this subsection, which contains the same alternative.

The penalties proposed at N.J.A.C. 7:27A-3.10(l)27 are being adopted herein with minor changes in terminology to coordinate with changes being made on adoption to N.J.A.C. 7:27-27.4 and 27.9 as explained in the response to comment 119 above. The penalties are being recodified at N.J.A.C. 7:27A-3.10(l)27 in the revised format for N.J.A.C. 7:27A-3.10 recently adopted by the Department.

Upon adoption, the Department has made other minor changes to correct punctuation, typographical errors or grammar.

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 27. CONTROL AND PROHIBITION OF MERCURY EMISSIONS

7:27-27.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Annual average" means the arithmetic average of all compliance tests conducted during a calendar year. The annual average is obtained by first determining the arithmetic average of all test runs conducted each quarter and then determining the arithmetic average of the quarterly averages.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials, Designation D388-77.

"Coal burning boiler" means a furnace used in the process of burning coal for the purpose of producing steam by heat transfer.

"Compliance testing" means a series of no fewer than three test runs conducted in a calendar quarter. The results of compliance testing shall be expressed as the arithmetic average of the results of all test runs conducted during the quarter.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly*[,]* or indirectly into the outdoor atmosphere.

"Department" means the New Jersey Department of Environmental Protection *[and Energy]*.

"Equipment" means any device capable of causing the emission of any air contaminant either directly or indirectly into the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

"Facility" means the combination of all structures, buildings, equipment, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth in N.J.A.C. 7:26-8.

"Hazardous waste incinerator" means any enclosed device burning hazardous waste using controlled flame combustion that neither meets the criteria for classification as an industrial boiler nor is defined as an industrial furnace. It also includes boilers and industrial furnaces which do not conform with the criteria for these devices under N.J.A.C. 7:26-9.1(c)9.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, method or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, or absorbers.

"Medical waste" means any solid waste which is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under 40 CFR Part 261 or any household waste generated from home self-care as defined in N.J.A.C. 7:26-3A.5.

"Mercury (Hg)" means all inorganic and organic compounds of mercury, including elemental mercury, expressed as elemental mercury.

"Municipal solid waste *[(MWS)]* *(MSW)*" means residential, commercial and institutional solid waste generated within a community.

"Municipal solid waste incinerator" means an incinerator which burns municipal solid waste.

"Operator" means any person who operates, leases, controls, or supervises a facility.

"Owner" means any person who owns a facility.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms,

partnerships and joint stock companies as well as individuals, and shall also include, without limitation, all political subdivisions of this state or any agencies or instrumentalities thereof.

"Preconstruction permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Sewage sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge.

"Solid waste" has the meaning as defined for this term at N.J.A.C. 7:26-1.6.

["Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.]

"Test run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

"Ug/dscm" means a measurement of the concentration of a specified substance, expressed as micrograms per dry standard cubic meter.

7:27-27.2 Applicability

Any municipal solid waste *[incinerators]* ***incinerator, including any municipal solid waste incinerator located at an apartment building or commercial facility, regardless of size,*** *[are]* ***is*** subject to *[the]* ***all applicable*** provisions of this subchapter.

7:27-27.3 General provisions

(a) Each owner or operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all applicable requirements of this subchapter.

(b) If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violation of this subchapter.

(c) Any person who fails to comply with any applicable provision of this subchapter shall be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and to applicable criminal penalties and sanctions including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

7:27-27.4 Municipal solid waste (MSW) incinerators

(a) Each owner or operator of a MSW incinerator *[subject to the requirements of this subchapter]*, which is capable of incinerating 9.6 tons or more of MSW per day, shall install and operate mercury emissions control apparatus by December 31, 1995, designed to reduce at a minimum 80*[%]* ***percent*** of the emissions of mercury from any MSW incinerator. Such design shall be capable of reducing the concentration of mercury in the flue gas from the MSW incinerator from 140 ug/dscm (corrected to seven percent oxygen) to 28 ug/dscm (corrected to seven percent oxygen) or less after the control apparatus. Compliance with this section shall be determined by comparing the design of the mercury emission control apparatus with the design of the control apparatus installed on similar operating facilities.

(b) Each owner or operator of a MSW incinerator *[subject to the requirements of this subchapter]* ***of any szie*** shall operate the MSW incinerator in accordance with provisions specified in either (b)1 or 2 below:

1. The emission of mercury from any MSW incinerator, as determined pursuant to (c) below, shall not exceed:

i. Commencing on January 1, 1996 through and including December 31, 1999, 65 ug/dscm, based on an annual average ***and with each test run*** corrected to seven percent oxygen***, as tested in accordance with a test protocol approved pursuant to (f) and (g) below***; and

ii. On and after January 1, 2000, 28 ug/dscm, based on an annual average ***and with each test run*** corrected to seven percent oxygen***, as tested in accordance with a test protocol approved pursuant to (f) and (g) below***; or

2. On and after January 1, 1996, mercury emissions at the exit of the control apparatus of any MSW incinerator, as determined pursuant to (c) below, shall not exceed 20 percent of the mercury emissions in the effluent from the MSW incinerator, prior to the inlet to the control apparatus, based on each quarterly average.

(c) Commencing in January 1996, the owner or operator of a MSW incinerator*[, subject to (b) above,]* ***served by control apparatus*** shall perform *[on a quarterly basis, three source emission tests]* ***compliance testing every quarter*** to measure mercury in the gas stream at the inlet of the air pollution control apparatus serving each incinerator and simultaneously perform *[three source emission tests]* ***compliance testing every quarter*** to measure mercury in the gas stream at the exit of the control apparatus. There shall be at least a 45 calendar day interval between the testing performed for a given quarter and the testing performed for the preceding quarter, unless a shorter period is approved by the Department. Any MSW incinerator without control apparatus shall perform *[three source emission tests]* ***compliance testing every quarter*** to measure mercury in the gas stream in the stack. ***The compliance testing shall be conducted in accordance with a test protocol approved pursuant to (f) and (g) below.***

(d) Compliance with (b) above shall be determined as follows:

1. Compliance with (b)1 above shall be determined annually based on the average of all *[source emission tests]* ***compliance testing*** performed in a calendar year; or

2. Compliance with (b)2 above shall be determined quarterly based on the *[average of the three source emission tests]* ***compliance testing*** performed during that quarter.

(e) Notwithstanding the provisions of (c) above, any person who achieves and maintains compliance with (b)1 or 2 above, for all applicable incinerators located at a facility, during two consecutive calendar years*,* may reduce the frequency of *[source emission]* ***compliance*** testing from *[three source emission tests performed quarterly]* ***each quarter*** to *[three source emission tests]* ***compliance testing*** performed ***only*** in the first quarter of each calendar year. However, if subsequent *[source emission]* ***compliance*** testing fails to demonstrate compliance with (b) above, then the frequency of *[source emission]* ***compliance*** testing shall revert to that indicated in (c) above.

(f) *[Source emissions tests]* ***Compliance testing*** performed pursuant to (c) and (e) above shall be conducted in accordance with a *[source emission]* test protocol approved by the Department. To obtain the approval of the Department of a *[source emission]* test protocol, the owner or operator shall submit to the Department a proposed *[source emission]* test protocol, setting forth all test methods, including, but not limited to, sampling and analytical procedures *[to be used]*; *[describing the]* ***a description of*** sampling equipment and the source sampling location(s); and *[providing]* ***provide*** sample calculations *[to]* ***that will*** be used to determine the concentration of mercury in the gas stream. The owner or operator shall submit ***for review and approval*** *[the]* ***a*** proposed ***test*** protocol ***each year,*** no less than 90 calendar days prior to the conduct of *[source emission tests for review and approval]* ***first quarter compliance testing for that calendar year*** to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection *[and Energy]*
CN-411
Trenton, New Jersey 08625-0411

(g) The Department shall not approve any proposed *[source emission]* test protocol submitted pursuant to (f) above unless the test method proposed to measure mercury is:

1. EPA Reference Method 29***, including all supplements and amendments thereto. This method is published in the EPA Main Bulletin Board, the Technical Transfer Network of the USEPA, under the area of Emissions Measurement Technical Information, with the file name of "M-29.ZIP-Multiple Metals" under the access number of (919) 541-5742***; or

2. An equivalent method demonstrated, to the satisfaction of the Department, to be as conservative and reliable as EPA Reference Method 29 for measuring mercury.

(h) Any person who is required to alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall apply to the Department for a preconstruction permit in accordance with N.J.A.C. 7:27-8.3, *[within 30 calendar days from the operative date of this subchapter]* ***by December 27, 1994***.

(i) The owner or operator of any MSW incinerator ***that has a reagent based mercury emission control system*** shall conduct ***optimization*** tests to determine the optimized reagent feed rate, for mercury emissions control apparatus, to *[minimize]* ***determine the reagent feed rate at which*** the emissions of mercury below the applicable limits of (b) above ***are optimally minimized***, as follows:

1. The optimization tests shall be performed during *[the]* first quarter *[of the source emission tests]* ***compliance testing*** required pursuant to (c) above.

2. If the owner or operator of any MSW incinerator owns or operates more than one identical incinerator ***at the same facility***, then optimization tests may be performed on one incinerator, and the results applied to ***the*** other incinerators which are identical to that incinerator ***at that facility***.

(j) The owner or operator of any MSW incinerator ***that has a reagent based mercury emission control system*** shall, *[at]* ***within 60 calendar days of*** the conclusion of the optimization tests, submit to the Department *[within 60 calendar days, an]* ***for approval a proposed*** optimized reagent feed rate which minimizes mercury emission below the applicable limits, while considering the amount of reagent used. ***The optimized reagent feed rate is the reagent feed rate such that a higher reagent feed rate will not appreciably reduce mercury emissions compared to the amount of reagent added.***

(k) The owner or operator of any MSW incinerator ***that has a reagent based mercury emission control system*** shall operate each MSW incinerator at, or above, the optimized reagent feed rate approved by the Department.

7:27-27.5 Hospital waste incinerators (Reserved)

7:27-27.6 Sewage sludge incinerators (Reserved)

7:27-27.7 Hazardous waste incinerators (Reserved)

7:27-27.8 Coal burning boilers (Reserved)

7:27-27.9 Reporting and recordkeeping

(a) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the testing requirements of N.J.A.C. 7:27-27.4(c) or (e) shall submit a copy of the report of the results of *[each source emission test]* ***compliance testing, including all test runs,*** conducted at any MSW incinerator pursuant to this subchapter within *[30]* ***60*** calendar days after completion of the *[three source emission tests]* ***compliance testing*** required for that quarter *[or year, as applicable]* to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection *[and Energy]*
CN-411
Trenton, New Jersey 08625-0411

(b) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the optimization requirements of N.J.A.C. 7:27-27.4(i) shall submit a copy of the report of the results of optimization tests conducted at any MSW incinerator pursuant to this subchapter within 60 calendar days after completion of the required tests, to the following address:

Chief
Bureau of Air Quality Engineering
Department of Environmental Protection *[and Energy]*
CN-027
Trenton, NJ 08625-0027

(c) If compliance is based on annual averages pursuant to N.J.A.C. 7:27-27.4(d)1 ***or (e)***, an owner or operator of a MSW incinerator shall report***, for the preceding calendar year,*** the annual average mercury emissions by *[January 30]* ***February 28, or the next business day if February 28 falls on a weekend or holiday,*** of each year. If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27-27.4(d)2 or (e), an owner or operator of a MSW incinerator shall report ***the quarterly average control efficiency*** within *[30]* ***60*** calendar days after completion of each calendar quarter. Such reports shall be submitted to:

Assistant Director
Air and Environmental Quality Enforcement
Department of Environmental Protection *[and Energy]*
CN-422
Trenton, NJ 08625-0422

(d) Any owner or operator of a MSW incinerator that submits to the Department a *[source emission test]* report ***of compliance testing, including all test runs,*** for a MSW incinerator shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial *[Hygienists]* ***Hygiene***.

(e) Any owner or operator of a MSW incinerator shall maintain at the facility a complete record, including all test reports, of all *[source testing]* ***compliance testing, including all test runs,*** conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of a MSW incinerator who submits to the Department a *[source emission test]* report ***of compliance testing, including all test runs,*** shall certify that report in accordance with N.J.A.C. 7:27-8.24.

(g) The owner or operator shall make any record made pursuant to (e) above available to the Department, or its authorized representatives *[thereof]*, for inspection for a period of five years after the date the record is made.

7:27-27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a)-(k) (No change.)

(l) The violations of N.J.A.C. 7:27-27 and the civil administrative penalty amounts for each violation, are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1.-26. (No change.)

27. The violations of N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-27.4(a)	Install/Operate Air Pollution Control Equipment	$4,000	$8,000	$20,000	$50,000

Citation	Rule Summary				
N.J.A.C. 7:27-27.4(b)1 N.J.A.C. 7:27-27.4(b)2	Mercury Emissions Detected by *[Stack Tests]* ***Compliance Testing*** from Source Operation				
	1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
	2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
	3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(c)	Perform *[Source Emission Tests]* ***Compliance Testing*** to Measure Mercury	$3,000	$6,000	$15,000	$45,000
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(f)	Submit *[Source Emission Test]* ***Compliance Testing*** Protocol	$1,000	$2,000	$5,000	$15,000
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(h)	Submit Application for Preconstruction Permit	$2,000	$4,000	$10,000	$30,000
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(i)	Conduct Optimization Tests	$1,000	$2,000	$5,000	$15,000
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(j)	Submit Optimized Reagent Injection Rate	$500	$1,000	$2,500	$7,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.4(k)	Operate at Optimized Reagent Injection Rate	$2,000	$4,000	$10,000	$30,000
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(a)	Submit *[Source Emission]* ***Compliance Testing*** Report	$500	$1,000	$2,500	$7,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(b)	Submit Optimization Test Report	$500	$1,000	$2,500	$7,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(c)	Submit Report	$500	$1,000	$2,500	$7,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(d)	Certify *[Source Emission Test]* ***Compliance Testing*** Report	$300	$600	$1,500	$4,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(e)	Maintain Records	$500	$1,000	$2,500	$7,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(f)	Certify *[Source Emission Test]* ***Compliance Testing*** Report	$300	$600	$1,500	$4,500
Citation	Rule Summary				
N.J.A.C. 7:27-27.9(g)	Make Records Readily Available	$500	$1,000	$2,500	$7,500

[3]Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable).

(m) (No change.)

HEALTH

(a)

CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND COMMISSION

Catastrophic Illness in Children Relief Fund Program
Readoption with Amendments: N.J.A.C. 8:18

Proposed: September 6, 1994 at 26 N.J.R. 3573(a).
Adopted: October 11, 1994 by the Catastrophic Illness in Children Relief Fund Commission, Mary Ann Whiteman, Executive Director.
Filed: October 21, 1994 as R.1994 d.572, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-159.
Effective Date: October 21, 1994, Readoption;
November 7, 1994, Amendments.
Expiration Date: October 21, 1999.

Summary of Public Comments and Agency Responses:

The proposed readoption with amendments was published on September 6, 1994. There were three comments received during the open public comment period. Two of the comments required clarification of the proposed readoption.

COMMENT: The Passaic County Special Child Health Services Case Management Unit supports the proposed readoption in its entirety.

RESPONSE: The Commission appreciates the support of the Passaic County Case Management Unit.

COMMENT: The Valerie Fund Children's Center at Newark Beth Israel Medical Center commented on whether or not if the one time vehicle allowance is part of the application with other related medical expenses or requires a separate application.

RESPONSE: All uncovered expenses in the same 12-month time period are considered at the same time. No other application is necessary for expenses related to the vehicle allowance or vehicle modification. The Commission will clarify this for the public upon adoption by amending the rule pertaining to the vehicle allowance.

COMMENT: The Home Health Assembly of New Jersey commented as to whether or not home health care services are included in eligible expenses.

RESPONSE: Home health care services are considered as an eligible expense provided that the services are medically authorized in the care of a child. These services may be considered in an application for a child's uncovered medically-related expenses.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:18.

Full text of the adopted amendments follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

8:18-1.3 General requirements

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

(c) To be eligible for assistance, a child must be a resident of the State of New Jersey. Resident means a person legally domiciled in New Jersey for a period of three months immediately preceding the initial date of application for assistance to the Fund.

1.-3. (No change.)

4. Seasonal residents in New Jersey are excluded from eligibility. Seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Migrant workers who can document a previous history of work in New Jersey are eligible for consideration.

8:18-1.7 Annual cap and vehicle allowance

(a) The amount of the Fund's disbursements on behalf of a child shall be capped at $100,000 per year.

(b) A one-time vehicle allowance will be capped at $25,000 for the purchase of a lease or a specialized vehicle. The allowance does not include modifications, which can be *[applied for]* ***considered*** separately. The one-time vehicle allowance of $25,000 shall be included in the total disbursement cap, in the year the vehicle allowance was disbursed.

8:18-1.14 Eligible health services

(a) Categories of incurred health expenses which are medically-authorized in the care of a child with an illness or condition eligible for consideration in assessing whether a family has reached its eligibility threshold of 15 percent of the first $100,000 of annual income of a family plus 20 percent of the excess income over $100,000 include, but are not limited to, the following:

1.-12. (No change.)

13. Purchase of a specialized leased or specialized, modified vehicle and any subsequent modifications; and

14. (No change.)

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

8:18-1.16 Administration of payments

(a) (No change.)

(b) Items in N.J.A.C. 8:18-1.14, Eligible health services, shall be considered for payments.

8:18-1.17 Appeal process

(a) The following applies to the appeals:

1. Upon receipt of a determination by the State Office, an applicant who disputes that determination may appeal to the Catastrophic Illness in Children Relief Fund Commission by filing a written appeal to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Commission
John Fitch Plaza
CN 360
Trenton, New Jersey 08625-0360
Attn: State Commissioner of Health

2.-6. (No change.)

(b) (No change.)

(b)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Worker and Community Right to Know Act Rules
Readoption with Amendments: N.J.A.C. 8:59

Proposed: July 18, 1994 at 26 N.J.R. 2888(a).
Adopted: September 28, 1994 by Len Fishman, Commissioner, Department of Health.
Filed: September 28, 1994, as R.1994 d.535, **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. 34:5A-1 et seq., specifically 34:5A-30.
Effective Date: September 28, 1994, Readoption.
November 7, 1994, Amendments.
Expiration Date: September 28, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health proposed to readopt with amendments its Worker and Community Right to Know Act rules, N.J.A.C. 8:59, in the New Jersey Register on July 18, 1994, at 26 N.J.R. 2888(a). A public hearing was held on August 10, 1994, at which Glenn Roberts, Director, Government Relations, Flavor & Extract Manufacturers' Association of the United States (FEMA) and Fragrance Materials Association of the United States (FMA), testified.

Richard Willinger, Program Manager of the Right to Know Program for the Department of Health, conducted the hearing, recommending that the Department evaluate the testimony and respond appropriately in the adoption notice. The Department's responses to the testimony have been incorporated into the Summary of comments and responses which follows.

An additional 497 written comments were submitted by the following organizations and individuals:

1. New Jersey State Industrial Union Council (IUC), AFL-CIO
2. New Jersey Right to Know & Act Coalition

3. Communications Workers of America, Local 1031, AFL-CIO
4. Exxon Chemical Company
5. New Jersey Business and Industry Association
6. American Society of Safety Engineers, Penn-Jersey and New Jersey Sections
7. American Industrial Hygiene Association, New Jersey Section
8. Sandy Alexander, Inc.
9. Colonial Graphics
10. Yes Press Inc.
11. Madison Printing Company, Inc.
12. Fischer Printing Corporation
13. Wood Press, Inc.
14. Graphic Arts Services, Inc.
15. Mane, U.S.A.
16. Drom International Inc. USA
17. Firmenich Incorporated
18. Dragoco
19. Takasago International Corporation (U.S.A.)
20. General Spice
21. Citroil Aromatic Inc.
22. Eastcoast Flavors, Inc.
23. Wessel Fragrances Inc.
24. Chart Corporation, Inc.
25. Berje
26. Hagelin & Company, Inc.
27. Medallion International, Inc.
28. Flavorite Laboratories, Inc.
29. Quest International Fragrances Company
30. Flavor & Extract Manufacturers' Association of the United States and Fragrance Materials Association of the United States (FEMA/FMA)
31. Betty Wells
32. C. Wenger
33. Michele J. Zabreski
34. Diane Covallo
35. Hector F. Pena
36. Jeff Mowen
37. Geneva L. Averiett
38. Douglas Facendo
39. Robert Sanders
40. George F. Talarico
41. Angelo Morresi
42. Eric DeGesero
43. John J. Kovacs
44. Martin D. Kelly
45. Eileen Palmer
46. Steven Sposoto
47. Esther Petercoal
48. Deborah J. Martin
49. Rose Dahl
50. Martha J. Stevens
51. JoAnne Christian
52. Maximino Irizarry
53. James L. Alexander Jr.
54. Daniel J. McColligan
55. James J. Galli
56. A.L. Dent
57. Robert Phillips
58. Richard L. Cuff
59. Edgar Pena
60. Joe Dedo Jr.
61. Keith Wilmot
62. Michael Diehl
63. George J. Strang
64. Mary Jane Maida
65. Jacqueline D. Kovacs
66. Annette C. Kovacs
67. Beverly Kwasnik
68. Alfred Whitehead
69. Carol Lombardi
70. Patricia Glassi
71. Rose B. Hopkins
72. Herbert C. Osborne
73. Jim Schmidt
74. Lloyd F. Tassey
75. Robert B. Hale
76. James P. Gordon
77. Edward M. Salmon Jr.
78. Gary Johnston
79. William L. O'Reilly Sr.
80. Janet Pisylser
81. B. Gould
82. David Fain
83. Domenick Fietto
84. Teresita J. Nonicid
85. Robert J. Bagrafo
86. Charles Imarros
87. Gail P. Broderick
88. Thomas Whalen
89. Susan Carroll
90. Allen Oviati
91. Morton Begun
92. Nyla Willis
93. Michele L. Frumpf
94. S. Desai
95. Charles S. Youmatzo
96. James A. Krucher
97. James O'Dwyer
98. Peter J. Mazzaroni
99. Rene Morganthaler
100. Kent Lombard
101. Harold Kopp
102. D. Merdler
103. Lawrence Grenner
104. James Bell
105. William J. Bushman
106. Lorraine Clark
107. Kris Kutyla
108. Chester Makowski
109. Donald F. Bey
110. Stephen Somers
111. Robert F. Tavares
112. Pauline J. Bochenek
113. Patricia Hopkins
114. J. Christenserl
115. Edward Niederhaus
116. Lee McCombs
117. Hans E. Hanke, Ph.D.
118. Raymond Pajank
119. Frederic H. Thor
120. Chris Pruden
121. L.C. Pereira
122. Maria Rangos
123. Lawrence Posey
124. Robert E. Malson Jr.
125. Roland Abate Jr.
126. John M. Herban
127. Nancy E. O'Shea
128. Catherine Ponzo
129. Herman P. Spencer
130. Robert Stermole
131. E. Lucey Blum
132. Anton Anjeluk
133. Arnold Martinez
134. C. Dvorak
135. Catherine Jeszenszky
136. Gary W. Gough
137. Philip H. Meyer
138. Joseph G. Il Vento
139. George Nicolacopulos
140. Greg Altamura
141. John A. Lopez
142. Jerome Lombardo
143. Joe Zgurzynski
144. Scott M. Carroll
145. Gladys Jackson
146. Curtis Baleb
147. Philip A. Christernon
148. Larry Giardelli
149. Charles H. Hendricks
150. Donald Pedersen

151. Peter J. McGuin
152. Jack Agran
153. Lori L. Jandura
154. Wendy Noroty
155. Stephen D. Grossman
156. Jeanine Szweds
157. Robert Rusch
158. Howard Smith
159. Douglas Manning
160. Dennis Carlock
161. Cheryl Morano
162. Harish B. Diwan
163. Stephen J. Wolff
164. Edward K. Wallace
165. Harold Van Riper
166. Richard E. Naipawer
167. Andrew D. Soos
168. Carl J. Pezzullo
169. J. Sebban
170. John Van Den Berg
171. Michael Johnson
172. Alan J. Chalk
173. Frank Simonetti
174. Caryl Yeager
175. Ruben Pagan Jr.
176. Patrick Tauriello
177. Edward W. Brown
178. Harold G. Thompson
179. Philip Hitchur
180. Richard Thabit
181. J.F. Perini
182. Joseph Guber
183. Lolita M. Villamaria
184. Robert Taylor
185. John Newton
186. Susan Vertea
187. L.M. Quartarolo
188. R. Desai
189. Leslie Kraus
190. Teri Smith
191. Diane Koenig
192. Arthur Lahr
193. Daniel W. Engh
194. Kenneth L. Purzycki
195. Paul J. Bambara
196. Vincent P. Presepe
197. Martin Vander Molen
198. Jean-Pierre Decosterd
199. Dian Dorian
200. Stephanie Messing
201. Franklin Radican
202. Diane Alvine
203. Darryl Montgomery
204. Susan Nilsen
205. Linn R. Lewis
206. Andrew J. Heslere
207. James E. Hassel
208. G.R. Wing
209. P.J. Foy
210. Kenneth LeGath
211. John A. Vernieri
212. Harold M. Pietrucha
213. Thomas C. Buco
214. Giuseppe D'Urso
215. B. Moore
216. Joseph A. Virgilio
217. Ronald J. Saus
218. A. Kolatan
219. Elizabeth Geffen
220. Vincent A. Francaillo
221. Colin O'Neill
222. Danielle Cook
223. Cynthia M. D'Epice
224. Mildred Reduy
225. Robert Bitto
226. Raymond Rebeck
227. Manuel C. Bernardo
228. Robert Caroll Jr.
229. John P. Tighe
230. Susan Dewitt
231. Ethan Moello
232. Alicia Q. Javier
233. Michael W. Moore
234. Ginny Butrico
235. Monica Flood
236. M. Vacca
237. Dennis Rezzonico
238. Donald Hughs
239. Katie Cook
240. Bruce Boves
241. Barbara Matzek
242. Rodd Bray
243. Eladio Vazquez
244. Richard G. Doubt
245. Catherine E. McLean
246. Michael McLean
247. Deirdre Ann Fearon
248. Evelyn Paulsen
249. Lionel Sadhoo
250. Eleanor Wiesenfeld
251. Elizabeth Calandrillo
252. Barbara Charpentier
253. Harry Davidson
254. Christian Fundaro
255. Martha Witt
256. Joan Ortland
257. V.P. Comerford
258. Maria Enriquez
259. Veronica T. Olshefski
260. Eric Helleled
261. Daniel A. Cosentino
262. Maria J. Moran
263. Kim Bigler
264. Laura Ferrara
265. Sandra Landrett
266. G. Montoya
267. Stephanie L. Carey
268. Carmen Acosh
269. Ken Baywick
270. Marion Airel
271. Zona Zadoyan
272. Ellen Kessler
273. Rusalla A. Gama
274. Thomas Lenihan
275. William D. Diedtrich
276. Amarita E. Virtucio
277. Daniel J. Carey
278. Thomas Motylevski
279. Celene Warner
280. Elaine McGale
281. Robert E. Casolite
282. Earl M. Fegely
283. Gary P. Kost
284. Betty Bieghley
285. Edward Green
286. Demal Salin
287. Frank P. Fondaro
288. Joseph Mjeer
289. Jeffery Wichmann
290. S.V. Patel
291. Katie Cook
292. Ruth E. Longo
293. Mary Wichmann
294. Robert Burton Jr.
295. M.C. Lomuntad
296. Donna Tobiasz
297. John E. Porter
298. Nancy Doyle
299. Jeanette Malone
300. L. Bagnato
301. Marian P. Fearon
302. Dominic L. Panada

303. John O. James
304. Mary Walter
305. Stanley Kosinski
306. Fred Dauncey
307. Madeline S. DiMauro
308. Karen A. Scheck
309. Tracy Gavin
310. Wendy Vinti
311. C. Davis
312. Trudy Van Der Wall
313. Carol Keller
314. Mildred Rodriguez
315. Kim Bardreau
316. Stephen H. Gates
317. Eric Guevana
318. Joseph V. Yushartis
319. Joseph A. DeBellis
320. Michael Jacob
321. Stan Pawelczyk
322. Myron Mosher
323. N. Neri
324. Jose Carlito Stad
325. Albert M. Andrew
326. Ofelia C. Trinidad
327. Marilyn Saices
328. Vipashi Feivedi
329. Filomina M. Cartor
330. J. Newton
331. Vicki L. Cipriano
332. M. Sidor
333. Shivangi Soman
334. Helen Rascau
335. Lucille Taggart
336. Mirka Madhere
337. John Ricco
338. Jon F. Just
339. Herman J. Elliott
340. John Gick
341. Anna R. Saksen
342. John P. Meade
343. Michael D. Edge
344. Stacy Westphal
345. Jim Hang Steffen
346. Nancy M. Fain
347. Susan Harrison
348. Shauna Tate
349. Kathleen Cameron
350. Kathy A. Grossi
351. Josephine Fugazzotti
352. Mary Ann Costa
353. Hirayuki Nakajima
354. M. San Miguel
355. N. Murray
356. Elizabeth Hazlitt
357. Elizabeth Karakus
358. Anthony J. Montanau
359. Cristina R. Vasquez
360. S. Panosian
361. Donald Hainggi
362. J.O. Manza
363. Cary R. Tenenbaum
364. Pamela A. Dodd
365. H.R. Ansari
366. M. Girard
367. W. Orefice
368. Janet Finnerty
369. Mike Munroe
370. G. Mansell
371. Diana M. Breglio
372. A. Imparato
373. Frank Asaro
374. L. Tousignant
375. Allan L. Streit
376. H. Bell
377. Robert Ardis
378. Carol Kirchner
379. John Torbett
380. Charles E. Gounod
381. Robert Glassman
382. Daniel E. Stebbins
383. Muriel Lehrer
384. Mohan Pradhan
385. John A. Boles
386. John K. Taggart
387. Kenneth Saloway
388. Klaus J. Bauer
389. E. Ulbrecht
390. 102 letters were received with illegible signatures
391. Haarmann & Reimer Corp.
392. Bush Boake Allen Inc.
393. Robertet, Inc.
394. Beacon, Ltd.
395. JPM Imports, Inc.
396. Belmay, Inc.

(Please note: Some names of individuals listed above may be misspelled due to the extreme difficulty in reading some of the signatures.)

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 and, along with the public hearing record, can be reviewed by the public during normal business hours by contacting Richard Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, N.J. 08625-0368, (609) 984-2202.

1. COMMENT: The New Jersey State Industrial Union Council, AFL-CIO, the New Jersey Right to Know & Act Coalition, and the Communications Workers of America, Local 1031, AFL-CIO, supported the readoption of the rules with amendments as published.

RESPONSE: The Department acknowledges the support.

2. COMMENT: The Right to Know & Act Coalition further commented that New Jersey's Right to Know law is the strongest, most protective program in existence because the elements of the law (survey, labeling, education and training, hazardous substance fact sheets) enable workers, emergency responders and the community to handle chemical hazards intelligently and to be adequately prepared to handle the chemical hazards without undue injury to persons or property. They further stated that the hazardous substance fact sheets developed by the Department are the only source of objective hazard information written for the general public to understand, and are invaluable. The Coalition pointed out that hazardous substances have caused thousands of accidents, illnesses and environmental damages in New Jersey, and these substances must be treated with full knowledge and caution which can only be done with full disclosure.

RESPONSE: The Department acknowledges the support.

3. COMMENT: The Communications Workers of America, Local 1031, AFL-CIO, commented that amendments adopted in 1993 and now being readopted streamline the requirements of the law for public employers and reduce the costs associated with the implementation of the law, especially in the area of research and development laboratories, without compromising the safety and health of public employees. They further stated that the worker provisions of the Right to Know law have been a valuable asset to their members and that the law has fulfilled its intent of reducing the significant incidence of illnesses and injuries to workers in the public sector.

RESPONSE: The Department acknowledges the support.

4. COMMENT: Exxon Chemical Company and New Jersey Business & Industry Association supported the proposed changes to the rules because they clarify certain issues and definitions and align definitions with those of the Department of Environmental Protection's (DEP) Right to Know rules.

RESPONSE: The Department acknowledges the support.

5. COMMENT: Exxon Chemical Company and New Jersey Business & Industry Association criticized the Department for not taking this opportunity, that is, the readoption, to critically review the inclusion of the United States Department of Transportation's (DOT) list of hazardous substances subject to labeling requirements.

RESPONSE: The Department has already performed the analysis requested by the commenters. On February 7, 1994, at 26 N.J.R. 540(a), the Department published proposed amendments to the Right to Know Hazardous Substance List (RTKHSL) and Special Health Hazard Substance List in the New Jersey Register. Prior to publication, the Department critically reviewed the chemicals listed on the DOT's Hazardous Materials Table and decided to remove many of the DOT

chemicals from the Right to Know Hazardous Substance List. The February 7, 1994 publication proposes to do this. Extensive comments have been received on the proposal, and it is currently being prepared for adoption.

6. COMMENT: The American Society of Safety Engineers (ASSE), Penn-Jersey and New Jersey Sections, commented that the definition of a "technically qualified person" (that is, those persons who can provide Right to Know training to public employees) should include Certified Safety Professionals (CSP) because a CSP is equally as qualified as a Certified Industrial Hygienist (CIH) to provide Right to Know training. According to ASSE, a CSP is proficient in the fields of chemistry, hazardous substances, safe handling procedures, personal protective equipment, and industrial hygiene, as a consequence of meeting stringent educational, work experience, and continuing education requirements, as well as two comprehensive examinations. They further stated that the Occupational Safety and Health Administration and several states have defined a "technically qualified professional" to include both CSPs and CIHs.

RESPONSE: The Department agrees and will add "Certified Safety Professional" to the definition of "technically qualified person," in a future rulemaking.

7. COMMENT: The American Industrial Hygiene Association, New Jersey Section, supported the readoption of the rules and amendments, especially the inclusion of Certified Industrial Hygienists in the definition of "technically qualified person." However, they suggested changing the phrase in the definition "and understands the health risks associated with exposure to hazardous substances" to "and subsequent to the granting of the baccalaureate degree has five years of professional experience in the field of industrial hygiene." They also proposed a similar change to the definition of "technically qualified person" for a research and development laboratory in paragraph 6 of the definition.

RESPONSE: The Department believes this change would be too restrictive on the persons who are capable of providing Right to Know education and training. There are persons who have relevant education and training in the sciences and hazardous materials, as well as experience in the health and safety field, who may not have five years of industrial hygiene experience but who would have the knowledge and ability to teach the material required in a Right to Know education and training course. The amendments to the definition will remain as proposed.

8. COMMENT: Sandy Alexander, Inc., Colonial Graphics, Yes Press Inc., Madison Printing Company Inc., Fischer Printing Corporation, Wood Press, Inc., Graphic Arts Services, Inc., Mane, U.S.A., Drom International Inc. USA, Firmenich Incorporated, Dragoco, Takasago International Corporation (U.S.A.), General Spice, Citroil Aromatic Inc., Eastcoast Flavors, Inc., Wessel Fragrances Inc., Chart Corporation, Inc., Berje, Hagelin & Company, Inc., Medallion International, Inc., Flavorite Laboratories, Inc., Quest International Fragrances Company, Haarmann & Reimer Corp., Bush Boake Allen Inc., Robertet, Inc., Beacon, Ltd., JPM Imports, Inc., Belmay, Inc., Flavor & Extract Manufacturers' Association of the United States (FEMA), Fragrance Materials Association of the United States (FMA), and the individuals listed as number 31-390 in the list of commenters supported a change in the labeling requirements to a nationally recognized placard system, such as the National Fire Protection Association (NFPA) or Hazardous Materials Identification System (HMIS), to be located on buildings, rooms or areas as appropriate. FEMA/FMA stated that the placard system would give emergency responders the information they need to plan their approach prior to entering a building, and believed that the existing Right to Know labeling system is useless in an emergency situation.

RESPONSE: Requiring placards to be posted on buildings, rooms or areas cannot be made administratively by the Department because the law requires the labeling of containers and certain parts of pipeline systems. Such a major change to the law can only be made by amending the statute, which would have to be done by the Legislature. Of course, companies which believe that a placarding system is helpful to emergency responders do not have to wait for such a legislative change to occur and can voluntarily post such placards on their buildings, rooms and areas now.

9. COMMENT: Mane, U.S.A., Drom International Inc. USA, Firmenich Incorporated, Dragoco, Takasago International Corporation (U.S.A.), General Spice, Citroil Aromatic Inc., Eastcoast Flavors, Inc., Wessel Fragrances Inc., Chart Corporation, Inc., Berje, Hagelin & Company, Inc., Medallion International, Inc., Flavorite Laboratories, Inc., Quest International Fragrances Company, Haarmann & Reimer Corp., Bush Boake Allen Inc., Robertet, Inc., Beacon, Ltd., JPM Imports, Inc., Belmay, Inc., Flavor & Extract Manufacturers' Association of the United States (FEMA), Fragrance Materials Association of the United States (FMA), and the individuals listed as number 31-390 in the list of commenters supported an exemption from Right to Know labeling for federally regulated flavors and fragrances. FEMA/FMA recommended eliminating the 54 gallon exemption limitation because there is no basis in risk analysis for this artificial size limit, and suggested exempting all Food and Drug Administration (FDA) regulated materials, regardless of size.

RESPONSE: The Right to Know rules currently exempt from labeling all raw food materials, food additives (such as flavors and fragrances), and finished food products intended for human or animal consumption that are regulated by Federal law. See N.J.A.C. 8:59-5.5(d)1. Food, food additives, color additives, drugs, cosmetics, and medical and veterinary devices, including materials intended for use as ingredients in such products (for example, flavors and fragrances) are exempt from Right to Know labeling requirements when they are subject to labeling required by the Federal Food, Drug and Cosmetic Act and are in containers that are less than 55 gallons or 450 pounds. (see N.J.A.C. 8:59-5.5(d)) This language essentially tracks the language of the OSHA Hazard Communication Standard. The only difference is that the State requirement limits the exemption to containers that are smaller than 55 gallon drums or 450 pounds, because this limitation mitigates the risk to firefighters in cases where possibly unlabeled or poorly labeled containers may have been used. The Department will re-examine the size limitation and the possibility of conforming this exemption to the OSHA Hazard Communication Standard. Such a significant change cannot be made in this adoption, but would have to be proposed as a future amendment to the rules.

10. COMMENT: FEMA/FMA recommended that the Food, Drug and Cosmetic Act exemption in N.J.A.C. 8:59-5.5(d) be clarified in that the "intended for use" language should not be interpreted to require that each and every drop of material in a container be used in an FDA regulated product. They stated that this interpretation by the Department far exceeds the actual implementation of the Federal Hazard Communication Standard, which has similar language, by OSHA, and is an example of the expansion of State standards beyond Federal standards.

RESPONSE: The Department agrees that it should not go beyond OSHA's interpretation of this language, since it has taken the language from an OSHA Standard, and will obtain a written interpretation of this language from OSHA, which will then become the policy of the Department in interpreting the "intended for use" phrase.

11. COMMENT: FEMA/FMA expressed appreciation for the work of the Department in returning trade secrets filed by its members under prior rules.

RESPONSE: The Department acknowledges the support.

12. COMMENT: FEMA/FMA supported an exemption from Right to Know labeling for Federally regulated flavors and fragrances because they are adequately regulated under existing Federal requirements which include, in addition to the Food, Drug and Cosmetic Act, the Department of Agriculture and the Consumer Product Safety Commission.

RESPONSE: The Department believes that the existing exemptions for raw food materials, food additives, and finished food products intended for human or animal consumption regulated by Federal law; distilled spirits (beverage alcohols), wine, and malt beverage intended for nonindustrial use and subject to the labeling requirements of the Federal Alcohol Administration Act; and food, food additives, color additives, drugs, cosmetics, and medical and veterinary devices, including materials intended for use as ingredients in such products (for example, flavors and fragrances) subject to the labeling requirements of the Food, Drug and Cosmetic Act (subject to the changes recommended above), meet the concerns of FEMA/FMA for the effective exemption of flavors and fragrances from Right to Know labeling.

13. COMMENT: FEMA/FMA recommended that the current labeling exemption that allows DOT labeling to be used on non-direct use shipping containers in lieu of Right to Know labeling, at N.J.A.C. 8:59-5.1(q), be expanded to include all shipping containers, in light of the new OSHA Standard that requires private employers to maintain DOT hazardous material labels on shipping containers until those containers are purged of vapors and cleaned of residue. They stated that DOT labels are widely recognized, are preferred by emergency responders, provide ample information to emergency responders, and does not unduly burden industry.

RESPONSE: Substituting DOT labeling for Right to Know labeling on all shipping containers cannot be made administratively by the De-

partment because the law requires the labeling of all containers and certain parts of pipeline systems with specific information. Some exceptions to Right to Know labeling are allowed by the law, such as DOT labeling on non-direct use shipping containers, but expanding this exemption to include all shipping containers would obviate the basic labeling requirements of the law. Such a major change to the law can only be made by amending the statute, which would have to be done by the Legislature.

14. COMMENT: FEMA/FMA stated that the recent small container labeling exemption (of two liters and two kilograms) is made virtually useless by the requirement to label special health hazards in containers below this threshold, because it is too burdensome to conduct a product-by-product review of the contents of containers to determine whether they contain a special health hazard substance and thus require Right to Know labeling, and urged the Department to reconsider this requirement.

RESPONSE: The Right to Know small container labeling exemption only requires the listing of ingredients in the container that are carcinogenic, mutagenic or teratogenic, or that contribute to the corrosivity, flammability at an F3 or F4 level, or reactivity at an R2, R3 or R4 level. The Right to Know small container exemption only requires the labeling of extremely hazardous ingredients, and is consistent with the recent New Jersey Institute of Technology report, "A Review of the Economic Impact of Environmental Statutes, Rules and Regulations on New Jersey Industry, A Report to the New Jersey Legislature" which states that "Very small containers should be exempt from the Right to Know regulations unless the substance in the container is so toxic as to represent a hazard" (R-42 of the N.J.I.T. report).

15. COMMENT: FEMA/FMA stated their appreciation of the regulatory change made in 1993 which allowed employers to use internal numbers as their trade secret registration numbers, and recommended that the requirement to include "New Jersey Trade Secret Registry Number" be eliminated and be replaced by inclusion in the Letter of Notification to the Department of the internal trade secret numbers that will be used by the employer.

RESPONSE: A container label may contain many numerical or alphanumerical codes identifying a variety of items—lot number, batch number, date and place of production, etc. The only way to distinguish the New Jersey Trade Secret Registry Number from these other numbers for those emergency responders and public employees who will be reading the label is to continue to use the words listed above or the acronym NJTSRN, or the other variations allowed in the rules at N.J.A.C. 8:59-3.6(b)2.

Summary of Agency-Initiated Changes:

The words "and Energy" have been deleted from the name "Department of Environmental Protection and Energy" because this department changed its name on July 1, 1994.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

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

8:59-1.3 Definitions

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

...

"Community Right to Know Survey" means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part I, and the Superfund Amendments and Reauthorization Act, Section 312.

...

"Designated county lead agency" means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by the Act in the county.

...

"Employee" shall have the same meaning as "public employee."

...

"Environmental hazardous substance" or "EHS" means any substance designated by the Department of Environmental Protection *[and Energy]* in N.J.A.C. 7:1G-2.

"Environmental hazardous substance list" means the list of environmental hazardous substances developed by the Department of Environmental Protection *[and Energy]* pursuant to N.J.S.A. 34:5A-4 and N.J.A.C. 7:1G-2. The environmental hazardous substance list is incorporated into the Right to Know Hazardous Substance List.

"Environmental survey" means a written form, comprised of the Community Right to Know Survey, and the Release and Pollution Prevention Report, prepared by the Department of Environmental Protection *[and Energy]* and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility. The Community Right to Know Survey is incorporated into the Right to Know Survey.

...

"Hazardous substance" means any substance, or substance contained in a mixture, included on the hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. "Hazardous substance" shall not include:

1.-7. (No change.)

8. Foods, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

9. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

10. Materials gathered as evidence by a law enforcement agency and maintained in an evidence locker or room;

11. Hazardous substances which are an integral part of a facility structure or furnishings; or

12. Products which are the personal property and are for the personal use of an employee.

...

"Local Emergency Planning Committee" means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

...

"Pilot plant" means pilot facility as that term is defined at N.J.S.A. 13:1D.

...

"Public employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered public employer, and shall include volunteer firefighters and volunteers who work for a covered public employer.

...

"Research and development (R&D) laboratory" means a specially designated area, including pilot plants, used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances, in the case of public employers, or environmental hazardous substances, in the case of private employers, are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Right to Know Survey and labeling, "primarily" means greater than 50 percent.

...

"Superfund Amendments and Reauthorization Act" or "SARA" means the Federal Act (PL 99-499) establishing the "Emergency Planning and Community Right to Know Act of 1986" at Title III (42 USC 11001).

"Technically qualified person" means

1. For training purposes, a person who is a registered nurse or a Certified Industrial Hygienist, or has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances;

2. For training purposes, a person who has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, private organization or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of

experience supervising employees who handle hazardous substances or work with hazardous substances. The 30 hour requirement may be met by the combination of one or more hazardous materials training courses;

3.-4. (No change.)

5. For training purposes, a person who has received certification pursuant to N.J.A.C. 8:59-12;

6. In a research and development laboratory, a person who has a bachelor's degree in industrial hygiene, environmental science, chemistry, or a related field, and understands the health risks associated with exposure to the hazardous substances used in the research and development laboratory.

...

"Trade secret docket number" means a code number temporarily or permanently assigned to the identity of information on the Community Right to Know Survey or Release and Pollution Prevention Report by the Department of Environmental Protection.

8:59-2.2 Completion of Right to Know Survey

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

(e) If a public employer does not know the chemical name and Chemical Abstracts Service number of the components of a substance, mixture, or intermediate, at the time of receipt of the annual Right to Know survey, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The public employer shall maintain this written documentation of its good faith effort.

(f)-(i) (No change.)

8:59-5.1 General provisions

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

(c) Every container at an employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance. If an employer does not know the chemical name and Chemical Abstracts Service number of the components in a container, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The employer shall maintain this written documentation of its good faith effort.

(d)-(q) (No change.)

8:59-10.1 General provisions

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

(c) The absence of any substance from the Special Health Hazard Substance List shall not imply that a substance is not carcinogenic, mutagenic, teratogenic, flammable, reactive/explosive, or corrosive. Such absence, or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential special health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

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

8:59-11.3 Definitions

(a) (No change.)

(b) For this subchapter and for N.J.A.C. 8:59-1, 3, 5, 8, 9 and 10, "employer" shall also mean any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be:

Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services;

Major Group Numbers 20 through 39 inclusive (manufacturing industries);

Major Group Number 45 (Transportation by Air), only Group Numbers 451—Air Transportation, Scheduled, And Air Courier Services, and 458—Airports, Flying Fields, and Airport Terminal Services;

Major Group Number 46 (Pipelines, Except Natural Gas);

Major Group Number 47 (Transportation Services), only Group Numbers 473—Arrangement of Transportation of Freight and Cargo, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation;

Major Group Number 48 (Communication), only Group Numbers 481—Telephone Communications, and 482—Telegraph and Other Message Communications;

Major Group Number 49 (Electric, Gas and Sanitary Services);

Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment Equipment and Supplies, and 5093—Scrap and Waste Materials;

Major Group Number 51 (Wholesale Trade, Nondurable Goods), only Group Numbers 512—Drugs, Drug Proprietaries and Druggist's Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Nondurable Goods;

Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers (New and Used), 552—Motor Vehicle Dealers (Used only), and 554—Gasoline Service Stations;

Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants, Except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers;

Major Group Number 75 (Automotive Repair, Services, and Parking*)*, only Group Number 753—Automotive Repair Shops;

Major Group Number 76 (Miscellaneous Repair Services), only Industry Number 7692—Welding Repair;

Major Group Number 80 (Health Services), only Group Number 806—Hospitals;

Major Group Number 82 (Educational Services), only Group Numbers 821—Elementary and Secondary Schools, and 822—Colleges, Universities, Professional Schools, and Junior Colleges, and Industry Number 8249—Vocational Schools, Not Elsewhere Classified; and

Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734—Testing Laboratories.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 5, 1994 at 26 N.J.R. 2723(a).

Adopted: October 11, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: October 17, 1994 as R.1994 d.545, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: November 7, 1994.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on July 25, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the

hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, New Jersey Department of Health, Room 501, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted**:

GLUCOTROL Glipizide 5 mg Tablet Mylan	GLUCOTROL Glipizide 10 mg Tablet Mylan

The following products and their manufacturers were **not adopted and are still pending**:

BACITRACIN Bacitracin 500 units Per gm Ointment Altana	GLUCOTROL Glipizide 10 mg Tablet Geneva
BACTRIM Sulfamethoxazole/trimethoprim 400 mg/80 mg Tablet Par	LOPRESSOR Metoprolol tartrate 50 mg Tablet Geneva
BACTRIM Sulfamethoxazole/trimethoprim 800 mg/160 mg Tablet Par	LOPRESSOR Metoprolol tartrate 100 mg Tablet Geneva
CHLOROPTIC S.O.P. Chloramphenicol 0.5% Ophth ointment Pharmafair/Sight	NAPHCON A Npahazoline HCl 0.25%, pheniramine maleate 0.3% Ophth solution Akorn/Taylor
CHLOROPTIC Chloramphenicol 1% Ophth solution Pharmafair/Sight	NEO-DECADRON Neomycin (as sulfate) 3.5 mg, dexamethasone sodium phosphate, 1 mg Per ml Ophth solution Pharmafair/Sight
CORTISPORIN Polymyxin B sulfate 10,000U, neomycin sulfate 3.5 mg as base, hydrocortisone 1% Per ml Otic solution Pharmafair/Sight	NOVAFED A Pseudoephedrine HCl with chlorpheniramine maleate 120/8 mg Capsule Kenmont Labs
DESYREL Trazodone HCl 150 mg Tablet Teva	ORUDIS Ketoprofen 50 mg Capsule Geneva
FLUORESCITE Fluorescein 10% Injection Akorn/Taylor	ORUDIS Ketoprofen 75 mg Capsule Geneva
FUNDUSCEIN Fluorescein 25% Injection Akorn/Taylor	POLYSPORIN Bacitracin zinc 500U, polymyxin B sulfate 10,000U Per gm Ophth ointment Pharmafair/Sight
GLUCOTROL Glipizide 5 mg Tablet Geneva	

TAGAMET Cimetidine 200 mg Tablet Danbury	TAGAMET Cimetidine 800 mg Tablet Lemmon
TAGAMET Cimetidine 300 mg Tablet Danbury	XANAX Alprazolam 0.25 mg Tablet Danbury
TAGAMET Cimetidine 400 mg Tablet Danbury	XANAX Alprazolam 0.5 mg Tablet Danbury
TAGAMET Cimetidine 800 mg Tablet Danbury	XANAX Alprazolam 0.1 mg Tablet Danbury
TAGAMET Cimetidine 200 mg Tablet Lemmon	XANAX Alprazolam 0.25 mg Tablet Geneva
TAGAMET Cimetidine 300 mg Tablet Lemmon	XANAX Alprazolam 0.5 mg Tablet Geneva
TAGAMET Cimetidine 400 mg Tablet Lemmon	XANAX Alprazolam 0.1 mg Tablet Geneva

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 3720(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 7, 1994 at 26 N.J.R. 1190(b).
Adopted: October 11, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: October 17, 1994 as R.1994 d.546, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: November 7, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on March 28, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized in a previous issue of the New Jersey Register (see 26 N.J.R. 2025(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing

record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, New Jersey Department of Health, Room 501, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

PROVENTIL
Albuterol sulfate
2 mg/5 ml
Syrup
Mova

The following products and their manufacturers were **not adopted and still pending**:

Atenolol tabs 50 mg, 100 mg	Teva
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Geneva
Clotrimazole 1% top soln.	Lemmon
Dexchlorpheneramine maleate repetabs 4 mg, 6 mg	Amide
Diflunisal tabs 250 mg, 500 mg	Purepac
Diltiazem tabs 30 mg, 60 mg	Novopharm
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Teva
Endal HC substitute	Pharm. Assoc.
Gemfibrozil tabs 600 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Mylan
Levothyroxine sodium tabs 137 mcg	Phone Poulenc
Metoclopramide tabs 5 mg	Biocraft
Metoprolol tartrate tabs 50 mg, 100 mg	Novopharm
Metoprolol tartrate tabs 50 mg, 100 mg	Teva
Nortriptyline HCl caps 10 mg, 25 mg, 50 mg, 75 mg	Lemmon
Oxazepam caps 10 mg, 15 mg, 30 mg	Geneva
Phenytoin 125 mg/5 ml oral suspension	Barre-National
Pindolol tabs 5 mg, 10 mg	Lemmon
Piroxicam caps 10 mg, 20 mg	Danbury
Terfenadine tabs 60 mg	Mutual
Trazodone tablets 150 mg	Mutual
Verapamil tabs 80 mg, 120 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2025(b), 2901(a) and 3715(b).

(a)

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

Proposed: May 2, 1994 at 26 N.J.R. 1821(a).
Adopted: October 11, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: October 17, 1994 as R.1994 d.547, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: November 7, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received no comments pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized above and in previous issues of the New Jersey Register (see 26 N.J.R. 2897(a) and 3719(a)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, New Jersey Department of Health, Room 501, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

TAGAMET	TEMOVATE
Cimetadine	Clobetasol propionate
300 mg/2 ml	0.05%
Injection	Ointment
Dupont Pharma	Copley
TEMOVATE	FELDENE
Clobetasol propionate	Piroxicam
0.05%	20 mg
Cream	Capsule
Copley	Novopharm

The following products and their manufacturers were **not adopted and still pending**:

Cefaclor capsules 250 mg, 500 mg	Lederle
Cefaclor susp 125 mg/5 ml, 187 mg/5 ml	Lederle
Cefaclor susp 250 mg/5 ml, 375 mg/5 ml	Lederle
Cimetadine 300 mg/5 ml oral solution	Dupont Pharma
Diltiazem CD caps 60 mg, 90 mg, 120 mg	Blue Ridge
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Glipizide tablets 5 mg, 10 mg	Dupont Pharma
Guanabenz acetate tabs 4 mg, 8 mg	Zenith
Hyoscyamine sulfate ER tabs 0.375 mg	Contract
Indapamide tabs 2.5 mg	Zenith
Isoniazid 100 mg, 300 mg tabs	Barr
Materna vitamin tabs substitute	Anabolic
Metoprolol tartrate tabs 50 mg, 100 mg	Copley
Naproxen sodium tabs 275 mg, 550 mg	Purepac
Pindolol tabs 5 mg, 10 mg	Novopharm
Piroxicam caps 10 mg, 20 mg	Zenith
Prenate 90 vitamin tabs substitute	Lini
Sucralfate tablets 1 gm	Blue Ridge
Sulfadiazine tabs 500 mg	Eon
Terfenadine tabs 60 mg	Blue Ridge
Terfenadine/pseudoephrine tabs 60/120	Blue Ridge

(OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2897(a) and 3719(a).)

(b)

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

Proposed: May 2, 1994 at 26 N.J.R. 1822(a).
Adopted: October 11, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: October 17, 1994 as R.1994 d.548, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: November 7, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: From Chase Laboratories in opposition to the proposed deletion of its products from the Formulary.

Chase forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary. Chase requested deferral of deletion of its products pending the FDA's re-inspection in the near future.

RESPONSE: The Council took action on the nifedipine products based on a recently completed inspection by the Food and Drug Administration and continued deferral on the remaining products pending an independent consultant's report.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. Eight comments were offered as summarized above and in previous issues of the New Jersey Register (see 26 N.J.R. 2898(a) and 3717(b)). The hearing officer recommended that the decisions be made based upon the available information and evidence. The Council deleted the products specified as "adopted," declined to delete the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, New Jersey Department of Health, Room 501, CN 360, Trenton, NJ 08625-0360.

The **deletion** of the following products and their manufacturers were adopted in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

PROCARDIA	PROCARDIA
Nifedipine	Nifedipine
10 mg	20 mg
Capsules	Capsules
Chase	Chase

The following products and their manufacturers were **deferred, and still pending**:

Biocraft:
Albuterol sulfate tabs 2 mg, 4 mg
Amiloride HCl, hydrochlorothiazide tabs 5/50 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg
Amoxicillin as the trihydrate caps 250 mg, 500 mg
Amoxicillin as the trihydrate tabs 250 mg
Amoxicillin as the trihydrate susp 250 mg/5 ml
Amoxicillin as the trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate susp 250 mg/5 ml
Ampicillin/ampicillin trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate caps 250 mg
Ampicillin/ampicillin trihydrate caps 500 mg
Baclofen tabs 10 mg, 20 mg
Cephalexin susp 125 mg/5 ml, 250 mg/5 ml
Cephalexin caps 250 mg, 500 mg
Cephalexin tabs 250 mg, 500 mg
Cephradine caps 250 mg, 500 mg
Cephadrine susp 125 mg/5 ml, 250 mg/5 ml
Cinoxacin caps 250 mg, 500 mg
Cloxacillin sodium monohydrate caps 250 mg, 500 mg
Cloxacillin sodium monohydrate syrup 125 mg/5 ml
Dicloxacillin sodium monohydrate caps 250 mg, 500 mg
Disopyramide phosphate caps 100 mg, 150 mg
Hydrocortisone cream 1%
Imipramine HCl tabs 10 mg, 25 mg, 50 mg
Ketoprofen caps 25 mg, 50 mg, 75 mg
Metaproterenol tabs 10 mg, 20 mg
Metaproterenol syrup 10 mg/5 ml
Metoclopramide tabs 10 mg
Metoclopramide syrup 5 mg/5 ml
Minocycline HCl caps 50 mg, 100 mg
Nystatin susp 100,000u/ml
Penicillin G potassium tabs 200,000u, 400,000u
Penicillin VK tabs 250 mg, 500 mg
Penicillin VK for sol. 125 mg/5 ml, 250 mg/5 ml
Sulfamethoxazole/TMP susp 200/40 mg per 5 ml
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg
Trimethoprim tabs 100 mg, 200 mg

Chase:
Amantadine HCl caps 100 mg
Clofibrate caps 500 mg
Valproic acid caps 250 mg

Halsey:
Belladonna alkaloids, phenobarbital elixir
Codeine phosphate/guaifenesin liq 10/100 mg per 5 ml
Cyproheptadine HCl syrup 2 mg/5 ml
Diphenhydramine HCl elixir 12.5 mg/5 ml
Ephedrine/hydroxyzine/theophylline liq 6.25/2.5/32.5 mg per 5 ml
Guaifenesin/codeine/pseudoephedrine liq 100/10/30 mg per 5 ml
Homatropine MBr/hydrocodone butartrate syrup 1.5/5 mg per 5 ml
Hydrocodone bitartrate/phenylpropanolamine syrup 2.5/12.5 mg per 5 ml
Hydrocodone bitartrate/phenylpropanolamine syrup 5/25 mg per 5 ml
Phenylpropanolamine/phenylephrine/guaifenesin liq 20/5/100 mg per 5 ml
Potassium chloride liq 10%
Promethazine HCl syrup 6.25 mg/5 ml
Promethazine/codeine syrup 6.25/10 mg per 5 ml
Promethazine/phenylephrine syrup 6.25/5 mg per 5 ml
Promethazine/DM syrup 6.25/15 mg per 5 ml
Promethazine/phenylephrine/codeine syrup 6.25/5/10 mg per 5 ml
Theophylline elixir 80 mg/15 ml
Theophylline/guaifenesin liq 150/90 mg per 15 ml

Sidmak:
Albuterol sulfate tabs 2 mg, 4 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg, 150 mg
Benztropine mesylate tabs 0.5 mg, 1 mg, 2 mg
Bethanechol CL tabs 5 mg, 10 mg, 25 mg, 50 mg
Chlorpropamide tabs 100 mg, 250 mg
Choline magnesium salicylate tabs 500 mg, 750 mg, 1 g
Cyproheptadine HCl tabs 4 mg
Desipramine HCl tabs 25 mg, 50 mg, 75 mg
Dipyridamole tabs 25 mg, 50 mg, 75 mg
Doxycycline hyclate caps 100 mg
Griseofulvin ultramicrosize tabs 165 mg, 330 mg
Hydralazine HCl tabs 10 mg, 25 mg, 50 mg, 100 mg
Hyroxyzine HCl tabs 10 mg, 25 mg, 50 mg
Ibuprofen tabs, 400 mg, 600 mg, 800 mg
Indomethacin caps 25 mg, 50 mg
Meclizine HCl tabs 12.5 mg, 25 mg
Methyldopa tabs 125 mg 250 mg, 500 mg
Metronidazole tabs 250 mg, 500 mg
Nystatin vaginal tabs 100,000u
Oxybutynin CL tabs 5 mg
Procainamide SR tabs 250 mg, 500 mg
Propranolol tabs 10 mg, 20 mg, 40 mg, 60 mg, 80 mg, 90 mg
Propranolol/hydrochlorothiazide tabs 40/25 mg, 80/25 mg
Salsalate tabs 500 mg, 750 mg
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg
Theophylline tabs 100 mg, 200 mg, 300 mg, 450 mg
Trazodone HCl tabs 50 mg, 100 mg, 150 mg
Verapamil HCl tabs 80 mg, 120 mg

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2898(a) and 3717(b).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: September 6, 1994 at 26 N.J.R. 3583(a).
Adopted: October 11, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: October 17, 1994 as R.1994 d.549, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: November 7, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on September 26, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. No one attended the hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, New Jersey Department of Health, Room 501, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted**:

ANUSOL HC
Hydrocortisone acetate
25 mg
Suppository
Clay-Park Labs

CORTENEMA
Hydrocortisone
100 mg per 60 ml
Solution
Copley

CORTISPORIN OPTHALMIC
Polymyxin B sulfate 10,000U with hydrocortisone 1%, neomycin sulfate 0.5%
Per ml
Ophth Susp
Steris

GARAMYCIN
Gentamicin
3 mg/ml
Ophth solution
Schering

GARAMYCIN
Gentamicin
3 mg/gm
Ophth ointment
Schering

GOLYTELY
PEG-3550 & electrolytes in 4000 ml
Electro gavage
Stafford-Miller International

K-LYTE CL
Potassium chloride, potassium bicarbonate and 1-lysine monohydrochloride
25 mEq
Tablet, efferves
CFH Labs

LEVSIN
Hyoscyamine sulfate
0.125 mg
Tablet
Contract Pharmacal

LOPID
Gemfibrozil
600 mg
Tablet
Purepac

P-V TUSSIN
Hydrocodone bitartrate 2.5 mg, pseudoephedrine HCl 30 mg, chlorpheniramine maleate 2 mg
Per 5 ml
Liquid
KV Pharm

PROVENTIL
Albuterol sulfate
2 mg
Tablet
Warrick

PROVENTIL
Albuterol sulfate
4 mg
Tablet
Warrick

QUINAMM
Quinine sulfate
260 mg
Tablet
Royce

QUINIDEX
Quinidine sulfate
300 mg
Tablet
Copley

SLO-BID
Theophylline
100 mg
Capsule
Arcola

SLO-BID
Theophylline
125 mg
Capsule
Arcola

SLO-BID
Theophylline
200 mg
Capsule
Arcola

SLO-BID
Theophylline
300 mg
Capsule
Arcola

STUARTNATAL PLUS
Prenatal vitamin
Per tablet
Tablet
Amide

STUARTNATAL PLUS
Prenatal vitamin
Per tablet
Tablet
Contract Pharmacal

SULAMYD
Sulfacetamide sodium
10%
Ophth ointment
Schering

SULAMYD
Sulfacetamide sodium
10%
Ophth solution
Schering

SYMMETREL
Amantadine HCl
50 mg/5 ml
Syrup
Dupont

TRILAFON
Perphenazine
16 mg
Tablet
Warrick

TRILAFON
Perphenazine
2 mg
Tablet
Warrick

TRILAFON
Perphenazine
4 mg
Tablet
Warrick

TRILAFON
Perphenazine
8 mg
Tablet
Warrick

VASOCIDIN
Prednisolone acetate 0.5%, Sulfacetamide sodium 10%
Per gm
Ophth ointment
Schering

WYTENSIN
Guanabenz
4 mg
Tablet
Copley

WYTENSIN
Guanabenz
8 mg
Tablet
Copley

The following products and their manufacturers were **not adopted and are still pending**:

ALDACTAZIDE-50
Spironolactone/ hydrochlorothiazide
50 mg/50 mg
Tablet
Danbury

AMOXIL
Amoxicillin as trihydrate
125 mg
Tablet, chewable
Novopharm

AMOXIL
Amoxicillin as trihydrate
250 mg
Tablet, chewable
Novopharm

ANAPROX
Naproxen sodium
275 mg
Tablet
Mylan

ANAPROX
Naproxen sodium
550 mg
Tablet
Mylan

ANSAID
Flurbiprofen
100 mg
Tablet
Mylan

ANSAID
Flurbiprofen
100 mg
Tablet
Novopharm

ANSAID
Flurbiprofen
50 mg
Tablet
Mylan

ANSAID
Flurbiprofen
50 mg
Tablet
Novopharm

BUSPAR
Buspirone HCl
10 mg
Tablet
Danbury

BUSPAR
Buspirone HCl
5 mg
Tablet
Danbury

CAPOTEN
Captopril
100 mg
Tablet
Novopharm

CAPOTEN
Captopril
12.5 mg
Tablet
Novopharm

CAPOTEN
Captopril
25 mg
Tablet
Novopharm

CAPOTEN
Captopril
50 mg
Tablet
Novopharm

CORGARD
Nadolol
120 mg
Tablet
Danbury

CORGARD
Nadolol
40 mg
Tablet
Danbury

CORGARD
Nadolol
80 mg
Tablet
Danbury

DARVOCET N
Propoxyphene napsylate 100 mg/acetaminophen 100 mg/650 mg
Tablet
Danbury

DESYREL
Trazodone HCl
150 mg
Tablet
Danbury

FIORINAL
Aspirin, butalbital and caffeine
325/50/40 mg
Tablet
Danbury

GLUCOTROL
Glipizide
10 mg
Tablet
Novopharm

GLUCOTROL
Glipizide
5 mg
Tablet
Novopharm

GLUCOTROL
Glipizide
10 mg
Tablet
Watson

GLUCOTROL
Glipizide
5 mg
Tablet
Watson

ISORDIL
Isosorbide dinitrate
20 mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
30 mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
40 mg
Tablet
Danbury

LOPID
Gemfibrozil
600 mg
Tablet
Mylan

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Watson

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Watson

MAXZIDE-25 MG
Triamterene, hydrochlorothiazide
37.5/25 mg
Tablet
Danbury

METIMYD
Sulfacetamide 100 mg, prednisolone 5 mg
Per ml
Ophth Susp
Schering

MICRONASE
Glyburide
1.25 mg
Tablet
Novopharm

MICRONASE
Glyburide
2.5 mg
Tablet
Novopharm

MICRONASE
Glyburide
5 mg
Tablet
Novopharm

MEXITIL
Mexiletine HCl
150 mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
200 mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
250 mg
Capsule
Novopharm

MODURETIC 5-50
Amiloride HCl with hydrochlorothiazide
5/50 mg
Tablet
Danbury

NAPROSYN
Naproxen
250 mg
Tablet
Danbury

NAPROSYN
Naproxen
375 mg
Tablet
Danbury

NAPROSYN
Naproxen
500 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
100 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
10 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
150 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
25 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
50 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
75 mg
Tablet
Danbury

ORGANIDIN
Iondinated glycerol
60 mg/5 ml
Elixir
Barre-National

PARLODEL
Bromocriptine mesylate
2.5 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
10 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
1 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
2.5 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
5 mg
Tablet
Danbury

REGLAN
Metoclopramide
5 mg
Tablet
Danbury

SELDANE
Terfenadine
60 mg
Tablet
Danbury

TEMOVATE
Clobetasol propionate
0.05%
Cream
NMC Labs

TEMOVATE
Clobetasol propionate
0.05%
Ointment
NMC Labs

TENORMIN
Atenolol
25 mg
Tablet
Danbury

TUSSI-ORGANDIN DM
Iodinated glycerol 30 mg, dextromethorphan HBr 10 mg
Per 5 ml
Liquid
Barre-National

TUSSI-ORGANDIN
Iodinated glycerol 30 mg and codeine phosphate 10 mg
Per 5 ml
Liquid
Barre-National

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services
Charity Care Component of the Health Care Subsidy Fund

Adopted Concurrent Amendment: N.J.A.C. 10:52-8.2

Proposed: August 15, 1994 at 26 N.J.R. 3485(a).

Adopted: September 29, 1994 by William Waldman, Commissioner, Department of Human Services, and approved by the Essential Health Services Commission, Victoria Wicks, Chair.

Filed: September 29, 1994 as R.1994 d.536, **without change.**

Authority: N.J.S.A. 30:4D-5, 6a(1), 7a, b, c, and e; and 12; 1902(a)(13) of the Social Security Act; 42 U.S.C. 1396a(a)(13); 42 CFR 447.250; N.J.S.A. 26:2H-18.56g.

Effective Date: September 29, 1994.

Expiration Date: February 8, 1995.

The following persons commented on the proposal:

Bruce J. Markowitz, President and CEO, Palisades General Hospital.

Cohen, Shapiro, Polisher, Skiekman, and Cohen, representing Clara Maass Medical Center, Newcomb Medical Center, Rahway Hospital, St. Peter's Medical Center, and Zurbrugg Memorial Hospital.

Sill, Cummis, Zukerman, Radin, Tischman, Epstein, and Gross, on behalf of the Hospital Alliance of New Jersey.

Ronald J. Napiorski, Chief Financial Officer, University of Medicine and Dentistry of New Jersey, University Hospital.

Shanley and Fisher, representing Cathedral Healthcare System.

Charles A. Mowll, Vice President, New Jersey Hospital Association.

Summary of Public Comments and Agency Responses:

COMMENT: The firm of Cohen, Shapiro, Polisher, Shiekman and Cohen, Counsellors-at-Law, representing Clara Maass Medical Center, Newcomb Medical Center, Rahway Hospital, St. Peter's Medical Center, and Zurbrugg Memorial Hospital, contends that the 80 percent limitation on defining hospitals which are eligible to receive a charity care subsidy in Chapter 160 should only be applied to 1993; for purposes of distributing the 1994 charity care subsidy, the commenter believes that 100 percent of New Jersey hospitals should be eligible.

RESPONSE: N.J.S.A. 26:2H-18.59c(2) provides that, if the Commission is not able to fully implement a charity care claims processing system by January 1, 1994, the Commission shall make disproportionate share payments to hospitals based on the charity care costs incurred by all hospitals in 1993. Contrary to the comment, the statute does not provide that all hospitals that provide some amount of charity care are automatically eligible for a subsidy. Rather, the statutory provision leaves it to the discretion and expertise of the Commission to determine both the method of distribution and the method for determining which hospitals are eligible for the distribution.

In 1993, the distribution was limited to the 80 percent of hospitals that provided the most charity care. A similar ratio has been adopted by the Commission and the Division in these rules. By continuing to limit charity care distributions to the top 80 percent of hospitals, the Commission and the Division will ensure that those hospitals that are most in need of the subsidy will receive it. This method of distribution also encourages hospitals to provide charity care and rewards those hospitals whose efforts bring them into the top 80 percent of hospitals. In this way, compliance with the statutory requirement that care not be denied on the basis of indigency is encouraged. Similarly, this manner of distribution also encourages hospitals to carefully document the charity care they provide. In a letter dated February 2, 1994, the Commission was advised by the Legislature that "... it was also intended that some degree of continuity and stability would be maintained in the distribution of subsidies by virtue of the fact that the pool of hospitals eligible for subsidies in 1994 would still be determined by the 80% eligibility formula."

Finally, N.J.S.A. 26:2H-18.59(d) is indicative of the Legislature's intent that not all hospitals would receive a charity care subsidy. That statute states that "a hospital which does not receive a charity care subsidy pursuant to this Act" shall provide the Commission with certain information. If the Legislature had intended that all hospitals receive the subsidy, it would not have included a provision in the Act for hospitals which did not receive the subsidy.

In sum, the Commission and the Division believe that the method chosen for distribution of the 1994 charity care subsidies is in keeping with the provisions of the statute and the legislative intent.

COMMENT: Two commenters, the firm of Sills, Cummis, Zuckerman, Radin, Tischman, Epstein and Gross, representing the Hospital Alliance of New Jersey, and the New Jersey Hospital Association, questioned the use of the 1993 revenue cap rather than net patient services revenue in the determination of the charity care rankings.

RESPONSE: It is important when developing a methodology that appropriate comparisons are made. In the absence of a rate-setting system, the Essential Health Services Commission, the Division, and other affected hospitals have no assurance that amounts reported as net patient service revenue are comparable. Revenue caps, however, were set with a standard methodology approved by the Hospital Rate Setting Commission. The Commission and the Division believe that this is the most standardized, and therefore most equitable, figure to use in the calculation.

COMMENT: The University of Medicine and Dentistry of New Jersey, University Hospital, requested that the Medicaid valuation of outpatient charity care be recalculated to include final settlement rates, and HealthStart and dental outpatient charges.

The New Jersey Hospital Association suggested that the Medicaid valuation should include Medicaid DRG payments plus disproportionate share payments.

RESPONSE: The outpatient valuation methodology referred to in the regulations was a result of a consultation between the Department of Health and the hospital industry. There are several problems with the request that final settlement amounts be used. Final settlements are typically made two to three years after the close of the rate year. Chapter 160 makes no provision for an interim payment followed by a reconciliation process which would further burden the declining charity care appropriations in future years. The use of the interim payment allows the system to remain current and places less burden on hospital administration and State government.

Also, since HealthStart services and dental services paid by Medicaid in an outpatient setting represent payment in full, it would be inappropriate to calculate charity care based on charges for these services.

Disproportionate share payments made by the Division to hospitals already reflect charity care payments to hospitals. To include them in the valuation would be to pay them twice: once through the individual payment rates and again through the lump sum disproportionate share payments.

COMMENT: The New Jersey Hospital Association commented that charity care distributed in 1994 should not be limited to the actual Statewide amount documented on audit but should be prorated based on the $450 million amount specific in Chapter 160.

RESPONSE: N.J.S.A. 26:2H-18.59c(1) provides that, in 1994, $450 million would be the "total amount of the charity care subsidy." In 1994, the law contemplated that hospitals would file claims for reimbursement that would be reviewed by the Commission and paid "based on actual services rendered." (N.J.S.A. 26:2H-18.59c.) Since it was possible that the total claims submitted by hospitals would not reach $450 million, that figure is clearly a "maximum" that could be distributed. The conclusion is supported by the fact that the statute contains a formula which

is used to set the "maximum charity care subsidy allotment a hospital may receive in a year." (N.J.S.A. 26:2H-18.59c.) The statute, however, contains no mandatory minimum payment. The Commission is also permitted to transfer only "[s]uch funds as may be necessary" to the Division for approved disproportionate share payments to hospitals, N.J.S.A. 26:2H-18.59a. Finally, in the absence of a claims processing system, N.J.S.A. 26:2H-18.59(c)(2) specifically provides that the 1994 payments shall be "based on the charity care costs incurred by all hospitals in 1993." Thus, only hospitals' actual charity care costs were to be subsidized. This interpretation is in strict accord with the Legislature's plainly stated intent that, after 1993, "hospitals ... be reimbursed for charity care based on the actual amount of charity care provided by the hospital." (Assembly Health and Human Services Committee Statement, Assembly No. 2100—P.L. 1992, c.160.)

COMMENT: The New Jersey Hospital Association expressed concern about repayment schedules which resulted from interim payments in the first half of 1994 which exceeded the payment levels based on the audit.

RESPONSE: The Commission and the Division of Medical Assistance and Health Services have both committed themselves to establishing reasonable payback schedules. These payback schedules will not begin until January 1995.

COMMENT: Palisades General Hospital commented that the proposed rule is silent on the issue of retroactive claims reconcilitation once the Essential Health Services Commission has established a claims processing system.

This hospital also questioned why the proposed rule does not address a reconciliation between actual 1994 charity care claims and provisional payments, asserting that use of the word "provisional" indicates legislative intent for a reconciliation process.

RESPONSE: The Essential Health Services Commission will not have a claims processing system established before January 1, 1995. Claims processing will not be used for accounts with a 1994 write-off date, but rather for accounts with a write-off date after the implementation of the claims processing system. Therefore, a system to reconcile is not necessary because hospitals will be paid for charity care delivered in 1994 by the methodology established in this rule, which will only be reconciled with the interim payments provided before the audit results were available.

The Commission and the Division interpret langauge regarding provisional payments in the absence of a claims processing system as allowing a provisional (that is, temporary) system until the claims processing system is implemented, as opposed to provisional (that is, subject to reconciliation) subsidy amounts.

COMMENT: The firm of Shanley and Fischer, Counsellors-at-Law, representing Cathedral Healthcare System, suggested that alternate criteria be used to determine eligibility for charity care. The commenter further suggested that disproportionate share hospitals be identified through demographic studies based on the percentage of low income persons in a hospital's service area or solely based on information concerning the family income of hospital patients.

RESPONSE: N.J.S.A. 26:2H-18.59c(2) plainly provides that, in the absence of a claims processing system, "the [C]ommission shall continue to make provisional disproportionate share payments to hospitals, through [the Division], based on the charity care costs incurred by all hospitals in 1993, until such time as the [C]ommission is able to implement the claims processing system." Therefore, the Commission is required to determine "the charity care cost incurred by all hospitals in 1993" in order to make the 1994 payments in accordance with the statute.

The Commission and the Division chose the audit conducted by the Department of Health of charity care rendered by hospitals in 1993 as its measure of "the charity care incurred by all hospitals in 1993." This was chosen for several reasons. First, the Legislature had required the Department to conduct such as audit. (See N.J.S.A. 26:2H-18.59b(5).) In addition, the Department had a great deal of experience in conducting charity care audits, having done so since 1989. The Department's audit procedures were also well known to hospitals, which had collected information under them since 1989 to justify their receipt of charity care payments, comprised of both charity care and bad debt, under the prior rate systems.

The audit is also the most objective means available for measuring the charity care costs incurred by hospitals in 1993. The audit produced an account of charity care costs based upon the documentation required to be supplied by hospitals. This, the Commission and the Division found was in accord with the Legislature's intent to discontinue subsidies for bad debt, to provide subsidies only for charity care, and to bring accountability to the entire system.

In addition, the Department of Health has already promulgated detailed rules regarding the charity care eligibility audit. The Commission and Division are reviewing the charity care eligibility rules for 1995 and will consider these in their deliberations.

COMMENT: The firm of Sills, Cummis, Zuckerman, Radin, Tischman, Epstein and Gross, representing the Hospital Alliance of New Jersey, asserted that the charity care distribution methodology goes beyond the statutory intent of Chapter 160, with regard to documenting patient eligibility.

RESPONSE: Again, this comment would be more germane to a rule dealing with the charity care eligibility audit than the distribution methodology. However, the Commission and the Division find that requiring proof of identification and residency are essential to supporting a charity care application. For example, the hospital cannot do a credible assessment of a person's financial eligibility for charity care without some assurance that the financial information presented belongs to the person who is receiving the care. This necessitates documentation of identity. It is, further, an appropriate public policy to limit eligibility for a State-funded charity care program to residents of the State, except for those who need emergency services while within the State borders.

COMMENT: The firm of Sills, Cummis, Zuckerman, Radin, Tischman, Epstein and Gross, representing the Hospital Alliance of New Jersey, commented that the Essential Health Services Commission and the Division are proposing to adopt an expired statutory provision that relieved a hospital which treats a patient found indigent by a court from complying with the audit criteria.

RESPONSE: The Commission and the Division are authorized to establish charity care eligibility criteria. Reference to judicial finding is an appropriate use of the Commission's and the Division's use of the regulatory authority in that it relieves patients and hospitals from having to re-establish charity care eligibility which has already been reviewed and approved.

Full text of adoption follows:

10:52-8.2 Method of payment

(a) The disproportionate share adjustment shall include the adjustment amount annually determined by the Essential Health Services Commission based upon a determination regarding payments for charity and uncompensated care from the Health Care Subsidy Fund.

1. For facilities operating under N.J.S.A. 18A:64G-1 et seq., the disproportionate share adjustment determined by the Essential Health Services Commission may be increased by an amount recommended by the Office of Management and Budget which will consider the total operating cost of the facility less any third party payments, including all other Medicaid payments, as well as payments from non-State sources for services provided by the hospital during the hospital's fiscal year.

2. The recommendation from the Essential Health Services Commission shall be calculated in the following manner pursuant to P.L. 1992, c.160 (N.J.S.A. 26:2H-18).

i. The determination of the Charity Care Component Costs of the Health Care Subsidy Fund shall be calculated in the following manner:

(1) The Essential Health Services Commission shall use the results of the charity care audit conducted as its definition of charity care incurred by all hospitals.

(2) The New Jersey Department of Health shall report to the Essential Health Services Commission, the results of its audit of New Jersey acute care hospital's charity care provided in the year per N.J.A.C. 8:31B-4.41 through 4.41N.

(A) For purposes of determining annual charity care costs, hospitals shall submit their audit lists per N.J.A.C. 8:31B-4.41A but may list their accounts by charges rather than the Medicaid rate.

(B) For purposes of determining annual charity care costs, the criteria in N.J.A.C. 8:31B-4.41D through 4.41L shall not apply to a patient who is investigated by a county adjuster and found to be indigent by a court of competent jurisdiction pursuant to N.J.S.A. 30:4. A patient so found shall qualify for 100 percent charity care coverage. Hospitals with patients who qualify under this provision shall include the appropriate documentation from the court in the patient's file for audit.

(C) For purposes of determining annual charity care costs, hospitals may document New Jersey residency for patients in either of the following two ways: hospitals must document that the applicant was a New Jersey resident at the time he or she received services

and had the intent to remain in the State. An out-of-State resident may apply for charity care if his or her services resulted from a situation requiring immediate medical care pursuant to N.J.A.C. 8:31B-4.41F.

(3) All charity care accounts shall be valued at the Medicaid rate as follows:

(A) For inpatient accounts, the New Jersey Department of Health and the New Jersey Department of Human Services shall value each account at the rate Medicaid would have reimbursed hospitals for the service(s).

(B) For outpatient accounts, outpatient charity care accounts written-off during the calendar year will be valued as follows: annual outpatient charity care charges multiplied by the ratio of the annual outpatient Medicaid payments to the annual outpatient Medicaid charges associated with paid claims. This Medicaid outpatient payment-to-charge ratio excludes billings for HealthStart and dental services.

(C) Disproportionate share adjustments and final rate settlements for the service period shall not be taken into account for the recognition of charity care costs.

(4) If a hospital's percentage of charity care costs in relation to their revenue cap is among the 80 percent of hospitals with the highest percentage of charity care, it is eligible to receive a Health Care Subsidy Fund Charity Care adjustment.

(5) For eligible hospitals, charity care subsidy amounts are determined as follows:

(A) Eligible hospitals annual charity care subsidy amount is equal to charity care costs as determined by the audit and valued at Medicaid rates.

(B) The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) rate of increase used to set Medicaid hospital rates will be used to inflate charity care costs in the current year.

(C) In no instances shall payments made during a calendar year exceed the preceding years audited and Medicaid rate valued amounts inflated by TEFRA rates used in the hospital rate setting system.

(D) Any overpayments which result from interim payments exceeding the audited payment levels shall be recovered by offsetting all Medicaid payments.

Recodify existing iii.-v. as ii.-iv. (No change in text.)

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

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Vocational Rehabilitation Services Program

Adopted New Rules: N.J.A.C. 10:95

Proposed: June 6, 1994 at 26 N.J.R. 2242(a).

Adopted: October 17, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: October 18, 1994 as R.1994 d.561, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: 29 U.S.C. 701 et seq., 34 CFR Parts 74, 76, 77, 78, 79, 80, 361, 363, and 395, N.J.S.A. 30:6-11.

Effective Date: November 7, 1994.

Expiration Date: November 7, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

The Commission has decided to make several minor changes to the text upon adoption which do not significantly alter the scope or intent of the proposal. These changes are designed to clarify specific aspects of the Commission's vocational rehabilitation services program.

The language at N.J.A.C. 10:95-4.2(b) is being modified to emphasize that counseling, guidance and placement are fundamental aspects of the vocational rehabilitation process. Counseling, guidance and placement are an inherent part of vocational rehabilitation services and need not always be specifically written into the client's individualized written rehabilitation program.

Language is being added to the adopted rules at N.J.A.C. 10:95-5.2(e)1 to make it clear that basic skills training, in and of itself, is not a vocational goal. Basic skills training may be one step in the vocational rehabilitation process.

The adopted new rules at N.J.A.C. 10:95-6.7(b)2viii includes homemaker training as a service offered by the Joseph Kohn Rehabilitation Center. Home and personal management training was included in the proposal at N.J.A.C. 10:95-6.7(b)1iii as a service offered by the Joseph Kohn Rehabilitation Center's independent living program. The inclusion of homemaker training in the text of the adopted new rules makes it clear that this service, which was inadvertently left out of the proposal, is also offered as part of the vocational program at the Joseph Kohn Rehabilitation Center. The inclusion of homemaker training in this section of the adopted rules is also consistent with the proposal at N.J.A.C. 10:95-1.2 and 6.2 which discuss homemaker as an employment goal.

The language of N.J.A.C. 10:95-13.1(h) has been modified in the adopted text to clarify the Commission's policy with respect to the payment of a client's transportation to and from work. Consistent with the proposal at N.J.A.C. 10:95-10.4 and 15.2, a case is closed as rehabilitated when the client, vocational rehabilitation counselor and employer determine that the client is suitably employed for a minimum of 60 days. The Commission may provide services, including transportation, to an eligible client during the period when the client is initially employed but his or her case has not yet been closed as rehabilitated. Therefore, in accordance with this policy, the rule as adopted allows the Commission, if necessary, to initially pay for the client's transportation to and from work until the client has been rehabilitated.

Finally, the adopted text at N.J.A.C. 10:95-14.1(c) includes interpreters for non-English speaking clients among the other training and placement related services which may be provided by the Commission to eligible clients. The Commission does not discriminate against individuals on the basis of ethnic origin or cultural heritage in accordance with 29 U.S.C. 701 et seq., and the provision of interpreters for non-English speaking clients was inadvertently not included in the proposal.

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

CHAPTER 95
VOCATIONAL REHABILITATION SERVICES PROGRAM OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

SUBCHAPTER 1. OVERVIEW OF VOCATIONAL REHABILITATION

10:95-1.1 Purpose and scope

(a) This chapter contains the rules of the Commission for the Blind and Visually Impaired regarding the vocational rehabilitation services available to eligible individuals so that such individuals might maximize their employment outcome, independence, and integration into the workplace and their communities.

(b) Vocational rehabilitation (VR) services derive from a Federally funded program emanating out of the Rehabilitation Act of 1973, as amended. The services provided under this Act are any goods or services necessary to render blind or visually impaired individuals employable, including, but not limited to, the following:

1. Evaluation of rehabilitation potential, including diagnostic and related services, following the determination of eligibility for VR services;
2. Physical and mental restoration services;
3. Vocational and other training services;
4. Counseling and guidance services;
5. Maintenance services;
6. Placement services;
7. Post employment services;
8. Services to clients' families;
9. Transportation services; and
10. Other VR related services.

(c) The individualized written rehabilitation program (IWRP) shall be the mechanism that the Commission for the Blind and

Visually Impaired will utilize to ensure that client involvement and choice is present in every case (see N.J.A.C. 10:91-5.4(a) and (c)). A statement indicating that ample choices were provided to the client shall be included in every individualized written rehabilitation program.

10:95-1.2 Definitions

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

"Amanuensis" means an individual who reads and/or writes appropriate material for a blind or visually impaired person. For the purposes of this chapter, an amanuensis is equivalent to a reader.

"Employment outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market. Pursuant to 34 CFR Part 361.1(c), independent homemaker is deemed to be an employment outcome.

"Individualized written rehabilitation program (IWRP)" means an agreement between the Commission and an individual that is designed to achieve the employment objective of the individual.

"Post-employment services" means the provision of services to individuals previously rehabilitated as employed who need additional vocational rehabilitation services to maintain employment.

"Rehabilitation" means the capacity of an individual to benefit from vocational rehabilitation services sufficient to achieve an employment outcome.

"Substantial gainful activity" means the performance of significant physical or mental activities in work for remuneration or profit as determined by the United States Social Security Administration.

"Substantial impediment to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

"Supported employment" means competitive work in integrated work settings for individuals with the most severe disabilities. These are persons for whom competitive employment has not traditionally occurred, for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disabilities, these persons need intensive supported employment services or extended services in order to perform such work.

"Vocational goal" means an employment objective consistent with the unique strengths, resources, priorities, concerns, abilities and capabilities of the individual.

SUBCHAPTER 2. ELIGIBILITY STANDARDS FOR VOCATIONAL REHABILITATION SERVICES

10:95-2.1 Purpose of eligibility determination

The purpose of eligibility determination is to identify those blind and visually impaired persons who may be served so as to provide such persons an opportunity to reach a level of independence which will promote employment potential consistent with each individual's capacity, interest and ability.

10:95-2.2 Determining eligibility

(a) The Commission shall determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive the services, unless:

1. The Commission notifies the individual that exceptional and unforeseen circumstances beyond the control of the agency preclude completing the determination within the prescribed time and the individual agrees that an extension of time is warranted; or

2. An extended evaluation is required in accordance with N.J.A.C. 10:95-3.3.

(b) Eligibility for VR services shall be based on the following criteria:

1. The person has a visual impairment or is legally blind as defined at N.J.A.C. 10:91-1.12; and

2. The visual impairment or legal blindness results in a substantial impediment to employment as defined at N.J.A.C. 10:95-1.2.

(c) Eligibility for an extended evaluation shall be based upon the criteria as required by N.J.A.C. 10:95-3.3.

(d) Ineligibility for vocational rehabilitation services shall be based upon the determination that:

1. The individual does not have a severe visual impairment or is not legally blind;

2. The visual impairment or legal blindness does not result in a substantial impediment to employment; and

3. There is clear and convincing evidence that such individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in accordance with the Rehabilitation Act of 1973 as amended (29 U.S.C. 701 et seq.) and any regulations promulgated thereunder.

SUBCHAPTER 3. DIAGNOSTIC AND EVALUATION SERVICES

10:95-3.1 Preliminary diagnostic study

(a) A vocational rehabilitation counselor shall request an eye report from an ophthalmologist, optometrist, and/or utilize medical records from other sources in order to determine an applicant's eligibility for Commission services.

(b) An otological examination by an otologist or an otorhinolaryngologist may be obtained when any of the following are present:

1. The client is legally or totally blind as defined at N.J.A.C. 10:91-1.12;

2. The client indicates difficulty hearing;

3. The counselor observes that the client has difficulty hearing; or

4. The physician indicates on the basic medical examination that the client has difficulty hearing.

10:95-3.2 Thorough diagnostic study

(a) The thorough diagnostic study is designed to determine which vocational rehabilitation services may be of benefit to the individual in terms of an employment outcome. This study shall consist of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, recreational and other factors relating to the individual's impediment to employment and rehabilitation needs.

(b) A medical examination performed by a licensed M.D. or a licensed doctor of osteopathy shall be obtained when any of the following are present:

1. An individual has a medical condition that may impact upon his or her ability to undertake or achieve their vocational program; or

2. A medical examination is required by a service provider.

10:95-3.3 Extended evaluation

(a) An extended evaluation is provided to those individuals who require in-depth analysis in order to assess the appropriateness of vocational rehabilitation services. This evaluation offers individuals who have a disability and an impediment to employment the opportunity to demonstrate vocational potential when documentation indicates:

1. The presence of a physical or mental disability which is a substantial impediment to employment as defined at N.J.A.C. 10:95-1.2; and

2. The Commission's inability to make a determination that vocational rehabilitation services may benefit the individual in terms of an employment outcome.

(b) The extended evaluation of an individual may continue for a period of up to a maximum of 18 months. The evaluation is terminated after it is determined that the individual is eligible or ineligible for VR services.

SUBCHAPTER 4. PHYSICAL AND MENTAL RESTORATION SERVICES

10:95-4.1 General purpose and scope

Restoration services are designed to alleviate or diminish the effects of a disability in order to improve a client's employment

potential. These services include surgery, hospitalization, physical therapy, psychological, psychiatric or other medical services. Physical and mental restoration services shall be considered only after it is determined that a client is ineligible for funding from other sources.

10:95-4.2 Physical restoration services

(a) Physical restoration services are designed to correct or substantially modify, within a reasonable period of time, a physical condition which is stable or slowly progressive and results in a substantial disability which directly affects the employment outcome of the individual.

(b) Physical restoration services may be provided to a client who has been accepted for rehabilitation services, has an individualized written rehabilitation program and a vocational goal. Physical restoration services shall be provided based upon a physician's recommendation and approval by the Commission's administrative medical consultant using generally accepted medical standards. The client's vocational rehabilitation counselor shall assure, on the individualized written rehabilitation program, that the provision of specific physical restoration services are related to the vocational goal. Physical restoration services, even if they are the primary service provided, shall never be the only service. At a minimum, counseling, guidance and placement must be *[written into]* ***part of*** the individualized written rehabilitation program.

(c) An individual who is undergoing an extended vocational rehabilitation evaluation pursuant to N.J.A.C. 10:95-3.3 may, with the approval of the Commission's administrative medical consultant, be provided with physical restoration services in order to assess the individual's rehabilitation potential.

(d) A financial needs test shall be applied to the provision of physical restoration services to clients who have been accepted for vocational rehabilitation services. The Commission's financial need standards for the provision of vocational rehabilitation services are set forth at N.J.A.C. 10:91-3.

(e) If a client has an acute or physical illness during the time the individual is already receiving other planned rehabilitation services, services shall be provided if the acute condition or illness is such that it would complicate or delay the extended evaluation or the client's achievement of the vocational goal. If the acute condition or illness leads to changes in the client's condition, it may be necessary to re-evaluate the client, amend the program, close the case or transfer the client to another more appropriate agency.

(f) The client may choose his or her health professionals, and health facilities as long as the professional or facility meets the agency's standards for providing the required services and is willing to accept the Commission's reimbursement fee schedule (see N.J.A.C. 10:91-7.1). All physical restoration services, including non-vision related treatments and surgeries, shall be approved by a Commission medical consultant. If the fee requested by the provider is higher than the fee schedule, the Commission medical consultant may authorize fee approval in writing.

(g) The Commission shall exclude from reimbursement those physical restoration services which:

1. Do not directly relate to the client's visual disability; or
2. Do not directly relate to the client's vocational goal.

10:95-4.3 Mental restoration services

(a) Mental restoration services are designed to stabilize, correct or substantially modify, a mental condition. The Commission shall exclude from reimbursement those mental restoration services which:

1. Do not directly relate to the client's impediment to employment;
2. Do not directly relate to the client's vocational goal;
3. Involve in-patient mental restoration services; or
4. Involve primary treatment for alcohol or drug problems.

(b) Mental restoration services may be provided to a client who has been accepted for vocational rehabilitation services, has an individualized written rehabilitation program and a vocational goal. The vocational rehabilitation counselor shall assure, on the individualized written rehabilitation program, that the provision of specific mental restoration services are related to the client's vocational goal. Mental restoration services shall not be the only service provided.

(c) An individual who is undergoing an extended vocational rehabilitation evaluation pursuant to N.J.A.C. 10:95-3.3 may be provided with mental restoration services in order to assess the individual's rehabilitation potential.

(d) A financial needs test shall be applied to the provision of mental restoration services to clients who have been accepted for vocational rehabilitation services. The Commission's financial need standards for the provision of vocational rehabilitation services are set forth at N.J.A.C. 10:91-3.

(e) The client may choose his or her mental health professionals and mental health facilities as long as the professional or facility meets the agency's standards for providing the required services and is willing to accept the Commission's reimbursement fee schedule (see N.J.A.C. 10:91-7.1). All mental restoration services shall be approved by a Commission psychiatric consultant. If the fee requested by the provider is higher than the fee schedule, the Commission psychiatric consultant may authorize fee approval in writing.

(f) To qualify for Commission reimbursement, the mental restoration services must be provided by:

1. A licensed physician specializing in psychiatry or neuropsychiatry;
2. A licensed psychologist;
3. A social worker eligible for third party payment;
4. A clinic or hospital certified by the American Hospital Association to provide psychological, psychiatric or psychotherapeutic services; or
5. A professional or facility certified by the American Hospital Association to provide outpatient drug or alcohol treatment.

(g) The Commission's psychiatric consultant shall have approved a client's mental restoration services treatment plan prior to the implementation of the plan.

(h) If a client has an acute or mental illness during the time the individual is already receiving planned rehabilitation services, services shall be provided if the acute condition or illness is such that it would complicate or delay the extended evaluation or the client's achievement of the vocational goal. If the acute condition or illness leads to changes in the client's condition, it may be necessary to re-evaluate the client, amend the program or close the case.

10:95-4.4 Low vision services

Low vision services are physical restoration services designed for low vision Commission clients who qualify to receive specialized services to assist them in maximizing visual efficiency and functioning. Low vision services rules are set forth at N.J.A.C. 10:94-3.3.

10:95-4.5 Provision of prosthetic, orthodic and other assistive devices

(a) Prosthetic, orthodic or other assistive devices, such as hearing aids, are sometimes necessary to assist a client in obtaining or retaining employment. The Commission may assist in providing these devices to severely disabled clients with dual disabilities if the client has been determined as financially eligible and there are no comparable benefits.

(b) In order for a client to be eligible to receive the Commission's assistance in the provision of any prosthetic, orthodic or other assistive device(s), the Commission shall have established that the client's primary disability is a visual impairment. If the Commission determines that the client's primary physical disability is other than visual, the case shall be referred to the Division of Vocational Rehabilitation Services (DVRS) in the Department of Labor.

(c) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 and its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of prosthetic, orthodic and other assistive devices.

(d) The Commission's Administrative Medical Consultant, according to professional medical standards, shall be responsible for reviewing and either approving or denying each medical recommendation for an assistive device. If the request is denied, the Administrative Medical Consultant must document the reason for the denial. If the

request for an assistive device is denied, the vocational rehabilitation counselor will assist the client in finding an alternate source of funding, if available.

SUBCHAPTER 5. TRAINING SERVICES

10:95-5.1 General purpose and scope

The Commission's training services are designed to develop and/or remediate those vocational and/or daily living skills needed for successful entry into employment.

10:95-5.2 Training services

(a) The client's training services shall be consistent with his or her interests, aptitudes and abilities as documented in the case record and shall be supportive of the client's vocational goal.

(b) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 and its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of training services.

(c) Vendors utilized for training services shall be licensed, certified or accredited by appropriate professional organizations.

(d) Preference shall be given to in-State programs and schools to enable the counselor to provide guidance, support, and assistance in placement and to maintain fiscal responsibility. If a client wishes to attend an out-of-State program or school, the client shall be responsible for any additional expense that would not have occurred if he or she attended an in-State program or school.

(e) The types of training covered under this subchapter are as follows:

1. Basic education skills training ***can be considered as an interim step toward a vocational goal***. This type of training leads to a certificate or diploma in basic education skills below the college level.

2. Business and industry training which leads to a certificate and usually provides specific job-related instruction but does not include broad-based academic courses.

3. Trades training which leads to a license or certificate and provides specific job skills but does not include broad-based academic courses.

4. Work adjustment training to help a client adjust to a work situation.

5. Technical associates degree training which is higher than secondary education and consists of a combination of basic academic and technical courses and leads to an Associate degree.

(f) This subchapter does not cover the following types of training:

1. Academic Associates, Baccalaureate and higher degree training (see N.J.A.C. 10:95-6.3); and

2. On the job training (see N.J.A.C. 10:95-6.4).

(g) Each client will be expected to complete the course of study within the time frame customarily required of other students.

(h) The expenses of eligible clients receiving training services under this subchapter shall be covered by the Commission as follows:

1. Room and board costs authorized for each client shall not exceed the rates established by the training service for that semester. Off campus living arrangements shall be subject to the same constraints;

2. Personal maintenance is issued at the discretion of the vocational rehabilitation counselor based on documented economic need (see N.J.A.C. 10:91-4.3(m) and N.J.A.C. 10:95-9.1);

3. Each eligible client receiving training services may receive a stipend for reader/amanuensis services and books and supplies according to the established Commission fee schedule as set forth in N.J.A.C. 10:95-6.8; and

4. Transportation services shall be available to eligible clients in accordance with the criteria set forth at N.J.A.C. 10:95-13.1.

SUBCHAPTER 6. COMMISSION OPERATED VOCATIONAL REHABILITATION SERVICES

10:95-6.1 Orientation and mobility services

Orientation and mobility services are designed to teach methods for safe, independent indoor and/or outdoor travel emphasizing environmental awareness, sensory training and utilization of remaining vision. The purpose of these services will be to enable clients, whenever possible, to be appropriately oriented and to travel on their own to and around their workplace, schools, homes and communities. The Commission's orientation and mobility services program rules are set forth at N.J.A.C. 10:93-3.

10:95-6.2 Vocational rehabilitation home instruction services

(a) Vocational rehabilitation home instruction services are designed to provide instruction and counseling in the techniques of daily living. The purpose of these services is to help clients, whenever possible, accommodate to their visual loss and to acquire the needed skills to function independently as a homemaker. The general rules for the Commission's rehabilitation and home instruction services program are set forth at N.J.A.C. 10:93-4.

(b) A homemaker is an individual who has the skills and abilities to maintain a home and actively functions in the capacity of maintaining a home. Homemaking activities relate to the maintenance of a suitable living environment for the individual and for the individual's family, if appropriate. Pursuant to 34 CFR Part 361.1(c), homemaking is deemed to be employment. Preparing an individual for this employment goal is one of the objectives of the Commission's vocational rehabilitation home instruction services program.

(c) In order to be accepted for services with a homemaker program, the client shall:

1. Meet the eligibility criteria set forth at N.J.A.C. 10:91-2.3 and 2.7;

2. Be given counseling and guidance to assure that vocational alternatives and options are explored with the client; and

3. Be able to and intend to fulfill the functions of a homemaker when rehabilitation services are completed.

(d) A client's vocational goal of homemaking shall be established by the client and vocational rehabilitation counselor when formulating the client's individualized written rehabilitation program (see N.J.A.C. 10:91-5.4(a) and (c)).

(e) The criteria for closing a rehabilitated case as a homemaker are set forth at N.J.A.C. 10:95-15.4.

10:95-6.3 College services

(a) College services are designed to assist Commission clients who require college training in order to achieve their vocational goal. The Commission monitors eligible clients during their college careers and functions as a resource to clients for information concerning:

1. Financial aid and similar benefits;
2. College admissions and qualifications;
3. Specific college programs;
4. A specific client's qualifications for college admission; and
5. The acceptance of a client for college services.

(b) Each applicant for college training shall meet the following criteria:

1. The client shall meet the eligibility requirements for vocational rehabilitation services as set forth at N.J.A.C. 10:91-2.3 and 2.7;

2. The client shall not be receiving financial aid from another state or territory;

3. The client shall not be residing in New Jersey for the sole purpose of receiving support for college training from the Commission;

4. The client shall be formally accepted into a full-time college program;

5. The client's vocational goal shall have been endorsed by the Commission;

6. The client, or his or her guardian, shall submit a completed Commission Financial Survey Form to the Commission in accordance with the provisions of N.J.A.C. 10:91-3; and

7. The client, or his or her parent or guardian, shall complete a Financial Aid Form (FAF) or its equivalent as required by the college or university to determine if the client is eligible for any financial assistance from sources outside the Commission. This information will then be used to determine if the client is eligible for financial assistance from the Commission (see N.J.A.C. 10:91-3).

(c) The vocational rehabilitation counselor, along with his or her supervisor, shall be responsible for making the recommendation to accept the client for college services based on the criteria in (b) above.

(d) The Commission shall provide reader service, books and supplies, in accordance with the rates set forth in N.J.A.C. 10:95-6.8, and academic intervention for all clients as needed.

(e) Appeals shall be handled in accordance with the provisions of N.J.A.C. 10:91-6.

(f) Each client, or his or her parent or guardian, shall annually complete the Financial Aid Form (FAF) or its equivalent in order to determine whether the client is eligible for any financial assistance other than from the Commission (see N.J.A.C. 10:91-3).

(g) The Commission shall annually review the Financial Survey Form in order to determine the client's level of financial participation (see N.J.A.C. 10:91-3).

(h) All college expenses shall be subject to the Financial Aid Form or equivalent or Commission needs test. The expenses of eligible clients receiving college sponsorship by the Commission under this subchapter shall be paid by the Commission as follows:

1. Tuition, and room and board costs shall be paid up to the current rates charged for clients attending a New Jersey State college or Rutgers, the State University of New Jersey;

2. For clients attending private in-state colleges and universities or private or public out-of-state colleges and universities, tuition, and room and board costs may not exceed the rates charged by Rutgers, the State University of New Jersey;

3. Each eligible client attending a full-time undergraduate program may receive a stipend for reader/amanuensis services and books and supplies according to the established Commission fee schedule as set forth in N.J.A.C. 10:95-6.8;

4. Transportation services may be available to eligible clients in accordance with the criteria set forth at N.J.A.C. 10:95-13.1; and

5. Personal maintenance is issued at the discretion of the vocational rehabilitation counselor based on documented economic need (see N.J.A.C. 10:91-4.3(m) and N.J.A.C. 10:95-9.1).

(i) The client's college program shall be consistent with his or her interests, aptitudes and abilities as documented in the client's case record and shall be supportive of the client's vocational goal.

(j) Each client will be expected to complete a degree program within the same time frame as customarily required of other full time students enrolled in the same program.

(k) Each client shall be expected to maintain a "B" or better average. Failure to maintain at least a "B" average will result in loss of Commission sponsorship.

10:95-6.4 On-the-job training services

(a) The purpose of on-the-job training is to encourage an employer to hire a Commission vocational rehabilitation client who may not be fully productive in the particular job opening available, but who shows promise of being able to perform the job with some additional on-the-job training.

(b) In order to enhance the possibility of a client being hired for a job, the Commission will pay for a percentage of the salary until the client is fully trained. This partial payment is made only on the position for which the client will be hired. The percentage of the Commission's payment during each period of the on-the-job training is based on the percentage of the job which actually constitutes training.

(c) In order to qualify as on-the-job training, the job opening must be a real position that the employer intends to fill at the completion of the on-the-job training period. The employer must be willing to carry the client on its payroll and to pay the percentage of salary and fringe benefits agreed upon for the length of the on-the-job training program. The position must have a salary and the income derived from the job may not be totally dependent on commissions or tips.

(d) Each program will be based on the individual client's circumstances. The training period for each client will be determined by the difficulty and/or complexity of the job being learned and the amount of time needed for the individual client to learn the job.

(e) To participate in on-the-job training, a client receiving training services from the Commission must accept the on-the-job training program that has been offered, and be advised that permanent employment will be based on the individual's job performance and ability to become fully trained for the position during the on-the-job training program.

(f) Each employer shall file a short written report with the Commission during each period of the on-the-job training program indicating the continued possibility of employing the client. The report must include a satisfactory or unsatisfactory rating of the client's job performance and a statement as to whether or not the employer intends to continue the on-the-job training.

10:95-6.5 Deaf-blind services

(a) The Commission's deaf-blind services are designed to better serve those individuals who experience a unique set of problems and needs due to profound hearing loss in addition to their visual loss.

(b) In order to be eligible to receive the Commission's deaf-blind services, an applicant shall meet the same criteria needed to receive Commission services as set forth at N.J.A.C. 10:91-2, and:

1. Have a hearing impairment so severe that speech cannot be understood with optimum amplification and not be correctable with aids or medical assistance; or

2. Have a prognosis of imminent hearing loss.

(c) Vocational rehabilitation services available to deaf-blind clients include:

1. All services that shall be provided to any other vocational rehabilitation client;

2. Specialized communication services and devices; and

3. Consultation with any education client over the age of 14 with a hearing loss so as to explore vocational possibilities.

10:95-6.6 Transitional summer services

(a) The Commission's vocationally-related transitional summer services are designed to evaluate the academic and vocational potential of the clients involved and provide them with an opportunity to test their skills to function independently. In addition, the services provide documented pre-vocational assessments for the Commission's education instructors, vocational rehabilitation counselors, transition counselors and local school guidance counselors to use in future discussions with clients and parents.

(b) Transitional summer services may be offered to a client only after the Commission has assessed the particular needs of the client.

(c) The Commission shall annually determine the feasibility of offering the transitional summer services based on the availability of funds and a cost benefit analysis of each program.

(d) To be eligible to attend the transitional summer service program, a client shall have been registered with the Commission for vocational rehabilitation services.

10:95-6.7 Joseph Kohn Rehabilitation Center

(a) The Joseph Kohn Rehabilitation Center (JKRC) is a residential facility which functions as a resource to:

1. Offer evaluation and adjustment services;

2. Clarify the client's fundamental concepts about blindness and visual impairment;

3. Maximize the client's independent functioning;

4. Garner information that can be used in the development of the client's vocational goals; and

5. Provide the client with the opportunity to have positive interaction with other blind and visually impaired individuals.

(b) The following programs shall be available at the Joseph Kohn Rehabilitation Center:

1. The independent living program helps clients maximize independent functioning in relation to their visual disability. The components of the program are:

i. Personal communications skills;

ii. Orientation and mobility;

iii. Home and personal management; and

iv. Arts and crafts.

2. The vocational program helps clients to move toward vocational rehabilitation through evaluation and some training. The following services may be provided:

i. Vocational counseling;

ii. Pre-vocational work adjustment;

iii. Vocational evaluation;

iv. Psychometric testing;

v. Clerical training program;
vi. Homebound employment program; *[and]*
vii. Training for candidates of the Business Enterprise Program (see N.J.A.C. 10:97)*[.]**; **and**
viii. Homemaker training.*
3. A counseling program is offered to all clients. The counseling program may include:
i. A weekly case management review;
ii. Weekly psychological counseling which focuses on adjustment to vision loss; and
iii. Group counseling.
(c) The services of the Joseph Kohn Rehabilitation Center shall be provided to all eligible Commission clients free of charge.
(d) Attendance at the Joseph Kohn Rehabilitation Center is based on the following criteria:
1. The client must be registered with the Commission to receive vocational rehabilitation services;
2. The client's medical record must indicate that he or she can physically participate in the program without risk to the health or safety to self or others;
3. The vocational rehabilitation counselor and the client agree that the client can benefit from the intensity of instruction provided at the center;
4. The client needs assistance in developing independent living skills and/or exploring information that can be used in the development of a vocational goal;
5. The client may have a specific vocational objective, and need assistance in moving toward the objective; or
6. The client is not registered for vocational rehabilitation services but needs the center's services to adjust to vision loss. The Joseph Kohn Rehabilitation Center may also serve the Commission's education and allied services clients for the purpose of rendering them independent living skills.
(e) A client who exhibits one or more of the following difficulties may be terminated from a Joseph Kohn Rehabilitation Center program, as determined by the Joseph Kohn Rehabilitation Center manager, and as delineated in the client information brochure, if a client demonstrates:
1. Repeated failures to cooperate with established policies and procedures;
2. Deteriorating emotional, physical or intellectual functioning which jeopardizes the health, safety, or well being of the individual;
3. Violent behavior;
4. Inability to benefit from further instruction; or
5. Behavior which has a negative or disruptive effect on others.
(f) Clients terminated from the Joseph Kohn Rehabilitation Center have the right to appeal this termination in accordance with the provisions of N.J.A.C. 10:91-6.

10:95-6.8 Reader/amanuensis services; books and supplies
(a) A client shall be eligible for reader/amanuensis services if:
1. The client's primary medium of communication is braille or CCTV;
2. The client's reading rate is 200 words per minute or less; and
3. The client's responsible counselor has certified the client as print-handicapped, in accordance with (a)1 and 2 above.
(b) Reader service fees shall be established as follows:
1. For full time undergraduate program, up to $150.00 per month;
2. For full time graduate program, up to $250.00 per month;
3. For full time training program, up to $100.00 per month; and
4. For part time undergraduate/graduate/training program, pro rated.
(c) Reader service fees for deaf/blind clients may exceed the limits in (b) above on a case-by-case basis, with documentation in the case folder and the approval of the counselor's supervisor.
(d) Amanuensis service fees shall be established at a maximum of $30.00 per day.
(e) Books and supplies shall be reimbursed at the rate of:
1. Up to $250.00 per semester for full time students; and
2. Pro rated for part time students.

SUBCHAPTER 7. PROVISION OF TRAINING AND ADAPTIVE EQUIPMENT

10:95-7.1 General purpose and scope
(a) Training equipment refers to those tools, appliances, materials and other supplies which any individual would need in order to participate in a specific training program.
(b) Adaptive equipment refers to those pieces of equipment, materials and/or accommodative devices which allow a visually impaired person to perform tasks so that the individual can participate in a training program and subsequently in an occupation.
(c) The Commission shall provide training/adaptive equipment and/or materials to eligible vocational rehabilitation clients to enable them to participate in a training program. The client's individualized written rehabilitation program must specify the training/adaptive equipment to be purchased (see N.J.A.C. 10:91-5.4).
(d) Equipment which has been fully paid for by the Commission shall remain the property of the Commission. If the client is a co-payer for a piece of equipment, then the equipment shall become the property of the client. While this equipment remains the Commission's property, the Commission shall pay all associated costs such as insurance and maintenance.
(e) The Commission shall provide training and adaptive equipment to an eligible client only after the client has signed the loan of equipment agreement form (see Appendix I of this chapter, incorporated herein by reference).
(f) If the client violates the loan of equipment agreement, the Commission shall refuse to authorize any additional services to the client.
(g) The Commission's economic needs test will be applied to all training and adaptive equipment except that which is purchased relative to work adjustment training (see N.J.A.C. 10:91-3 and 5.4).

10:95-7.2 Replacement equipment in last year of high school
(a) Equipment provided in high school through the Commission's educational services program shall be recovered when a client drops out, graduates or otherwise no longer attends high school.
(b) Appropriate Commission staff serving the client shall meet as early as possible during the client's last year in high school to determine the client's post high school equipment needs.

SUBCHAPTER 8. COUNSELING AND GUIDANCE SERVICES

10:95-8.1 General purpose and scope
The Commission's counseling and guidance services are designed to counsel the individual in connection with his or her vocational potential and the health and social problems related to their vocational objective or adjustment. Counseling and guidance is the core of the rehabilitation process. These services assist the individual in developing and understanding their capabilities and limitations and appropriately using the rehabilitation services needed to achieve the best possible vocational objective or adjustment. Counseling and guidance may be provided to a client during any phase of the rehabilitation process.

10:95-8.2 Transition services
(a) Transition services are designed to provide the client, family, high school personnel and other professionals with specialized vocational achievement to assure a smooth transition from high school to college or work. The goal of transition services is to provide early vocational planning.
(b) The services of a transition counselor shall be requested when a client's education instructor feels there is a need for involvement or consultation by the Commission's vocational rehabilitation staff. The transition counselor, the education instructor and any other ancillary workers are part of a transition team. Mainstream clients who will be graduating in two to three years shall be referred for transition services at age 16. Clients who remain in high school until age 21 shall be referred for transition services at age 19.
(c) The client's current Commission individual service program shall include the services rendered by the transition counselor.

(d) The client's education instructor shall provide direct instructional and other education related services to the client, high school personnel and families.

(e) The transition services supervisor, or the transition counselor, shall confer with the appropriate vocational rehabilitation supervisor on all cases where the client is in his or her last year of formal education to determine appropriate actions such as transfer to a vocational rehabilitation counselor, transfer for college services or closure of the client's case.

10:95-8.3 Career development services

(a) The Commission's career development services assist vocational rehabilitation clients in obtaining appropriate employment by working directly with clients, professionals and prospective employers of blind and visually impaired job applicants. These services may be provided to clients who are ready for employment, receiving post-employment services, or in need of career information.

(b) Career development services may include the following:

1. Development of on-the-job evaluations, training and employment opportunities;
2. Provide consultative services to employers regarding job placement and related services;
3. Assistance to clients in developing job seeking skills; and
4. Provision of career information on employment trends, career choices, job evaluation, training, job readiness and the appropriate choice of a post-secondary education curriculum.

SUBCHAPTER 9. MAINTENANCE SERVICES

10:95-9.1 General purpose and scope

(a) Maintenance is a supportive service provided only to enable an individual to participate in other vocational rehabilitation services. It is provided to the client in meeting the extra or added costs of food, shelter, clothing and other subsistence expenses arising from the active participation in a vocational rehabilitation program. Maintenance payments are not intended to ameliorate poverty.

(b) The Commission shall provide maintenance payments to or on behalf of eligible clients only up to the amount of increased expenses that the rehabilitation program causes for the individual or his or her family.

(c) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 to the provision of maintenance services to all vocational rehabilitation clients except for those individuals who are receiving diagnostic services, work adjustment training or basic skills training.

(d) The Commission shall ascertain an individual's financial need each time the need for maintenance services arises (see N.J.A.C. 10:91-3).

(e) The Commission shall provide maintenance services to or on behalf of eligible clients as follows:

1. If the client is receiving meals as part of boarding costs, the Commission shall pay the published cost of the meal plan;
2. If the client is not receiving meals as part of boarding costs, the payment rate shall be the current daily rate of meal reimbursement for New Jersey State employees. This rate will also be paid to clients at residential facilities for those meals that shall not be provided on weekends or holidays;
3. If the client is receiving a room as part of residential costs, the Commission shall pay for the current cost of the room;
4. If housing is available at the facility and the client chooses to live independently, the rate of payment shall not exceed that of the residential housing available;
5. If no housing is available at the facility, the rate of payment shall not exceed the rate paid for board at Rutgers, the State University of New Jersey.

(f) Maintenance payments shall not be considered earned income.

SUBCHAPTER 10. PLACEMENT SERVICES

10:95-10.1 General purpose and scope of placement and adaptive equipment

(a) Placement and adaptive equipment may be issued to eligible vocational rehabilitation clients to enable them to compete equally in the job market.

(b) Placement equipment refers to those tools, appliances, machinery, licenses, initial stocks and supplies which enable an individual to perform his or her job.

(c) A description of adaptive equipment is set forth at N.J.A.C. 10:95-7.1(b).

(d) A client who has just begun employment or who is receiving post-employment services may be eligible to receive placement or adaptive equipment provided by the Commission. Employers will be encouraged to participate in the purchase of placement and/or adaptive equipment.

(e) The Commission's economic needs standard as set forth at N.J.A.C. 10:91-3 shall be applied to the purchase of all placement and/or adaptive equipment.

(f) The Commission shall officially transfer ownership of placement or adaptive equipment to the client or co-payee (employer) when the client is deemed to be competitively employed in accordance with the provisions of N.J.A.C. 10:95-15.2. The client or the employer shall be responsible for the cost of insuring the equipment. The counselor shall discuss this obligation with the client and the employer to assure that the client or employer agree to insure the equipment. The Commission shall purchase any necessary maintenance contract on the equipment for up to one year when the equipment is purchased. The client shall pay the cost of the maintenance contract after the first year. The client shall be responsible for all deductibles, repairs or routine maintenance not covered by the contract.

10:95-10.2 Business enterprise program

(a) The Commission's business enterprise program is designed to emphasize and reaffirm the Commission's commitment to assist those clients whose vocational goal is self-employment. The program provides coordinated services to the client from the beginning of the diagnostic evaluation through and into the actual operation of the business.

(b) The business enterprise program includes the following:

1. The Randolph Sheppard program (see N.J.A.C. 10:97); and
2. The small business program (see N.J.A.C. 10:95-10.3).

10:95-10.3 Small business program

(a) The small business program is designed to provide vocational rehabilitation services to those clients whose goal is to establish a solely owned business.

(b) The following criteria will determine a client's eligibility for the small business program:

1. The client must indicate a commitment to own and operate his or her own business;
2. The business goal must be appropriate to the client's physical condition according to the counselor based upon documented medical conditions pertaining to the requirement of the business; and
3. The client must demonstrate an ability to acquire basic business management skills such as maintaining inventory and financial records.

(c) The Commission's similar benefits rules as set forth at N.J.A.C. 10:91-3 shall apply to the provision of financial services to clients in the small business program.

(d) The Commission shall evaluate each client who wishes to establish a business. The outcome of this evaluation will be a written report which provides justification for any projected expenditure of vocational rehabilitation funds.

(e) Each client shall utilize his or her own resources to fund the business venture. Each successful applicant for the business enterprise program shall have an outside source for financing his or her own business.

(f) Start-up costs are one-time expenditures such as the purchase of licenses, supplies, services and equipment. The client shall provide

a minimum of 20 percent of the total start-up cost of the business before the Commission will intervene by providing vocational rehabilitation funds. The Commission's maximum expenditure of vocational rehabilitation funds for any individual business shall be no more than $25,000. The client shall submit to the Commission verification that the client's co-payment of start-up costs is available before authorization for the expenditure of vocational rehabilitation funds will be processed. No vocational rehabilitation funds shall be provided for long term operational or fixed asset costs. However, adaptive equipment shall be funded.

(g) The business enterprise program may continue to provide assistance to the client after financing has been put into place and until the business is operational. Commission staff may visit the business for up to one year after the business is established.

(h) The Commission shall retain title to any equipment it purchases for a self-employed client in the business enterprise program until all necessary post-employment services have been provided and the case is successfully closed. As title holder, the Commission shall be responsible for the maintenance and insurance of all equipment. When a case is closed due to the unsuccessful provision of post-employment services, the Commission shall recoup any equipment purchased with Commission funds.

10:95-10.4 Competitive employment

(a) A client shall be considered competitively employed when the client, vocational rehabilitation counselor and employer determine that the client is suitably employed for a minimum of 60 days and has reached his or her vocational goal. The standards for determining suitable employment shall be as follows:

1. The client and the employer are mutually satisfied;
2. The client is maintaining acceptable behavior in the job environment;
3. The occupation is consistent with the client's capabilities and the client possesses the acceptable skills to perform or continue to work satisfactorily;
4. The employment and working conditions do not aggravate the client's disability, and the client's disability will not jeopardize his or her own or others health and safety;
5. The wage and working conditions conform to all state and Federal statutory requirements; and
6. The employment is regular, reasonably permanent and the client receives a wage commensurate with that paid other workers for similar work.

(b) In addition to (a) above, clients shall be considered to be employed if they are working full time as lay workers for religious groups or organizations even if they are paid at a very minimal level and/or receive payment in kind.

10:95-10.5 Non-competitive employment

(a) The following shall be considered non-competitive occupations:

1. Sheltered employment;
2. Unpaid family worker; and
3. Homemaker.

(b) In order for a client to be considered suitably employed in a sheltered environment, the employment must meet the following standards:

1. The employment is productive, is based upon each individual's capacities and abilities, and is measured by, but not limited to, the following:

i. The number of hours the client is actually working;

ii. How the activity improves the individual's social well-being;

iii. How the activity contributes to the economy of the individual, the family and the community;

iv. The degree of positive change attributed to the rehabilitation effort; and

v. The degree to which the client is performing near optimum level;

2. The wages earned by the client are one of the primary purposes for the employment. Wages include fringe benefits, such as social security, workers compensation insurance, paid vacation, sick leave and any other benefits earned by other employees; and

3. The goal is gainful employment, rather than therapeutic activity, and the sheltered employment is consistent with the goal established on the client's individualized written rehabilitation program and the client's capabilities (see N.J.A.C. 10:91-5.4(a) and (c)).

(c) An unpaid family worker is a person who works without actual cash reimbursement on a family farm or in a family business. In order to be considered an unpaid family worker, an individual must make an economic contribution to the family business. The contribution is measured by the cost to the family of employing another person to do the same work.

(d) The Commission's homemaker rules are set forth at N.J.A.C. 10:95-6.2 and 15.4.

SUBCHAPTER 11. POST-EMPLOYMENT SERVICES

10:95-11.1 General purpose and scope

(a) Post-employment services are designed to assist the individual in maintaining employment after the individual has been determined to be rehabilitated. Post-employment services may include any vocational rehabilitation services or combination of services necessary to assist the individual in maintaining employment. Counseling and guidance and other appropriate services shall be provided to maintain an individual's employment.

(b) The following criteria shall be established for the provision of post-employment services:

1. The individual has been determined to be rehabilitated;
2. Post-employment services are necessary to assist the individual in maintaining employment;
3. The services act as a supplement to the services provided prior to case closure;
4. The services do not entail a complex or comprehensive rehabilitation effort; and
5. The services are related to the client's individualized written rehabilitation program developed during the rehabilitation process.

(c) The Commission shall inform each individual as part of the process of closing a case as rehabilitated that the individual may be eligible to receive post-employment services.

(d) The following groups of individuals generally require post-employment services:

1. Individuals identified prior to closure as needing post-employment services. In these cases, the Commission's intention to provide post-employment services will be indicated on the client's individualized written rehabilitation program;
2. Individuals for whom unexpected situations arise; and
3. Individuals identified through re-evaluation of extended employment.

(e) The Commission shall apply its economic needs test as set forth at N.J.A.C. 10:91-3 to the same services and items during the post-employment phase as it does during the rest of the rehabilitative process. The Commission shall administer a new needs test to reflect the individual's changed financial situation due to his or her employment status. The Commission shall apply its policy regarding the use of similar benefits as set forth at N.J.A.C. 10:91-3 to the provision of post-employment services.

(f) The Commission may provide post-employment services to individuals in sheltered employment identified as needing additional rehabilitation services to maintain employment, either in the sheltered workshops or by progressing to competitive employment.

(g) The Commission shall not provide post-employment services to upgrade an individual's financial status (see definition of post-employment services at N.J.A.C. 10:95-1.2).

(h) The vocational rehabilitation counselor shall record the decision to terminate post-employment services in the individual's amended individualized written rehabilitation program. Post-employment services shall be terminated if:

1. The problem requiring post-employment services has been resolved;
2. The individual attains sufficient independence to function without continued post-employment services;
3. The individual's employment appears secure;
4. The employment continues at a suitable level in relation to the individual's potential; or

5. The individual's condition or situation becomes such that post-employment services cannot maintain them in employment.

SUBCHAPTER 12. SERVICES TO CLIENTS' FAMILIES

10:95-12.1 General purpose and scope

(a) Services shall be provided to family members when such services are necessary to the adjustment or rehabilitation of the client. The objective of the client's successful rehabilitation is carried out by helping the family recognize its responsibilities to use its own resources for contributing to the rehabilitation of the client, and supplementing or supporting as necessary the family's own resources or the resources available in the community.

(b) For the purposes of this subchapter, a family member is any relative of the client by blood or marriage, or legally responsible person or other individual(s) living in the same household with whom the client has a close interpersonal relationship.

(c) An individual who meets the definition of family member in (b) above may receive services after the client has been determined eligible for vocational rehabilitation services, during any active phase of the client's case (see N.J.A.C. 10:91-2.3, 2.7, and 5.4(a) and (c), and N.J.A.C. 10:95-3.3 and 11.1).

(d) The Commission shall provide services to a client's family only if it is necessary for the rehabilitation of the client and the services are not otherwise available through existing community agencies.

(e) The Commission, the client and the client's family member(s) shall jointly determine the need for Commission services based on the following criteria:

1. The services to the client's family will have a substantial impact on the client;

2. The service will allow or increase the opportunities for the client to use vocational rehabilitation services;

3. Without the services the client would be unable to begin or continue his or her individualized rehabilitation program; or

4. The individualized written rehabilitation program would be jeopardized or interfered with to the extent that employment would be unnecessarily delayed or could not be achieved.

(f) The Commission shall apply its financial needs test as set forth at N.J.A.C. 10:91-3 to the provision of services to a client's family. Any participation in the costs of services to families, whether by the client or other family member is considered participation by the client. The Commission shall also apply its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of services to a client's family.

(g) The Commission shall provide to the client's family only those goods or services which are necessary to the adjustment or rehabilitation of the client as stipulated in the client's individualized written rehabilitation program. These services may include:

1. Group or individual counseling to help family member(s) understand the needs of the client;

2. Day care services for children which would enable the client to pursue his or her individualized written rehabilitation program;

3. Genetic or marital counseling services when indicated; and

4. Housing services to assist the family in locating adequate living quarters as appropriate to meet the needs of the client in promoting his or her rehabilitation program.

(h) The Commission shall terminate services to a client's family when:

1. The service(s) no longer makes a substantial contribution to the client's rehabilitation;

2. The client is not accepted for vocational rehabilitation services or the client's case is closed as not rehabilitated either before or after the initiation of an individualized written rehabilitation program; or

3. The client is rehabilitated and the case is closed.

SUBCHAPTER 13. TRANSPORTATION SERVICES

10:95-13.1 General purpose and scope

(a) Transportation is a supportive service which contributes to the eligible individual's ability to participate in or receive the benefits of vocational rehabilitation services. Transportation services consist of necessary travel and related expenses, including subsistence during travel, in connection with transporting individuals and their escorts (if necessary) for the purpose of providing vocational rehabilitation services. Transportation includes:

1. Travel costs associated with using public or private transportation;

2. Subsistence while in travel;

3. Payment for the services of escorts, other than family members, for severely disabled persons and the escorts' travel costs;

4. Relocation and moving expenses; and

5. Other transportation related expenses such as tolls.

(b) The Commission shall apply its needs test as set forth at N.J.A.C. 10:91-3 to the provision of all transportation services except when an individual is an applicant for Commission services or during diagnostic evaluation, work adjustment training or basic skills training at a community based organization. The Commission and the client shall explore all alternative sources before the Commission will provide any transportation services in accordance with N.J.A.C. 10:91-3.

(c) The type of transportation provided is based on the limitations of the client and the obstacles in his or her environment rather than convenience. The factors to be considered in determining the most appropriate mode of transportation include:

1. The circumstances of the individual client;

2. The availability and appropriateness of the transportation system; and

3. The current cost of the transportation.

(d) A client must have an orientation and mobility evaluation stating that the client cannot travel by public transportation, or that the commute is too lengthy or difficult prior to an authorization for private transportation such as a private automobile or a van.

(e) Subsistence is a temporary type of maintenance which is limited to the cost of food and lodging only while a client is in transit.

(f) The Commission may pay for the services of an escort in transit only for the multi-disabled severely impaired client. In order to receive an authorization for a paid escort, the client must be unable to travel without assistance. The Commission shall apply the following standards when an escort must accompany a client during transit:

1. A family member may be paid as an escort only in instances where acting as an escort causes undue financial hardship to the family member;

2. The Commission shall pay an additional fee for assistance during travel only when a paid attendant is normally unavailable to the client; and

3. The Commission may furnish the escort's travel costs, including food or lodging.

(g) The Commission may provide financial assistance for any expense in transit when permanent relocation is necessary for the client to accept an offer of employment. Such expenses include, but are not limited to, the cost of a moving van and meals and lodging on route. The Commission shall provide transportation assistance to family members when such services are necessary to the rehabilitation or adjustment of the client, and the family members meet all of the criteria for Commission services to family members as set forth at N.J.A.C. 10:95-12.1. The Commission shall deny transportation assistance to family member(s) when the transportation is for the purpose of a permanent relocation and the client is not involved in the move.

(h) The Commission may provide transportation services to enable an individual to participate in post-employment services. The Commission shall not pay for a client's transportation to and from work ***after the client has been rehabilitated***.

(i) The Commission shall provide transportation at the client's request to permit an individual to attend a fair hearing or administrative review.

(j) The Commission shall provide transportation service pursuant to N.J.A.C. 10:95-13.1(b).

(k) Other rates shall be set as follows:

1. For transportation by private individuals, reimbursement for mileage, tolls and parking is the current rate paid to New Jersey State employees. The Commission disallows reimbursement to family

members providing transportation to the client unless it would cause undue financial hardship as demonstrated by the Commission's financial needs standard test (see N.J.A.C. 10:91-3);

2. Reimbursement for meals and lodging will be commensurate with the current rate paid to New Jersey State employees; and

3. Escorts will be paid the hourly minimum wage plus allowable travel expenses incurred.

SUBCHAPTER 14. OTHER SERVICES

10:95-14.1 Other training and placement related services

(a) Other training and placement related services are basic services or pieces of equipment which are required by clients for their education or training because of their visual impairment.

(b) The Commission shall apply its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of services described in (c) below.

(c) The other training and placement related services available from the Commission shall be:

1. An allotment for reader/amanuensis service. The Commission's reader/amanuensis rules are set forth at N.J.A.C. 10:95-5.2(i)4;

2. Orientation and mobility training. The Commission's orientation and mobility rules are set forth at N.J.A.C. 10:93-3;

3. Rehabilitation teaching. The Commission's rehabilitation teaching rules are set forth at N.J.A.C. 10:93-4; *[and]*

4. Interpreter for deaf/blind clients*[.]**; **and**

5. Interpreter for non-English speaking clients.*

(d) The Commission may provide other training and placement related services to any client for whom there is a vocational goal which is documented in the client's individualized written rehabilitation program (see N.J.A.C. 10:91-5.4(a) and (c)). The individualized written rehabilitation program must delineate the specific services that shall be provided and the length of service provision.

(e) The Commission may also provide other training and placement related services to a client attending a college or training program while undergoing an extended evaluation (see N.J.A.C. 10:95-3.3) or during the development of the individualized written rehabilitation program.

(f) A client shall not receive other training and placement related services if:

1. The client is attending a program that is uncertified or unaccredited;

2. The client is taking make-up courses. If these courses are being repeated during a semester in which new courses are being undertaken, payments for other training and placement related services shall be pro rated to provide for the new courses only; or

3. The client elects to take a second training or education program similar to one already completed.

(g) The Commission's vocational rehabilitation funds shall be used to pay for other training and placement related services as long as another rehabilitation service is being provided. In order to continue receiving the services described in this subchapter, there must be a reason for the Commission to continue the provision of primary vocational rehabilitation services. The Commission shall not pay for other training and placement related services beyond the amount of time normally needed to complete the training program or beyond the extended course of study in the client's individualized written rehabilitation program.

SUBCHAPTER 15. CRITERIA FOR CASE CLOSURE

10:95-15.1 Case closure in referral or applicant status

(a) Upon a determination of ineligibility, the Commission shall close the case of an individual who was either referred or applied to the agency for vocational rehabilitation services.

(b) The Commission shall base its determination of ineligibility for vocational rehabilitation services in accordance with the criteria set forth at N.J.A.C. 10:95-2.2(c).

(c) The Commission shall issue a certificate of ineligibility in accordance with N.J.A.C. 10:91-2.10 upon a determination that an individual is ineligible for vocational rehabilitation services.

10:95-15.2 Competitive closure

(a) The Commission shall consider a client to be competitively employed and close the case as rehabilitated when the following criteria have been met:

1. An evaluation was made of the rehabilitation potential of the client which resulted in a determination that the client met the eligibility criteria as set forth at N.J.A.C. 10:95-2.2(b);

2. The client's individualized written rehabilitation program will have been jointly formulated by the client and counselor, and the provision of services has been completed insofar as feasible (see N.J.A.C. 10:91-5.4(a) and (c));

3. The client has received substantial rehabilitation services. Substantial rehabilitation services are any vocational rehabilitation services that shall be provided which assist the client's vocational potential. A determination of whether substantial vocational rehabilitation services have been received is based upon their impact on the client's vocational rehabilitation, not on the number, type or cost of services;

4. Counseling and guidance services were provided;

5. It is determined by the client, counselor and employer that the client is suitably employed for a minimum of 60 days in accordance with the criteria set forth at N.J.A.C. 10:95-10.4(a); and

6. The client shall be considered competitively employed in a supported employment situation providing that he or she meets the definition of supported employment as set forth at N.J.A.C. 10:95-1.2.

(b) The Commission may, in some instances, close a case as rehabilitated when some of the criteria for determining suitable employment are not met. For example, the client may decide to accept or remain on a job which, in the opinion of the counselor, is not compatible with the client's physical, mental or educational capacities, or is not permanent enough to assure continued self support. When the client has made such a job choice in light of all the facts, the counselor shall inform the client that the case will be closed as rehabilitated. The client may, however, reapply for vocational rehabilitation services as the need arises. The case record must clearly indicate the justification for closing a case under these exceptional circumstances.

(c) If a client becomes employed before beginning planned vocational rehabilitation services, the vocational rehabilitation counselor and the client may amend the individualized written rehabilitation program to provide the client with needed services. At the completion of these services, the case will be closed as rehabilitated when the criteria set forth at N.J.A.C. 10:95-10.4 and 15.2, N.J.A.C. 10:95-10.5 and 15.3, or N.J.A.C. 10:95-6.2 and 15.4 are met.

10:95-15.3 Non-competitive closure

(a) In order to close the case of a rehabilitated client who is suitably engaged in non-competitive employment, the case record shall show that:

1. The Commission provided substantial services which materially contributed to an improvement in the client's adjustment or ability to function in the non-competitive occupation;

2. The improved level of functioning enabled the client to make a significant contribution in actual work activities in a sheltered environment, at home or in a family worker situation; and

3. As a result of the improved level of functioning and the work activity performed, socio-economic benefits may be realized.

(b) The Commission's other non-competitive employment rules are set forth at N.J.A.C. 10:95-10.5.

10:95-15.4 Homemaker closure

(a) The counselor shall document in the client's case folder the amount of time actually needed for the homemaker training. The Commission shall make every effort to schedule homemaking training in such a manner as to permit an individual's case to be closed as a rehabilitated homemaker within nine months of the receipt of a referral from the client's vocational rehabilitation counselor.

(b) In order to close a client's case as being a rehabilitated homemaker, the case record will show evidence that:

1. The Commission provided services which contributed to the client's adjustment and ability to function as a homemaker;

2. The client is able to perform homemaking activities; and
3. The client actually functions as a homemaker on a day-to-day basis.

(c) The Commission's homemaker rules are set forth at N.J.A.C. 10:95-6.2.

10:95-15.5 Case closed as not rehabilitated after initiation of planned services

(a) The Commission may close a client's case as not rehabilitated in accordance with (b) below, after the initiation of services developed through an individualized written rehabilitation program, when the client is unable to achieve his or her vocational goal after having received at least one planned vocational rehabilitation service (see N.J.A.C. 10:91-5.4(a) and (c)).

(b) The Commission shall close a case as not rehabilitated after the initiation of planned services when one of the following circumstances occurs:

1. The client cannot achieve suitable employment;
2. The client does not follow through with the program of services. After documenting that the client understands the purpose and availability of vocational rehabilitation services, the vocational rehabilitation counselor shall record and document the reasons for the client's decision not to proceed with planned services;
3. There are intervening reasons for closing the case which may include:
i. The client moves, dies or is institutionalized;
ii. The client cannot be located;
iii. The case is transferred to another state's vocational rehabilitation agency; or
iv. Another agency's services are more appropriate to the client's needs;
4. New information or other factors determine that suitable employment for the client is not possible. Examples include:
i. The client's disability becomes too severe;
ii. The client's medical condition deteriorates;
iii. The medical prognosis becomes unfavorable;
iv. Additional disabilities or problems are identified with the provision of services; or
v. Evaluation and training reports and records indicate that the client cannot be expected to benefit from vocational rehabilitation services; or
5. The client obtained employment without benefiting from the Commission's vocational rehabilitation services.

SUBCHAPTER 16. FOLLOW-UP REVIEW

10:95-16.1 Review of ineligibility decisions

(a) Vocational rehabilitation clients declared ineligible because their disability was deemed too severe to benefit from services shall have an opportunity for their cases to be reviewed and reopened, if appropriate.

(b) The Commission shall conduct one review within 12 months after closure of each individual who initially signed a written document requesting vocational rehabilitation services and was subsequently determined to be ineligible because of an inability to achieve a vocational goal. The reasons for such an ineligibility determination include, but are not limited to, a disability that is too severe or an unfavorable medical prognosis.

(c) The Commission shall be responsible for informing individuals deemed ineligible for vocational rehabilitation services after undergoing an extended evaluation that additional reviews will be conducted upon receipt of a written request for a review by the individual.

(d) The Commission shall conduct no review of an ineligibility determination if:

1. The individual refuses review;
2. The individual is no longer present in this state;
3. The individual's whereabouts are unknown;
4. The individual's medical condition is rapidly progressive or terminal;
5. The individual has died;
6. The individual is unavailable for review; or
7. The individual has no disabling condition.

10:95-16.2 Review of extended employment

The Commission shall annually review and re-evaluate the status of each individual who has been placed in a community based organization to receive extended employment services (see N.J.A.C. 10:95-10.5(c)).

APPENDIX I

AGREEMENT
CONCERNING THE LOAN OF TOOLS,
EQUIPMENT, INITIAL STOCK, AND
OTHER MATERIAL ITEMS FOR EDUCATIONAL
AND TRAINING PURPOSES.

NEW JERSEY STATE COMMISSION FOR THE BLIND
AND VISUALLY IMPAIRED
153 Halsey Street
P.O. Box 47017
Newark, New Jersey 07101

I, _____
Name of Client Address

hereby agree that the New Jersey State Commission for the Blind is providing me with the use of the following equipment, stock or supplies:

All tools, equipment, other material items, and the equivalent of initial stock or inventory provided for my use by the New Jersey State Commission for the Blind are the property of the said Commission, and are furnished to me for instructional and/or training purposes. These items are for my use, with the residual title and interest remaining with the said Commission. They are on loan for as long as I remain in the Commission sponsored or approved educational or training program. I further understand that this property may be used by me only for the purposes granted, and may not be disposed of or sold.

I understand that I am responsible for any deliberate damage or misuse and for routine maintenance, including cleaning and typewriter ribbon replacement. I will be responsible for minor repairs ($35.00 or less) unless this causes a financial hardship which is substantiated by the Commission's needs test. I will return my listed equipment immediately upon request to the New Jersey Commission for the Blind and Visually Impaired.

Signature _____ Date _____

CBVI-5FA
7/88/244B

INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Organizational Rule: Public Information
Adopted Amendment: N.J.A.C. 11:1-1.1

Adopted: October 17, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.
Filed: October 17, 1994 as R.1994 d.557.
Authority: N.J.S.A. 17:1C-6(d), (e), (f) and 52:14B-3(l).
Effective Date: October 17, 1994.
Expiration Date: January 31, 1996.

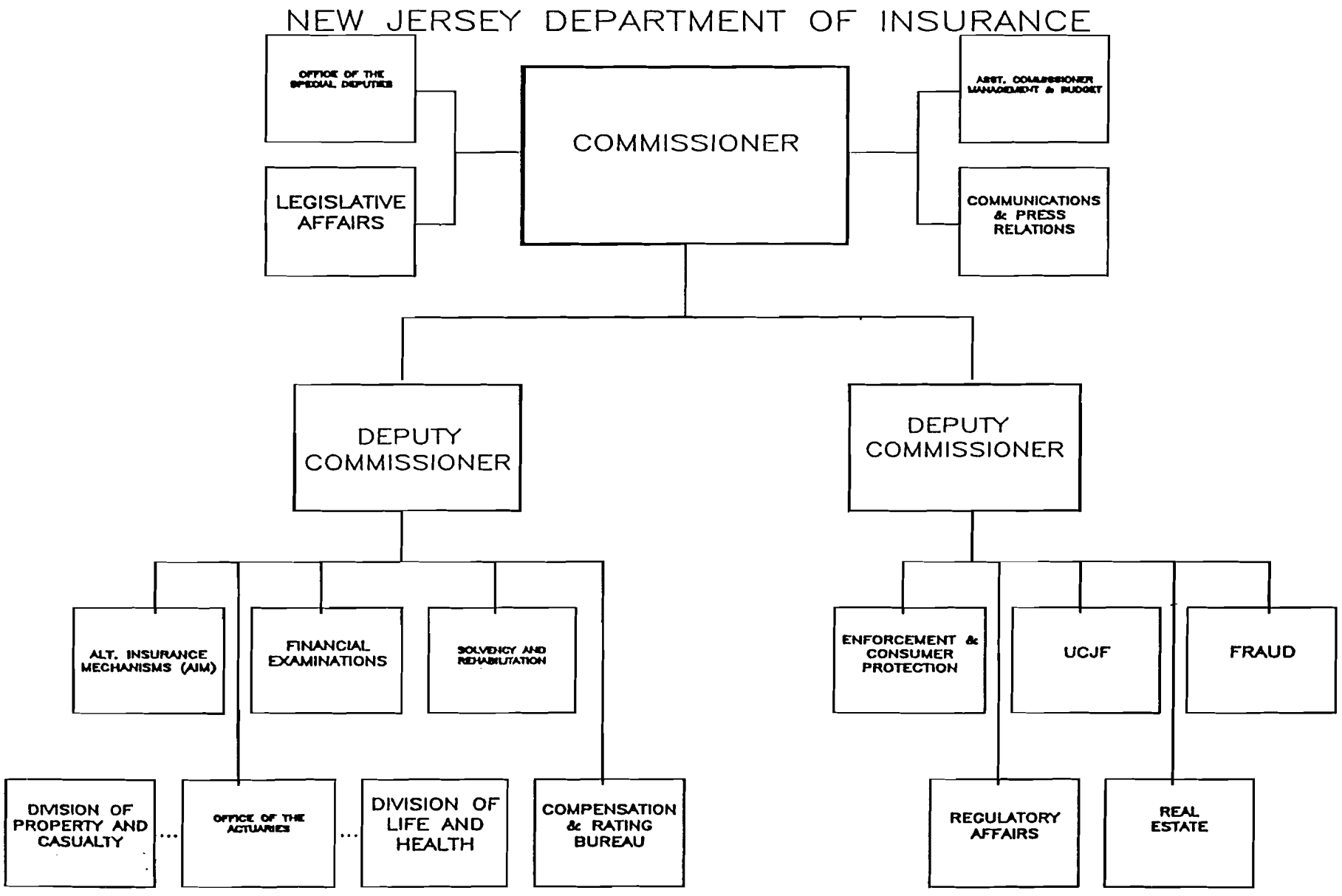
This organizational rule is exempt from the notice and public comment requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and is effective upon filing with the Office of Administrative Law.

Full text of the adoption follows:

11:1-1.1 Organization of the Department

(a) The organization of the Department of Insurance appears on the following page.

Office of Administrative Law Note: A new organizational chart has been adopted superseding the chart presently appearing in the New Jersey Administrative Code at N.J.A.C. 11:1-1.1. This new chart is reproduced below; the chart being deleted is not reproduced herein, but may be found at N.J.A.C. 11:1-1.1.


NEW JERSEY DEPARTMENT OF INSURANCE
OFFICE OF THE SPECIAL DEPUTIES
LEGISLATIVE AFFAIRS
COMMISSIONER
ASST. COMMISSIONER MANAGEMENT & BUDGET
COMMUNICATIONS & PRESS RELATIONS
DEPUTY COMMISSIONER
DEPUTY COMMISSIONER
ALT. INSURANCE MECHANISMS (AIM)
FINANCIAL EXAMINATIONS
SOLVENCY AND REHABILITATION
ENFORCEMENT & CONSUMER PROTECTION
UCJF
FRAUD
DIVISION OF PROPERTY AND CASUALTY
OFFICE OF THE ACTUARIES
DIVISION OF LIFE AND HEALTH
COMPENSATION & RATING BUREAU
REGULATORY AFFAIRS
REAL ESTATE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Determination of Insurers in a Hazardous Financial Condition

Adopted Amendment: N.J.A.C. 11:2-27.3

Proposed: September 6, 1994 at 26 N.J.R. 3589(a).
Adopted: October 17, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.
Filed: October 17, 1994 as R.1994 d.550, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:17-1 et seq., 17:23-20 et seq., 17:27A-1 et seq., 17:30C-1 et seq., and 17:51A-1 et seq.

Effective Date: November 7, 1994.
Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

11:2-27.3 Determination of hazardous financial conditions; factors

(a) (No change.)

(b) The Commissioner shall presume that the factor set forth in (a)4 above exists with respect to a domestic property and casualty insurer if the Commissioner finds the following:

1. The insurer has invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, in amounts which exceed the lesser of 10 percent of such insurer's assets or 50 percent of such insurer's surplus as regards policyholders, or that otherwise after such investments that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

i. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(1) The total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; or

2. The insurer has invested any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, and that each such subsidiary has not agreed to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed the investment limitations described in (b)1 above or in any other applicable provision of N.J.S.A. 17:24-1 et seq. The total investment of the insurer shall include any direct investment by the insurer in an asset, and the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(c) An insurer may rebut the presumption as set forth in (b) above pursuant to N.J.A.C. 11:2-27.4(b) by demonstrating to the Commissioner that after such investments the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

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

(b)

THE COMMISSIONER

Group Self-Insurance

Readoption: N.J.A.C. 11:15

Proposed: June 20, 1994 at 26 N.J.R. 2518(a) (see also 26 N.J.R. 3356(a)).
Adopted: October 17, 1994 by Edward Gross, Acting Commissioner, Department of Insurance.
Filed: October 17, 1994 as R.1994 d.551, **without change.**

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and 40A:10-36 et seq.

Effective Date: October 17, 1994.
Expiration Date: October 17, 1999.

Summary of Public Comments and Agency Responses:

The Department of Insurance ("Department") received eight timely written comments from joint insurance funds ("JIFs"), a JIF administrator, JIF servicing organization, a number of local units, and a producer trade organization, as follows:

1. The Township of East Brunswick;
2. The Independent Insurance Agents of New Jersey;
3. The Municipal Excess Liability Joint Insurance Fund;
4. Camden/Burlington Regional Employee Benefits Fund; Ocean/Monmouth Regional Employee Benefits Fund; North Jersey Municipal Employee Benefits Fund (collectively);
5. Citta, Holzapfel, Millard and Zabarsky (on behalf of the Ocean County Joint Insurance Fund);
6. Cleary and Alfieri (on behalf of the Monmouth Municipal Joint Insurance Fund);
7. Buckelew and Associates; and
8. Benefit Pathfinders Associates, Inc.

COMMENT: Virtually all of the commenters objected to the readoption of N.J.A.C. 11:15-2 governing the formation and operation of local unit property/casualty JIFs. With respect to N.J.A.C. 11:15-2, the commenters generally expressed concerns with the costs of compliance with the existing rules as well as compliance with several of the proposed amendments to the rules (see the June 20, 1994 issue of the New Jersey Register, 26 N.J.R. 2725(a)). The commenters also indicated that the existing rules do not reflect current conditions and therefore should be revised.

The specific concerns generally raised by some or all of these commenters related to the following: (1) the general requirement that all JIFs maintain aggregate excess insurance (N.J.A.C. 11:15-2.23) in that the potential benefits are minimal compared to increased costs to JIF members. Several commenters suggested that the rules be modified to require aggregate excess insurance based on the JIF's retention level, annual budget for retained losses, or whether the JIF can demonstrate that aggregate excess insurance is not available at a reasonable premium; (2) the lack of standards regarding the maintenance of specific, per occurrence excess insurance, including a standard regarding the amount of risk per occurrence a JIF may retain (N.J.A.C. 11:15-2.23); (3) the requirement that separate trust fund accounts (bank accounts) be established for each line of coverage (N.J.A.C. 11:15-2.13(a)); (4) the requirement that intertrust fund transfers may only be made where each member participates in every line of coverage for the relevant fund year (N.J.A.C. 11:15-2.13); (5) the limitation on interyear transfers to a loss fund account between fund years with identical fund membership (N.J.A.C. 11:15-2.21(e)); (6) the failure of the rules to address the provision of monies and securities coverage under a JIF's "property" line of coverage (N.J.A.C. 11:15-2.2); (7) the provision of certain safety programs through the JIF, such as training and vaccine for compliance with PEOSHA's blood borne pathogens regulation; (8) the ability of a JIF to designate its fiscal year; and (9) existing filing and other miscellaneous requirements, specifically: notification of any change to the JIF's budget (N.J.A.C. 11:15-2.4(f)6); the requirement that payments of claims over $5000 be approved by the executive committee (N.J.A.C. 11:15-2.22(b)); the filing of an updated list of fund commissioners annually with the Department and the Department of Community Affairs (N.J.A.C. 11:15-2.6(c)7); the requirement that the plan of risk management include the amount of premium paid for reinsurance (N.J.A.C. 11:15-2.6(e)8); and duplication of filing requirements for a JIF whose membership is comprised of other JIFs.

Some of these commenters also reiterated comments regarding the proposed amendments to N.J.A.C. 11:15-2 regarding the establishment of producer arrangements; the revised filing date for financial reports from June 30 to March 31; the revised refund requirements; and the inclusion of producers within the definition of "servicing organization." As noted above, these comments, as well as the comments regarding the existing requirements, were also submitted in response to the proposed amendments to N.J.A.C. 11:15-2.

In addition, some of the commenters objected to the readoption of N.J.A.C. 11:15-3, which governs the establishment and operation of health JIFs, and expressed concern with or requested modification of several requirements currently imposed under those rules. Specifically, these commenters objected to:

(1) The due date for annual and quarterly financial reports (N.J.A.C. 11:15-3.24(a)). The commenters stated that the current deadline for annual reports of 120 days after the end of the year has, in practice, "proven impossible." The commenters believed that the deadline can only be met if there are no "compilations" (such as reinsurance recoveries). In any case, the commenters stated that the current deadline does not provide sufficient time for the executive committee to review the report before it is filed. The commenters further stated that municipalities have six months to complete and review the annual audit, and believed that health funds should not be subject to any shorter period.

The commenters also stated that the current quarterly report requirement and the deadline for the submission of those reports (45 days after the end of the quarter) is burdensome and unnecessary. For example, the commenters stated that the quarterly reports require all items calculated by member. The commenters suggested that the rules be revised to require a quarterly "fast track" type report to be submitted 60 days after the end of the quarter.

(2) The requirements regarding the payment of refunds (N.J.A.C. 11:15-3.20). The commenters stated that the rules require a JIF to declare a refund within six months of the end of the year, with 50 percent of the amount paid no later than 210 days after year end, and the remainder paid 60 days thereafter. The commenters believed that this requirement is inconsistent with sound fiscal management, and could lead to a JIF being required to impose an additional assessment shortly after paying a refund. The commenters stated that the rules governing property/casualty funds at N.J.A.C. 11:15-2.21 mandate a waiting period before a refund may be made, and the JIF is under no obligation to make a refund. The commenters suggested that the rule be revised to provide that a JIF may refund monies six months after the end of the year, and leave it to the JIF's commissioners to determine whether to declare a refund.

(3) The current two-stage approval process (N.J.A.C. 11:15-3.5). The commenters noted that the two-stage approval process was originally suggested by the JIFs to give both the Department and JIFs time to resolve problems with basic documents before the "final rush" which occurs just before start-up. The commenters believed that the Legislature intended that the approval process be "relatively easy." However, the commenters stated that the Department requires "incredible" detail and declares applications incomplete on relatively minor issues. The commenters thus suggested that the rules be revised to provide for conditional approval, which would permit a JIF whose application is "substantially complete" to begin operation.

(4) The lack of the ability for the Commissioner to "waive" the requirement for stop loss and/or reinsurance (N.J.A.C. 11:15-3.23) similar to that provided in the property/casualty JIF rules at N.J.A.C. 11:15-2.23(a). The commenters are concerned that even though availability of stop loss coverage is not currently a problem, given the time required to promulgate rules, if an availability crises were to occur, the lack of a waiver provision could have serious consequences. The commenters stated that the rules should be flexible to respond to contingencies, and thus suggested that the rules incorporate waiver provisions as those set forth in N.J.A.C. 11:15-2.23.

(5) In addition to the above, one commenter expressed concern with the amount of paperwork required. Specifically, the commenter cited two examples.

First, N.J.A.C. 11:15-3.6(e)9, which requires a JIF to file with the Commissioner and the Department of Community Affairs a list of fund commissioners, updated annually. The commenter stated that the Local Government Ethics Law requires another list to be filed with the Local Finance Board. The commenter questioned whether all three entities require the list. The commenter further stated that if the Department determined it necessary to require the list to be filed, the rules should be revised to provide that the requirements may be satisfied by filing the list filed with the Local Finance Board.

Second, N.J.A.C. 11:15-3.6(d)7, which requires the plan of risk management to include the amount of premium paid for reinsurance. The commenter stated that this requires formal amendment to the risk management plan every time the premium changes, which is at least annually, and is often more frequent. The commenter stated that this requirement is burdensome and unnecessary since this information is already contained in the budget and reinsurance policies, which are also filed.

The commenters thus requested that the Department address these concerns set forth above as part of the readoption of N.J.A.C. 11:15-2 and 3.

RESPONSE: The Department initially notes that all of N.J.A.C. 11:15 was proposed to be readopted without change. Substantive changes to the proposal cannot be made upon adoption without affording notice and opportunity to comment pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Moreover, as previously noted, all of the comments regarding N.J.A.C. 11:15-2 reflect those submitted in response to the separately proposed amendments to N.J.A.C. 11:15-2. Therefore, to the extent the comments relate to N.J.A.C. 11:15-2, those comments will be addressed in the adoption of the proposed amendments.

The Department's reponses to the comments relating to N.J.A.C. 11:15-3 follow. Responses are set forth in the order of the comments presented.

(1) Regarding the filing deadlines for the financial reports, the Department believes that the existing deadlines are both reasonable and appropriate. These deadlines are consistent with those required of any other entity providing health insurance coverage. The Department further notes that health coverage is a "short tail" coverage and that therefore the Department must be in a position to determine the financial condition of the fund as soon as possible. This will enable the Department to require the JIF to take any necessary action to address any deficiencies as quickly as possible so that such action may be undertaken as part of the next budget period. The Department further believes that six months is too long a period in which to receive financial information for the prior year. In order for the Department to be in a position to determine a JIF's financial condition, the financial reports must reflect a JIF's current financial condition as accurately as possible. The longer the time between the end of the reporting period and the time the data is submitted, the less reliable such data becomes. The Department notes that pursuant to N.J.S.A. 40A:10-36 et seq., the Department is statutorily mandated to determine whether a JIF is operating in an actuarially and financially sound manner, and to establish appropriate guidelines for the establishment, operation, modification, and dissolution of JIFs. While the commenters indicate that 120 days is "unworkable", they provide no basis for that assertion, nor an alternative reporting format.

Similarly, the Department believes that the quarterly reporting requirements and deadlines are reasonable and appropriate for a JIF's first two years of operation. During its initial operational period, the JIF has no previous experience in the provision of health coverage and therefore close monitoring of its financial condition is especially important. The Department notes that the commenters had no objection to providing a "fast track" type quarterly report due 60, rather than 45, days after the quarter. The commenters do not specify, however, the burdens imposed by the Department's current reporting requirements that would be eliminated under such a "fast track" report. Moreover, the commenters failed to indicate the type of information that would be included in any "fast track" report. The Department thus is unable to determine whether such a report would satisfy the Department's requirements with respect to its monitoring function.

Nevertheless, in light of the concerns expressed by the commenters, the Department will further review its current reporting requirements to determine whether any changes are necessary or appropriate for possible future amendment.

(2) Regarding the requirements with respect to the declaration and payment of refunds pursuant to N.J.A.C. 11:15-3.20(a), the Department notes that similar concerns were expressed as part of the adoption of these rules (see 25 N.J.R. 3220(a), 3221). As indicated in the response to the previous comments, the Department did not intend the rules to require that a JIF determine that all surplus monies may be refunded. Rather, the Department intended this provision to require that a JIF make a determination within six months (such period may be extended

by the Commissioner for good cause) of the end of the fiscal year of those amounts that the JIF believed may be safely refundable. If a JIF determined that no amount may be safely refundable, no refunds would be made. The differences between these requirements and those in the rules governing property/casualty JIFs was intended to recognize that health coverage is not a "long-tail" type coverage (as are liability and workers' compensation), in that losses for health coverage develop over a shorter period than liability lines. However, in consideration of the concerns expressed by the commenters, the Department recognizes that this provision may have been misconstrued and may be open to misinterpretation. Accordingly, the Department will consider the commenters' concerns regarding this provision for possible future amendment.

(3) With respect to the two-stage approval process, as the commenters noted, this process was developed and ultimately adopted at the suggestion of several JIFs during the development of the rules. The Department believes that the current process is reasonable, appropriate, necessary, and authorized pursuant to N.J.S.A. 40A:10-36 et seq. The Department believes that the commenters' assertion that the Legislature intended the approval process to be "easy" is misplaced. Whether a task is "easy" is a highly subjective matter, and the Department does not believe that the Legislature expressed a preference for one type of approval process over another. Rather, through N.J.S.A. 40A:10-36 et seq. the Legislature specifically mandated that specified information be included in any bylaws or plan of risk management; authorized the Commissioner to specify additional items to be included as part of the bylaws or plan of risk management; specifically required that the bylaws or plan of risk management be approved by the Department and the Department of Community Affairs; mandated that all JIFs be operated in an actuarially sound manner; authorized the Commissioner to conduct any examinations of JIFs as he or she deems necessary; and mandated that the Commissioner promulgate rules regarding the establishment, operation, modification, and dissolution of JIFs. Accordingly, the Department believes that the Legislature intended that the Department conduct a thorough review of any prospective JIF as well as operating JIFs to help ensure that such entities are operated in an actuarially sound manner and will be able to pay claims when presented. The Department believes that the current application provisions are reasonable, appropriate, and necessary to achieve that purpose.

Moreover, the Department does not believe that a "conditional approval" process would be appropriate or feasible. To adopt such a procedure would in effect provide that the Commissioner could approve a JIF that did not otherwise satisfy the requirements for approval. The commenters do not suggest any standards by which an application could be deemed "substantially complete" and warrant approval. Moreover, providing for a "conditional approval" could lead to disparity in the review and approval among different JIF applicants. In addition, the Department notes that the first JIFs approved, which were approved prior to the adoption of the rules on July 19, 1993, were "conditionally approved" (that is, approved subject to compliance with various conditions.) The Department notes that much of the documentation and information required to be submitted subsequent to approval was never filed, and that other problems occurred (such as failure to obtain required reinsurance) which had significant impacts on the JIF's financial condition.

The Department also notes that in numerous cases, the "frustration" experienced by prospective JIFs may be due to actions by the entities themselves. The Department has had experience on numerous occasions where a prospective JIF will apply for approval and request an effective date which is before the expiration of the 30 working day deemer period provided by N.J.S.A. 40A:10-41, and at the same time prospective members cancel their existing coverage to coincide with that prospective effective date. While this may cause "frustration" if the application is not approved by the proposed effective date, such action is inconsistent with the intent of the Legislature as it does not afford the Department and the Department of Community Affairs the full review period authorized by N.J.S.A. 40A:10-41.

Accordingly, the Department believes that the current application process is reasonable and appropriate. However, to the extent the commenters have specific concerns with specific filing or application requirements, the Department would consider any such concerns and would make any appropriate changes through future amendment.

(4) With respect to the waiver of stop loss and excess insurance as required by N.J.A.C. 11:15-3.23, the Department notes that no waiver provision was provided as was set forth in the rules governing property/casualty JIFs because to date there has been no availability problem for stop loss and/or reinsurance for health insurance, and none was foreseen for the immediate future. However, the Department recognizes the commenters' concern that the rules provide for future market conditions and contingencies. Accordingly, although the Department does not believe that any change is necessary at this time for the reasons set forth above, the Department will consider the commenters' concerns for possible future amendment.

(5) With respect to the filing of the updated list of fund commissioners annually with the Department and the Department of Community Affairs, the Department notes that while a similar list may be filed with another entity, the Department believes that it is reasonable and appropriate to require that information to be filed directly with the Department. However, if the list required to be filed with the Local Finance Board satisfies the requirements in N.J.A.C. 11:15-3.6(e)9, a JIF may file a copy of that list in satisfaction of the requirements in the rules. The Department notes, however, that it expresses no opinion as to whether the filing with the Local Finance Board satisfies the requirements of the rule.

With respect to the requirements in N.J.A.C. 11:15-3.6(d)7 that the plan of risk management include the amount of premium paid for the insurance, the Department does not believe that this requirement should pose any undue burden in that the plan of risk management is likely to change on an annual basis and thus require revision in any case. For example, the minimum aggregate attachment point (and thus the amount of risk to be retained by the fund on a self-insured basis) will likely change on a yearly basis since it is based on the JIF's experience, which changes on a yearly basis. The Department also notes that although this information may be contained in the budget, amendments to the budget need be filed only when the amendment changes the budget five percent or more. However, the Department would accept a reference in the plan of risk management to the amount of reinsurance premium to an attached document (such as the budget or reinsurance policy). Therefore, when changes in the premium occur, the JIF would file a revised "attachment" rather than amend the plan of risk management.

COMMENT: One commenter noted that N.J.A.C. 11:15 contains rules which govern the formation of pooling mechanisms by groups of hospitals seeking to self-insure workers' compensation coverage, and by local units of government joining together to insure against liability, property damage and workers' compensation and group health and term life insurance. The commenter expressed concern that as more employers elect coverage through these alternative mechanisms, the reduced number of employers securing coverage through the voluntary and assigned risk insurance programs shoulder the burden of the costs of premium taxes and assessments for various residual markets. The commenter additionally noted that excluding workers' compensation premium for self-insurers and JIFs also results in their not paying their "fair share" of various taxes and assessments for automobile residual markets.

In addition, the commenter believed that all self-insurers should pay the surcharge into the "Second Injury Fund," which the commenter stated is not paid by JIFs. The commenter stated that since employees under JIFs may change employers in the future and submit claims for a second injury while under a traditional insurance plan, the commenter believed that it is unfair that the cost of the Second Injury Fund be placed only on a portion of the employers of this State. Moreover, the commenter stated that full participation supporting the costs of the Second Injury Fund would reduce the overall percentage surcharge. Accordingly, the commenter believed that government self-insureds and JIFs should be required to pay these surcharges as well.

The commenter further stated that under the current New Jersey Workers' Compensation Insurance Plan (the residual market for workers' compensation coverage), the assessment for losses is shared only by the voluntary insurance companies. Therefore, self-insured funds and JIFs are not participating in the costs associated with providing coverage to employees not able to secure coverage in the voluntary market. The commenter thus believed that "non-traditional" plans should be required to pay their fair share of the residual market losses, which would reduce the costs paid by voluntary market insurers and insureds.

RESPONSE: The Department initially notes that the proposed readoption relates to rules governing JIFs, rather than individual self-insurers (government or private). Moreover, this Department does not regulate individual governmental entity self-insurers. These entities are subject to a degree of oversight by the Department of Community Affairs. The Department further notes that the commenter's concerns

generally relate to the application of various laws governing workers' compensation to JIFs. However, the statutes generally governing the provision of workers' compensation benefits, including the Second Injury Fund and any assessments therefor, are administered by the Department of Labor, not this Department. It should also be noted that a bill is pending in the Legislature that would require self-insured governmental entities to remit funds to the Commissioner of the Department of Labor in an amount equal to benefits paid to such entity from the Second Injury Fund (see Assembly Bill No. A-1958).

Finally, it should be emphasized that the rules in N.J.A.C. 11:15 do not independently authorize the provision of workers' compensation benefits through JIFs. Rather, the Legislature has authorized the provision of such coverage through these mechanisms at N.J.S.A. 40A:10-36 et seq. (in the case of local unit JIFs) and 34:15-77.1 et seq. (in the case of hospital JIFs). The Department's responsibility with respect to such mechanisms is to ensure that they possess the necessary financial resources and managerial expertise to help ensure that these mechanisms will be in a position to pay their obligations.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 11:15.

LABOR

(a)

EMPLOYMENT SECURITY AND JOB TRAINING

1995 Maximum Weekly Benefit Rates
1995 Taxable Wage Base Under the Unemployment Compensation Law
1995 Contribution Rate of Governmental Entities and Instrumentalities
1995 Base Week
1995 Alternative Earnings Test
Adopted Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6 and 1.7

Proposed: September 6, 1994 at 26 N.J.R. 3592(b).
Adopted: October 17, 1994 by Peter J. Calderone, Commissioner, Department of Labor.
Filed: October 17, 1994 as R.1994 d.552, **with a technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Effective Date: November 7, 1994.
Expiration Date: July 30, 1995.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on September 26, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed amendments. As a result, the hearing officer recommended that the rules be adopted with changes not in violation of N.J.A.C. 1:30-4.3. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

N.J.A.C. 12:15-1.3(c) has been changed upon adoption to correct a technical error in the proposal which indicates that maximum benefits shall be effective for the calendar year 1995 rather than for the calendar year 1995 on benefit years and periods of disability commencing on or after January 1, 1995.

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

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $354.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being $331.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1995 ***on benefit years and periods of disability commencing on or after January 1, 1995***.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first $17,600 during the calendar year 1995.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) (No change.)

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1995.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being $126.00 per week for calendar year 1995.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $7,600 for benefit years and periods of disability commencing on or after January 1, 1995.

(b)

DIVISION OF WORKERS' COMPENSATION

1995 Maximum Workers' Compensation Benefit Rates
Adopted Amendment: N.J.A.C. 12:235-1.6

Proposed: September 6, 1994 at 26 N.J.R. 3594(b).
Adopted: October 17, 1994 by Peter J. Calderone, Commissioner, Department of Labor.
Filed: October 17, 1994 as R.1994 d.553, **without change**.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12a.

Effective Date: November 7, 1994.
Expiration Date: May 3, 1996.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on September 26, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed amendment. As a result, the hearing officer recommended that the rules be adopted as proposed. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12a, the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being $469.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1994.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

TREASURY-GENERAL

Waiver of Executive Order No. 66(1978)
Set-Aside Procedures for State Contracting Agencies Regarding Small Businesses and Women and Minority Businesses
N.J.A.C. 12A:10 and 17:13, and 12A:10A and 17:14

Take notice that the rules found at N.J.A.C. 12A:10 and 17:13 and those found at N.J.A.C. 12A:10A and 17:14, which concern set-aside procedures for State contracting agencies regarding small businesses and women and minority businesses, were due to expire on October 13, 1994, pursuant to Executive Order No. 66(1978).

The standards and requirements set forth in these rules establish a set-aside program for the State's contracting agencies that bid and execute contracts for goods and services and for construction contracts. These rules are necessary for the Department of Commerce and Economic Development and the Department of Treasury to administer the State's set-aside program; hence, it is imperative that no lapse of these rules occur. The Departments plan to readopt these chapters with technical amendments, but the readoption could not be accomplished by the October 13, 1994 sunset date.

Governor Whitman has determined that the Department of Commerce and Economic Development and the Department of Treasury have met the spirit and intent of Executive Order No. 66(1978) by ensuring that these rules remain necessary, adequate and responsive for the purpose for which they were promulgated.

Therefore, on October 5, 1994, by the authority vested in her by Executive Order No. 66(1978), Governor Whitman directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for N.J.A.C. 12A:10 and 17:13 and for N.J.A.C. 12A:10A and 17:14 and that the expiration date for these chapters be extended from October 13, 1994 to and including March 31, 1995, in which time successful readoption can be accomplished.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Limited Licenses: Physician Assistants
Adopted New Rules: N.J.A.C. 13:35-2B
Adopted Repeal: N.J.A.C. 13:35-6.15

Proposed: November 15, 1993 at 25 N.J.R. 5099(b).

Adopted: August 10, 1994 by the Board of Medical Examiners, Fred Jacobs, M.D., President.

Filed: October 4, 1994 as R.1994 d.538, **without change, but with N.J.A.C. 13:35-2B.4(a)12 and (b)6 not adopted.**

Authority: N.J.S.A. 45:9-27.28.

Effective Date: November 7, 1994.

Expiration Date: September 19, 1999.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rules at N.J.A.C. 13:35-2B, regarding limited licensure of physician assistants.

The Board notes that the notice of proposal inadvertently referenced N.J.A.C. 13:35-6.14, rather than N.J.A.C. 13:35-6.15, as the section of N.J.A.C. 13:35 requiring repeal. As noted in the proposal's Summary statement, the Board intended to repeal the section of N.J.A.C. 13:35 containing the physician assistant pilot program regulations (N.J.A.C. 13:35-6.15) because the individuals participating in pilot programs will be subject to the new rules implementing the Physician Assistant Licensing Act, P.L. 1991, c.378, as amended by P.L. 1992, c.102. This notice of adoption correctly repeals N.J.A.C. 13:35-6.15.

The official comment period ended on December 15, 1993. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 15, 1993 at 25 N.J.R. 5099(b). Announcements were also forwarded to The Star Ledger, The Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Physician Assistant Advisory Committee, Marianne Kehoe, Executive Director, 124 Halsey St., P.O. Box 45031, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Advisory Committee received 70 written comments regarding the proposal. A list of the commenters follows:

Gary Noris, M.D.
Robert L. Sweeney, D.O. FACEP
Russell H. Harris, M.D., FACEP
Edward Luchansky, M.D., FACOG
Eric R. Braverman, M.D.
Alfred Sacchetti, M.D., FACEP
Richard M. Schwab, M.D., FACEP
Robert Post, M.D.
Marianne Kultz
Robert J. Roland, D.O.
Diane K. Erwin, C.N.M., M.S.
Elaine K. Diegmann, CNM, M. Ed., Director, Nurse-Midwifery Program, UMNNJ, School of Health Related Professions
Denise McDonald
Myrtle Elizabeth Hasford
Teresa Marsico, CNM, Med. FACNM
Pedro Guzman, RPAC
David F. Grimm, Executive Director, NJ Optometric Association
Suzanne Allen Widlow, M.D., President, Morris County Medical Society
David Kaufman, M.D.
Charles Obioha, M.D.
A.C. Stowe, M.D.
Sunil Patel, M.D.
Jeffrey J. Sorokin, M.D., FACP
Lyda Sue Cunningham, MA, RN
Geraldine Moon, Vice President, Hospital Operations—NJHA
Marvin A. Lipsky, M.D.
Jonathan R. Sachs, M.D.
David E. Wexler, M.D.
Michael L. Margolin, M.D.
Charles A. Accurso, M.D.
Francis X. Keeley, M.D.
Robert J. Rubin, M.D.
Robert L. Erickson, M.D.
Raymond P. Kenny, M.D., FACP, FACG
Victor W. Groisser, M.D.
John J. Farley
Mary A. Kral, PA-C
Linda Garry, PA-C
Robert Spierer, M.D.
Claire O'Connell, PA-C
Richard J. Bukosky, M.D., President, Union County Medical Society of NJ
ShiShir G. Vidwans, M.D.
John D. Fanburg
Robert P. Kamrin, M.D.
Joseph N. Micale, M.D., President, Medical Society of New Jersey
Christine Reynolds, RN
John D. Fanburg
Bienvenido Gonzalez, PA-C
Antoinette Y. Snead
Gary J. Bouchard, PA-C

Virginia Wall, PA-C
Kurt R. Johnson, PA
Joseph P. Thorton, MPH, PA-C, President, New Jersey State Society of Physician Assistants
Robert M. D'Angel, Esq.
Frances Quinless, PHD, RN
Judith Pollachek, MSN, MA, RN, GNP
Antoinette Y. Snead
Sister Marie de Sales O'Dowd, PA-C
Mark Aita, S.J., M.D.
William B. Foley, S.J., M.D.
Bruce Siegel, M.D., M.P.H., Commissioner of Health, New Jersey Department of Health
Ellen Pelka
Valerie Daly, M.D.
Joseph Leahy
Ms. Karen Kowal, PA-C
Arthur T. Gionti, M.D., Vice President Medical Services, St. Clares Riverside Medical Center
Leslie Davis Potter, President, Family Planning Association of New Jersey
Daniel D. Manzi, M.D., President, Essex County Medical Society
Robert L. Wegrya, M.D.
Bienvenido Gonzalez

Following is a summary of the comments received together with the Board's responses:

1. COMMENT: Thirty-three commenters wrote in support of New Jersey joining the ranks of other states that license physician assistants (PAs). Thirteen of these commenters expressed their unqualified support of this proposal.

RESPONSE: The Board appreciates this support and believes that the adopted proposal will have a favorable social and economic impact on health-care providers and consumers.

N.J.A.C. 13:35-2B.2 Definitions

2. COMMENT: Writing on behalf of the New Jersey Optometric Association (NJOA), Executive Director David F. Grimm recommended that the phrase "supervising physician's scope of practice" be amended to include **"as defined by the supervising physician's specialty board certification"** so as to restrict the PA's scope of practice to his or her specialty.

RESPONSE: The Board is satisfied that the term, "scope of practice," as used in this regulation sufficiently restricts the supervising physician to his or her area of expertise.

N.J.A.C. 13:35-2B.3 Practice Requirements

N.J.A.C. 13:35-2B.3(a)3

3. COMMENT: One respondent asked whether a PA may commence services absent an introduction by the supervising physician.

RESPONSE: The enabling statute does not restrict a physician assistant from initiating services prior to being introduced by the supervising physician. However, upon initial patient involvement by a PA who has not been introduced by the supervisor, the PA must advise the patient that services will be rendered in his or her capacity as physician assistant.

N.J.A.C. 13:35-2B.3(a)4

4. COMMENT: NJOA recommended that this provision be amended to require the licensee to wear an identification tag using the term "physician assistant" whenever on premises and not just when rendering services.

RESPONSE: This provision mirrors the statute (N.J.S.A. 45:9-27.15), which requires the PA to wear "an identification tag using the term 'physician assistant' **whenever acting in that capacity**." (Emphasis supplied.) The Board is of the opinion that this requirement sufficiently addresses concerns about appropriate identification.

N.J.A.C. 13:35-2B.3(b)

5. COMMENT: One respondent asked whether a PA must notify the Board of all locations in which his or her employer practices even if the physician assistant does not actually provide services at each practice location.

RESPONSE: The PA is required to provide the Board with notice of only those locations where the physician assistant actually provides services.

6. COMMENT: One respondent stated that requiring the PA to notify the Board of each change in protocol, employment or supervising physician appears to be administratively burdensome for both the PA and the Board. The respondent believes that this information could be requested at the time of license application and biennial renewal.

RESPONSE: The statute requires that the designation of additional procedures gain Board approval and that the Board be notified within 10 days of any change in supervising physician. The Board believes that receipt of this information in a timely manner is necessary to enable the Board to continue to exercise sufficient oversight of physician assistant practice, thereby safeguarding the public's interest.

N.J.A.C. 13:35-2B.4 Scope of practice

N.J.A.C. 13:35-2B.4(a)1

7. COMMENT: The President of the Essex County Medical Society, Dr. Daniel D. Manzi, recommended amending this provision to add the words "for interpretation" following the initial reference to supervising physician.

RESPONSE: The recommended change is beyond the scope of this proposal, the purpose of which is to establish the appropriate role of the PA and not that of the supervising physician.

8. COMMENT: The Vice President of Medical Services at St. Clares Riverside Medical Center, Arthur T. Gionti, wrote that in both paragraphs (a)1 and 4 the grammatical construction leaves it unclear as to whether the word "jointly" applies to the entire paragraph or merely to the phrase "determine and implement therapeutic plans."

RESPONSE: The word "jointly" applies to determining and implementing therapeutic plans.

N.J.A.C. 13:35-2B.4(a)2

9. COMMENT: On behalf of the Medical Society of New Jersey, President Joseph N. Micale urged that this provision be amended to clarify that a physician should determine whether a wound is infected.

RESPONSE: Such a determination is within the PA scope of practice and the Board is of the opinion that a physician assistant is qualified to determine whether a wound is infected.

10. COMMENT: One respondent wrote that prohibiting PAs from treating infected wounds appears to be inconsistent with N.J.A.C. 13:35-2B.4(a)9, which permits "packing of wounds."

RESPONSE: N.J.S.A. 45:9-27.16(a)1 specifically prohibits a PA from caring for infected wounds. The regulatory provision cited by the commenter must, therefore, be read to refer only to non-infected wounds.

11. COMMENT: NJOA recommended amending this provision as follows: "except for facial wounds **including the eye or adnexae**" so as to prohibit a PA from care of wounds to the eye and adnexae.

RESPONSE: The Board believes it is clear that the prohibition against a PA suturing facial wounds includes a wound to the eye and adnexae. The Board points out that the PA would be permitted to care for an eye wound if specifically permitted to do so pursuant to protocol or specific physician direction (see N.J.A.C. 13:35-2B.4(b)3.)

N.J.A.C. 13:35-2B.4(a)3

12. COMMENT: The Vice President of Nursing Services at Dover General Hospital, Lyda Sue Cunningham, wrote that PAs should not be permitted to engage in patient counseling and education because a PA's education does not include adult learning specifics.

RESPONSE: This provision mirrors the statute, which recognizes the ability of physician assistants to provide counseling and education.

N.J.A.C. 13:35-2B.4(a)4

13. COMMENT: One respondent asked if the emergency department of a hospital is considered an inpatient setting for the purposes of these rules and further noted that "inpatient" was not defined in the proposal.

RESPONSE: The Board has adopted the common usage within the medical profession in defining "inpatient" as someone admitted to a health care facility. Thus, an emergency room is not considered an inpatient setting under these rules.

14. COMMENT: The Medical Society of New Jersey wrote that this provision should be amended to assure that PAs are not authorized to conduct patient rounds in in-patient settings to the exclusion of attending physicians.

RESPONSE: The Board does not believe an amendment is necessary. The Board is confident that it is well-understood that a physician's responsibility for providing direct patient care cannot be altered by regulation.

N.J.A.C. 13:35-2B.4(a)7

15. COMMENT: Two respondents—Richard J. Bukosky of the Union County Medical Society and Robert J. Roland of the Infectious Diseases

Specialists in New Jersey—stated that the practice areas set forth in paragraphs (a)7 through 12 are not within the training of physician assistants and that to permit a PA to engage in them goes beyond the intended scope established by the Legislature.

With regard specifically to paragraph (a)12, which permits a PA to perform uncomplicated obstetrical deliveries, two respondents, Dr. Vidwans and the Program Analyst for the New Jersey Family Planning League, Christine Reynolds, stated that specific physician direction should be required prior to a PA performing uncomplicated obstetrical deliveries. The Assistant Vice President of Patient and Hospital Operations at Memorial Hospital of Burlington County, Denise McDonald, recommended that specialty training be required of a PA in order to perform deliveries. Five respondents asked if regulations similar to those for certififed nurse midwives will be issued regarding the PA's performance of uncomplicated obstetrical deliveries. Dr. Manzi stated that deliveries should be left to physicians and midwives.

RESPONSE: The statute specifically empowers the Board to designate procedures, other than those specifically enumerated in the statute, that PAs may perform on a routine and discretionary basis. It is the Board's considered opinion that the procedures set forth in paragraphs (a)7 through 11 are suitable for performance by PAs when within the supervising physician's scope of practice and the PA's training and ability. Upon reconsideration of paragraph (a)12, however, the Board is concerned that PAs may lack the necessary prescribing privileges to perform follow-up on deliveries in licensed birthing facilities. Further, the Board believes more specificity is necessary with regard to the scope of privileges in this area. Accordingly, the Board not adopted proposed paragraph (a)12, deferring action on this subject pending further discussion and consideration.

16. COMMENT: The Dean of the Nursing School at UMDNJ, Frances Quinless, objected to the phrase "including, but not limited to" in paragraphs (a)7 and 8 as vague and in need of clarification.

RESPONSE: The examples provided in paragraphs (a)7 and 8 are intended as examples and are not intended as a complete statement of the fluids which may be collected; thus, the phrase objected to above becomes duly appropriate and suitable.

17. COMMENT: NJOA suggested amending this provision to conclude with the qualification, "excluding withdrawal of aqueous and other fluids from the eye," because a PA should not be permitted on a discretionary and routine basis to insert a needle into the eye for fluid collection.

RESPONSE: The Board is of the opinion that the procedure outlined above may be appropriate for a PA to perform on a discretionary and routine basis if circumscribed by the supervising physician's scope of practice and the PA's training and ability.

N.J.A.C. 13:35-2B.4(a)8

18. COMMENT: The Medical Society of New Jersey suggested amending this provision to delete the phrase "but not limited to" because it will cause confusion and possibly create excessive delegation.

RESPONSE: The phrase is appropriate because it introduces a list that offers examples for the purpose of clarification and as such is not intended to be exhaustive. The Board has no reason to believe at this time that physicians will engage in inappropriate delegation of these duties. The Board will, of course, reconsider this suggestion if necessary at a later date.

19. COMMENT: The same commenter suggested that the word "arterial" be deleted because PAs typically are not prepared to manage and repair known complications involving torn arteries.

RESPONSE: The Board believes that placing arterial catheters is within the training and expertise of physician assistants, who have the ability to handle the initial management of known complications.

20. COMMENT: Dr. Kamrin wrote that the potential for harm through the intra-arterial administration of therapeutic materials and drugs is significant. He suggested that the Board require either that a physician be in attendance or that PAs not engage in this function.

RESPONSE: Paragraph (a)8 permits a PA to place and use access catheters and tubes on a discretionary and routine basis, but not for the intra-arterial administration of therapeutic materials and drugs. The Board proposed to permit PAs to perform intra-arterial administration of therapeutic materials only under specific physician direction and upon proof of training, experience and proficiency to perform such procedures (see paragraph (b)6). However, based upon public comment and additional consideration by the Board, as stated more specifically below, paragraph (b)6 has not been adopted.

21. COMMENT: Dr. Vidwans suggested that placement of C.V.P. lines and even cardiac catheters can create emergency situations that can only be handled by a specially trained physician.

RESPONSE: These procedures are within the training of PAs and are now being safely performed by the PA on a routine basis. Furthermore, as stated the Board is confident that the PA has the ability to handle initial management of known complications.

N.J.A.C. 13:35-2B.4(a)9

22. COMMENT: Three respondents wrote that minor surgery and debridement should be performed only by the physician. The alternative offered by the Medical Society of New Jersey was to permit PAs to perform surgical procedures only according to formal protocols established by the supervising physician.

RESPONSE: See response to Comment 21.

23. COMMENT: Dr. Kamrin wrote that unless the term "minor surgical procedure" has a strict formal definition accepted by the medical community, use of this term allows too much discretion. He recommended prohibiting the performance of any minor surgical procedure in the operating suite and prohibiting use of more than local anesthesia; IV-conscious sedation should be prohibited.

RESPONSE: The term "minor surgical procedure" does have a formal definition within each medical setting, and that definition and any prohibitions are unique to each setting. Placing prohibitions upon the procedure by a global regulation applicable to all licensees would therefore be inappropriate.

24. COMMENT: NJOA recommended that this provision conclude with the statement: "excluding refractive or other laser procedures on the eye and excluding all procedures involving the eye and adnexae and the removal of superficial and imbedded foreign objects in the eye and adnexae."

RESPONSE: The removal of superficial and imbedded foreign objects is typically a minor procedure, and is correctly placed within those duties that a PA may perform on a discretionary and routine basis. Pursuant to N.J.A.C. 13:35-2B.4(b), a physician assistant could perform other procedures involving the eye provided the PA is sufficiently trained in that specialty.

N.J.A.C. 13:35-2B.4(a)10

25. COMMENT: Dr. Vidwans wrote that applying and removing medical and surgical appliances should require the supervising physician's involvement.

RESPONSE: See response to Comment 21.

26. COMMENT: Dr. Kamrin suggested that this provision is too broad and consequently some physicians may tend to delegate as many functions as possible to a PA. He asked if the Board intended that PAs be given free rein to perform functions such as applying traction by placing metal pins through bones and pins into the skull, applying monitors internally and externally including scalp electrodes on term fetuses, and implanting infusion pumps beneath the skin.

RESPONSE: In no event will PAs be given free rein, since the duties they perform must be within the supervising physician's scope of practice and befit the training, proficiency and experience of the physician assistant.

27. COMMENT: Dr. Gionti suggested that it may be wise to further define those situations in which a PA can apply a cast on a "discretionary and routine basis."

RESPONSE: The situations in which a PA applies a cast can best be determined by the PA in consultation with the supervising physician.

28. COMMENT: NJOA recommended that this provision conclude with the statement: "excluding the insertion, removal, adjustment and dispensing of medical devices for the eye."

RESPONSE: The Board believes that a PA may insert, remove and adjust medical appliances for the eye provided that these duties fall within the PA's training, proficiency and experience and are encompassed within the scope of practice of the supervising physician. This regulation does not, however, permit a PA to dispense medical and surgical appliances and devices.

N.J.A.C. 13:35-2B.4(a)11

29. COMMENT: Four respondents wrote that anything other than initial management of emergency and life-threatening conditions requires training far beyond physician assistant capacity. The Medical Society of New Jersey recommended that PAs be permitted to manage emergency and life-threatening conditions only in the absence of a trained and experienced physician who will be able to assert management authority.

RESPONSE: As stated in the response to Comment 21, the Board believes the PA has the ability to manage emergency and life-threatening conditions prior to assertion of management authority by a physician. It should be noted that the PA must be under the direct supervision of a physician as a condition of practice.

30. COMMENT: NJOA recommended concluding this provision with the statement: "excluding any ocular emergency that has sight-threatening consequences."

RESPONSE: See response to Comment 29. Further, the Board points out that it is not in the best interest of the public's safety, health and welfare to delay treatment.

N.J.A.C. 13:35-2B.4(a)12

31. COMMENT: Dr. Kamrin stated that if physician assistants are to perform obstetrical deliveries, it is necessary for their supervising physicians to perform this function as well; furthermore, it is presumed that the physician has either similar hospital privileges or at least a formal written arrangement with the hospital to accept suddenly complicated deliveries.

RESPONSE: See response to Comment 15. The Board has deferred final action with regard to permitting a PA to perform uncomplicated obstetrical deliveries. The Board points out, however, that N.J.A.C. 13:35-2B.1 mandates that the PA's duties must be encompassed by the supervising physician's scope of practice. Therefore, any function performed by a PA must be within the scope of practice of the supervising physician. Furthermore, it is to be expected that hospitals will in this regard handle the involvement of PAs in a manner similar to their professional relationship with physicians.

32. COMMENT: The Chief Physician Assistant and Clinical Coordinator for the Harlem Hospital Center, Pedro Gozman, wrote to object to PA's being prevented from performing full obstetric and gynecologic service to the best of their trained abilities.

RESPONSE: As stated, final action with regard to obstetrical deliveries has been deferred.

N.J.A.C. 13:35-2B.4(b)

33. COMMENT: One respondent asked whether physicians will be required to "petition" the Board if the procedures a PA is seeking to perform are not specifically enumerated in this subsection of the proposed rule.

RESPONSE: The need for such a petition has already been established by statute. N.J.S.A. 45:9-27.17 permits a physician to delegate only those procedures identified in N.J.S.A. 45:9-27.16 (which procedures are also identified in subsection (b) of the regulations.) Any additional procedures must, pursuant to N.J.S.A. 45:9-27.24, be designated by the Board by "adopting regulations in accordance with the Administrative Procedure Act."

34. COMMENT: Based upon concerns about the physician assistant level of training and experience, Robert J. Roland of the Infectious Disease Specialists of New Jersey stated that PAs should be prohibited from performing any of the duties enumerated in paragraphs (b)1 through 7; the president of the Morris County Medical Society, Dr. Suzanne Allen Widrow, objected to PAs being permitted to perform the duties listed in paragraphs (b)3 through 6, and a significant number of respondents objected to PAs performing any of the duties listed in paragraph (b)6. Two respondents, Geraldine Moon, Vice President of Hospital Operations for the New Jersey Hospital Association, and Dr. Kamrin, recommended that the Board require a PA to fulfill the same performance criteria as a physician for each of the duties outlined.

RESPONSE: The duties outlined in (b)1 through 4 are specifically provided for in the statute, and the duties cited in paragraph (b)5 clarify duties that appear in the statute. None of these duties, however, may be performed by a PA unless they are within the scope of practice of the supervising physician and the training and experience of the PA. The Board also recognizes that individual institutions may impose credentialling requirements prior to according a physician assistant privileges consistent with these proposed regulations.

With regard to paragraph (b)6, the Board did not adopt this provision for the reasons more specifically set forth below in response to Comment 42.

N.J.A.C. 13:35-2B.4(b)2

35. COMMENT: NJOA recommended that the following specific exclusion be appended to this provision, "except for intraocular injections and injections into the eye's adnexae." The commenter stated that a PA's training and experience does not provide a sufficient foundation to insert a needle into the human eye and its adnexae.

RESPONSE: The Board is of the opinion that the procedure outlined above may be appropriate for a PA to perform upon specific physician direction or protocol and if circumscribed by the supervising physician's scope of practice and the PA's training and ability.

36. COMMENT: Dr. Vidwans wrote that giving injections, administering medications and ordering diagnostic studies should be permitted only if fulfilled in the presence of a supervising physician who can take care of complications such as anaphylactic shock.

RESPONSE: The statute does not require the physical presence of the supervising physician. The Board believes its requirements for supervision, as set forth in N.J.A.C. 13:35-2B.10, will effectively safeguard the public's health.

N.J.A.C. 13:35-2B.4(b)3

37. COMMENT: Dr. Manzi of the Essex County Medical Society wrote that suturing is a physician function.

RESPONSE: The duties outlined in paragraph (b)3 are specifically permitted by statute and, in the Board's opinion, may appropriately and safely be performed by the PA.

38. COMMENT: Dr. Vidwans favored amending this provision to permit a physician assistant to perform these duties only as an assistant to the supervising physician.

RESPONSE: See response to Comment 37.

N.J.A.C. 13:35-2B.4(b)4

39. COMMENT: Dr. Manzi wrote that PAs should not be authorized to prescribe. The Medical Society of New Jersey suggested amending this provision so that PAs are not routinely permitted to prescribe virtually all medications other than controlled dangerous substances.

RESPONSE: The PA's prescribing privileges are authorized by statute. The implementing regulations contain numerous safeguards intended to limit dispensing to medications related to the PA's practice area. Specifically, the PA is permitted to dispense medications "to implement [jointly developed] therapeutic plans." Pursuant to N.J.A.C. 13:35-2B.12, the prescription must state whether it is written pursuant to protocol or specific physician direction. Moreover, specific dosages, quantities and strengths must be included in the patient record, which the supervising physician subsequently must personally review and countersign.

40. COMMENT: Dr. Vidwans favored amending this provision to permit PAs to order and prescribe if the orders and prescriptions are immediately countersigned by the supervising physician.

RESPONSE: See response to Comment 39. The Board is of the opinion that together the enabling statute and the proposed regulations are sufficiently protective of the public. The statute and the regulations require the countersigning of medical orders within 24 hours and an indication on every prescription as to whether it was written pursuant to protocol or physician direction.

41. COMMENT: Dr. Kamrin wrote that countersigning should be mandatory only when a PA deviates from a protocol approved by the medical staff.

RESPONSE: The statute requires countersigning, and thus the suggestion outlined above would be contrary to the statutory requirement.

N.J.A.C. 13:35-2B.4(b)6

42. COMMENT: Fourteen respondents objected to the use by PAs of endoscopic instruments because of concerns about their level of training and that of their supervising physicians.

RESPONSE: The Board determined upon reconsideration that this paragraph is unclear concerning the PA's authority to engage in the placement of central venous catheters or chest tubes. The Board also believes that the duties set forth in paragraph (b)6 may require a higher level of supervision than that proposed. Accordingly, final consideration of paragraph (b)6 subject matter has been deferred pending further review.

43. COMMENT: Dr. Micale wrote that for the sake of clarity the phrase "such as, but not limited to" should be removed.

RESPONSE: The phrase in question is accurate and suitable because it reflects the fact that this list exists to clarify by means of examples not intended to be exhaustive.

44. COMMENT: NJOA recommended that this section be amended as follows:

Performing other procedures for diagnostic, therapeutic or interventional purposes such as, but not limited to, introduction of contrast material for radiologic studies **of the human body excluding flourescein-**

angiography and other studies of the eye, use of endoscopic instruments and aspiration of fluid from joints and body cavities, collection of cerebrospinal fluid, biopsy of tissues **except for removal of tissues from the eye or adnexae**, placement of central venous catheters or chest tubes, and endotracheal intubation. The supervising physician shall maintain documentation, or ensure that documentation is maintained, evidencing that the physician assistant has the training, experience and proficiency to perform such procedures.

RESPONSE: The Board will take these concerns into consideration in its further deliberations on this paragraph (b)6.

45. COMMENT: One respondent stated that PAs who provide services to inpatients and/or outpatients of a hospital or other healthcare institution must apply for and be granted specific clinical privileges by the institution in accordance with the bylaws of the medical staff and the governing body. The services of such physician assistants must also be subject to peer review in the institutions in which they practice.

RESPONSE: The Board agrees and points out that it is the responsibility of the employer and/or facility to determine the specific clinical privileges accorded to a physician assistant.

N.J.A.C. 13:35-2B.5 Eligibility for licensure

46. COMMENT: One respondent wrote that Advanced Cardiac Life Support (ACLS) competency should be explicitly required for licensure.

RESPONSE: The statute does not require ACLS as a prerequisite for licensure.

N.J.A.C. 13:35-2B.5(a)1

47. COMMENT: Two respondents, the Medical Society of New Jersey and the Essex County Medical Society, wrote that 18 years of age is too young for individuals to be performing surgery, prescribing medications, and providing other highly complex and potentially dangerous procedures. The Society suggested a minimum age of at least 21.

RESPONSE: The minimum age requirement is set by statute. The Board points out that the minimum age requirement is only one criteria for determining an individual's eligibility for licensure.

N.J.A.C. 13:35-2B.5(a)2

48. COMMENT: The Medical Society of New Jersey suggested that the Board should not require applicants for physician assistant licensure to answer absolutely all questions because to do so might violate the protection afforded by the Americans with Disabilities Act (ADA).

RESPONSE: The application does not contain questions violative of the ADA.

N.J.A.C. 13:35-2B.5(a)4

49. COMMENT: One respondent stated that NCCPA certification should be a prerequisite for licensure by endorsement, and the Medical Society of New Jersey suggested that NCCPA certification or its equivalent should be a prerequisite for licensure.

RESPONSE: The requirements for licensure are set forth in the statute. The Board does not believe certification is necessary because it is confident that the continuing medical education (CME) requirements set forth in the statute and in these rules ensure that licensees will remain proficient and current regarding their knowledge of the profession.

N.J.A.C. 13:35-2B.5(b)

50. COMMENT: Ten respondents, including the New Jersey State Society of Physician Assistants, wrote objecting to the inability of PAs to practice while awaiting certification because this policy encourages many graduates to look elsewhere for employment. They urged the creation of a provision for temporary licensure.

RESPONSE: The concern outlined above was addressed by recently enacted legislation (P.L. 1993, c.337) which permits such licensure. The Board will address the need for additional or amended regulations in the near future.

N.J.A.C. 13:35-2B.8 Credit hour requirements

51. COMMENT: One respondent suggested 100 CME hours be required for license renewal.

RESPONSE: The Board is of the opinion that 40 hours of Category 1, CME, is sufficient.

N.J.A.C. 13:35-2B.10 Supervision

N.J.A.C. 13:35-2B.10(b)1

52. COMMENT: Two respondents wrote that both the term "inpatient setting" and the options—continuing or intermittent—need to be more specifically defined. One respondent added the suggestion that an inpatient should be seen by a physician no less than every 48 hours.

RESPONSE: The Board is confident that the term "inpatient setting" is readily understood by health care professionals to mean a setting where a patient has been admitted to a health care facility. Typical hospital protocol calls for physician review of the patient within 24 hours of admission. It should be noted that the supervising physician determines the frequency of patient-care visits and that the Board has amplified this requirement to include the need for constant availability through electronic communications.

N.J.A.C. 13:35-2B.10(a)4

53. COMMENT: The Medical Director of Mercer Medical Center, Dr. Robert P. Kamrin, wrote that in an in-patient setting it would be appropriate for the supervising physician to countersign the PA's history and physical examination, as well as the care plan, within 24 hours of hospital admission.

RESPONSE: This provision mirrors the statute, which requires the supervising physician to review all charts and records and countersign all medical orders within 24 hours.

N.J.A.C. 13:35-2B.10(b)2

54. COMMENT: One respondent asked if the reference here to an outpatient setting means an outpatient department of a hospital or a free standing private office.

RESPONSE: The reference is in regard to any setting in which a patient is not an inpatient in a health care facility.

55. COMMENT: Two commenters objected to this provision. Richard Bukosky wrote that to be "available through electronic communications for consultation or recall" is diametrically opposed to the meaning of "direct supervision of a physician." For the same reason, Dr. Manzi of the Essex County Medical Society wrote that the PA should not only advise the patient of his or her identity but should also obtain a written consent.

RESPONSE: The Board devoted a considerable amount of time to determining the tasks that may be performed by a PA consistent with the statute. Because physician assistants are thoroughly trained to perform these specified duties, physician availability through electronic communications (an "on-call" situation) is therefore both appropriate and necessary to facilitate the best care for the public. The Board is confident that this standard, in conjunction with the other supervisory obligations of the physician as outlined in the statute and the regulations (such as permissible supervisory ratio and regular patient record review) safeguard the public's interest by seeking to ensure that physician assistants provide competent medical help.

N.J.A.C. 13:35-2B.10(b)3

56. COMMENT: The Medical Society of New Jersey wrote that supervising physicians should be required to prepare PA performance reviews, noting areas of satisfactory performance and areas of recommended improvement so as to enhance the quality of care and supervision and to enable the Board to determine more easily whether an acceptable review took place.

RESPONSE: Because of the small pool of physician assistants now working within the State, the Board is confident that physicians are able to oversee PA performance and to recommend necessary improvements without resort to requirements for a more formal review procedure. However, the Board will continue to monitor this situation and may, if necessary, consider performance review requirements in the future.

N.J.A.C. 13:35-2B.10(b)4

57. COMMENT: The Board was asked how a supervising physician will review charts and records if he or she is on vacation, since no delegation is permitted in an outpatient/private office setting.

RESPONSE: The commenter's statement regarding delegation in an outpatient setting is incorrect. The supervising physician remains responsible at all times for compliance with Board regulations pertaining to the performance of the PA. Therefore, if the supervising physician's absence while on vacation precludes compliance with this or any other regulation, the supervising physician would be required to appoint a designee in both the inpatient setting and the outpatient setting.

58. COMMENT: One respondent suggested amending this provision as follows: "In an inpatient setting, the supervising physician should

countersign all written orders within 24 hours after the written order is carried out." The commenter did not provide a reason for the suggestion.

RESPONSE: The statute specifically requires countersigning of medical orders within 24 hours of "their entry by the physician assistant."

N.J.A.C. 13:35-2B.10(b)5ii

59. COMMENT: Christine Reynolds of the New Jersey Family Planning League, Inc., wrote that the 1:2 ratio of supervising physician to physician assistants in an outpatient setting is overly restrictive and asked the Board to expand this ratio to 1:4 or to establish a mechanism for a waiver based on the scope of practice within the clinical setting.

RESPONSE: The Board determined the outpatient ratio of 1:2 based on consideration of physician assistant practice in other jurisdictions. The Board may reconsider the ratio at a later date should observation of the evolving situation here in New Jersey suggest that a modification of the ratio may be in order. This proposal already includes a waiver mechanism.

60. COMMENT: The Medical Society of New Jersey wrote that the in-patient ratio of 1:4 is insufficient to be automatically acceptable and that the Board should review all situations in which ratios exceed 1:2.

RESPONSE: The Board favors retaining the 1:4 ratio for now because it is of the opinion that it protects the public interest, although the Board will monitor the evolving situation and may modify the ratios at a later date.

N.J.A.C. 13:35-2B.11 Recordkeeping

N.J.A.C. 13:35-2B.11(a)7

61. COMMENT: The Medical Society of New Jersey wrote that patient records developed by PAs should include a treatment plan stating the recommended course of treatment, based on the findings and diagnosis or medical impression, because this will allow the supervising physician and other reviewers to ascertain the appropriateness of the full course of treatment.

RESPONSE: In those instances when the physician has an obligation pursuant to regulation to develop a treatment plan, it would be appropriate for the PA to include a treatment plan that is jointly agreed to by the supervising physician and the physician assistant.

N.J.A.C. 13:35-2B.11(a)8ii

62. COMMENT: Dr. Kamrin wrote that if the implication here is that PAs write orders only under specific physician direction, then countersigning is unnecessary.

RESPONSE: The commenter is correct that PAs may write orders only under specific physician direction. The countersignature requirement, however, must be retained because it is imposed by statute.

N.J.A.C. 13:35-2B.12 Requirements for issuing prescriptions for medication

N.J.A.C. 13:35-2B.12(a)1

63. COMMENT: Several respondents requested clarification as to whether a PA can order medication under prescribed protocol and physician countersignature in an outpatient setting.

RESPONSE: The enabling legislation does not provide for prescriptive authority in outpatient settings.

64. COMMENT: Seventeen respondents, including the New Jersey State Society of Physician Assistants and the then Commissioner of the New Jersey Department of Health, Bruce Siegel, objected to the lack of outpatient prescriptive authority because this provision will essentially eliminate the use of physician assistants to serve the inner-city neighborhoods and the rural poor. Several respondents noted that more than 34 states provide prescriptive authority to PAs in both inpatient and outpatient practice settings. Dr. Siegel recommended that a formulary be designed.

RESPONSE: The enabling legislation does not provide for prescriptive authority in outpatient settings.

65. COMMENT: Two pharmacist-respondents required clarification regarding procedures proposed for filling in-patient prescriptions written by PAs.

RESPONSE: Procedures for filling in-patient prescriptions written by physician assistants are no different from the procedures the pharmacist follows when filling prescriptions written by physicians.

N.J.A.C. 13:35-2B.12(a)2

66. COMMENT: One respondent stated that to require a physician to order fairly standard medications, such as narcotics, when trained personnel are already present would be a needless waste of manpower and will needlessly prolong patient suffering.

RESPONSE: A physician assistant is prohibited by statute from prescribing any controlled dangerous substance.

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 2B. LIMITED LICENSES: PHYSICIAN ASSISTANTS

13:35-2B.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of the Physician Assistant Licensing Act, P.L. 1991, c.378, as amended by P.L. 1992, c.102.

(b) This subchapter shall apply to all physician assistants licensed pursuant to the provisions of this subchapter and to anyone within the jurisdiction of the Physician Assistant Advisory Committee.

13:35-2B.2 Definitions

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

"Board" means the State Board of Medical Examiners.

"Committee" means the Physician Assistant Advisory Committee.

"Direct supervision" means supervision by a plenary licensed physician which shall meet all of the conditions established in N.J.A.C. 13:35-2B.10(b).

"Director" means the Director of the Division of Consumer Affairs.

"Licensee" means a physician assistant licensed pursuant to this subchapter.

"Licensed personnel" means health care practitioners licensed in the State of New Jersey to perform specific duties in the health care field.

"Physician" means a person who holds a current, valid license to practice medicine and surgery in this State.

"Physician assistant" means a person who holds a current, valid license to practice as a physician assistant in this State.

"Physician designee" means a plenary licensed physician who is assigned by the supervising physician in case of his or her temporary absence and whose scope of practice encompasses the duties assigned to a physician assistant.

"Supervising physician" means a plenary licensed physician in good standing who, pursuant to N.J.S.A. 45:9-27.18, engages in the direct supervision of physician assistants whose duties shall be encompassed by the supervising physician's scope of practice.

13:35-2B.3 Practice requirements

(a) A licensee may engage in clinical practice in any medical care setting provided that:

1. The licensee is under the direct supervision of a physician pursuant to the provisions of N.J.A.C. 13:35-2B.10;

2. The licensee limits his or her practice to those procedures authorized pursuant to N.J.A.C. 13:35-2B.4;

3. Upon initial involvement in a patient's course of care or treatment, the licensee or the supervising physician advises the patient that authorized procedures are to be performed by the physician assistant;

4. The licensee conspicuously wears an identification tag using the term "physician assistant" whenever acting in that capacity; and

5. The licensee complies with the recordkeeping requirements set forth in N.J.A.C. 13:35-2B.11.

(b) The licensee shall file with the Board a notice of employment for each place of employment, on forms provided by the Committee, within 10 days after the date on which employment commences. Furthermore, the licensee shall report to the Board any change in employment or supervisor within 10 days of the change.

13:35-2B.4 Scope of practice

(a) A licensee who has complied with the provisions of N.J.A.C. 13:35-2B.3 may perform the following procedures on a discretionary and routine basis:

1. Approaching a patient to elicit a detailed and accurate history, perform an appropriate physical examination, identify problems, record information and interpret and present information to the supervising physician, determine and implement therapeutic plans jointly with the supervising physician and compile and record pertinent narrative case summaries;

2. Suturing and follow up care of wounds including removing sutures and clips and changing dressings, except for facial wounds, traumatic wounds requiring suturing in layers and infected wounds;

3. Providing patient counseling services and patient education consistent with directions of the supervising physician;

4. Assisting a physician in an inpatient setting by conducting patient rounds, recording patient progress notes, determining and implementing therapeutic plans jointly with the supervising physician and compiling and recording pertinent narrative case summaries;

5. Assisting a physician in the delivery of services to patients requiring continuing care in a private home, nursing home, extended care facility, private office practice or other setting, including the review and monitoring of treatment and therapy plans;

6. Facilitating the referral of patients to, and promoting their awareness of, health care facilities and other appropriate agencies and resources in the community;

7. Collecting fluids for diagnostic purposes, including, but not limited to, blood, urine, sputum and exudates;

8. Placing and utilizing access catheters and tubes for diagnostic, therapeutic or interventional purposes, including, but not limited to, intravenous, arterial, nasogastric and urinary;

9. Performing minor surgical procedures such as simple excisions, incision and drainage, debridement and packing of wounds;

10. Applying and removing medical and surgical appliances and devices such as splints, casts, immobilizers, traction, monitors and infusion pumps;

11. Management of emergency and life threatening conditions;

12. *[Performing uncomplicated obstetrical deliveries in a licensed health care facility (which may include a licensed birthing center)]* ***(Reserved)***; and

13. Subject to review by the Board, such other written procedures established by the employer, provided the procedures are within the training and experience of both the supervising physician and the physician assistant.

(b) A licensee who has complied with the provisions of N.J.A.C. 13:35-2B.3 may perform the following procedures, provided the procedures are within the training and experience of both the supervising physician and the physician assistant, only when the supervising physician directs the licensee to perform the procedures or orders or prescribes the procedures, or the procedures are specified in a written protocol approved by the Board.

1. Performing non-invasive laboratory procedures and related studies or assisting licensed personnel in the performance of invasive laboratory procedures and related studies;

2. Giving injections, administering medications and ordering diagnostic studies;

3. Suturing and caring for facial wounds, traumatic wounds requiring suturing in layers and infected wounds;

4. In an inpatient setting, ordering medications and prescribing other than controlled dangerous substances and writing orders to implement therapeutic plans identified pursuant to (a)4 above;

5. In the operating room, assisting a supervising surgeon as a first assistant or as a second assistant when deemed necessary by the supervising surgeon and when a qualified assistant physician is not required by N.J.A.C. 13:35-4.1;

6. *[Performing other procedures for diagnostic, therapeutic or interventional purposes such as, but not limited to, introduction of contrast material for radiologic studies, use of endoscopic instruments and aspiration of fluid from joints and body cavities, collection of cerebrospinal fluid, biopsy of tissues, placement of central venous catheters or chest tubes, and endotracheal intubation. The supervising physician shall maintain documentation, or ensure that documentation is maintained, evidencing that the physician assistant has the training, experience and proficiency to perform such procedures]* ***(Reserved)***; and

7. Subject to review and approval by the Board, such other written procedures established by the employer, provided the procedures are within the training and experience of both the supervising physician and the physician assistant.

13:35-2B.5 Eligibility for licensure

(a) An applicant for licensure shall submit to the Board, with the completed application form and the required fee, evidence that the applicant:

1. Is at least 18 years of age;

2. Is of good moral character, evidence of which shall require the applicant for licensure to respond to such inquiry as the Board deems appropriate regarding past and present fitness to practice, and issues pertinent thereto;

3. Has successfully completed an education program for physician assistants which is approved by the Committee on Allied Health Education and Accreditation, or its successor; and

4. Has passed the examination administered by the National Commission on Certification of Physician Assistants (NCCPA), except as set forth in (b) below.

(b) An applicant who submits satisfactory proof that he or she holds a current license, certification or registration to practice as a physician assistant in a state which has standards substantially equivalent to those of this State shall be deemed to satisfy the examination requirement set forth in (a)4 above.

13:35-2B.6 Refusal to issue, suspension or revocation of license

(a) The Board may refuse to issue or may suspend or revoke any license issued by the Board for any of the reasons set forth in N.J.S.A. 45:1-21.

(b) Prior to any license suspension or revocation, the licensee shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:35-2B.7 License renewal, continuing education requirement

(a) The Board shall not issue a biennial license renewal unless the applicant submits, with the renewal application, proof that he or she completed courses of continuing professional education of the types and number of credits specified in N.J.A.C. 13:35-2B.8.

(b) Falsification of any information submitted with the renewal application may result in an appearance before the Board or a duly appointed Committee thereof and, after due notice to the licensee and the opportunity for a hearing pursuant to the Administrative Procedure Act and the Uniform Administrative Procedure Rules, penalties and/or suspension or revocation of the license.

(c) The Board will, from time to time, conduct inquiries among licensees on a random basis to determine compliance with continuing education requirements.

13:35-2B.8 Credit-hour requirements

(a) Each applicant for a biennial license renewal shall be required to complete, during the preceding biennial period, a minimum of 40 continuing education credit hours in category I courses approved by the American Medical Association, the American Academy of Physician Assistants, the American Academy of Family Physicians, the American Osteopathic Association or the Accreditation Council on Continuing Medical Education. The Board reserves the right to review and approve continuing education courses offered by entities other than those set forth above.

(b) Fifteen credits may be carried over into a succeeding biennial period only if earned during the last six months of the preceding biennial period.

13:35-2B.9 Waiver of continuing education requirement

(a) The Board may, in its discretion, temporarily waive continuing education requirements on an individual basis for reasons of hardship, such as illness or disability, or other good cause.

(b) Any licensee seeking a waiver of the continuing education requirements must apply to the Board in writing and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide the Board with such additional information as it may reasonably request in support of the application.

13:35-2B.10 Supervision

(a) A physician assistant shall engage in practice only under the direct supervision of a physician.

(b) The physician assistant shall not render care unless the following conditions are met:

1. In an inpatient setting, the supervising physician or physician-designee is continuously or intermittently present on-site with constant availability through electronic communications for consultation or recall;

2. In an outpatient setting, the supervising physician or physician-designee is constantly available through electronic communications for consultation or recall;

3. The supervising physician regularly reviews the practice of the physician assistant;

4. The supervising physician personally reviews all charts and patient records and countersigns all medical orders as follows:

i. In an inpatient setting, within 24 hours of the physician assistant's entry of the order in the patient record; and

ii. In an outpatient setting, within a maximum of seven days of the physician assistant's entry of the order in the patient record; and

5. The following supervisory ratios are met:

i. In a private practice which is not hospital based or institutionally affiliated, no more than two physician assistants to one physician at any one time;

ii. In all other settings, no more than four physician assistants to one physician at any one time.

(c) Upon application to the Board, the Board may alter the supervisory ratios set forth in (b) above.

(d) A supervising physician who is a department head may assign physician assistants under his or her supervision to attending and staff physicians, who shall be responsible for the practice of the physician assistant during the assignment. In all other settings in which a physician assistant is employed, the supervising physician of record shall be considered to be the person responsible for the practice of the physician assistant.

13:35-2B.11 Recordkeeping

(a) Licensees shall make contemporaneous, permanent entries into professional treatment records which shall accurately reflect the treatment or services rendered. To the extent applicable, professional treatment records shall reflect:

1. The dates and times of all treatments;
2. The patient complaint;
3. The history;
4. Findings on appropriate examination;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or medical impression; and
8. Treatment ordered. If medications are ordered, the patient record shall include:

i. Specific dosages, quantities and strengths of medications;

ii. A statement indicating whether the medication order is written pursuant to protocol or specific physician direction. Acceptable abbreviations are "prt" for protocol and "spd" for specific physician direction;

iii. The physician assistant's full name, printed or stamped, and the license number; and

iv. The supervising physician's full name, printed or stamped.

(b) If the information required pursuant to (a)8iii and iv appears at least once in the patient record, it need not be repeated each time a medication order is entered in the patient record.

(c) The physician assistant shall sign each entry in the patient record and record the designation "PA-C" following his or her signature.

(d) To the extent a physician assistant is charged with independent responsibility for the provision of information used to prepare bills and claims forms, such information shall accurately reflect the treatment or services rendered.

13:35-2B.12 Requirements for issuing prescriptions for medications

(a) A physician assistant may issue prescriptions only in accordance with the following conditions:

1. A physician assistant may issue prescriptions only in an inpatient setting.

2. A physician assistant shall not issue prescriptions for controlled dangerous substances.

3. A physician assistant shall provide the following on all prescription blanks:

i. The physician assistant's full name, professional identification ("PA-C"), license number, address and telephone number. This information shall be printed or stamped on all prescription blanks;

ii. The supervising physician's full name, printed or stamped;

iii. A statement indicating whether the prescription is written pursuant to protocol or specific physician direction. Acceptable abbreviations are "prt" for protocol and "spd" for specific physician direction;

iv. The full name, age and address of the patient;

v. The date of issuance of prescription;

vi. The name, strength and quantity of drug or drugs to be dispensed and route of administration;

vii. Adequate instruction for the patient. A direction of "p.r.n." or "as directed" alone shall be deemed an insufficient direction;

viii. The number of refills permitted or time limit for refills, or both;

ix. The signature of the prescriber, hand-written; and

x. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the physician assistant's initials next to the chosen option, in addition to the space required for the signature in (a)3ix above.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Standards for Licensure of Physicians with Post-Secondary Educational Deficiencies

Adopted Amendment: N.J.A.C. 13:35-3.12

Proposed: July 5, 1994 at 26 N.J.R. 2742(b).

Adopted: August 10, 1994 by the Board of Medical Examiners, Fred Jacobs, M.D., President.

Filed: October 4, 1994 as R.1994 d.539, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2 and 45:9-7.

Effective Date: November 7, 1994.

Expiration Date: September 21, 1999.

The State Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:35-3.12, relating to standards for licensure of physicians with post-secondary educational deficiencies. The official comment period ended on August 4, 1994. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 5, 1994 at 26 N.J.R. 2742(b). Announcements were also forwarded to: The New Jersey Association of Osteopathic Physicians and Surgeons, the Executive Director of the New Jersey Podiatric Medical Society, the Federation of State Boards of Medical Examiners, the Medical Society of New Jersey, the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, the Department of Health, Camden Courier Post, the Atlantic City Press, the Trenton Times, Star Ledger, Bergen Record and Asbury Park Press. In addition, personal letters were forwarded to every applicant whose license application has been tabled for reasons pertaining to post-secondary educational deficiencies. A full record of this opportunity to be heard can be inspected by contacting the State Board of Medical Examiners at 140 East Front Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

The New Jersey State Board of Medical Examiners received two comments from interested parties during the official 30 day comment period. Comments were received from Baldev Singh, M.D. and from the Medical Society of New Jersey. Summaries of those comments and the Board responses follow.

COMMENT: Dr. Singh has objected to the delineation of credentials which the Board will recognize as substitutes for post-secondary educational deficiencies. He contends that the Board is unfairly establishing a "higher standard for these physicians as compared to other medical graduates." He suggests that the Board ought to allow licensure upon proof of passage of the licensure examination and completion of a residency program.

RESPONSE: In the future, the Board may determine that it ought to recognize other accomplishments to serve as a substitute for post-secondary educational deficiencies. It has chosen these credentials in the proposed rule to be evidence of achievement of a level of professional accomplishment that should more than compensate for any failure to meet the statutory criteria for licensure eligibility established by the Legislature. Pursuant to P.L. 1993, c.145, the Board was given the discretion to identify the alternative credentials which it would recognize. It is anxious to implement these as soon as possible so that those applicants who have been awaiting licensure and who meet these criteria may be granted licensure. If experience demonstrates that these criteria are unduly restrictive or otherwise not reflective of the range of accomplishments which ought to be considered, the Board will of course revisit the issue.

COMMENT: The Medical Society in its comment of August 1, 1994 detailed the role that it had played in securing the legislative change. It asks that the Board establish reasonable, standardized protocols or guides to identify "specific deficiencies." Concern is also expressed that the approach to devising remediation for those deficiencies ought not to be too formalistic. The Society voices its objections to the fact that the protocol contains no language to encourage the desired flexibility in making case-by-case determinations.

RESPONSE: The statutory requirements for licensure set forth at N.J.S.A. 45:9-6 establish the protocols to which the Board will look to determine whether the individual applicant has met the criteria for licensure. To the extent that an individual cannot meet those statutory criteria the Board via this rule has recognized certain substitutes. The Board, however, does intend to approach this task with flexibility and has expressed a willingness to review again the criteria herein to determine whether additional adjustments are needed. Like the Medical Society, the Board recognizes a need to process applications that have been delayed.

Summary of Agency-Initiated Changes:

1. Certain editing corrections have been made in several places. In addition, the phrase "each of the following courses" has been added to subsection (a) to make it clear that applicants are required to submit proof that they have completed course work in all three subjects: biology, chemistry and physics.

2. Acronyms are spelled out in subsections (b) and (c) and the American Osteopathic Association, which had been inadvertently omitted from the proposal, is added to paragraph (c)1.

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

13:35-3.12 Standards for licensure of physicians with post-secondary educational deficiencies

(a) An applicant for licensure to practice medicine and surgery in this State shall*[, prior to having commenced medical school studies,]* submit proof to the Board that***, prior to having commenced medical school studies,*** he or she has successfully completed a satisfactory course of at least two years, at a college or university accredited by an agency recognized by the Board, during which period he or she shall have earned at least 60 credits, and passed at least one three*-*credit course in ***each of the following subjects:*** chemistry, physics and biology.

(b) The Board in its discretion may waive any or all of the pre-medical requirements set forth in (a) above if the credentials presented include proof of the following:

1. Certification by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association;

2. Award of a Ph.D. degree in a health*-*related field from a college or university accredited by an agency recognized by the Board;

3. Award of an M.P.H. degree from a college or university accredited by an agency recognized by the Board; or

4. Award of *[an N.I.H.]* ***a National Institute of Health*** Research Award.

(c) The Board in its discretion may waive up to one half of the required credits and/or the required subjects if the credentials presented include proof of successful completion of the full term of *[an A.C.G.M.E. accredited]* ***a*** fellowship program ***accredited by the American College of Graduate Medical Education or American Osteopathic Association*** acceptable to the Board.

(d) The Board in its discretion may waive any or all of the required subjects if the credentials presented include proof of a score of 80 on each part of the *[FLEX]* ***Federation Licensing Examination (FLEX)*** or the *[USMLE]* ***Uniform State Medical Licensing Examination (USMLE)***.

(e) If the Board identifies substantive deficiencies, and none of the credentials identified at (b), (c) or (d) above have been presented, the applicant may be provided leave to secure such credentials and the Board, upon request, may provide guidance to applicants seeking to remediate deficiencies.

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Change of Address; Business Name or Telephone Number; Place of Business

Adopted Amendment: N.J.A.C. 13:44D-2.2
Adopted New Rule: N.J.A.C. 13:44D-2.6

Proposed: July 5, 1994 at 26 N.J.R. 2745(a).
Adopted: September 23, 1994 by Board of Public Movers and Warehousemen, Thomas B. Quicksell, President.
Filed: October 4, 1994 as R.1994 d.540, **without change.**

Authority: N.J.S.A. 45:14D-1 et seq.

Effective Date: November 7, 1994.
Expiration Date: June 30, 1999.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:44D-2.2 Change of address, business name or telephone number

(a) A licensed public mover and/or warehouseman shall notify the Board in writing of any change of mailing address, permanent place of business address or business name from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of mailing address, permanent place of business address or business name.

(b) A licensed public mover and/or warehouseman shall notify the Board in writing of any change of business telephone number from that currently registered with the Board. Such notice shall be given not later than 30 days following the change of telephone number.

13:44D-2.6 Place of business

(a) A licensee shall maintain a permanent bona fide place of business in the State of New Jersey wherein:

1. All original business records and forms related to a licensee's business dealings shall be kept; and

2. A representative shall be present and authorized to act on behalf of the licensee and to accept or process necessary documents. The representative shall be present and available for a minimum of 20 hours per week between the hours of 7:00 A.M. to 7:00 P.M.

(b) A licensee shall conspicuously post a notice on the premises of his or her permanent place of business that includes:

1. The telephone number of a representative available to handle consumer inquiries for a minimum of 35 hours per week; and

2. The schedule of a minimum of 20 hours per week when a representative will be present and available at the place of business.

(c) A permanent place of business shall not include either a post office box or a maildrop location.

(d) For the purpose of this section, "conspicuously posted" shall mean a placement location that will permit the average consumer to readily read the notice required herein without having to enter the premises of the licensee's place of business.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Items Included in Jockey's Weight
Adopted Amendment: N.J.A.C. 13:70-8.18

Proposed: August 1, 1994 at 26 N.J.R. 3130(a).
Adopted: September 23, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: October 17, 1994 as R.1994 d.554, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 7, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-8.18 Items included in a jockey's weight; safety vest requirement

(a) A jockey's weight shall include his or her clothing, boots, saddle and its attachments, or any other equipment, except as specified. None of the following items shall be included in a jockey's weight:

1. Whip;
2. Bridle;
3. Bit or reins;
4. Safety helmet;
5. Blinkers;
6. Goggles;
7. Number cloth; and
8. Safety vest.

(b) A safety vest shall be worn by all jockeys competing in race events. The safety vest shall weigh no more than two pounds and shall be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

(c) A safety vest shall be worn by all exercise riders, pony people, and outriders during the performance of their duties of working out or otherwise training a horse while on the racetrack, training track or general stable area. The vest shall be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Overweight of Jockey After Race
Adopted Amendment: N.J.A.C. 13:70-8.28

Proposed: August 1, 1994 at 26 N.J.R. 3130(b).
Adopted: September 23, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: October 17, 1994 as R.1994 d.555, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 7, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-8.28 Overweight of jockey after race

No jockey shall weigh in at more than four pounds over the weight at which he or she weighed out, except insofar as said weight may have been affected by the elements.

(c)

NEW JERSEY RACING COMMISSION

Casino Simulcasting
Ticket Claims; Cancellation of Tickets
Adopted Amendments: N.J.A.C. 13:72-2.11 and 4.10

Proposed: June 20, 1994 at 26 N.J.R. 2546(a).
Adopted: August 19, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: October 17, 1994 as R.1994 d.556, **without change.**

Authority: N.J.S.A. 5:5-30, 193 and 210.

Effective Date: November 7, 1994.
Expiration Date: January 19, 1998.

On August 19, 1993, the New Jersey Racing Commission ("Racing Commission"), pursuant to N.J.S.A. 5:5-30, 193 and 210, and in accordance with the applicable provisions of the Administrative Procedures Act, adopted amendments to N.J.A.C. 13:72-2.11 and 4.10. A summary of the received comments and agency response is set forth below.

Summary of Public Comments and Agency Responses:

COMMENT: Prior to the publication of the proposal on June 20, 1994 at 26 N.J.R. 2546(a), comments in support of such amendments were received from Resorts International, Inc., the Trump Taj Mahal Casino-Resort, and the Atlantic City Caesar's Hotel and Casino.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement and Sands Hotel and Casino do not object to the amendments as proposed.

RESPONSE: Accepted.

COMMENT: Resorts International Hotel, Inc., supports the amendments as proposed.

RESPONSE: Accepted.

Full text of the adoption follows:

13:72-2.11 Ticket claims

(a) (No change.)

(b) No claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) (No change.)

13:72-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket shall be cancelled.

(b) A pari-mutuel ticket with a total value of $500.00 or less may be cancelled at any time prior to off-time.

(c) A pari-mutuel ticket of any value may be cancelled prior to the end of the delay period if the patron has not left the pari-mutuel window at which the ticket was purchased or if the patron left the window without paying for or accepting the ticket.

(d) A pari-mutuel ticket of any value may be cancelled prior to off-time if the ticket is on a wager (such as trifecta) where probable payoffs or odds are not displayed to the public.

(e) A pari-mutuel ticket of any value may be cancelled if the ticket is on an advance race and the race immediately preceding the race for which the cancellation has been requested has not been declared official.

(f) A pari-mutuel ticket with a total value exceeding $500.00 which is not otherwise cancellable pursuant to this section may be cancelled by a simulcast counter shift supervisor or supervisor thereof at any time prior to off-time if he or she determines that the cancellation will not significantly alter a pari-mutuel pool. The factors to be considered before approving or disapproving a cancellation request include the size of the mutuel pool, the reason for the requested cancellation, current odds, minutes to post time, and any late changes

such as track conditions or jockey (driver) changes. Any request to cancel such a ticket shall be reported to the Racing Commission on a form approved by the Racing Commission within 48 hours.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

New Jersey Bridge Rehabilitation and Improvement Fund: State Aid to Counties and Municipalities

Readoption: N.J.A.C. 16:21A

Proposed: August 15, 1994 at 26 N.J.R. 3246(a).
Adopted: September 20, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Planning.
Filed: October 14, 1994 as R.1994 d.544, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-47 and the New Jersey Bridge Rehabilitation and Improvement Bond Act of 1983, P.L. 1983, c.363.

Effective Date: October 14, 1994.
Expiration Date: October 14, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:21A.

TREASURY-GENERAL

(b)

Waiver of Executive Order No. 66(1978) Purchase Bureau

N.J.A.C. 17:12

Take notice that the rules concerning the Purchase Bureau and the making of contracts and agreements paid by State funds, N.J.A.C. 17:12, were due to expire on October 13, 1994, pursuant to Executive Order No. 66(1978).

These rules establish the various requirements for and procedures governing State purchasing contracts. They include procedures for bidding (N.J.A.C. 17:12-2), hearings (N.J.A.C. 17:12-3), agency complaints (N.J.A.C. 17:12-4), cooperative purchasing with local governments (N.J.A.C. 17:12-5), and debarments, suspensions and disqualifications of bidders and vendors (N.J.A.C. 17:12-6). Treasury and its Division of Purchase and Property, which supervises the Purchase Bureau, rely on these rules to ensure the smooth operation of State government and its relationship with bidders and vendors of goods and services.

Treasury could not readopt the Purchase Bureau regulations by the October 13, 1994 expiration date. Given the need for the State to maintain its established relationship with bidders and vendors of goods and services, a waiver of Executive Order No. 66(1978) is required. Governor Whitman determined that Treasury has met the spirit and intent of Executive Order No. 66(1978) by ensuring that the provisions of N.J.A.C. 17:12 remain necessary, adequate, and responsive for the purpose for which they were promulgated.

Therefore, on October 5, 1994, Governor Whitman directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for N.J.A.C. 17:12, and the expiration date for the existing rules is extended from October 13, 1994 to February 28, 1995, by which time they can be successfully readopted.

OTHER AGENCIES

(c)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Regulations

Adopted Amendments: N.J.A.C. 19:3, 19:3A, 19:4 and 19:5

Proposed: May 16, 1994 at 26 N.J.R. 1970(a).
Adopted: October 5, 1994 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Filed: October 12, 1994 as R.1994 d.543, **with substantive and technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: November 7, 1994.
Expiration Date: March 29, 1998, N.J.A.C. 19:3
November 4, 1996, N.J.A.C. 19:3A
March 29, 1998, N.J.A.C. 19:4
November 7, 1999, N.J.A.C. 19:5.

Summary of Public Comments and Agency Responses:
The proposal appeared in the May 16, 1994 issue of the New Jersey Register. Public hearings were held on June 1, 1994. The record remained open until June 15, 1994. In response to the public notice, during the public hearing and subsequent to the hearing the HMDC received the following comments:

COMMENT: The HMDC received the following telephone inquiries or letters requesting copy of proposed amendments to the regulations:
Kathy Schomer, PSE&G, March 28, 1994, advised that she would wait for publication in New Jersey Register;
Harvey Moskowitz, Moskowitz, Heyer & Gruel, P.A., March 29, 1994, advised he would wait for publication in New Jersey Register;
Sol Rosenblum, March 29, 1994;
Louis P. Jacobitti & Associates, April 26, 1994;
George Cascino, Cascino Engineering, April 25, 1994, requesting copy of recycling portions of proposed amendments;
Jeryl Turco-Maglio, Hudson Meadows Urban Renewal Development Corp., April 6, 1994;
Perry Frenzel, P.E., P.P., Hartz Mountain Industries.

RESPONSE: Copies of the proposal were sent to all parties requesting same.

Summary of Hearing Officers' Recommendations and Agency Responses:
Two public hearings on this matter were held, at 2:00 P.M. and at 7:00 P.M., on June 1, 1994, at the offices of the HMDC. The hearings were chaired by Thomas Marturano and Ileana Kafrouni, who recommended that the agency consider the comments as presented. The agency's responses are presented below, immediately after the comment to which they refer. The following are the comments received at these hearings.

Appearances at Public Hearing (2:00 P.M.)

David J. Hughes, Esq., Hartz Mountain Industries, appeared at the hearing. He introduced Mr. Phillips and Ms. Kominsky who testified on behalf of Hartz Mountain. Paul Phillips, P.P., A.I.C.P., testified first.

COMMENT: Mr. Phillips stated he had five areas of concern from a planning perspective. The first had to do with the elimination of retail uses as either a principal permitted use, or an accessory use from the Highway Commercial Zone, the Service-highway commercial zone, and the Heavy industrial zones.

The HMDC informed Mr. Phillips that accessory retail uses in connection with office, hotels and motels in the Highway commercial will continue to be a permitted use. He stated that if retail uses are eliminated as principal permitted uses in the Service-highway commercial and Heavy industrial zones, putting aside the permitted accessory retail uses, which would remain in Highway Commercial, there would not be a single zone within the HMDC jurisdiction that would allow this use. Those amend-

ments would appear to be contrary to the terms of the needs statement that's been prepared for the Hackensack Meadowlands District as part of the SAMP process, which indicates that there is a demand for roughly about 2.5 million square feet of retail floor area, and that would be both neighborhood, community, and regional retail shopping space within the District.

He suggested it might be advisable to reconsider the elimination of retail uses from these two zones where they're now permitted as principal uses. The anticipated demand for retail space, and the fact that there are limited opportunities right now to accommodate retail use within the District to serve both the needs of the residents and workers within the District. Some areas in these two zones may be suitable for retail given the established character of the areas and existing roadway infrastructure such as in the Service-highway commercial zone.

His second point focused on the issue of the impact of the regulations, if adopted, on the Service-highway commercial zone, specifically the Mill Creek Mall property. The elimination of retail uses in the Service-highway commercial zone would render the Mill Creek Mall development nonconforming in terms of use, since it is a retail project. What would be the purpose of eliminating retail use in that zone, and making this major development nonconforming? What purpose, and what public benefit would be gained from making that use on that site nonconforming?

Mr. Phillips' third comment dealt with the proposal to amend the definition of floor area to include outdoor seating areas associated with restaurants, which he felt was both unnecessary and undesirable. He felt the HMDC would want to encourage rather than discourage this type of activity. Outdoor seating is highly seasonal and can be utilized by restaurants about six months during the year, only when the weather is favorable. Such usage represents a fairly minor percentage of the overall hours of operation of the restaurant. The key to outdoor seating is that it be located in areas which do not interfere with pedestrian circulation. An owner must demonstrate that the pedestrian circulation will not be impeded or adversely impacted by outdoor seating.

He suggested outdoor seating be regulated by placing a limit upon the percentage of the total outside seating area at any given time or the absolute number of seats that may be outside, rather than requiring that these areas be included in F.A.R., because they are not used for the majority time of the year.

His fourth concern deals with the proposal to exempt three family residences. He was concerned that there might be an unintended effect, of subjecting future residential development in an Island residential, Specially planned area, to municipal review.

Mr. Phillips' last comment pertained to the amendments to the various criteria. He stated that the overall amendment to the criteria for variances falls short from a planning perspective. He requested that some type of what is known as the flexible "C", or C-2, criteria under the Municipal Land Use Law in New Jersey be introduced into the rule. Under the flexible "C", if an applicant can show that the benefits of granting such a bulk variance outweigh any detrimental impacts, then the jurisdiction would have the ability to grant that variance. A flexible "C" criteria allows for the approval of bulk variances without having to prove the hardship criteria.

Mr. Phillips felt that use variance criteria is becoming more burdensome. In addition to demonstrating hardship, an applicant must also demonstrate that the site is particularly suited for the use, making it extremely difficult to basically support the granting of a use variance. He suggested the adoption of the Municipal Land Use law criteria whereby an applicant can demonstrate special reasons which advance any of the purposes of zoning set forth in the Municipal Land Use statute. He suggested the deletion of the requirement to demonstrate a compelling need for all uses.

In summary, Mr. Phillips felt that the ordinance will become less flexible and more restrictive if the changes proposed are adopted.

RESPONSE: All of Mr. Phillips' comments are summarized in his letter to the HMDC dated June 13, 1994, and therefore the HMDC's response is not enumerated here. For the Commission's response to Mr. Phillips' comments please see the Response to Report #3, set forth below.

COMMENT: Karen Kominsky, P.P., of the firm Policy Management & Communications, Inc., also testified on behalf of Hartz Mountain. Ms. Kominsky's comments dealt with the economic impact of the proposed regulations. She stated that the definition of floor area should not include the outdoor seating areas. The regulations should enable a restaurant owner to enhance his or her business by providing an outdoor seating area, provided there are no safety problems or interference with pedestrian flows.

RESPONSE: The response to this comment is found further below. See Response (Outdoor seating areas), under Report #4.

COMMENT: Ms. Kominsky further stated that the elimination of retail and services in the Service-highway commercial zone would be a detriment to the zone. She inquired how the proposed rules dealing with retail uses would mesh with the SAMP process and its goals.

RESPONSE: The elimination of retail uses from the Service-highway commercial zone was an error. Retail uses will continue to be permitted in this zone.

COMMENT: Mr. Hughes asked if a minor subdivision would now require a public hearing based on the amendment to N.J.A.C. 19:4-6.22. Mr. Hughes also had a question concerning the zoning lot of record, in particular, he requested that the Commission include a time frame for filing of a reciprocal easement agreement.

RESPONSE: The amendment to N.J.A.C. 19:4-6.22 reflects a requirement in the District's subdivision rules (N.J.A.C. 19:5), which require a public hearing for all major subdivisions. Public hearings for minor subdivisions are not required unless the proposed subdivision requires a variance from the regulations.

The Commission has amended its proposed zoning lot of record rules at N.J.A.C. 19:4-4.9 to eliminate the reciprocal easement agreement. In lieu of this requirement, the Commission required that the form of the single ownership of the property, which may be in the form of a joint venture, newly formed corporation, or the like, be recorded at the time the lot of record is created. All future property owners will be bound by this recorded form of ownership, which, for HMDC purposes, places the responsibility for control of all lots in the zoning lot of record with one entity.

COMMENT: Jeryl Turco-Maglio, Hudson Meadows Urban Renewal Development Corp., also attended the public hearing. Because of the many topics covered by Ms. Maglio in her testimony, the agency response will follow each comment.

COMMENT: Ms. Maglio requested a definition of a recycling facility and requested that the Commission explain the delineation between the jurisdiction of the HMDC and of the DEPE as it pertains to recycling?

RESPONSE: The HMDC is using the NJDEP definitions to define both Class A and Class B recycling facilities.

The HMDC is one of the 22 solid waste districts regulated by the NJDEP. Any proposed solid waste facility in the District must first be included in the HMDC plan and then the proposal is sent to the NJDEP for certification.

COMMENT: Ms. Maglio inquired how the rules would integrate or segregate uses such as the Class A or Class B recycling facilities into zones that allow Planned Unit Developments (PUDs).

RESPONSE: The Class A or Class B recycling facilities may be included in PUDs if they meet all applicable regulations.

COMMENT: Ms. Maglio asked why recycling facilities would be allowed to conduct operations outdoors?

RESPONSE: Ordinarily, Class A and Class B recycling facilities would not be allowed to conduct operations outdoors, except if they are located in the Heavy industrial or Public utility zones, where they would be a specifically permitted use. These two zones allow outdoor operations, and these outdoor operations would not be adversely affected by the outdoor operation of Class A or B recycling facilities.

COMMENT: Ms. Maglio asked if hazardous materials could be recycled at Class B recycling facilities?

RESPONSE: In accordance with current NJDEP rules, Class B recycling facilities are not permitted to accept or recycle hazardous materials.

COMMENT: Ms. Maglio asked if hazardous materials are recycled at Class B recycling facilities, could that site then be the subject of a Clean Up under ECRA (ISFA)?

RESPONSE: See previous response—hazardous materials are not recycled at Class B facilities.

COMMENT: Ms. Maglio asked if the HMDC is independent of the DEPE?

RESPONSE: The HMDC's solid waste activities are regulated by the NJDEP. The NJDEP has no jurisdiction over the HMDC's zoning powers.

COMMENT: Ms. Maglio asked how the Commission could allow recycling facilities in the same zone that allows uses such as child care, hotels and motels, retail and hospitals? How can they also be allowed in zones that allow residential PUDs (Planned Unit Developments)?

RESPONSE: Class A recycling facilities are compatible with the mentioned uses. Class B recycling facilities are special exceptions in most zones and would be evaluated on a case-by-case basis.

The incorporation of Class A and B recycling facilities in the Light industrial and distribution A, Light industrial and distribution B, and Heavy industrial zones is consistent with and advances the intent and purposes of those zones. Recycling facilities are industrial uses and should be permitted in industrial zones. The use limitation prohibiting outdoor storage controls the impact of Class A recycling facilities in the Light industrial and distribution A and B zones upon adjacent properties. The impacts of Class B recycling facilities in the Light industrial and distribution B zone is controlled by this prohibition and by their classification as a special exception, where they will only be permitted subject to meeting distinct criteria with testimony offered at a public hearing. Hotels and motels, retail uses and hospitals are also considered special exceptions in the Light industrial and distribution A and B zones. Child care facilities are proposed to be permitted in these zones in order to allow industrial and manufacturing uses to have on site child care facilities consistent with judicial findings.

COMMENT: Ms. Maglio asked that the Commission explain the need to allow high hazard uses as defined in the New Jersey Uniform Construction Code? She asked if the rules would allow explosives to be stored or utilized in commercial and light industrial areas?

RESPONSE: The HMDC is adopting the definitions of the New Jersey Uniform Construction Code for detonation, deflagration, physical or health hazard uses. The environmental performance standards reflect these changes. Detonation uses may be stored as accessory to a permitted use in a quantity of five pounds or less in the Category B and C areas.

The HMDC must allow the existing manufacturing facilities, as well as some commercial business within the District, to continue to use hazardous materials, as defined by the New Jersey Uniform Construction Code, as an accessory use to their business. The HMDC, through its plan review powers, is responsible for the proper administration of the rules contained within the New Jersey Uniform Construction Code. As such, HMDC must also regulate what land uses require what classification of hazardous material as well as the quantity needed. To adequately accomplish this, HMDC feels the need to adopt similar verbiage and classifications as defined within the New Jersey Uniform Construction Code.

COMMENT: Ms. Maglio asked if HMDC anticipated the possibility of a facility that manufactured weapons or fireworks or that somehow used TNT, locating in the District?

RESPONSE: A facility which manufactures weapons or explosives would not be permitted in the District.

COMMENT: Ms. Maglio asked (1) why HMDC was creating zoning lots of record?; (2) why it had to considt of one owner?; (3) why if there is no reciprocal easement agreement the zoning lot of record would become null and void? and (4) why are zoning lots of record created by the HMDC?

RESPONSE: Zoning lots of record are not being created; zoning lot of record provisions are currently located in N.J.A.C. 19:4-2.2, Definitions. This is an inappropriate location for zoning requirements. All of the requirements for a zoning lot of record can now be found in N.J.A.C. 19:4-4.9. In general, the zoning lot of record, which is created by the developer, not the HMDC, allows for a more efficient layout and design of multi-structure developments as opposed to lot by lot development. In addition to the above, it serves as another option available to developers. The requirement for single ownership insures the property will be developed as a single unit. N.J.A.C. 19:4-4.9 is amended on adoption to clarify that single ownership may mean individual ownership, joint ventures or the like. Zoning lots of record are to become null and void if the form of single ownership dissolves. The intent of this provision is to insure that the development is not only built as a unit, but utilized as a unit.

COMMENT: Ms. Maglio asked why HMDC was changing the word District to the word zone in the Marshland preservation zone?

RESPONSE: The statement in N.J.A.C. 19:4-4.15(a) is only applicable to the Marshland preservation zone and not the entire District.

COMMENT: Ms. Maglio asked why HMDC was changing the word landfill to fill?

RESPONSE: Throughout the current text of N.J.A.C. 19:5 (Subdivision rules), the word landfill was used to refer to the activity of filling a particular property with clean soil for development. The change was necessary for consistency with modern terminology.

COMMENT: Ms. Maglio asked why parks were changed to public parks?; why are the parks now owned by the government instead of the private developer?; does the developer have to deed the park over to the government?; what does HMDC mean by private? and why are privately owned parks being deleted from the rules?

RESPONSE: The HMDC added the definition of public parks because of a growing need in the District. The change has no impact on a private developer that wishes to construct a park. Private developers do not have to deed their parks over to the government. Private parks are parks not owned by some branch of government. Private parks are not being deleted from the rules.

COMMENT: Ms. Maglio asked why there is a minimum of 900 dwelling units required in the Planned park zone?

RESPONSE: This is an existing rule, which is not part of these amendments; thus, the comment is beyond the scope of the proposal, and requires no response.

Appearances at Public Hearing (7:30 P.M.)

Anthony Impreveduto, Assemblyman
Gerry Rolnick, Goldies Automotive
Gilbert Bowman, Esq., Bruinooge & Associates.

COMMENT: Assemblyman Anthony Impreveduto commended the HMDC for the amendments to its rules pertaining to one, two and three family dwellings in the District.

COMMENT: Gerry Rolnick, the principal of Goldies Automotive, addressed the issue of recycling. Mr. Rolnick felt there were three areas that would seem to make recycling more difficult—(1) the 600 square foot area for recycling was inadequate for the needs of his company; (2) the use of cement is unfeasible (he would prefer macadam); and (3) the requirement for covering the outdoor recyclables.

RESPONSE: (1) The 600 square foot area was determined to allow the storage of two full containers to be recycled. HMDC realized the need to allow the storage of a full container load of recyclables outdoors. Most haulers do not provide pick-ups for less than a container full of recyclables. The recyclable area is to be for temporary, not permanent, storage. This in no way prohibits the additional storage of recyclables indoors.

(2) Concrete is required because it is a more durable surface, as opposed to macadam, in an area exposed to excessive wear and tear.

(3) The covering of outdoor recyclables may be accomplished by individual container covers. Covering will allow the recyclables to remain marketable under adverse environmental conditions.

COMMENT: Gilbert W. Bowman, Esq., of Bruinooge & Associates, testified at the hearing. Mr. Bowman had various comments regarding the regulations, all of which are summarized in his letter to the HMDC dated June 15, 1994, and therefore not enumerated here. A detailed summary of Mr. Bowman's comments and the agency response can be found below, in the Response at Report #4.

Letters/reports submitted subsequent to the public hearing:

COMMENT (Report #1): Letter from Diana Fainberg, Vice President of Bellemead Development Corporation, dated June 2, 1994 pertaining to the proposed revisions to the zoning regulations.

a. Ms. Fainberg is curious as to the timing of the proposal. She recommends that the proposal not be adopted, but deferred for consideration with a full-scale zoning review upon the completion of the Special Area Management Plan which is pending for the HMDC SAMP. Ms. Fainberg believes that many aspects of the proposal are favorable in improving flexibility; others pose problems.

RESPONSE: Until the SAMP is in place, the HMDC will continue to maintain high standards for development. These changes will not impede the changes that will be generated when the SAMP is adopted and the Master Plan re-examined.

b. (N.J.A.C. 19:3-1.4, Occupancy) The lower occupancy fee for small space users is beneficial; however, the entire fee schedule should be reviewed for its impact on small businesses.

RESPONSE: The fee schedule, in its entirety, will be reviewed as part of future amendments to the regulations.

c. (N.J.A.C. 19:3-2.2, Definitions—"Floor Area") Outdoor seating areas should not be included in floor area calculations. They are transitory based on the weather and time of year. While it is appropriate to regulate the placement of outdoor seating so as not to interfere with pedestrian traffic or other uses, outdoor seating is not the floor area of a building. Outdoor seating can be a benefit in promoting a lively street-scene atmosphere.

RESPONSE: The response to this comment is found further below. See Response: (Outdoor seating areas), under Report #4.

d. (N.J.A.C. 19:4-4.9(a), Zoning lot of record) This is a good concept that should be addressed more fully following the SAMP and Master Plan. The definition provides for a reciprocal easement agreement if individual portions of a zoning lot of record fall under different ownership. Rather than require single ownership at the time of development, such an agreement could be established at the outset of the project. This intent should be to accommodate a range of ownership or joint venture options. There should be criteria on which the Chief Engineer can base a decision regarding continguity of lots separated by variances. A portion of lot should remain part of the zoning lot, even if a waterway or easement separates it from the remainder. Utility easements or rights-of-ways or drainage ditches, which are ubiquitous in the District, should not preclude lots being considered contiguous. An existing public road would be a reasonable boundary of a zoning lot of record. The term "unit" should encompass more than one principal building or use developed according to a unified plan.

RESPONSE: The HMDC agrees with Ms. Fainberg regarding the ownership of the zoning lot of record. The rules have been amended to require a single form of ownership at the time a zoning lot of record is created. This may include a variety of joint venture options. Documentation of this form of ownership will be required to be recorded, and will be required to bind all future property owners. With regard to the contiguity of lots, the HMDC feels that the existing general criteria represent the best way to insure that the lots within a zoning lot of record will meet the intent of the regulations with respect to acting as a unit. The term "unit" used in the zoning lot of record regulations refers to the development acting as a unit. It is not intended to quantify the number of structures or uses within the development.

e. (N.J.A.C. 19:4-4.138, Property maintenance) Subsections (a), (b), and (c) appear reasonable; they should not be allowed to become unreasonable enforcement triggers. If a property is subject to illegal dumping, winter or storm damage or other factors beyond the owner's control, a reasonable amount of time should be provided to correct the situation prior to enforcement proceedings. In cases where major maintenance of drainage facilities is required and the facility benefits numerous property owners, costs should be equitably distributed among the beneficiaries.

RESPONSE: A reasonable amount of time is always given to property owners to remove illegal dumping or storm damage. The HMDC first notifies a property owner of a violation on their property. The person is then given 15 days to correct the problem. If not corrected, a second letter is sent, advising the property owner of possible enforcement action by the HMDC. Enforcement proceedings are only conducted when the property owner fails to ameliorate the violation. Drainage facilities and their maintenance are the responsibility of the property owner.

f. (N.J.A.C. 19:4-142(f)2, Use variances) The "compelling public benefit" criterion for granting a use variance is reminiscent of the wetlands rules, where it acts as an obstacle to otherwise sound economic development. The criterion could well be used to limit use variances to institutional, public service or health service uses. It should be HMDC's policy that land uses designed in accordance with the regulations that provide employment and economic strength to the District and are consistent with the Master Plan are in the public benefit when they conform to the other use variance criteria and do not impose adverse impacts.

RESPONSE: The response to this comment is found further below. See Response: (Variances), under Report #4.

g. (N.J.A.C. 19:4-6.17(e)29, Parking) The proposal provides that minimum parking spaces may be reduced in accordance with an NJDOT approved trip reduction program but only those businesses employing over 100 employees need DOT approval. Smaller businesses might still run an effective program and be eligible for parking spaces reductions without the need for state approval.

RESPONSE: The response to this comment is found further below. See Response: (TDM), under Report #4.

COMMENT (Report #2): Letter from Jeryl Turco-Maglio, Hudson Meadows Urban Renewal Development Corporation, dated June 6, 1994, pertaining to the HMDC proposed regulation changes.

a. (N.J.A.C. 19:4-4.2) Ms. Maglio vehemently opposes any degradation of property through negative utilization such as Class A and Class B recycling facilities which are being proposed as a new use in section N.J.A.C. 19:4-2.2.

RESPONSE: The HMDC does not consider recycling facilities that meet the regulations of the zones in which they are proposed to be permitted as negative utilization resulting in degradation of property. Recycling facilities are similar to the other industrial uses permitted in these zones, and they must meet the intent and purpose of the zones in which they are located.

b. (N.J.A.C. 19:4-4.84) Class A recyclable facilities are permitted in light industrial and distribution zones. Light industrial zoning also permits other uses such as day care centers, hotel, restaurants. These could be located in close proximity to recycling landfills.

RESPONSE: The incorporation of Class A and B recycling Facilities in the Light industrial and distribution A, Light industrial and distribution B and Heavy industrial zones is consistent with and advances the intent and purposes of those zones. Recycling facilities are industrial uses and should be permitted in industrial zones. The use limitations prohibiting outdoor storage controls the impact of Class A recycling facilities in the Light industrial and distribution A and B zones upon adjacent properties. The impacts of Class B recycling facilities in the Light industrial and distribution B zone are not only controlled by this prohibition, but also by their status as a special exception, where they will only be permitted subject to meeting distinct criteria with testimony and evidence presented during a public hearing. Hotels and motels, retail uses and hospitals are also permitted in the Light industrial and distribution A and B zones as special exceptions and therefore only permitted under distinct criteria after a public hearing, including the requirement to contribute to and promote the welfare or convenience of the public and will not cause substantial injury to the value of other property in the neighborhood. Child care facilities are proposed to be permitted in these zones in order to allow industrial and manufacturing uses to have on site child care facilities consistent with judicial findings.

c. (N.J.A.C. 19:4-4.95) Light industrial and Distribution zone "B" allows for not only recycling "A" facilities but also recycling "B" facilities. This zone also permits hospitals, clinics, child care centers, etc.

RESPONSE: Class B recycling facilities are special exceptions in the Light industrial and distribution B zone. Hence, the recycling facility would have to demonstrate that it will contribute to and promote the welfare or convenience of the public and will not cause substantial injury to the value of other property in the neighborhood, in order to be approved.

d. (N.J.A.C. 19:4-6.7) Ms. Maglio feels the environmental performance standards, in general, are more relaxed for hazardous materials. HMDC District is one of the most densely populated residential and commercial communities in the State of New Jersey. It is a unconscionable threat to the public welfare and safety to allow explosives and physical hazards in a district where so many people live and work. The problem as she envisions it is that there are not many communities in the State of New Jersey that would voluntarily allow these uses including solid waste management and high hazard substances. Being that the HMDC's jurisdiction supersedes that of the mayors, towns would be vulnerable to exploitation by recycling facilities and companies that use hazardous chemicals that would have difficulty attempting to locate elsewhere due to zoning restrictions.

RESPONSE: HMDC has revised its current Category A Environmental Performance Standards to permit the accessory use/storage of certain materials and liquids that are commonly used as part of permitted uses subject to Category A requirements. Previously, no quantity of any hazardous material could be utilized or stored on site. The Performance Standards for Categories B and C have only been eased to the extent that HMDC shall not longer require a special exception for the accessory storage or utilization of less than five pounds of materials that pose a detonation hazard. The other proposed changes only bring the verbiage used in the regulations up to the current verbiage used by the New Jersey Uniform Construction Code.

The proposed placement of these materials within a facility invokes the utmost scrutiny by not only the staff of the HMDC, but through its Special exception noticing requirements, and the appropriate professionals within the local municipality.

e. (N.J.A.C. 19:4-4.9) Ms. Maglio also has concerns related to zoning lot of record. She does not believe that a property owner should have to purchase all the lots in the zoning lot of record or be unable to build on their property even if their plan meets all the zoning and building regulations. In addition, she feels there is no limitation as to the scope of a zoning lot of record, it could conceivable consist of hundreds of acres as long as they are contiguous and in the same zone. She feels that HMDC is "attempting to deprive the Town of Kearny and Hudson Meadows Urban Renewal of valuable wetlands mitigation rights by including this additional property in their plan."

RESPONSE: The proposed zoning lot record requirements do not prohibit or deter property owners from developing their single lots in accordance with the zoning regulations. No property owner will be forced to buy property under these requirements. Furthermore, these requirements would not deprive Kearny or Hudson Meadows Urban Renewal of wetland mitigation rights.

COMMENT (Report #3): Letter from Paul A. Phillips, P.P., AICP, Abeles, Phillips Preiss & Shapiro, Inc., on behalf of Hartz Mountain Industries, dated June 13, 1994 regarding the HMDC proposed regulation changes.

a. Mr. Phillips has a serious concern regarding the proposal to eliminate retail use as a principal permitted use in both the Service-highway commercial and Heavy industrial zones. He feels that if the proposed amendments are adopted, there will not be a single zone district within HMDC's jurisdiction (other than a Specially Planned Area) that allows retail use as a right, that is, as a principal permitted use. He feels that the proposal to eliminate retail uses from among the list of principal permitted uses would have a devastating impact on the existing Mill Creek Mall development. If the proposed amendments are adopted, the Mall would be rendered non-conforming in terms of use. Such a land use strategy (eliminating retail as a permitted use in the District) is not only questionable, but is also contrary to the "Needs Statement" that has recently been prepared for the District as part of the SAMP process. The Needs Statement indicates that there is a demand for between 2.2 and 2.7 million square feet of neighborhood, community and regional level retail floor area within the District by the year 2010.

RESPONSE: The elimination of retail uses in the Service-highway commercial zone was an error. Retail uses will continue to be permitted in the Service-highway commercial Zone. With respect to the retail uses in the Heavy industrial zone, the HMDC believes that the retail uses do not advance the intent and purpose within this zone. It was the intent of the HMDC to have deleted this use during previous rulemakings. However, due to an oversight, it was not done. The Heavy Industrial Zone, which contains uses such as chemical plants, resource recovery, contractors' yards and asphalt plants, is not geared toward uses which attract members of the general public or pedestrians who might make use of retail establishments.

b. Mr. Phillips disagrees with the proposal to amend the floor area definition to include "outdoor seating areas associated with restaurants." He feels that the amount of time that a restaurant can make use of outdoor seating is relatively small in comparison to its total annual operating hours. If such areas were to be included as part of "floor area" restaurant operators would not provide outdoor seating to the extent that they do now. A far better means by which to regulate restaurant seating would be to place a limit on the amount of percentage of the total restaurant seating that may be outdoor seating at any given time.

RESPONSE: The response to this comment is found further below. See Response: (Outdoor seating areas), under Report #4.

c. "The proposal to exempt individual/detailed one, two and three family dwellings from HMDC jurisdiction could subject portions of future residential development projects within the District to the exclusive review of the local municipality." Mr. Phillips feels that, if adopted, this provision could have the unintended effect of exempting future development in the IR zone from HMDC review, or could create a situation whereby a cumbersome, multi-jurisdictional review (on the part of the municipality and HMDC) would occur.

RESPONSE: The HMDC agrees with this comment. This section has been clarified to address one, two and three family dwellings in the Low density residential zone only. This was HMDC's intent, in keeping with the subsection amended.

d. While certain changes are proposed in terms of the existing variance criteria, Mr. Phillips believes that the suggested modifications are overly restrictive, and that additional changes are warranted to bring HMDC District Zoning more in line with the statutory criteria established under New Jersey's Municipal Land Use Law (MLUL). The HMDC may wish to consider adopting an additional, more flexible standard for those situations where hardship does not apply, but where an applicant can demonstrate that the benefits of granting the variance substantially outweigh any detrimental effects, and that one or more of the purposes of zoning will be advanced by deviating for the underlying bulk standard. Secondly, he is particularly concerned that the proposed additional standards to be met in connection with an application for a use variance are so onerous that, if they were adopted, it would be nearly impossible to sustain such a variance based on the literal application of all the criteria. Not only would hardship have to exist, but an applicant would now also have to demonstate that there is a compelling need for the use and that the site is particularly suited for the use. He recommends that the HMDC consider the same standards for a use variance as set forth in the MLUL, where an applicant must demonstrate that there are "special reasons" in support of the granting of the use variance but is not required to prove either hardship or compelling public need.

RESPONSE: The response to this comment is found further below. See Response: (Variances), under Report #4.

e. He feels that the proposal to modify the existing concept of a "Zoning Lot of Record" is unnecessary. His opinion that the existing practice of recording a Memorandum of Zoning is sufficient in that, being a recorded instrument, this document binds all subsequent title holders. Furthermore, the proposed amendment does not provide for events such as condemnation or foreclosure which, by their nature, inhibit cooperation between the respective parties in formulating a reciprocal easement agreement. He feels that a specific time period for obtaining the agreement, preferably a minimum of six months, should be established before a presumption arises that the zoning lot of reocrd is deemed null and void.

RESPONSE: The existing zoning lot of record provisions are currently located in N.J.A.C. 19:4-2.2, Definitions. This in an inappropriate location for zoning requirements. The HMDC has reviewed all comments and has modified the proposed regulations to require that a form of single ownership, such as a joint venture, be established and recorded at the time of zoning lot of record is created. This should address Mr. Phillips concern regarding unforeseen events concerning ownership of the zoning lot of record.

f. The proposal to include "water features" as an integral part of the Island residential, Specially planned area, could hamper a developer's ability to produce the minimum required dwelling units within an IR development.

RESPONSE: This change was proposed to establish an alternative to the creation of islands, which are not always achievable in the permitting process. The water features may be internal to the proposed site plan such as ponds or they may be streams, creeks or the river along the edge of the Island residential, Specially planned area.

g. The proposal to require that a Transportation Demand Management (TDM) Plan accompany an applicant's request for approval of a satellite parking facility is inappropriate. A TDM is only required by the State for employers having more than 100, employees arriving at the work place between the hours of 6:00 A.M. and 10:00 A.M. This would be totally inappropriate in circumstances where an applicant is not subject to the requirements of the Clean Air Act (that is, less than 100 employees arriving during this period).

RESPONSE: The response to this comment is found further below. See Response: (TDM), under Report #4.

COMMENT (Report #4): Letter from Gilbert W. Bowman, Esq., Bruinooge & Associates, dated June 15, 1994, regarding the proposed amendments to the regulations.

a. The HMDC proposal should be broadened to include a technical reorganization and simplification of the regulations. The regulations, as existing and proposed, are not uniformly organized in logical or intuitive groupings, contain duplications and overlaps, and in certain instances fail to treat comparable subjects in a consistent fashion. Example:

- Rules of general application are intermingled with rules applicable only in specific zones. Rules of general application should be separated from rules applicable to specific zones and labeled accordingly.
- Zone regulations are intermingled. N.J.A.C. 19:4-4.18 through 19:4-4.27A, intermingling Planned Park, Park and Recreation and Low-Density Residential Zone regulations.
- In certain instances, the regulations do not contain an explicit statement that an application is required to be made in order to undertake a certain activity, the required being ascertainable only be implication from a fee schedule and/or a careful review of multiple definitions and provisions within the regulations.
- Certain regulations are located in chapters or subchapters bearing titles which have no relation to the particular subject matter. Example, fee schedule previously referenced is located within the chapter entitled "First Stage of Master Plan for the Comprehensive Development of the HMD."
- Certain rules of general application are unnecessarily duplicated as rules applicable in specific zones.
- Regarding conflicting treatment of like subject matter, compare N.J.A.C. 19:4-6.18(j) with N.J.A.C. 19:6-4.18(m). Inconsistent treatment

of like subject matter creates ambiguities. Either explicit prohibitions in each instance, or in none of them, would be preferable.

• For an example of a "gap" in the regulations, see N.J.A.C. 19:3-1.2(a)3. Nothing in the regulations expresses the scope of review which would be specialized and limited based on the subject matter. Again, references to regulation of a "structure" would also apply.

• Regarding conflicting treatment of like subject matter, compare N.J.A.C. 19:4-6.18(j) with N.J.A.C. 19:6-4.18(m). Inconsistent treatment of like subject matter creates ambiguities. Either explicit prohibitions in each instance, or in none of them, would be preferable.

• For an example of a "gap" in the regulations, see N.J.A.C. 19:3-1.2(a)3. Nothing in the regulations expresses the scope of review which would be specialized and limited based on the subject matter. Again, references to regulation of a "structure" would also apply.

• Simplifying and organizing the regulations will make them easier for the regulated community to understand and apply.

RESPONSE: The HMDC agrees with these observations. These changes will be addressed as part of the revisions and amendments that will be made after the completion of SAMP and the revised Master Plan.

b. (N.J.A.C. 19:4-2.2) The definition of "floor area" requires restaurant outdoor seating areas to be included in floor area calculations. The resulting increase in parking requirements and other restrictions resulting from inclusion of such areas in floor area calculations would appear to be inappropriate and unreasonable for what amounts to a periodic, temporary, short-term use.

RESPONSE: (Outdoor seating areas) The HMDC concurs with the comment pertaining to outdoor seating areas, and has deleted outdoor seating areas from the definition of floor area. Instead, outdoor seating areas have been included as an accessory use in N.J.A.C. 19:4-4.145 and as a permitted obstruction is required yards in N.J.A.C. 19:4-4.8. Furthermore, the original proposal required that seating areas meet setback requirements and be subject to the parking standards found in N.J.A.C. 19:4-6.18(g). In lieu of the above and in consideration of the comments received, the proposal has been modified that regardless of the zone in which an outdoor seating area is located it will have to meet a minimum front yard setback of 35 feet and side and rear yard setbacks of 10 feet. For example in the Light Industrial and distribution A zone the front and rear yard setbacks are 50 feet and 75 feet respectively as opposed to the setbacks of 35 feet and 10 feet. In addtion, they have been addresed under the use limitations of the following zones: Highway commercial zone, Service-highway commercial zone, Research park zone, Research distribution park zone, Light industrial and distribution A zone, Light industrial and distribution B zone and Commercial park zone. In order to control the size of the outdoor seating area it must be accessory to the principal use. Accessory uses such as warehouse retail are limited currently limited to 10 percent of the floor area. However, due to the unique inefficient nature of outdoor seating areas, a factor of 15 percent was used. Finally, the original proposal required parking for all outdoor seats. The regulation upon adoption, would require parking only when the seating area exceeds 20 seats. Upon adoption, the rules are less restrictive than as originally proposed.

c. (N.J.A.C. 19:4-2.2) A technical amendment has been proposed to the definition of "yard" but the related definitions of "yard: front" and "lot line: front" remain unchanged. He believes that these latter definitions penalize owners of corner lots by designating two of the four yards on such lots as front yards. A reasonable amendment should allow choice of a single front yard for corner lots, with the other "front" yard to serve as a side yard. Improvements in such a yard could be appropriately screened and managed for aesthetic purposes.

RESPONSE: The amendment to the definition of "yard" was to delete the term open space and replace it with the word area. The term open space is defined in the regulations used in other sections of the regulations in accordance with its defintion. A yard is an area, whose size, depending on zone designation, is determined by the bulk requirements of that particular zone. The term open space is not used in the definitions of front yard or front lot line. The remainder of the comment deals with regulations not being amended at this time.

d. (N.J.A.C. 19:4-3.2(b)) Placing within municipal control final land use decisions within the municipality with respect to applications involving one-, two- and three-family residences, invites conflict.

RESPONSE: Municipal control over one, two and three family dwelling units will only be in the Low density residential zone in municipalities which have enacted ordinances consistent with or which will effectuate the purposes of the HMDC's Master Plan. Under current regulations, most permits for one and two family dwellings in the low density residential zone are done by the municipality. HMDC has amended N.J.A.C. 19:4-3.2(b)1 to include specification of the low density residential zone and to include subdivisions in the group of actions ordinarily taken by the zoning authority in a municipality, consistent with N.J.S.A. 40:55D.

e. (N.J.A.C. 19:4-4.9) "Zoning lot of record" unreasonably requires single ownership of multiple lots sought to be joined as a single zoning lot of record, while at the same time providing protection to nonconformities resulting from "elimination of the zoning lot of record" in the event the single ownership terminates and no reciprocal easement agreement is recorded. The regulation fails to require the creation and recording of a document joining multiple lots at the time the zoning lot record is created.

RESPONSE: In response to this and other comments received in response to the proposal, HMDC has modified the proposed regulations at N.J.A.C. 19:4-4.9 to require that a form of single ownership, such as a joint venture, be established and recorded at the time a zoning lot of record is created.

f. (N.J.A.C. 19:4-4.140(a)) The property maintenance provisions proposed are overbroad, do not take into account other existing legal relationships effecting the use of property, and unfairly place on the owners of property responsibility in all instances for the property maintenance item described. The proposed regulation should be rewritten to make responsible those who would have the legal obligation to perform the maintenance items referred to, or in the alternative, to add to the list of potentially responsible parties (tenants, occupants).

AGENCY RESPONSE: Since the inception of the HMDC it has been the policy of the agency, to hold property owners responsible for any activity on a piece of property. The District is made up of 14 municipalities and in excess of 5,000 pieces of properties. It is difficult if not impossible for this agency to determine who the responsible party may be on an individual basis, as has been suggested. The HMDC would have to keep lists on each lot determining who the responsible party on that particular lot would be. Our fining ability, under Statute, is only enforceable on the property owner.

RESPONSE: While the HMDC understands that the property owner is not directly responsible for or has knowledge of third party actions, it has been and will continue to be the policy of the HMDC that property owners are responsible for rectifying any violations on their property and for the payments of any fines. It should also be noted that administrative due process is granted to the property owner in which he might seek legal redress with the tenant before any penalties are assessed.

g. Proposed amendments to N.J.A.C. 19:4-4.142 create a distinction between bulk and use variances and the criteria to be established for each. The regulation continues to contain language and concepts imported from the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., but omits certain variance concepts contained therein for no apparent reason. For example, no "flexible C" variance provision is included, compare N.J.S.A. 40:55D-70c(2); no "special reasons" language is included with respect to use variances, compare N.J.S.A. 40:55D-70d.

The body of decisional law interpreting HMDC regulations is small by comparison to the decisional law interpreting the Municipal Land Use Law. Interpretations of the variance language of the Municipal Land Use Law, while by no means complete, are certainly more well evolved than interpretations of the HMDC variance regulation. A greater degree of certainty of interpretation of the HMDC variance regulation could be achieved by explicitly incorporating Municipal Land Use Law variance concepts and acknowledging decisional law interpreting the Municipal Land Use Law as persuasive authority in dealing with variance issues confronting the HMDC.

RESPONSE: (Variances) The HMDC received three commments relative to the proposed criteria for the granting of variances. Gil Bowman, Esq., noted that no "flexible c" variance provision (similar to N.J.S.A. 40:55D-70c(2)) for bulk variances has been added, and no special reasons variance provisions (similar to N.J.S.A. 40:55D-70d) for use variances has been added, and he requested consideration of same. Paul Phillips, PP, AICP, opined that the suggested modifications are overly restrictive, and that additional changes should be made to bring HMDC zoning more in line with the statutory criteria established under New Jersey's Municipal Land Use Law (MLUL). Diana Fainberg of Bellemead Development Corporation also raised concerns about "compelling public benefit" criterion for granting of a use variance and advised that its use would serve as an obstacle to otherwise sound economic development. She recommended that it be HMDC's policy that land uses designed in accordance with the regulations that provide for employment

and economic strength to the District and are consistent with the Master Plan are in the public benefit when they conform to other use variance criteria and do not impose adverse impacts.

The HMDC will address the comments together, with separate statements for those comments relating to bulk vs. use variance criteria. In general, the HMDC statutory authority for zoning, and subsquent regulations, is different than the MLUL enabling authority and the HMDC wishes it to remain so. The New Jersey Legislature and Governor recognized the uniqueness of the District when they developed the HMDC as the first State regional planning authority. They consequently gave the HMDC unique mandates and powers. In order to carry out the balancing act with which HMDC has been charged, HMDC is of the opinion that it must continue to develop unique and innovative planning techniques. HMDC sees no reason to bring its regulations "more in line" with the MLUL. The HMDC reviews adopted amendments to the MLUL on an annual basis and incorporates those changes that it finds are timely and beneficial to the District, and discards those that it finds inappropriate. HMDC will continue to act in this manner.

In regards to bulk regulations, the "flexible c" variance has not been adopted by the HMDC, and is not proposed to be, because the HMDC is desirous of maintaining hardship as the primary argument for the granting of a variance. The adoption of the flexible c criteria for the MLUL was in many ways an admission that bulk variances had been granted over the years by municipal bodies where true site specific hardships were not evident. Many of the variances granted were related to residential development where municipal bodies did not wish to impede additions to residential dwellings. As the HMDC believes that true site specific hardship has been the determining factor in variance cases in the District, and largely conforming development has proceeded for 25 years without the flexible c, and the HMDC is regulating less and less detached single family residential development, it does not see a benefit to the adoption of the "flexible c."

As to the use variance criteria, HMDC finds that the adoption of separate criteria for use is long overdue. Standard bulk hardship rationale for a use variance is not appropriate. Furthermore, regarding uniqueness of the District, HMDC has proposed additional use variance criteria; some reflect MLUL criteria, some are unique to the District. Insuring that the proposed use will contribute to and promote the HMDC Master Plan, and is compatible with and complimentary to the surrounding neighborhood is desirable in all development proposals. Insuring provision of adequate infrastructure is a must with today's development in the District, but takes on added importance when reviewing a use in an area not contemplated by the zone plan. Lack of substantial impairment of intent and purpose of the zone regulations and promotion of public welfare is the satisfying of negative criteria as called out in the MLUL. The advancement of environmental impacts to use variance criteria reflects the unique heightened interest and concern for the Meadowlands environment. HMDC agrees with Ms. Fainberg and Mr. Phillips that the use of the concept of "compelling public benefit" is too strong and restrictive. This reference has been deleted from N.J.A.C. 19:4-4.142(f)2ii and v, replacing it with, in (f)2ii, a reference to the public health, safety, morals, order, convenience and prosperity, concepts already contained in N.J.A.C. 19:4-2.1; and in v, a reference to the HMDC Master Plan, which is consistent with the purpose of this chapter. HMDC also agrees with Ms. Fainberg that it is HMDC policy to foster land uses that provide for employment and economic strength to the District, but is of the opinion that it cannot make this a criteria for the grant of a use variance. Such grants must be **site** specific, not employment specific.

h. (N.J.A.C. 19:4-6.18(g)29) Allowing minimum required number of parking spaces to be reduced in accordance with an employee trip reduction program approved by DOT does not provide any indication of how parking requirements will be adjusted in relation to trip reduction program projections or results.

RESPONSE: The parking requirements will be adjusted in accordance with the results of the trip reduction program. Each adjustment will be made on a case-by-case basis based upon the approved DOT plan.

i. (N.J.A.C. 19:4-6.18(g)30) Satellite Parking Facilities

- The requirement that "all tenants in both properties have legal occupancy certifications from the HMDC" appears to overlook the situation where a tenant is seeking to lease a building contingent upon approval of parking on adjacent property.
- HMDC review of leases should be confined to ascertaining that the parking spaces on an adjacent property are being made available for a period co-extensive with the term of the use which would be served.
- "Backup plan," the adjacent property parking arrangement would occur in the first instance only with consent of the "legal tenant" of property B. A backup plan from the occupant of property A should be required only if the "legal tenant" of property B has a right to reclaim the spaces being leased for the use of the occupant of property A.
- TDM requirement is excessive as applied to all applicants. This plan should be made an option as one possible "backup plan."
- References to "tenants" should be to legal occupants, taking into account owner occupancies, legal subtenancies, etc.

RESPONSE: (TDM) The HMDC agrees with some of the recommended word changes received and have amended the regulations accordingly. Clarification will be made to indicate tenants with complete occupancy certifications filed with the HMDC will also be allowed to utilize this provision. The intended HMDC review of leases was limited to ascertaining the parking provision; amended language will specifically state that portion of the lease is all that is required to be submitted. The word legal occupants will be used in place of tenant as it is more inclusive and will insure compliance with the provision by all parties.

The HMDC understands the concerns raised relative to the backup plan and TDM provision, but cannot accept the recommended changes. The proposed provision is intended to be utilized as a second option, the provision of all of a legal occupant's parking needs on **one** property must still remain the focus, and first desire, of the HMDC. It is meant to be a means by which legal occupants can continue to utilize an existing facility, and jobs can be retained in the District, without imposition of financial and time encompassing burdens involved with relocation, variance requests, and site improvements when such undertakings are not physically required—the problem can be solved by a reallocation of existing resources rather than additional expenditures. It is **not** however to be a means by which one propety owner (Property A) can utilize another property (Property B) to the detriment of that property owner, the zone plan, or the District. It is HMDC's opinion that even with this provision, there may come a time when a legal occupant does outgrow the ability of an individual property, and surrounding area, to sustain that growth positively. The HMDC must therefore insure that the owner of Property B still retains full rights to, and value of, the affected parking area. The ability of a property owner (Property B) to retain some mechanism to reclaim the leased space in order to be assured that their own tenant's needs can be met must be a priority of the HMDC.

HMDC does not see any reason to assume that the TDM requirement will be excessive. The HMDC is not using the TDM as a trip reduction program, but as a zoning program to insure proper balanced growth. HMDC is not "fixing" APO targets. The extent of the TDM will be legal occupant specific, and will only be that which is required for the affected property owners to prove to the HMDC that adequate parking for all affected parties is and will be available. The cost will be dependent on the magnitude of the parking problem created by the legal occupant, and would certainly be less expensive than a relocation of the legal occupant, and possibly less expensive than the lease cost of the parking spaces. The TDM imposition should also not be viewed as a financial burden. Implementation of a TDM could reduce the expenditures of Property Owner B as he or she could learn that all of the required parking spaces can actually be provided within his or her own current resources without the expenditure of financial resources associated with a lease.

j. N.J.A.C. 19:4-6.18(h)6 (loading in rear yards only; no loading facilities "near open ditches") and 19:4-6.18(k)6ii (minimum 10 foot wide shade tree landscape strip between paved areas on separate properties) could require expensive and/or impractical improvements upon changes in use and/or occupancy of or modifications to properties in light of the provisions of N.J.A.C. 19:4-3.2, 4.4, and 4.5. These provisions should be phrased as recommendations to be implemented where practicable and not unduly expensive, not as requirements.

RESPONSE: The proposed changes to N.J.A.C. 19:4-6.18(h)6 and 19:4-6.18(k)6ii will not apply when changes of use or occupancy are applied for. They will be enforced when applications for additional loading or parking improvements are submitted. These proposed changes are not intended to supersede the ability of an existing non-conformity to remain.

k. The N.J.A.C. 19:4-6.18(m)1ii "anti-dumping" fence provisions appear to be unrealistic. A four foot fence is insufficient to prevent dumping, a six foot height limitation would be more appropriate. If unauthorized dumping continues after development, the fence should be allowed to remain, and accordingly, the provision requiring removal upon completion of site development should be deleted.

RESPONSE: This regulation has been developed in response to many inquiries from owners of properties which have been subjected to illegal dumping. A four foot fence is adequate in prohibiting vehicles from entering the site and is in no way less effective than a six foot fence. With respect to developed properties, the HMDC believes that property maintenance, lighting and fencing, in accordance with the regulations, are the best deterrents for illegal dumping.

l. The N.J.A.C. 19:5-3.1 new definition of "sanitary landfill" is potentially confusing.

RESPONSE: Definition has been amended. The proposed definition is that of "The Solid Waste Handbook" which is a modification of the definition first developed by the American Society of Civil Engineers.

m. The "Economic Impact" statement which accompanies the proposed regulations does not address increases in cost which will be imposed on developers and other regulated individuals and entities due to the proposed changes in the regulations.

RESPONSE: HMDC disagrees with this comment, and believes that the Economic Impact statement which was part of the proposal, does address costs to the development community resulting from any of the amendments to the regulations. The HMDC has reviewed the Economic Impact Statement included with the proposal and finds that it fully addresses all economic impacts associated with the amendment to the rules.

The record in this matter was closed on June 15, 1994. In accordance with HMDC statutory requirements the matter was then forwarded to the Hackensack Meadowlands Municipal Committee (HMMC). Fred J. Dressel, Executive Director of Hackensack Meadowlands Municipal Committee, submitted a letter dated August 4, 1994, enclosing a copy of HMMC Resolution No. 94-12 accepting the SP-279 regulatory amendments.

Summary of other changes upon adoption:

N.J.A.C. 19:3A-2.2(d) The word municipality was changed to District. Within the context of this subsection, The Executive Director of the HMDC, under the requirements of the Federal Flood Insurance Administrator, must report on the conditions of the entire District and not one particular municipality.

N.J.A.C. 19:4-2.2 "Service: retail" The word entertainment has been deleted. Entertainment is defined in N.J.A.C. 19:4-2.2 as an accessory use unto itself and was therefore, deleted in order to avoid confusion between the two separate requirements. Additionally, a change was made at N.J.A.C. 19:4-4.35(c)2, deleting "specialty shops" and replacing it with the more specific and appropriate terms "retail service" and "personal service."

N.J.A.C. 19:4-6.18(e)10 The type of storm event has been changed from a 10 year storm event to a 25 year storm event. This change is based on current and customary engineering standards. This change brings the site plan requirements in line with the subdivision regulations of the District (N.J.A.C. 19:5). In addition, this standard has been the policy of the Commission for many years and is now being codified.

N.J.A.C. 19:4-6.18(g)24 The parking requirement for marinas has been changed. The changes make the regulation less restrictive. The HMDC believes that one parking space for every berth is excessive and has cut the requirement in half by requiring one space for every two berths. This is based on the HMDC's observation of existing marinas along the Hackensack River.

N.J.A.C. 19:4-6.18(h)6 In this section, the term accessory truck parking area has been changed to accessory trailer parking area to make it consistent with the new definition proposed and adopted at N.J.A.C. 19:4-2.2.

N.J.A.C. 19:5-7.10(e)8 The edition of the reference used, the New Jersey State Standards Specifications for Road and Bridge Construction, is being changed from the 1961 Edition to the 1989 Edition. This has been done to keep up with the "state-of-the-art" in this area of engineering design. The companies that manufacture these components use the latest specifications since the bulk of the catchbasins and manholes are used by the NJDOT which uses the latest edition. In this same section, the words rip-rap were deleted. In the context of this sentence, the standard is applicable only to castings. Inclusion of rip rap in this sentence was an error, this is clear because the standard is obviously not applicable.

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

CHAPTER 3

SUBCHAPTER 1. REVISED FEE SCHEDULES

19:3-1.2 Zoning

(a) Zoning fees are as follows:

1.-12. (No change.)

13. A fee of $500.00 is charged for interior alterations involving a changing use and/or requiring a zoning certificate; and

14. A fee of $200.00 is charged for review of recycling areas.

(b) (No change.)

19:3-1.3 Construction permits

(a) General construction permit fee requirements are as follows:

1.-3. (No change.)

4. The Office of the Chief Engineer of the HMDC, acting as agent for the Department of Community Affairs, shall have the responsibility, pursuant to N.J.S.A. 13:17-1 et seq. for the approval of all plans, for insuring compliance with the Uniform Construction Code (UCC) and for enforcement as contained in N.J.A.C. 19:6-1 et seq. Therefore, pursuant to N.J.A.C. 19:6-1.5 the fees in this section shall pertain.

5. (No change.)

(b) (No change.)

(c) Construction permit fees are as follows:

1.-2. (No change.)

3. Elevators:

i. The fee for a permit to install an elevator device shall be a flat fee. The fee may vary for different types of inspections, tests and elevator devices.

ii. The fee for Plan Review for elevator devices in structures in Use Groups R-3, R-4 and for elevator devices wholly within dwelling units in R-2 structures shall be $50.00 for each device.

iii. The fee for Plan Review for elevator devices in structures in Use Groups other than R-3 and R-4 shall be $260.00 for each device.

iv. The fee for a certificate of approval or certificate of compliance certifying the work done under a construction permit has been satisfactorily completed shall be $28.00.

v. Acceptance tests. The HMDC fees for witnessing acceptance test and performing inspections in structures not in Use Group R-3, R-4, or exempted R-2 structure, shall be as follows:

(1) Traction and winding drum elevators;

(A) One to 10 floors	$243.00
(B) Over 10 floors	$405.00
(C) Hydraulic elevators	$216.00
(D) Roped hydraulic elevators	$243.00
(E) Escalators, moving walks	$216.00
(F) Dumbwaiters	$ 54.00
(G) Stairway chairlifts, inclined and vertical wheelchair lifts and manlifts	$ 54.00

(2) Additional charges for devices equipped with the following features shall be as follows:

(A) Oil buffers (per buffer)	$ 43.00
(B) Counterweight governor and safeties	$108.00
(C) Auxiliary power generator	$ 81.00

vi. The HMDC fee for elevator devices in structures in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be $162.00.

vii. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be $54.00.

viii. The HMDC fees for routine, six month, tests and inspections for elevator devices in structures not in Use Groups R-3 or R-4, or otherwise exempt devises in R-2 structures, shall be as follows:

(1) Traction and winding drum elevators:

(A) One to 10 floors	$151.00
(B) Over 10 floors	$194.00
(C) Hydraulic elevators	$108.00
(D) Roped hydraulic elevators	$151.00
(E) Escalators, moving walks	$151.00

ix. The fee for one year periodic inspection and witnessing of tests of elevator devices, which shall include a six month routine inspection, shall be as follows:

(1) Traction and winding drum elevators:
(A) One to 10 floors $216.00
(B) Over 10 floors $259.00
(C) Hydraulic elevators $162.00
(D) Roped hydraulic elevators $216.00
(E) Escalator, moving walks $346.00
(F) Dumbwaiters $ 86.00
(G) Manlifts, stairway chairlifts, inclined and vertical wheelchair lifts $130.00
(2) Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:
(A) Oil buffers (charge per oil buffer) $ 43.00
(B) Counterweight governor and safeties $ 86.00
(C) Auxiliary power generator $ 54.00
x. The fee for the three year or five year inspection of elevator devices shall be as follows:
(1) Traction and winding drum elevators:
(A) One to 10 floors (five year inspection) $367.00
(B) Over 10 floors (five year inspection) $410.00
(2) Hydraulic and roped hydraulic elevators:
(A) Three-year inspection $270.00
(B) Five-year inspection $162.00
4. (No change.)
5. Periodic inspections: The fees for periodic departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:
i. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be $33.00 for each device when they are tested (thrice annually) and $85.00 for each device when they are broken down and tested (once annually).

19:3-1.4 Occupancy
(a) (No change.)
(b) The fee for a Certificate of Occupancy or Occupancy Certification is as follows:
1. For tenant spaces of up to and including 3,000 square feet, the fee is $250.00;
2. For tenant spaces in excess of 3,000 square feet, the fee is $500.00.
(c) (No change.)

19:3-1.6 General Provisions
(a) This fee schedule shall not be applicable to county or municipal government. Any fee, or portion thereof, provided for herein, may be waived by the Executive Director upon recommendation of the chief engineer upon good cause shown.
(b)-(g) (No change.)

CHAPTER 3A
ADMINISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

19:3A-1.2 Annual meeting
An annual meeting of the Hackensack Meadowlands Development Commission shall be held on the fourth Wednesday in the month of June.

SUBCHAPTER 2. FLOOD INSURANCE

19:3A-2.1 Required land use and control measures
(a) The Office of the Chief Engineer shall review all permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must:
1.-3. (No change.)
(b) The Office of the Chief Engineer shall review all subdivision proposals and other proposed new developments to assure that:
1. All such proposals are consistent with the need to minimize flood damage;
2.-3. (No change.)
(c) New or replacement water supply systems and/or sanitary sewage systems shall be designed to minimize [of] **or** eliminate infiltration of flood waters into the systems and discharges from the systems into flood water***s.*** *[on-site]* ***On-site*** waste disposal systems shall be located so as to avoid impairment of them or contamination from them during flooding.

19:3A-2.2 Securing coverage under the National Flood Insurance Program
(a) (No change.)
(b) The Executive Director of the Hackensack Meadowlands Development Commission shall be the person responsible for the implementation and coordination of the Federal Flood Insurance Program within the Hackensack Meadowlands District.
(c) The Executive Director of the Hackensack Meadowlands Development Commission shall be the person responsible to furnish on request, by an appropriate Federal or State official or by a designated representative of the National Insurers Association, information for each structure constructed within the area of special flood hazards after flood insurance is made available in the community concerning its first floor elevation, and if there is a basement the distance from the first floor to the bottom of the lowest opening where water flowing over the ground would enter said basement.
(d) The Executive Director of the Hackensack Meadowlands Development Commission shall be the person responsible for the preparation and submission to the Federal Flood Insurance Administrator an annual report concerning the activities of the *[municipality]* ***District*** related to the National Flood Insurance Program.
(e) The Hackensack Meadowlands Development Commission office located at One DeKorte Park Plaza, Lyndhurst, New Jersey, shall be the local repository where flood insurance and flood hazard maps will be available for public inspection.
(f) (No change.)
(g) The Hackensack Meadowlands Development Commission will comply with the regulations of the National Flood Insurance Program to:
1.-4. (No change.)
5. Cooperate with Federal, State, and local agencies and private firms which undertake to study survey maps and identify flood-prone areas.
(h) (No change.)

CHAPTER 4
DISTRICT ZONING REGULATIONS

SUBCHAPTER 2. CONSTRUCTION AND DEFINITIONS

19:4-2.2 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
. . .
"Accessory entertainment" means a use that is provided to restaurant customers as incidental to the normal service of food and drink and is compatible with the restaurant use. Such use shall not occupy more than 25 percent of the restaurant's customer seating area.
"Accessory trailer parking ***area***" means an approved parking area, properly screened from the public right-of-way for the temporary parking of empty, operable trucks and/or trailers, owned or leased by the property owner or tenant.
"Adult care center" means an establishment which provides daytime supervision and activities for senior citizens and/or physically/mentally challenged adults. No residential facilities are permitted in an Adult Care Facility.
. . .
"Auto garage" means a facility that is principally used for the mechanical repair of motor vehicles. This facility would include major engine and transmission repair and replacement, chassis and

suspension repair, body work, and vehicle painting. These facilities may include limited accessory outdoor storage areas for parts and vehicles.

"Auto maintenance facility" means a facility that is principally used for the routine maintenance of motor vehicles. Such routine maintenance would include activities such as fluid changes; filter, belt, tire and shock replacement; brake and muffler repair; and, vehicle detailing. These facilities would not involve the overnight storage of vehicles.

...

"Bus terminals" means any facility used for the storage and/or dispatching of buses where the maintenance, repair, or fueling of the buses is accessory to the principal use of storage. Buses may include charter, transit or school.

...

"Child care center" means any facility licensed by the Department of Human Services which is maintained for the care, development or supervision of children.

"Class A recyclable material" means any source separated non-putrescible recyclable material as defined by the *[New Jersey Department of Environmental Protection and Energy]* ***NJDEP***.

"Class A recycling facility" means a facility which handles Class A recyclable material.

"Class B recyclable material" means a source separated recyclable material as defined by the NJDEP*[E]*.

"Class B recycling facility" means a facility which handles Class B recyclable material.

"Communications common carrier" means any person (individual, partnership, association, joint-stock company, trust, corporation, or other entity) engaged as a common carrier for hire in interstate or foreign radio transmission of energy as defined by the Federal Communications Commission (FCC).

"Community residence" means a licensed community residential facility for the developmentally disabled providing food, shelter and personal guidance to not more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, half-way houses, intermediate care facilities, supervised apartment living arrangements, and hostels.*[)]*

"Community shelter" means any community shelter for victims of domestic violence approved and certified by the Department of Human Services, providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

...

"Dwelling: multiple-family" means a residential building containing three or more dwelling units occupied or intended to be occupied by persons living independently of each other, or a group of such buildings.

...

"Floor area" means the sum of the areas of all floors of a building or buildings, measured from the faces of the exterior walls not including porches, balconies, patios, terraces, breezeways and enclosed pedestrian walkways. *[Outdoor seating areas associated with restaurants shall be included in floor area calculations.]*

...

"Freight forwarding" means an establishment primarily engaged in the transhipment of goods from shippers to receivers for a charge, covering the entire transportation route and, in turn, making use of services of other transportation establishments as instrumentalities in effecting delivery. Freight forwarding facilities may include areas for the temporary storage, transfer, repacking, consolidation or distribution of such goods and accessory parking and servicing of trucks and trailers.

...

"Indoor recreation" means a commercial establishment which is designed and equipped for the conduct of sports, leisure activities and other customary recreational activities within a completely enclosed structure.

...

"Intermodal facility" means a facility principally used for the transfer of cargo from one mode of transportation to another. The cargo is primarily containerized and is not broken down or consolidated on site. Intermodal facilities may include trailer parking areas and interior areas for the repair and servicing of trailers, containers, and trucks utilized on site.

...

"Lot" means a designated parcel, tract, or area of land established by a plot or otherwise as permitted by law and to be used, developed, or built upon as a unit.

...

"Minor truck repair" means the repair of trucks not normally involving overnight storage or long term repair. Such repairs must occur inside an approved facility. The following are not considered minor truck repairs: fender and body work, suspension and chassis repair, transmission and minor rebuilding or trailer repairs.

...

"Nonconforming lot" means a lot in which the area, dimension or location was lawful prior to the adoption, revision or amendment to the HMDC Zoning Regulations but fails to conform to the requirements of the zone in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure in which the size, dimension or location was lawful prior to the adoption, revision or amendment to the HMDC Zoning Regulations but which fails to conform to the requirements of the zone in which it is located by reason of such adoption, revision or amendment.

...

"Public park" means an area set aside and designated for outdoor recreation including both active participation and passive experiences. Public parks include both recreation facilities or preservation areas, conveyed or otherwise dedicated to the state, county or municipality or any such agency for recreational or preservation purposes. Public park includes among other uses, county and municipal parks, athletic fields owned by a public entity, publicly owned marinas and public open space within a specially planned area, as defined at N.J.A.C. 19:4-2.2.

...

"Recycling area" means space allocated for collection and storage of source separated recyclable materials.

"Remodeling" means any change in a structure (other than incidental repairs and normal maintenance, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing) which may prolong its useful life, or the useful life of its supporting members such as bearing walls or partitions, columns, beams, girders or foundations; or the removal of any portion of the structure.

...

"Restaurant" means an establishment where food is prepared, served, and consumed primarily within the principal structure. The serving of liquor at a restaurant is permitted provided it is accessory to the principal use in accordance with N.J.A.C. 19:4-4.145.

...

"Satellite parking facilities" means the use of excess parking facilities on property other than the property where a legal tenant is occupying a structure.

...

"Self storage facility" means a facility principally used for the storage of goods and materials within reasonably small tenant spaces by various tenants, none of which employ any on-site employees. Such a facility may have an accessory residential unit for a facility employee responsible for facility operations and security.

"Service: business" means an establishment primarily engaged in rendering service to business establishments on a fee or contract basis, such as advertising and mailing; business maintenance; employment service; management and consulting services; protective services; and/or equipment rental and leasing.

"Service: personal" means an establishment primarily engaged in providing services involving the care of a person or his or her apparel.

"Service: retail" means an establishment providing services *[or entertainment]*, as opposed to products, to the general public including finance, real estate and insurance, health, education, museums and galleries.

"Service: social" means an establishment providing assistance and aid to those persons requiring counseling for psychological problems, employment, learning disabilities, and physical disabilities.

"Special exception" means a use permitted in a particular zone only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in N.J.A.C. 19:4-4.141.

...

"Variance" means a permission to depart from the literal requirements of a zoning regulations if the conditions and standards of such use are complied with as specified in N.J.A.C. 19:4-4.142.

...

"Yard" means an area on a lot which is unoccupied and unobstructed from its lowest level to the sky, except for the permitted obstructions listed in N.J.A.C. 19:4-4.9.

...

"Zoning certificate (ZC)" means a document signed by the Chief Engineer, as required in these rules, as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion, or installation of a structure, building, or site improvement, which acknowledges that such use, structure, or building complies with the provisions of the regulations or authorized variance therefrom.

...

SUBCHAPTER 3. APPLICATION OF REGULATIONS

19:4-3.1 Territorial application

(a) (No change.)

(b) The Hackensack Meadowlands District shall be divided into the following districts, the location of which shall be determined by reference to the Official Zoning Map, with all notations and attached boundary descriptions if any, kept in the Office of the Chief Engineer and hereby adopted as a part of these regulations.

1. (No change.)

2. Specially planned areas:

i.-vi. (No change.)

vii. Planned Development Center 1 (PDC 1)*;*

viii.-xii. (No change.)

xiii. Special Use 2 (SU 2);

xiv. Special Use 3 (SU 3).

19:4-3.2 Structures, uses, occupancies, and land

(a)(No change.)

(b) The following, except as otherwise provided, shall be exempt from the regulations listed in (a) above:

1. Whenever the governing body of a constituent municipality has enacted zoning ordinances and any other codes or standards which are consistent with, or which will effectuate the purposes of, the Commission's Master Plan, that municipality may make final land use decisions within the municipality with respect to applications made concerning individual/detached one, two or three family residences ***in the low density residential zone***. These decisions shall include, but not be limited to, variances, certificates of occupancy, plan review, building permits***, subdivisions*** and site approvals. Whenever a municipality shall make a zoning and/or land use decision pursuant to this subsection, a copy of the decision, the application and any other pertinent information shall be forwarded to the Commission within 10 working days of the final action.

2. (No change.)

19:4-3.3 Zoning of public ways, waterways, and railroad rights-of-way

(a) All streets, roads, highways, public ways, and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon the same.

(b) Where the center line of a street, road, highway, public way, waterway or railroad right-of-way serves as a zone boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

(c) All waterways comprising the Hackensack River and its tributaries shall be deemed to be in the Marshland Preservation Zone; however, this designation shall not prevent the implementation of public marinas or public access facilities.

SUBCHAPTER 4. ZONE REGULATIONS

19:4-4.2 Special exceptions

No use of a structure or land that is designated as a special exception in any zone shall hereafter be established, and no existing special exception shall hereafter be changed to another special exception, in such zone unless a special use permit has been secured in accordance with the provisions of this subchapter.

...

19:4-4.8 Obstructions in yards

(a) The following shall not be considered to be obstructions and shall be permitted when located in a required yard:

1. In all yards: Open terraces not over four feet above the average level of the adjoining ground, terraces, porches or weather protection enclosures projecting six feet or less into the required yard and totalling less than 60 square feet in floor area; awnings or canopies; steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot from a street; one-story bay windows and overhanging eaves and gutters, and fireplaces projecting 30 inches or less into the required yard; arbors; flag poles; signs, when permitted by N.J.A.C. 19:4-6.18; fences when permitted by N.J.A.C. 19:4-6.18; and transformers.

2. In any yard except a required front yard: Accessory uses permitted by N.J.A.C. 19:4-4.145 and meeting the applicable side yard requirements: recreational equipment; parking facilities, provided that a minimum distance of six feet of landscaping is maintained between parking facilities and buildings.

(b) (No change.)

(c) Outdoor seating areas may be located in a required yeard, provided they meet a minimum front yard setback of 35 feet and minimum side and rear yard setbacks of 10 feet.

19:4-4.9 Zoning lot of record

(a) A zoning lot of record may be established in order to utilize two or more lots as a united parcel. Zoning lots of record shall meet the following requirements:

1. The zoning lot of record shall be designed, developed, built and used as a single unit. Usage of open space, parking and other site related amenities are to be shared by the site users.

2. The individual lots within a zoning lot of record shall be under ***some form of*** single ownership at the time of development. *[In the event that the subject lots become owned by two or more entities, a reciprocal easement agreement shall be established to insure that the zoning lot of record continues to act as a single unit.]* This *[agreement]* ***form of ownership*** shall be approved by the Office of the Chief Engineer, and shall be recorded in the county registrar's office. *[In the event that no reciprocal easement agreement is recorded, the zoning lot of record will become null and void if two or more entities own the premises.]* ***All future owners or mortgage holders shall be bound by the recorded form of single ownership.*** Any nonconformities resulting from the elimination of the zoning lot of record shall be classified as existing legal nonconformities, and shall be bound by the restrictions of N.J.A.C. 19:4-6.23.

3. The zoning lot of record shall be comprised of lots which are contiguous and within the same zone. Whether or not lots or portions of lots which are separated by a manmade or natural barrier, such as a waterway or right-of-way, will be considered to be contiguous will be determined by the Office of the Chief Engineer based upon the nature and extent of such barrier and the nature and extent of the area in which such barrier is located.

4. Zoning lots of record shall be designed and utilized as a unit.

19:4-4.15 Marshland preservation zone; use limitations

No use shall be operated, conducted or maintained that may impair the quality of the zone as a marsh preservation area. Any use that significantly discourages or interferes with use of the zone as a natural habitat for waterfowl and other forms of marsh life shall be presumed to be a use that impairs the quality of the zone as a marsh preservation area.

19:4-4.16 Marshland preservation zone; environmental performance standards

(a) All uses in the marshland preservation zone shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6:

1. (No change.)

2. Environmental performance standards category A: fire and explosion hazards; radioactive materials.

3.-4. (No change.)

19:4-4.17 Marshland preservation zone; design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

19:4-4.19 Park and recreation zone; permitted uses

(a) Permitted uses in the park and recreation zone include:

1. Public parks;

2. (No change.)

19:4-4.20A Planned park zone 1; special exceptions

(a) The following special exceptions shall apply:

1.-2. (No change.)

3. Residential uses as provided in N.J.A.C. 19:4-4.19A where the developer exceeds 900 dwelling units for the entire zone.

19:4-4.22 Park and recreation zone; environmental performance standards

(a) All uses in the park and recreation zone shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6:

1.-3. (No change.)

19:4-4.24A Planned park zone 1; environmental performance standards

(a) All uses in the planned park zone shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6.

1. All Category B environmental performance standards shall apply.

2. (No change.)

19:4-4.27 Low density residential zone; permitted uses

(a) Permitted uses in the low density residential zone include:

1.-6. (No change.)

7. Swimming clubs, swimming pools and recreational facilities incidental thereto; and

8. Community residences for the developmentally disabled and community shelters for victims of domestic violence with less than six residents.

19:4-4.28 Low density residential zone; special exceptions

(a) Special exceptions in the low density residential zone include:

1.-5. (No change.)

6. Any satellite antenna exceeding six feet in diameter; and

7. Community residences for the developmentally disabled and community shelters for victims of domestic violence with six or more residents provided that no such residence shall be located within 1,500 feet of another such residence and the number of persons, other than resident staff, residing at existing such residences within each municipality shall not exceed 50 persons, or 0.5 percent of the population of each municipality, whichever is greater.

19:4-4.29 Low density residential zone; lot area and density requirements

(a) (No change.)

19:4-4.31 Low density residential zone; design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18. No land which is located in the low density residential zone shall be used for a driveway, walkway or access purpose to any land which is located in any zone created by N.J.A.C. 19:4-4.43 through 4.156.

19:4-4.34 Waterfront recreation zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139 or as a planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.35 Waterfront recreation zone; required marina and other permitted uses

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

(c) When included with a marina meeting the minimum requirements set forth in (a) above, the following uses shall be permitted:

1. (No change.)

2. Retail *[and specialty shops, and]*, **retail service and personal*** service uses, compatible with the purposes of this zone and which meet the needs of the users;

3.-5. (No change.)

(d) Child care centers are a permitted use. However, this use does not require the provision of a marina.

19:4-4.36 Waterfront recreation zone; special exceptions

(a) When included with a marina meeting the minimum requirements set forth in N.J.A.C. 19:4-4.35(a), the following uses shall be special exceptions:

1. (No change.)

2. Theater; and

3. Indoor recreation*[al facilities; and]*.*

19:4-4.37 Waterfront recreation zone; use limitations

(a) All uses shall be buffered whenever possible by tidally-affected marsh or otherwise screened, where the same adjoin the low density residential zone at a side or rear lot line.

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

(d) Outdoor play areas are permitted in association with licensed child care centers.

19:4-4.45 Highway commercial zone; permitted uses

(a) Permitted uses in the highway commercial zone include:

1.-7. (No change.)

8. Accessory retail uses in connection with office, hotels and motels*[.]*;*

*[8.]***9.*** Child care centers;

*[9.]***10.*** Personal services;

*[10.]***11.*** Retail services; and

*[11.]***12.*** Social services.

19:4-4.46 Highway commercial zone; special exceptions

(a) Special exceptions in the highway commercial zone include:

1.-3. (No change.)

4. Automobile service stations or auto maintenance facilities;

5. Indoor recreation; and

6. Any satellite antenna that must be located on a tower.

19:4-4.47 Highway commercial zone; use limitations

(a) All business, service, storage and display of goods, except for outdoor display facilities that are accessory to automobile showrooms and off-street parking and loading, shall be conducted within completely enclosed buildings.

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

(e) Outdoor play areas are permitted in association with licensed child care centers.

(f) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.50 Highway commercial zone; buffer requirements

(a) There shall be a 25-foot wide strip of landscaped open space, with heavy vegetative screening, where any development borders a specially planned area, the park and recreation zone, and the low density residential zone.

(b) (No change.)

19:4-4.51 Highway commercial zone; environmental performance standards

(a) All uses in the highway commercial zone shall comply with the environmental performance standard categories of N.J.A.C. 19:4-6:

1. Environmental performance standard category B for fire and explosion hazards and radioactive materials.

2.-3. (No change.)

19:4-4.54 Service-highway commercial zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 19:4-4.139 or as a planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.55 Service-highway commercial zone; permitted uses

(a) Permitted uses in the service-highway commercial zone include:

1.-2. (No change.)

3. Automobile service stations or auto maintenance facilities

4.-5. (No change.)

6. Social services;

7. (No change.)

8. Other drive-in establishments;

9. Child care centers;

10. Personal services; *[and]*

11. Retail services*[.]**; and**

12. Retail.*

19:4-4.56 Service-highway commercial zone; special exceptions

(a) Special exceptions in the service***-***highway commercial zone include:

1.-3. (No change.)

4. Indoor recreation; and

5. (No chang.e)

19:4-4.57 Service-highway commercial zone; use limitations

(a) (No change.)

(b) Outdoor display and storage (except off-street parking and loading, and recycling areas) shall be permitted only in connection with an otherwise permitted or special exception use when such use is housed within an enclosed building, and the area of such storage or display shall not exceed 10 percent of the floor area of the enclosed building in which the permitted or special permit use is located.

(c) All uses shall be screened where the same adjoin the low density residential zone at a side or rear lot line.

(d) Outdoor play areas are permitted in association with licensed child care centers.

(e) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.58 Service-highway commercial zone; lot area requirements

(a) Lot area requirements in the service-highway commercial zone are:

1.-3. (No change.)

19:4-4.60 Service-highway commercial zone; buffer requirements

(a) There shall be a 25-foot wide strip of landscaped open space with heavy vegetative screening where any development borders a specially planned area, a residential planned unit development, or the park and recreation zone, or low density residential zone.

(b) (No change.)

19:4-4.61 Service-highway commercial zone; environmental performance standards

(a) All uses in the service-highway commercial zone shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6:

1. Environmental performance standard category B for radioactive materials; fire and explosion hazards;

2.-3. (No change.)

19:4-4.64 Research park zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139 or as a planned unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.65 Research park zone; permitted uses

(a) Permitted uses in the research park zone include:

1.-2. (No change.)

3. Warehouses; and

4. Child care centers.

19:4-4.66 Research park zone; special exceptions

(a) Special exceptions in the research park zone include:

1.-4. (No change.)

5. Indoor recreation; and

6. (No change.)

19:4-4.67 Research park zone; use limitations

(a) All operations, activities and storage (except landing areas for helistops, off-street parking and recycling areas) shall be conducted within completely enclosed buildings.

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

(e) Temporary warehouse sales are permitted for a maximum of 12 days per year. No warehouse sale shall exceed four consecutive days. The Office of the Chief Engineer may limit the number of sales permitted on any day; thus, applications will be approved on a first come, first served basis.

(f) Outdoor play areas are permitted in association with licensed child care centers.

(g) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.70 Research park zone; environmental performance standards

(a) All uses in research park zone shall comply with the following environmental performance categories of N.J.A.C. 19:4-6.

1. All category B environmental performance standards;

2. (No change.)

19:4-4.73 Research distribution park zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139 or as a planned unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.74 Research distribution park zone; permitted uses

(a) Permitted uses in the research distribution park zone include:

1.-3. (No change.)

4. Warehouse; and

5. Child care centers.

19:4-4.75 Research distribution park zone; special exception

(a) Special exceptions in the research distribution park zone include:

1.-4. (No change.)

5. Indoor recreation; and

6. (No change.)

19:4-4.76 Research distribution park zone; use limitations

(a) All operations, activities and storage (except for landing areas for helistops, off street parking and loading and recycling areas) shall be conducted in completely enclosed buildings.

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

(e) Temporary warehouse sales are permitted for a maximum of 12 days per year. No warehouse sale shall exceed four consecutive days. The Office of the Chief Engineer may limit the number of sales permitted on any day ; thus, applications will be approved on a first come, first served basis.

(f) Outdoor play areas are permitted in association with licensed child care centers.

(g) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.79 Research distribution park zone; environmental performance standards

(a) All uses in the research distribution ***park* zone shall comply with the following environmental performance categories of N.J.A.C. 19:4-6.**

1. All category B environmental performance standards;

2. (No change.)

19:4-4.82 Light industrial and distribution zone A; purposes

This zone is designed to accommodate on large lots a wide range of industrial, distribution, commercial and business uses that generate a minimum of detrimental environmental effects.

19:4-4.83 Light industrial and distribution zone A; type of development

Developers of land located in the zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139 or as a planned unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.84 Light industrial and distribution zone A; permitted uses

(a) Permitted uses in the light industrial and distribution zone A include:

1.-2. (No change.)

3. Warehouses, wholesale establishments and other storage facilities;

4. Business offices, but not including professional office buildings principally for doctors, dentists, lawyers, real estate brokers and/or similar professional persons, except as an accessory use to an otherwise permitted use or as a special permit;

5. Light public utility uses;

6. Child care centers;

7. Class A recycling facilities;

8. Self-storage facilities; and

9. Business services.

19:4-4.85 Light industrial and distribution zone A; special exceptions

(a) Special exceptions in the light industrial and distribution zone A include:

1.-9. (No change.)

10. Indoor recreation;

11. Any satellite antenna which must be located on a tower;

12. Auto maintenance facilities; and

13. Social services.

19:4-4.86 Light industrial and distribution zone A; use limitations

(a) All operations, activities, and storage (except landing areas for helistops, off-street parking and loading, and recycling areas) shall be conducted within completely enclosed buildings.

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

(e) Temporary warehouse sales are permitted for a maximum of 12 days per year. No warehouse sale shall exceed four consecutive days. The Office of the Chief Engineer may limit the number of sales permitted on any day; thus, applications will be approved on a first come, first served basis.

(f) Outdoor play areas are permitted in association with licensed child care centers.

(g) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.87 Light industrial and distribution zone A; lot area requirements

(a) The lot area requirements in the light industrial and distribution zone A are:

1.-2. (No change.)

19:4-4.88 Light industrial and distribution zone A; bulk regulations

(a) The bulk regulations in the light industrial and distribution zone A are:

1.-5. (No change.)

19:4-4.89 Light industrial and distribution zone A: buffer requirements

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

19:4-4.90 Light industrial and distribution zone A; environmental performance standards

(a) All uses in the light industrial and distribution zone A shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:

1.-2. (No change.)

19:4-4.91 Light industrial and distribution zone A; design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

19:4-4.92 Light industrial and distribution zone B; purposes

This zone is designed to accommodate a wide range of industrial, distribution, commercial and business uses that generate a minimum of detrimental environmental effects.

19:4-4.93 Light industrial and distribution zone B; type of development

Developers of land located in the zone shall have the option of developing said land in accordance with N.J.A.C. 19:4- 4.133 to 4.139 or as a planned unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.94 Light industrial and distribution zone B; permitted uses

(a) Permitted uses in the light industrial and distribution zone B include:

1.-2. (No change.)

Recodify existing 4 through 8 as 3 through 7 (No change in text.)

8. Light public utility uses;

9. Auto maintenance facilities;

10. Bus terminals;

11. Child care centers;

12. Class A recycling facilities;

13. Freight forwarding facilities;

14. Self-storage facilities;

15. Business services; and

16. Communications common carrier.

19:4-4.95 Light industrial and distribution zone B; special exceptions

(a) Special exceptions in the light industrial and distribution zone B include:

1.-8. (No change.)

9. Class B recycling facilities;

10. Any satellite antenna which must be located on a tower;

11. Indoor recreation.

19:4-4.96 Light industrial and distribution zone B; use limitations

(a) All operations, activities and storage (except landing areas for helistops, off street parking and loading, parking of empty, registered and operational vehicles, boat and auto sales/rental yards, accessory lumber yards and home improvement centers, and recycling areas) shall be conducted within completely enclosed buildings.

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

(e) Temporary warehouse sales are permitted for a maximum of 12 days per year. No warehouse sale shall exceed four consecutive days. The Office of the Chief Engineer may limit the number of sales permitted on any day; thus, applications will be approved on a first come, first served basis.

(f) (No change.)
(g) Outdoor play areas are permitted in association with licensed child care centers.
(h) Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.97 Light industrial and distribution zone B; lot area requirements
(a) The lot area requirements in the light industrial and distribution zone B are:
1.-3. (No change.)

19:4-4.98 Light industrial and distribution zone B; bulk regulations
(a) The bulk regulations in the light industrial and distribution zone B are:
1.-5. (No change.)

19:4-4.99 Light industrial and distribution zone B; buffer requirements
(a)-(b) (No change.)

19:4-4.100 Light industrial and distribution zone B; environmental performance standard
(a) All uses in the light industrial and distribution zone B shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:
1.-2. (No change.)

19:4-4.101 Light industrial and distribution zone B; design of structures and other improvements
The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

19:4-4.103 Heavy industrial zone; type of development
Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139 or as a ***planned*** unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.104 Heavy industrial zone; permitted uses
(a) Permitted uses in the heavy industrial zone include:
1.-9. (No change.)
10. Auto garage;
11.-15. (No change.)
16. Class A and B recycling facilities;
17. Bus terminals;
18. Freight forwarding;
19. Intermodal facilities; and
20. Communications common carrier.

19:4-4.105 Heavy industrial zone; special exception
(a) Special exceptions in the heavy industrial zone include:
1.-2. (No change.)
3. Child care centers; and
4. (No change.)

19:4-4.106 Heavy industrial zone; lot area requirements
(a) The lot size requirements in the heavy industrial zone are:
1.-3. (No change.)

19:4-4.109 Heavy industrial zone; environmental performance standards
(a) All uses in the heavy industrial zone shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:
1.-2. (No change.)

19:4-4.114 Airport facilities zone; special exception
(a) Special exceptions in the airport facilities zone include:
1.-2. (No change.)
3. Child Care Centers; and
4. (No change.)

19:4-4.115 Airport facilities zone; use limitation
(a) All operations, activities and storage (except landing and storage areas for airports, heliports, helistops, off-street parking and loading) shall be conducted within completely enclosed buildings.
(b) Outdoor play areas are permitted in association with licensed child care centers.

19:4-4.116 Airport facilities zone; lot area requirements
There are no lot area requirements in the airport facilities zone.

19:4-4.118 Airport facilities zone; environmental performance standards
(a) All uses in the airport facilities *[district]* ***zone*** shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:
1. All category B environmental performance standards of N.J.A.C. 19:4-6 shall apply.
2. All water quality standards of N.J.A.C. 19:4-6 shall apply.

19:4-4.123 Sports complex zone; land not exempt
(a) Land not exempt from the jurisdiction of the Commission shall be rezoned by the Commission from the sports complex zone classification within three months after the occurrence of any of the following:
1.-2. (No change.)

19:4-4.125 Public Utilities zone; type of development
Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to *[19:4-]*4.139 or as a ***planned*** unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.126 Public utilities zone; permitted uses
(a) Permitted uses in the public utilities zone include:
1.-3. (No change.)
4. Automobile service stations;
5. Intermodal facilities; and
6. Communications common carrier.

19:4-4.127 Public utilities zone; special exception
(a) Special exceptions in the public utilities zone include:
1.-2. (No change.)
3. Child care centers; and
4. (No change.)

19:4-4.128 Public utilities zone; lot area requirements
(a) The lot *[size]* ***area*** requirements in the public utilities zone are:
1.-3. (No change.)

19:4-4.131 Public utilities zone; environmental performance standards
(a) All uses in the public utilities zone shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:
1.-2. (No change.)

19:4-4.133 Zoning certificates
(a) Unless a zoning certificate issued under these regulations shall first have been obtained from the Office of the Chief Engineer:
1.-2. (No change.)
(b) (No change.)

19:4-4.134 Application for zoning certificate
(a) All applications for zoning certificates shall be filed with the Office of the Chief Engineer. If the Office of the Chief Engineer determines that architectural review is necessary under the standards set forth in N.J.A.C. 19:4-6.19, he shall require that two copies of the application shall be filed and shall forward one copy to the Environmental Design Committee: otherwise, only one copy need be filed. All applications for zoning certificates shall be signed by the property owner.
(b) Every application for a zoning certificate shall include:
1.-4. (No change.)
5. For the construction or moving of any structure or addition thereto, a site plan, as follows:

i. A survey of the tract that is to be developed showing existing features of the property, including building setback lines, land uses, public right-of-ways, easements, utility lines, general topography and drainage, watercourse locations, and all natural features including plant material over four inch caliper;

ii.-iii. (No change.)

6.-7. (No change.)

8. Landscape plans and plant schedules showing the existing and proposed landscaping of the site and all areas to be devoted to open space.

9.-10. (No change.)

11. All site plans, surveys, and landscape plans shall be signed and sealed by a licensed professional as required by law;

12. Other such information as may be reasonably required.

19:4-4.135 Review and approval of application for a zoning certificate

(a) Within two weeks after the receipt of the complete application, the Office of the Chief Engineer shall approve the application by letter to the applicant and to the municipality in which the development is located which shall serve as a zoning certificate, if the application complies with the following standards:

1.-2. (No change.)

3. The traffic circulation system both on site and off site, and off-street parking and loading facilities are adequate for the proposed use, are designed to promote maximum safety, to provide ready and efficient access for emergency equipment such as fire and police vehicles, and to provide access to existing streets, roads and highways.

4.-5. (No change.)

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

19:4-4.138 Application for occupancy certificate

(a) Every application for an occupancy certificate shall be filed with the Office of the Chief Engineer. All applications for occupancy certification shall be signed by the property owner and shall contain the following information:

1.-5. (No change.)

19:4-4.140A Property Maintenance

(a) Property owners are responsible for maintaining all properties free of debris and outdoor storage, except where otherwise permitted.

(b) Property owners are responsible for maintaining all drainage ditches free of debris and siltation and ensuring that all drainage facilities are in satisfactory operating condition.

(c) Property owners are responsible for maintaining parking and loading areas free of potholes or other hazardous conditions that might deter from the proper and safe use of the loading and parking areas.

19:4-4.141 Special exceptions

(a) (No change.)

(b) An application for a special exception permit, together with an application for a zoning certificate, shall be filed with the Office of the Chief Engineer. The application shall be signed by the property owner and contain the following information as well as such additional information as may be prescribed by rules of the Office of the Chief Engineer.

1.-3. (No change.)

(c) (No change.)

(d) A special exception permit shall not be granted unless specific written findings of fact are made based directly upon the particular evidence presented which support conclusions that:

1.-5. (No change.)

6. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets.

7. (No change.)

(e)-(h) (No change.)

19:4-4.142 Variances

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

(c) An application for a variance, together with an application for a zoning certificate, shall be filed with the Office of the Chief Engineer. The application shall be signed by the property owner and contain the following information as well as such additional information as may be prescribed by rule of the Office of the Chief Engineer.

1.-4. (No change.)

(d) (No change.)

(e) A variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that:

1. As to bulk variances:

i.The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone, and is not created by an action or actions of the property owner or the applicant.

ii. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

iii. The strict application of the provisions of these regulations from which a variance is requested will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner represented in the application.

iv. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

v. The variance desired will not have an adverse environmental impact.

vi. Granting the variance desired will not substantially impair the intent and purpose of these regulations and will not result in substantial etriment to the public good.

2. As to use variances:

i. The strict application of the provisions of these regulations from which a variance is requested will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner represented in the application.

ii. *[The use variance requested shall be designed so as to be compatible with, and complimentary to, the surrounding area and the neighboring uses.]* ***The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.***

iii. Adequate infrastructure, including, but not limited to, storm and sanitary sewers, utilities, access roads, will be provided and shall be so designed to prevent and/or minimize negative impacts upon the existing infrastructure. In addition, the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner.

iv. Granting of the use variance will not substantially impair the intent and purpose of these regulations and will not result in substantial detriment to the public good.

v. The use variance desired at the specified location will contribute to and promote the *[welfare or convenience of the public.]* ***intent of the HMDC Master Plan.***

vi. The use variance requested shall not have an adverse environmental impact.

(f) In determining whether the evidence supports the conclusions required by (e) above, the Executive Director shall consider the extent to which the evidence demonstrates that:

1. As to bulk variances:

i. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or undue hardship upon the owner, lessee, occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced.

ii. The request for a variance is not based exclusively upon desire of the owner, lessee, occupant or applicant to make more money out of the property.

iii. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located.

iv. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion

in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

2. As to use variances:

i. Enforcement of the use provisions of these regulations would result in a practical difficulty or undue hardship upon the owner, lessee, occupant, as distinguished from a mere inconvenience.

ii. The request for a use variance is not based exclusively upon desire of the owner, lessee, occupant or applicant to make more money out of the property.

iii. The granting of the use variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located.

iv. The proposed use will not impair an adequate supply of light or air to adjacent property, decrease existing levels of service on those public rights of way which the project impacts, negatively impact on-site circulation, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

v. The applicant has demonstrated that the proposed use will *[result in a compelling public benefit.]* ***further the purposes of the Master Plan.***

vi. The applicant has demonstrated that the *[site]* ***use*** in question is *[particularly suited for the proposed use or the site is particularly unsuitable for any of the uses permitted in the subject zone.]* ***Compatible with and complimentary to the surrounding neighborhood.***

(g) Within eight weeks of the close of the public informational hearing, the Chief Engineer shall submit a recommended form of decision to the Executive Director regarding the submitted variance application. The Executive Director shall review the findings, conclusions, and recommendations of the Chief Engineer and shall state his acceptance, rejection or modification of the Chief Engineer's recommendation*[.]*. The Executive Director, in forwarding a copy of the decision to the applicant, shall advise the applicant of its right to appeal the decision in accordance with the provisions of N.J.A.C. 19:4-6.25.

Recodify existing (i) through (k) as (h) through (j) (No change in text.)

19:4-4.145 Accessory uses

(a) (No change.)

(b) Accessory structures and uses include, but are not limited to, the following:

1. (No change.)

2. Accessory uses permitted on open space.

i.-iv. (No change.)

v. Outdoor seating areas;

*[v.]***vi.*** Signs when permitted by N.J.A.C. 19:4-6.18; and

*[vi.]***vii.*** Transformers, underground vaults, and tanks.

(c) Bulk regulations are as follows:

1.-2. (No change.)

3. Outdoor seating areas shall maintain a front yard setback of 35 feet and side and rear yard setbacks of 10 feet. Outdoor seating areas shall not be located in required parking and/or loading areas.

19:4-4.146 Commercial park zone*[:]**;* purposes

The Commercial park zone is designed to accommodate, on large lots, commercial mixed use developments, combined in such a way that these developments are aesthetically pleasing, and inter-related in such a way that there is a mitigating effect upon peak hour traffic which would normally be generated from single commercial uses of equivalent size.

19:4-4.147 Commercial park zone*[:]**;* type of development

Developers of land located in the zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 4.139, or as a ***planned*** unit development in accordance with N.J.A.C. 19:4-4.144.

19:4-4.148 Commercial park zone*[:]**;* permitted uses

(a) The following are permitted uses in the commercial park zone:

1.-2. (No change.)

3. Restaurants, not including fast food, or drive-in facilities;

4. Child care centers;

5. Business services;

6. Personal services;

7. Retail services; and

8. Social services.

19:4-4.149 Commercial ark zone*[:]**;* special exceptions

(a) The following are special exceptions in the commercial park zone:

1.-3. (No change.)

4. Indoor Recreation; and

5. (No change.)

19:4-4.150 Commercial park zone*[:]**;* use limitations

(a) The following are use limitations in the commercial park zone:

1.-3. (No change.)

4. Outdoor seating areas, accessory to a permitted or special exception use, not exceeding 15 percent of the principal use, are permitted. In the case of a restaurant, the outdoor seating area shall not be greater than 15 percent of the interior seating area.

19:4-4.151 Commercial park zone*[:]**;* lot area requirements

The minimum lot area in the commercial park zone *[one]* is three acres.

19:4-4.152 Commercial park zone*[:]**;* bulk regulations

(a) The following are bulk regulations in the commercial park zone:

1.-6. (No change.)

19:4-4.153 Commercial park zone*[:]**;* buffer requirements

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

19:4-4.154 Commercial park zone*[:]**;* environmental performance standards

(a) All uses in the commercial park zone shall comply with the environmental performance categories of N.J.A.C. 19:4-6 as follows:

1.-3. (No change.)

19:4-4.155 Commercial park zone*[:]**;* design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

19:4-4.156 Commercial park zone*[:]**;* waterfront development

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

SUBCHAPTER 5. SPECIALLY PLANNED AREA REGULATIONS

19:4-5.3 The island residential specially planned areas: IR-1, IR-2 and IR-3

(a) These specially planned areas are designed to accommodate relatively dense residential uses that will be clustered on one or more man-made islands or peninsulas. The design shall incorporate man-made lagoons of the Hackensack River, and/or water features, and shall, be surrounded by substantial areas of marshland open space. The regulations are designed to require unified planning and development of large-scale projects that will occupy a minimum amount of land area and will disturb to the least extent possible existing marshland areas.

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

(d) No general plan for any IR shall be approved under N.J.A.C. 19:4-5.8, no development plan shall be approved under N.J.A.C. 19:4-5.10, unless it contains the following types and amounts of development:

1. Residential development:

i. (No change.)

ii. Each IR shall have no more than 25 dwelling units per acre or a minimum of 2,000 dwelling units for the total area of the IR, minus the acreage used for school sites, commercial areas (which shall be deemed only for the purpose of determining the total number of dwelling units required and permitted in each IR, to be 15 acres for each community shopping center and five acres for each

neighborhood shopping center), open areas, state highways or turnpikes, railroad right-of-way and land used for non-conforming uses or structures.

iii. (No change in text.)

iv. (No change in text.)

v. Not more than 40 percent of the total dwelling units in any IR shall be in structures exceeding 15 stories in height.

vi. (No change in text.)

vii. If the development of any IR is staged, each section thereof must substantially comply with the requirements of this subsection.

2. Commercial development:

i. (No change.)

ii. Bulk and use standards include:

(1) (No change.)

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

iii. (No change.)

3. Common open space:

i. (No change.)

ii. Intra-neighborhood common open space shall be located in one or more clusters within each neighborhood or intermingled among the users of the IR. It shall contain recreation areas and facilities and playgrounds for children sufficient to meet the recreation needs of the residents of the neighborhood. Recreation facilities sufficient to serve the recreational needs of the residents of the entire IR may be interspersed among the neighborhoods and located in the intra-neighborhood open spaces. A fee may be charged for recreational uses which require a substantial expenditure for maintenance. Intra-neighborhood common open space not allocated for recreational purposes should, wherever possible, incorporate into its design configuration and maintenance, the ecological characteristics of the wetlands. Marinas are a permitted use in the IR. All intra-neighborhood common open space not used for recreational and waterfront purposes shall contain landscaped areas and may contain watercourses or other amenities. Every effort shall be made to preserve existing tidal watercourses and their natural meanders. Landscaped areas shall contain lawns, trees, and shrubbery, and pedestrian paths, ways and malls, and may contain flower and rock gardens, statues and sculpture, bicycle paths, and whatever other matter enhances the quality of the landscaped area. Landscaped areas contiguous to tidal watercourses shall promote wherever possible natural wetlands vegetation. Structures for community meetings and activities and for public cultural activities may be built upon intra-neighborhood common open space.

iii.-vi. (No change.)

4.-5. (No change.)

6. Transportation systems:

i. (No change.)

ii. The applicant shall arrange for the appropriate public or private body to provide or shall himself provide a mass-transit system sufficient to meet the transportation needs of the residents of his IR, as to both internal movement and, where possible, access to widely-used areas in the Meadowlands District and in the Northeast New Jersey-New York metropolitan region. The mass-transit system shall be coordinated with the mass-transit systems of abutting specially planned areas, with any mass-transit system for all or part of the Meadowlands District in general, and with the commuter transfer systems established in the District.

iii. (No change.)

7.-14. (No change.)

(e) (No change.)

(f) The environmental design standards include:

1. Structures and open spaces shall be laid out in a manner that best serves the residents and users of each IR. Site layout shall maximize aesthetic values and shall be in accordance with imaginative and farsighted concepts of site design. The layout shall comply with the following:

i. Each IR shall consist of one or more man-made islands or peninsulas located in a man-made lagoon of the Hackensack River.

ii.-xi. (No change.)

2.-3. (No change.)

(g) All uses in each IR shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6

1.-2. (No change.)

19:4-5.6 The special use specially planned areas: SU-1 , SU-2 and SU-3

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

SUBCHAPTER 6. GENERAL PROVISIONS

*1*9:4-6.1 Performance standards; noise

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

(d) Noises shall not exceed the maximum sound levels specified in Table *[1]* *I*, except as designated below. Where more than one specified sound level applies, the most restrictive shall govern. Measurements may be made at points of maximum noise intensity.

TABLE I
NOISE LEVEL RESTRICTIONS

Performance Standard Category	Maximum Permitted Sound Level	Where Measured
A	65 dBA	On or beyond subject property boundary line
B	70 DBA	On or beyond subject property boundary line
C	76 DBA	On or beyond the zone boundaries

(e)-(i) (No change.)

19:4-6.3 Performance standards; vibrations

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

(c) In any residential zone, residential specially planned area, or residential planned unit development, the peak particle velocity shall not exceed 0.02 inches per second during the hours of 7:00 A.M. to 9:00 P.M. and shall not exceed 0.01 inches per second during the hours of 9:00 P.M. to 7:00 A.M.

TABLE II
VIBRATION LEVEL RESTRICTIONS

Performance Standard Category	Maximum Peak Particle Velocity, inches per second	Where Measured
A	0.02	On or beyond subject property boundary line
B	0.05	On or beyond subject property boundary line
C	0.10	On or beyond the zone boundaries

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

19:4-6.7 Performance standards; hazardous materials, liquids and chemicals

(a) (No change.)

(b) Category A standards:

1. The storage, utilization or manufacture of materials that pose a detonation, deflagration, physical or health hazard are not permitted as a principal use.

2. The storage and/or utilization (but not manufacture) of materials and products classified as health hazards by the New Jersey Uniform Construction Code shall only be permitted as an accessory use to the principal use provided the area devoted to such accessory use does not occupy more than 10 percent of the building's floor area.

3. The storage and/or utilization (but not manufacture) of materials and products classified as deflagration or physical hazards by the New Jersey Uniform Construction Code shall be permitted as an accessory use to the principal use only as a special exception.

(c) Category B standards are as follows:

1. The storage and/or utilization (but not manufacture) of materials and products that pose a detonation hazard may be allowed as accessory to a principal use in a quantity of five pounds or less. The storage, utilization and manufacture of materials and products that pose a detonation hazard in excess of five pounds is not permitted.

2. The storage, utilization or manufacture of hazardous materials, liquids and chemicals that pose a deflagration, physical or health hazard shall be permitted as an accessory to the principal use provided the area devoted to such accessory use does not occupy more than 10 percent of the building's floor area.

3. The storage, utilization or manufacture of hazardous materials, liquids and chemicals that pose a deflagration, physical or health hazard may be allowed as a principal use only as a special exception.

(d) Category C standards are as follows:

1. The storage and/or utilization (but not manufacture) of materials and products that pose a detonation hazard may be allowed as accessory to a principal use in a quantity of five pounds or less. The storage, utilization and manufacture of materials and products that pose a detonation hazard in excess of five pounds is not permitted.

2. The storage, utilization or manufacture of hazardous materials, liquids and chemicals that pose a deflagration, physical or health hazard shall be permitted as an accessory to the principal use provided the area devoted to such accessory use does not occupy more than 10 percent of the lot area. Said materials or products may be stored outdoors provided such storage is set back at least 50 feet from all lot lines and is properly screened.

3. The storage, utilization or manufacture of hazardous materials, liquids and chemicals that pose a deflagration, physical or health hazard may be allowed as a principal use only as a special exception. Said materials or products may be stored outdoors provided such storage is set back at least 50 feet from a lot line and is properly screened.

(e) Whenever any facility or part thereof, including storage dike, which stores, utilizes or manufactures hazardous materials, liquids and chemicals is within 300 feet from another zone, the more restrictive of the environmental performance standards for the two districts shall apply.

19:4-6.8 Definitions regarding hazardous materials

(a) The words and terms which follow, regarding hazardous materials, shall have the following meanings:

"Deflagration" means an exothermic reaction, such as the extremely rapid oxidation of a flammable dust or vapor in air, in which the reaction progresses through the unburned material at a rate less than the velocity of sound. A deflagration can have an explosive effect.

"Detonation" means an exothermic reaction characterized by the presence of a shock wave in the material which establishes and maintains the reaction. The reaction zone progresses through the material at a rate greater than the velocity of sound. The principal heating mechanism is one of shock compression. Detonations have an explosive effect.

"Health hazard" means a classification of a chemical for which there is statistically significant evidence that acute or chronic health effects are capable of occurring in exposed persons. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, hephrotoxins, neurotoxins, agents which are capable of acting on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes.

"Physical hazards" means a chemical for which there is evidence that it is a combustible liquid, compressed gas, cryogenic, explosive, flammable gas, flammable liquid, flammable solid, organic peroxide, oxidizer, pyrophoric or unstable (reactive) or water-reactive material.

(b) All definitions other than those in (a) above regarding hazardous materials, liquids, and chemicals shall be in accordance with nationally recognized codes and standards.

19:4-6.18 Design of structures; provision and design of other improvements, including parking and loading facilities, landscape improvements, lighting, fencing, signs, satellite antennas, public parks and recycling areas

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

(e) Parking design standards include:

1.-8. (No change.)

9. All vehicular areas, except for one and two- family detached residences shall be curbed with full depth concrete or granite block and paved or otherwise improved with an all-weather, dustless material.

10. All vehicular areas shall be drained so as to direct surface water runoff to a stormwater *[rainage]* ***drainage*** system for eventual subsurface or stream disposal. All drainage and grading plans shall be designed for a *[10]* ***25*** year storm event using the rational method or approved alternative. Detention or retention shall be provided when required. All other drainage related details shall be in line with accepted engineering practices.

11. (No change.)

(f) (No change.)

(g) Off-street parking spaces accessory to the uses hereinafter designated shall be provided as follows:

1.-10. (No change.)

11. Establishments handling the sale and consumption of the premises of food, beverages, and refreshments: at least .33, but not more than 0.75 parking space for each person based upon the maximum number of persons that can be accommodated at the same time in accordance with the designed capacity, provided that drive-in restaurants shall have a minimum of 10 parkings spaces*[;]**. **Outdoor seating areas, in excess of 20 deats, shall provide 0.33 parking space per person, based on the maximum capacity of the seating layout.***

12.-23. (No change.)

24. For a marina, the following parking requirements shall apply: one space for each two docking berths, plus one space for each 100 feet of usable water frontage, plus one trailer parking space *[per]* ***for every two*** berth***s***.

25. Self storage facilities: one parking space for each 100 storage units, or one space per 10,000 square feet, whichever is less, with a minimum of six parking spaces provided, plus such spaces as required for accessory uses. Adequate drive aisle widths shall be provided to allow for safe vehicle passage adjacent to loading doors.

26. Bus terminals: one parking space for every two bus parking spaces.

Recodify existing 24 and 25 as 27 and 28 (No change in text.)

29. The minimum required number of parking spaces may be reduced in accordance with an employee trip reduction program, approved by the New Jersey Department of Transportation;

30. Satellite parking facilities: notwithstanding the provisions of (e) above, legal occupants on one property (Property A) may utilize excess parking spaces on adjacent properties (Property B) for employee parking provided the following conditions are satisfied:

i. All *[tenants]* ***occupants*** on both properties have legal occupancy certifications from the HMDC ***or have filed a complete application with the HMDC for occupancy certification***, and all application information relative to parking and employees on site is valid;

ii. All parking areas on both properties are either designed and laid out in conformance with (e) above or have a legal pre-existing non-conforming status;

iii. A copy of *[a]* ***that portion of the*** lease between the parties ***dealing with occupancy square footage and parking arrangements*** is submitted to the HMDC;

iv. The determination of the number of "excess" spaces that are available, and can be utilized, on Property B is to be made by the HMDC after a careful review of the number of spaces that are actually required by all *[tenants]* ***legal occupants*** on both properties. This determination is to be made based upon occupancy certification applications, site inspections, and other relevant information;

v. The *[tenant]* ***legal occupant*** is to provide a backup plan to be utilized in case these "excess" parking spaces become needed by a legal *[tenant]* ***occupant*** on Property B. A request for a satellite parking facility must be accompanied by the applicant's submission of a Transportation Demand Management Plan (TDM) indicating other modes of transportation that will be implemented and/or the access by the applicant to other nearby property which can be utilized for this parking; and

vi. This satellite parking facility cannot be transferred from *[tenant]* ***one legal occupant*** to another without the written approval of the HMDC;

31. (No change in text.)

(h) Off street loading standards include the following:

1.-2. (No change.)

3. Each required off-street loading space or berth shall be *[designated]* ***designed*** with appropriate means of vehicular access to a street or highway in a manner which will least interfere with traffic movement.

4.-5. (No change.)

6. In the zones, all required loading spaces or berths shall be located on the same lot as the use served. All loading facilities, including accessory *[truck]* ***trailer*** parking areas, shall be located in the rear yard. Where this is not possible due to technical reasons related to site layout, locating loading facilities within the side yard will be allowed if otherwise permitted by these regulations. No loading facilities will be permitted within the front yard. There shall be no loading in a yard abutting a public street. Any loading space or berth located in a rear yard may be open to the sky, unless otherwise provided. No permitted or required loading space or berth shall be located within 40 feet of the nearest point of intersection of any two streets or highways. All loading facilities shall be located so as to minimize dangers of access thereto and in no event shall they be located near open ditches.

7. (No change.)

8. The design of on-site loading facilities shall comply with truck maneuvering templates, current industry practices or with such other design standards as may be established from time to time by either the Office of the Chief Engineer or by the Development Board. On-site loading facilities may be open to the sky or enclosed within a building.

9. (No change.)

(i) On-site loading berth requirements include:

1. (No change.)

2. On the same lot with every building, or part thereof, erected hereafter in any zone or in close proximity to any use erected in a specially planned area for which loading spaces are required, there shall be provided adequate space for motor vehicles to load and unload in order to avoid interference with the public streets. Such space shall include the following minimum loading spaces:

i.-v. (No change.)

3. Uses for which on-site facilities are required by this Section but which are located in buildings that have a floor area that is less than the required minimum above which off-street loading facilities are required shall be provided with adequate receiving facilities, accessible by motor vehicle, service drive, or open space on the same lot.

(j) No sign, unless exempt under (j)3 below, shall hereafter be constructed, erected, moved, remodeled, or expanded until a zoning certificate for such sign, indicating compliance with these regulations, has been obtained, or unless it is part of an approved implementation plan. No zoning certificate for any sign shall be issued unless the sign complies with the following:

1.-2. (No change.)

3. Exemptions:

i. The following signs shall be exempt from the requirements of this subsection:

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

(5) Signs not exceeding five square feet in area displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, rest rooms, freight entrances*,* recycling areas, and the like.

ii. The following signs are exempt from the zoning certificate requirement of this subsection, but shall comply with all other requirements of this subsection:

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

(4) One temporary banner or sale sign per lot, for the purposes of warehouse sales and grand opening sales. The maximum size of any one banner shall be in accordance with maximum size of any single sign from Table 1 of this section. Sales signs may be erected up to seven days before the scheduled event and must be removed immediately following the event. Grand opening signs may be erected up to seven days before the event and remain a total of 14 days;

(5) Real estate signs, one per lot, not exceeding five square feet per side or a total of 10 square feet in *[low]* ***the Low*** density residential zone, and 20 square feet total in all other zones.

4. General standards:

i.-ii. (No change.)

iii. Signs shall be shaded wherever it is deemed necessary by the HMDC to avoid casting bright light upon property located in any residence or residential district or upon any public right-of-way or park. Any illuminated sign located on a lot adjacent to or across a right-of-way from any residence or residential zone or specially planned area, which sign is visible from such residence or residential zone or specially planned area, shall not be illuminated between the hours of 11:00 P.M. and 7:00 A.M. Such signs shall not be permitted to utilize white illuminated backgrounds.

iv.-x.(No change.)

5. Specially planned areas, multi-tenanted structures, or multi-structure developments shall be governed by the following sign regulations:

i .(No change.)

ii. The sign plan shall be based on an integrated design theme to include all of the elements in (j)5i(1) through (8) above. All of the above elements shall be designed to be harmonious and consistent with each other, the architecture and materials of principal structures, and the landscape plan. Where there is existing signage on the property, the sign plan shall include details as described in (j)5i above, for both existing and proposed signs, to be installed in accordance with the approved sign plan as changes/additions of each sign occur.

iii. Total sign area permitted is five percent of the building's front facade. The Office of the Chief Engineer may permit up to 10 percent of the building(s) front facade, if in its opinion, such additional area shall assist in developing a harmonious and integrated sign plan in accordance with the goals and objectives of this section. For the purposes of these calculations, no building should have more than one front facade.

iv.-v. (No change.)

vi. Maximum sign area of any single sign is 300 square feet.

6.-7 (No change.)

(k) Landscape improvements:

1.-2. (No change.)

3. Screening:

i.-ii.(No change.)

iii. All off-street loading and accessory trailer parking areas shall be located or effectively screened with a decorative fence in accordance with (m) below supplemented by evergreen plant material capable of maturing to a height and width sufficient to screen such areas, and vehicles within the areas, from public rights*-*of*-*ways and any point within a specially planned area, planned unit development or residential use or zone.

iv.-v. (No change.)

4.-5. (No change.)

6. Shade trees:

i. (No change.)

ii. Adjacent paved areas on separate properties, including parking, loading and driveway areas, shall be delineated by a minimum 10 foot wide shade tree lined landscape strip. A five foot landscape strip is to be provided by each property owner with shade trees to be planted on 25 to 40 foot centers within the strip. Where an adjacent developable property is vacant, or adjacent properties are being developed simultaneously, it is the intent of this provision that each property owner provide for one half of the required trees.

7.-9. (No change.)

(l) Lighting:

1. Site illumination levels:

i. (No change.)

Recodify existing (1) to (5) as ii. to vi. (No change in text.)

vii. Light sources shall comply with the following:

(1) A minimum of one lighting fixture, plus one for every 30 stalls, shall be installed throughout the parking lot.

(2) All light sources shall be arranged so as to reflect illumination levels greater than one footcandle away from adjacent properties.

(3) All light sources shall be shielded or positioned so as to prevent glare from being a hazard or nuisance, or negatively impacting site users, adjacent properties or the traveling public.

(4) Poles shall be rustproof metal, cast iron, fiberglass, finished wood or similar decorative material.

(5) Poles in pedestrian walkway areas shall not be greater than 15 feet in height and shall utilize underground wiring.

(6) Poles in all other areas shall not exceed 25 feet in height, and shall utilize underground wiring. Poles of a greater height, but not exceeding 40 feet, and utilizing overhead wires, may be permitted under specific request of, and authorization by, the Office of the Chief Engineer due to specific site or use related, technical reasons. These reasons may include a need for excessive width or length of paved areas for rail terminals, or such other uses where the provision of standard spaced poles would create an undue safety hazard to site users.

(7) All site lighting poles shall utilize underground wiring unless the Office of the Chief Engineer determines that a pole height greater than 25 feet is warranted due to technical reasons.

(8) Light sources on structures shall not exceed 25 feet, or the height of the structure, whichever is less.

2. Illumination levels for covered parking facilities:

i. For purposes of these regulations, covered parking facilities consist of general parking and pedestrian areas; ramps and corners; entrance areas; and stairways.

ii. Illumination levels in these areas shall maintain an average-to-minimum uniformity ratio not exceeding 4:1.

iii. These areas must maintain the required illumination levels both day and night.

iv. An evenly distributed, average illumination level between 3.5 and 4.5 footcandles shall be maintained throughout general parking and pedestrian areas.

v. An evenly distributed, average illumination level between 3.5 and 4.5 footcandles shall be maintained throughout ramps and corners.

vi. An evenly distributed, average illumination level between 3.5 and 4.5 footcandles shall be maintained throughout entrance areas, extending 50 feet beyond the covered edge.

vii. An evenly distributed, average illumination level between 3.5 and 4.5 footcandles shall be maintained throughout stairways.

viii. Lighting requirements for the top parking level, if not covered, shall be in conformance with the requirements of (l)1 above.

(m) Fences or walls in excess of 18 inches in height shall be permitted in accordance with the following standards:

1. Fences or walls are not permitted in required front yards except for the following:

i. Fences or walls in the low density residential zone with a maximum height of four feet are permitted provided that they are not chain link fences.

ii. Fences or walls, not exceeding four feet in height, on undeveloped properties that are subject to illegal dumping of debris and other materials. The determination that illegal dumping occurs must be confirmed by an inspection by the Office of the Chief Engineer prior to the erection of the fence. Before a Certificate of Completion can be issued, the property must be cleared of debris. The fence shall be removed once the site is developed.

iii. Fences or walls are permitted to be erected at the front building line of a principal structure extending to the side or rear lot lines provided that they do not exceed a maximum height of six feet in the low density residential zone and eight feet in all other zones.

2.-5. (No change.)

(n) Satellite antennas shall be permitted in accordance with the following standards:

1.-6. (No change.)

7. The diameter of the satellite antenna shall be as follows:

i. A maximum of six feet in the Low Density Residential Zone;

ii. A maximum of 12 feet in all the other zones except where a larger diameter sender/receiver antenna is required as accessory to a communications common carrier;

8. (No change.)

(o) (No change.)

(p) Public parks are exempt from the design standards in this section; however, the Commission strongly recommends that they meet the intent and purpose of the HMDC Park Design Guidelines, and to every extent possible, comply with the design criteria contained in those guidelines.

(q) Recycling areas:

1. All multifamily housing developments, any construction of 50 or more units of single family residential housing, and any commercial or industrial development of 1,000 square feet or more, shall include an on site indoor or outdoor recycling area for the collection and storage, but not processing, of site generated Class A recyclable materials.

2. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number, and which are consistent with anticipated usage and current methods of collection. Records indicating the amounts and types of material collected, and proof of the recycling of such material, shall be submitted by commercial and industrial operations in order to determine the maximum size of the recycling area. No recycling areas for commercial or industrial operations shall be greater than 600 square feet. No recyclable food products shall be stored in this area for more than one week, no other material may be stored for more than three months.

3. The recycling area shall be well lit, and shall be safely and easily accessible by recycling personnel and vehicles.

4. The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. The covering of a recycling area with building materials, shall render the area a structure to be calculated within lot area calculations.

5. Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area.

6. No recycling areas shall be located in front yards, except where existing front yard loading is pre-existing non-conforming and other yards are not adequate. Recycling areas are encouraged to be located adjacent to truck loading areas.

7. All recycling areas shall be screened with fencing and/or landscaping material sufficient to screen the area from adjacent properties and public rights of way in accordance with (m) above. No containers or recyclable material shall be stored outside of the defined storage area at any time.

8. The ground surface of all recycling areas shall be a concrete pad. A minimum five foot buffer shall be provided between the edge of the concrete pad and the adjacent property line. The recycling area shall not be higher than the fence screening it.

9. The HMDC is to forward copies of zoning certificate approvals granted to recycling areas to the appropriate municipal recycling coordinator.

...

19:4-6.22 Public hearing

(a) (No change.)

(b) At least 10 days in advance of public hearing, the applicant, upon instruction of the Development Board or hearing officer, whichever is holding the hearing, shall publish notice of hearing in a newspaper of general circulation and shall give notice personally, or by certified mail, return receipt requested, to the following:

1. For variances, subdivisions or special exception applications, owners of property and appropriate officials of constituent municipalities within 200 feet of the subject property as shown on the most recent tax list of the municipality in which the subject property is situated and any adjacent municipalities;

2.-4. (No change.)

(c)-(j) (No change.)

19:4-6.23 Nonconformities
(a)-(d) (No change.)
(e) Limitations include the following:
1.-2. (No change.)
Recodify existing (g) and (h) as (f) and (g) (No change in text.)

19:4-6.24 Fees, penalties and enforcement
(a) Any application for a zoning certificate, occupancy certificate, variance, special exception permit, amendment, subdivision or accompanying a general, development, or implementation plan, or the filing of a notice of appeal shall be accompanied by such fee as shall be specified from time to time by resolution of the Commission.
(b)-(g) (No change.)

CHAPTER 5
SUBDIVISION REGULATIONS

SUBCHAPTER 3. DEFINITIONS

19:5-3.1 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.
...
"Design standards or design requirements" means all requirements and regulations relating to design and layout of subdivisions contained in N.J.A.C. 19:5-7, Design Standards.
"Fill" means any material placed by controlled methods, which raises the elevation of the land surface from its natural state or condition. Such materials include, but are not limited to, earth, sand, gravel and rock.
"Final plat" means the final map of all or a portion of a subdivision which is presented to the Commission for final approval and meeting the requirements of N.J.A.C. 19:5-6, Contents of Plats.
...
"Improvements" means all facilities constructed or erected by a subdivider within a subdivision to permit or facilitate the use of lots or blocks for a principal residential, business or manufacturing purpose. Improvements shall include all facilities listed in N.J.A.C. 19:5-8, Installation of Required Improvements.
...
"Lot" means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit.
...
"Preliminary plat" means the preliminary map indicating the proposed layout of the subdivision which is submitted to the Commission for tentative approval and meeting the requirements of N.J.A.C. 19:5-6, Contents of Plats.
...
"Sanitary landfill" means an *[engineered method of controlled solid waste disposal which raises the land surface from its natural state or condition. Solid waste materials include, but are not limited to, garbage, rubbish, construction debris, demolition rubble and any form of industrial waste.]* ***an engineered area or facility designed for the disposal of solid waste on land, in a manner that protects the environment, by spreading the waste in layers, compacting it to the smallest practical volume and covering it with soil at the end of each working day.***
...
"Sketch plat" means the sketch map of a subdivision of sufficient accuracy to be used for the purpose of discussion and classification and meeting the requirements of N.J.A.C. 19:5-6, Contents of Plats.
...

SUBCHAPTER 4. ADMINISTERING AGENCIES

19:5-4.2 Duties of Office of the Chief Engineer
(a) The Office of the Chief Engineer shall administer the provisions of this chapter in the manner set forth herein and in furtherance of such authority shall:
1.-2. (No change.)
3. Review sketch plats, all preliminary plats to determine whether such plats comply with this Chapter, all final plats to determine whether they comply with the preliminary plat and this Chapter. In conjunction with its review of preliminary plats, the Office of the Chief Engineer shall hold a hearing in those instances in which a hearing is not required before the appropriate authorities of the municipality in which the subdivision is located, or in such other instances as the Chief Engineer shall deem necessary. Notice and procedures of such hearing shall be governed by N.J.A.C. 19:4-6.22; provided, however, that copies of the maps and other documents to be considered at the hearing and the minutes of the hearing shall be filed with the Office of the Chief Engineer;
4.-9. (No change.)

19:5-4.3 Appeals to Commission
(a) Whenever the Office of the Chief Engineer, pursuant to the authority set forth in this Chapter, disapproves, in whole or in part, an application, the applicant may appeal such action in accordance with N.J.A.C. 19:4-6.25.

SUBCHAPTER 5. PROCEDURE FOR APPROVAL OF SUBDIVISION PLATS

19:5-5.1 Application for subdivision approval
The owner of the land to be subdivided shall file with the Office of the Chief Engineer ten copies of the proposed sketch plat filed with the municipal authority and an application that states the name and address of the person making the application, identifies the location of the land to be subdivided, and describes the proposed subdivision in general terms, including the approximate number of proposed lots and typical lot widths and depths.

19:5-5.3 Classification of minor subdivision
(a)-(d) (No change.)
(e) No further approval of the Office of the Chief Engineer shall be required respecting the subdivision, provided that a deed description or plat map drawn in compliance with P.L. 1953, c.358, as amended or supplemented hereafter, shall be filed or recorded by the subdivider in the proper county recorder's office within 90 days from the date of return of the approved sketch plat.
(f) If the plat is classified as a major subdivision, a notation to that effect shall be made by the Secretary on the plat, which shall be returned to the subdivider for compliance with the procedures set forth in N.J.A.C. 19:5-5.4 through 5.10.
...

19:5-5.5 (Reserved)

19:5-5.6 Action by Chief Engineer on preliminary plat
(a) The Office of the Chief Engineer shall review the preliminary plat and the reports and recommendations of the agencies, departments and divisions of the district to whom the preliminary plat has been submitted for review. It shall also conduct a public hearing where required by and in accordance with the procedures set forth in N.J.A.C. 19:4-6.22 at which time interested persons may attend and offer evidence in support of or against the preliminary plat.
(b)-(c) (No change.)
(d) If the Office of the Chief Engineer determines that the preliminary plat does not satisfy the conditions of (a) and (b) above, it may suggest modifications so as to satisfy such conditions, and, in such event:
1. (No change.)
2. The subdivider may reject the suggested modifications, or, within the time allowed for action by the Office of the Chief Engineer, may refrain from taking any action thereon. In either event, the preliminary plat shall be deemed to have been disapproved, and the Office of the Chief Engineer shall thereupon furnish the subdivider with a written statement setting forth the reasons for disapproval of the preliminary plat.
(e)-(f) (No change.)
(g) If the preliminary plat is approved by the Office of the Chief Engineer, the Secretary shall affix a certification to this effect on the preliminary plat and transmit copies thereof to the subdivider and the appropriate municipal approval authority. If the preliminary

plat is approved with modifications, the subdivider may resubmit a preliminary plat incorporating the modifications to the Office of the Chief Engineer within 90 days of its decision to approve the preliminary plat with modifications. If the preliminary plat is disapproved, the Office of the Chief Engineer shall issue a written statement setting forth its reasons for disapproval. If the Office of the Chief Engineer fails to act upon the preliminary plat within a 45 day period from the date of receipt, then such preliminary plat shall be deemed to have been approved unless the subdivider shall have consented to extend or waive such time limitation.

SUBCHAPTER 6. CONTENTS OF PLATS

19:5-6.1 Form of sketch plat

(a) The sketch plat shall be prepared by a land surveyor licensed to practice in the State of New Jersey.

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

19:5-6.2 Contents of sketch plat

(a) The sketch plat shall include or be accompanied by the following information:

1. (No change.)

2. A certificate signed and acknowledged by all parties having record title or interest in the land subdivided, and consenting to the preparation and recording of the said subdivision map. If the property is subject to the State's riparian interest as shown on a map issued by the New Jersey Department of Environmental Protection and Energy pursuant to N.J.S.A. 13:17-1 et seq. then a copy of a riparian instrument issued pursuant to law shall also be submitted;

3.-5. (No change.)

6. A topographic survey including but not limited to the following data:

i.-vi. (No change.)

vii. Boundary lines of any areas containing fill materials with data indicating type and vertical extent of such materials;

viii. (No change.)

7.-8. (No change.)

19:5-6.4 Form of preliminary plat

The preliminary plat shall be prepared, at a scale of one inch equal to 100 feet, by a land surveyor licensed to practice in New Jersey.

19:5-6.5 Contents of preliminary plat

(a) The following data and information shall be shown on or accompany the preliminary plat:

1.-8. (No change.)

9. The location of existing and proposed property lines, building setback lines, existing buildings and structures with an indication of whether they will be retained and the location and extent of wooded areas and wetland areas;

10.-14. (No change.)

15. All existing water courses shall be shown and accompanied by the following information:

i. When a water course is proposed for alteration, improvement or relocation or when a drainage structure is proposed on a stream with a drainage area of ½ square mile or greater, evidence of submission of such improvement to the New Jersey Department of Environmental Protection and Energy shall accompany the subdivision;

ii. Cross sections of water courses at an appropriate scale showing extent of flood way (if defined), top of bank, normal water level and bottom elevations at the following locations:

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

iii.-iv. (No change.)

16.-19. (No change.)

20. Storm drainage systems including but not limited to the following:

i.-ii. (No change.)

iii. The location and extent of any proposed retention or detention basins;

iv. (No change.)

21. Existing and proposed sanitary sewerage facilities serving the subdivision, including, but not limited to, the following:

i.-ii. (No change.)

iii. All pertinent design data utilized in arriving at the configuration of the proposed facilities including any specialized construction which may be required in areas containing fill materials;

iv. Proof of submittal of such plan to the appropriate state and local agencies.

22. Existing and proposed water distribution systems serving the subdivision, including, but not limited to, the following:

i.-iv. (No change.)

v. All pertinent design data utilized in arriving at the configuration of the proposed facilities including demand assumptions and any specialized construction which may be necessary in areas containing fill materials;

vi. (No change.)

23. (No change.)

24. Delineation of all areas containing fill and detailed information concerning the material encountered. Such information shall include, but not be limited to, the following:

i. Depth and type of material involved;

ii.-vi. (No change.)

vii. In all such areas where construction of roadways, paved areas, utilities and other facilities is proposed, additional data including, but not limited to, the following shall be submitted;

(1) Design precautions to be taken to assure that residual post construction settlements will not adversely affect the appearance or structural integrity of any proposed facilities;

(2) Method to be employed in eliminating the build-up of combustible gases where there exists such a potential.

25.-26. (No change.)

19:5-6.7 Contents of final plat

(a) In addition to the information contained on the preliminary plat the final plat shall show or be accompanied by the following:

1.-3. (No change.)

4. The following certificates, which may be combined where appropriate:

i. A certificate signed and acknowledged by all parties having any record title or interest in the land subdivided, dedicating all parcels of land shown on the final plat and intended for the exclusive use of the lot owners of the subdivision, their licensees, visitors and tenants. The parcels required to be dedicated shall be dedicated to the municipality in which the subdivision is located;

ii. A certificate signed by the land surveyor responsible for the survey and final map certifying the accuracy of the details. Said land surveyor shall be licensed to practice in the State of New Jersey and his or her signature shall be accompanied by his or her seal.

19:5-6.8 Other data to be submitted with final plat

(a) The following additional data shall be submitted with the final plat:

1. (No change.)

2. Sheets and drawings showing the following:

i.-ii. (No change.)

iii. Ties to existing monuments, proposed monuments, adjacent subdivisions and street corners.

3. (No change.)

SUBCHAPTER 7. DESIGN STANDARDS

19:5-7.2 Master Plan or applicable redevelopment plans

No subdivision shall conflict with the Master Plan or any applicable redevelopment plan of the District.

19:5-7.3 Land subject to flooding

(a) No land subject to flooding or which lacks adequate drainage shall be subdivided for residential use or any other use which would be incompatible with such flooding or drainage characteristics.

(b) (No change.)

19:5-7.4 Land containing sanitary landfill

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

(c) It shall be further demonstrated that the effect of constituent materials and/or state of decomposition shall be such that corrosion producing properties, combustible gases and fire hazards have been adequately provided for.

19:5-7.5 Streets layout and design

(a)-(j) (No change.)

(k) Street right-of-way widths shall be as shown on the Master Plan and any applicable redevelopment plan of the District, and where not shown thereon, shall not be less than as follows:

Street Type	Right-of-Way in Feet
Arterial	100 feet, except that 150 feet of right-of-way shall be required within 350 feet from the intersection of the center lines of an arterial street with any other arterial or collector street.
Collector	80 feet.
Local, for residential areas	50 feet.
Local, for business, commercial and industrial areas	60 feet.
Marginal Access Streets (with two way traffic)	40 feet.

(l)-(p) (No change.)

(q) Street pavement at intersections shall be rounded by the following minimum radii:

i. Type of Street	Intersecting With	Minimum Curb Radii
Local Residential	Local Residential	20 feet
Local Residential	Collector	30 feet
Local Residential	Arterial	30 feet
Business, Commercial or Industrial Collector or Arterial	Business, Commercial or Industrial Collector or Arterial	50 feet

ii. Right-of-way lines may be required to be rounded by an arc having at least the same radius as the arc of the curb when normal right-of-way requirements are not sufficient to allow the construction of streets having their radii set out along.

(r) (No change.)

(s) The applicant shall conform with local standards as they pertain to the pavement's thickness and widths.

19:5-7.6 (Reserved)

19:5-7.7 Blocks

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

(c) All blocks shall be so designed as to provide two tiers of lots, unless a different arrangement is required in order to comply with N.J.A.C. 19:5-7.5(d) (Streets layout and design), or is permitted by N.J.A.C. 19:5-7.8(f) (Lots).

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

19:5-7.10 Drainage

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

(d) All pipeline and open channel systems carry the maximum discharge commensurate with design.

(e) Pipelines shall be designed using the following basic design controls:

1.-2. (No change.)

3. Friction factor "n" shall be 0.015 (or equivalent) for circular cross section, nonporous concrete pipe. Other cross sections or pipe materials shall have commensurate friction factors.

4.-7. (No change.)

8. Catch basins and manholes shall be constructed in *[accord]* ***accordance*** with New Jersey State Standard Specifications for Road and Bridge Construction, *[1961]* ***1989*** Edition. Casting curb head height shall be two inches greater than curb height specified. Castings shall conform to New Jersey State Standards *[and rip rap]*.

9. Ends of pipe starting or terminating in an open ditch shall have suitable headwalls and rip-rap.

(f) Permissible design velocities (feet per second) in open channels shall be as follows:

Excavation Material	Velocity
Fine sand to firm loam	2.0 to 3.0
Stiff clay to hardpan	3.0 to 5.0
Concrete lined ditch	10

(g) Velocity shall be controlled by use of check drops and ditch banks shall be protected by use of vegetation and/or rip rap as design velocity dictates. Discharge flows shall be based upon the following Manning "n" values:

.015—	Best concrete lined ditch
.025—	Best unlined ditch
.03 to .15—	Fair to poor natural streams and water courses.

(h) If an alternative flow formula is used, discharge coefficients shall be equivalent to the Manning values specified in (g) above.

19:5-7.11 Water supply and sewerage disposal systems

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

(e) An application for a permit for the construction and operation of a temporary sewerage facility shall include:

1. (No change.)

2. A written statement from the New Jersey Department of Environmental Protection and Energy that the applicant's plans and specifications for construction and operation of the proposed temporary facilities are in accordance with the Department's requirements;

3. (No change.)

19:5-7.12 Fill

Filling, excavation, regrading or surcharging of land shall be in accordance with N.J.A.C. 19:4-6.18(o).

SUBCHAPTER 8. INSTALLATION OF REQUIRED IMPROVEMENTS

19:5-8.1 Required improvements

(a) The subdivider of a proposed subdivision shall install, or provide for the installation of, the following facilities and improvements:

1. All roadways, curbs, gutters and street drainage facilities in accordance with the standards set by the Office of the Chief Engineer;

2.-3. (No change.)

4. Fire hydrants located and installed in accordance with the standards of the National Fire Protection Association;

5.-9. (No change.)

10. Fill meeting the requirements set by the Office of the Chief Engineer;

11.-12. (No change.)

19:5-8.2 Exceptions for existing improvements

(a) Where the proposed subdivision is a resubdivision or concerns an area presently having any or all required improvements set out in N.J.A.C. 19:5-8.1, Required improvements and where such improvements meet the requirements of said Section, no further provision need be made by the subdividers to duplicate such improvements. However, where such existing improvements do not meet the requirements of N.J.A.C. 19:5-8.1, Required improvements, the subdivider shall repair, correct, or replace such improvements so that all improvements will then meet the aforesaid requirements of said section.

(b) (No change.)

19:5-8.3 Agreement, bond and deposit guaranteeing installation of required improvements

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

(c) Once the improvements are completed and accepted by the municipality, the subdivider shall furnish a maintenance bond for the benefit of the municipality within which the improvement is located, with sufficient surety in an amount of 15 percent of the sum of the corporate completion bond to maintain the required improvements against defective workmanship and material and inherent defects due to faulty workmanship for a period of 24 months from the date of the completion and acceptance of the required improvements by the municipality.

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

SUBCHAPTER 9. IMPROVEMENT PROCEDURES

19:5-9.1 Final improvement plans

(a) Upon the approval of a preliminary plat, the subdivider shall have prepared by a licensed professional engineer, engineering drawings for proposed required improvements containing the date and information specified in N.J.A.C. 19:5-9.2, Content of engineering drawings.

(b) (No change.)

19:5-9.2 Content of engineering drawings

(a) Engineering drawings for required improvements shall contain the following data and information:

1.-4. (No change.)

5. Grading plans for all lots and other sites in the subdivision, lighting plans, street plantings and monument locations;

6. (No change.)

19:5-9.3 Review by office of Chief Engineer

(a) The Office of the Chief Engineer shall review all engineering drawings in order to determine whether such drawings are consistent with the approved preliminary plat and comply with the design standards of N.J.A.C. 19:5-7.

(b) In the event that the drawings do not conform or comply, the Office of the Chief Engineer shall notify the subdivider of the specific manner in which such drawings do not so conform or comply, and the subdivider may then correct such drawings.

19:5-9.5 Construction of improvements

No improvements shall be constructed nor shall any work preliminary thereto be done until such time as a final plat and the engineering drawings accompanying it shall have been approved and there shall have been compliance with all of the requirements relating to an agreement, bond and deposit specified in N.J.A.C. 19:5-8.3, Agreement, bond and deposit guaranteeing installation of required improvements.

19:5-9.7 Inspection procedures

(a) Within the 48-hour notice period specified in N.J.A.C. 19:5-9.6, Inspection, the Office of the Chief Engineer may conduct an on site inspection to determine that the proposed work complies with the engineering drawings.

(b) (No change.)

(c) Upon the correction of such defects or deficiencies, the subdivider shall again notify the Office of the Chief Engineer as provided in N.J.A.C. 19:5-9.6, Inspection.

19:5-9.9 Certification of improvements

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

(d) Upon receipt of such notification, the applicant shall submit the 24 month maintenance bond specified in N.J.A.C. 19:5-8.3, Agreement, bond and deposit guaranteeing installation of required improvements.

SUBCHAPTER 11. FEES, PENALTIES AND ENFORCEMENT

19:5-11.1 Fees, penalties and enforcement

Fees, penalties and enforcement shall be in conformance with N.J.A.C. 19:4-6.24.

19:5-11.2 (Reserved)

19:5-11.3 (Reserved)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Rules of the Games; Double Down Stud
Temporary Adoption of Amendments to N.J.A.C. 19:45-1.1, 1.11, 1.12, 1.15, 1.25; 19:46-1.17 and 1.19; New Rules N.J.A.C. 19:45-1.47 and 1.48; 19:46-1.13F and 19:47-17

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether a game known as "Double Down Stud" is suitable for casino use.

This experiment involves a revised version of double down stud, and supersedes the double down stud test authorized by the Notice published in the New Jersey Register on March 21, 1994, at 26 N.J.R. 1390(a).

The experiment will be conducted in accordance with temporary rules, which will be posted in each casino participating in this experiment, and will also be available from the Commission upon request.

This test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Commission, to conduct the game of double down stud in its casino or simulcasting facility.

This experiment could begin on or after November 14, 1994 and continue for a maximum of 270 days from that date, unless otherwise terminated by the Commission or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Acceptance of Wire Transfers
Adopted Amendment: N.J.A.C. 19:45-1.24A

Proposed: August 1, 1994 at 26 N.J.R. 3140(a).

Adopted: October 4, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: October 7, 1994 as R.1994 d.542, **with technical and substantive changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(a), 70(g), 99 and 101.

Effective Date: November 7, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: Greate Bay Hotel and Casino, Inc. (Sands Hotel & Casino) indicated it did not object to the proposal.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement objected to the proposal, contending it would create a greater risk of fraud and also increase the possibility that a person other than the proper recipient of a wire transfer might receive the proceeds of the transfer.

The Division argues that because a release of wire transfer funds occurs at the cage and involves patron monies, it is not comparable to procedures for counter checks (for which signature verifications are already permitted), which represent the casino's funds and are dealt with at the gaming tables. The Division believes that there is a greater risk of fraud if only signature comparisons are used, and notes that it investigates 12 to 15 cases of alleged counter check forgeries each year. The Division contends that maintaining the requirement that only actual

identification credentials be presented to obtain the release of wire transfer funds, would provide greater assurance that the funds are being given to the correct patron.

RESPONSE: Accepted in part and rejected in part. Facsimile signature verifications are presently utilized to ensure patron identification for acceptance of cash equivalents and casino checks, as well as counter checks. See N.J.A.C. 19:45-1.25(e) and (j).

In the Commission's view, the differences between wire transfers, counter checks and cash equivalents are not substantial enough to merit different treatment. And unlike counter checks, wire transfers represent the patron's money rather than the casino's; these funds are not gross revenue, and the Commission and the State have no financial interest in them. Additionally, the proposed signature verification procedure would supplement, not replace, existing identification procedures; any casino licensee which desires to require production of identification credentials at the cashiers' cage may continue to use that procedure when it believes it is necessary or prudent to do so.

However, in reviewing the Division's comments, it was noted that the proposed procedure for using signature facsimiles for wire transfers was not consistent with the present procedures in N.J.A.C. 19:45-1.25(e)2 for acceptance of cash equivalents and casino checks, which require that a cashier must also verify the physical description of a patron when verifying his or her signature facsimile.

Accordingly, a minor substantive change has been made, which adds the requirement that when a computer-generated facsimile of a patron's signature is used to ensure the identity of a patron receiving a wire transfer, the cashier must also verify the patron's physical description in the credit file.

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

Agency note: The rule text published below includes amendments adopted subsequent to the proposal adopted herein (see 26 N.J.R. 2215(a) and 3892(a).

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

(a)-(f) (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 Acknowledgment Form, transmit the duplicate copy and any supporting documentation to the accounting department, and forward the original Wire Transfer Acknowledgment Form to:

1. (No change.)

2. The general cashier, if the funds are to be used to establish a cash deposit, who shall:

i. (No change.)

ii. Prepare a Customer Deposit Form in accordance with the provisions of N.J.A.C. 19:45-1.24, except that prior to the release to the patron of any funds credited to a cash deposit file by means of a wire transfer, the general cashier shall *[verify the patron's identity by examining]* ***examine*** the patron's identification credentials or *[by comparing]* ***verify that*** the patron's signature on the Customer Deposit Form *[to a computer generated facsimile thereof, obtained as part of]* ***and the patron's physical description agree with the information recorded in*** the patron's credit file pursuant to N.J.A.C. 19:45-1.27, to insure that the patron is the patron recorded on the Wire Transfer Acknowledgment Form, and shall maintain documentation supporting that examination; and

iii. (No change.)

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

(a)

CASINO CONTROL COMMISSION

Simulcasting
Cancellation of Tickets
Adopted Amendments: N.J.A.C. 19:55-2.11 and 4.10

Proposed: June 20, 1994 at 26 N.J.R. 2566(a).

Adopted: August 9, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: August 10, 1994 as R.1994 d.446, **without change.**

Authority: N.J.S.A. 5:12-69(a), 70(j), 193 and 210.

Effective Date: November 7, 1994.

Expiration Date: January 19, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement and Sands Hotel and Casino do not object to the amendments as proposed.

RESPONSE: Accepted.

COMMENT: Resorts International Hotel, Inc. supports the amendments as proposed.

RESPONSE: Accepted.

Full text of the adoption follows:

19:55-2.11 Ticket Claims

(a) (No change.)

(b) No claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) (No change.)

19:55-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket shall be cancelled.

(b) A pari-mutuel ticket with a total value of $500.00 or less may be cancelled at any time prior to off-time.

(c) A pari-mutuel ticket of any value may be cancelled prior to the end of the delay period if the patron has not left the pari-mutuel window at which the ticket was purchased or if the patron left the window without paying for or accepting the ticket.

(d) A pari-mutuel ticket of any value may be cancelled prior to off-time if the ticket is on a wager (such as trifecta) where probable payoffs or odds are not displayed to the public.

(e) A pari-mutuel ticket of any value may be cancelled if the ticket is on an advance race and the race immediately preceding the race for which the cancellation has been requested has not been declared official.

(f) A pari-mutuel ticket with a total value exceeding $500.000 which is not otherwise cancellable pursuant to this section may be cancelled by a simulcast counter shift supervisor or supervisor thereof at any time prior to off-time if he or she determines that the cancellation will not significantly alter a pari-mutuel pool. The factors to be considered before approving or disapproving a cancellation request include the size of the mutuel pool, the reason for the requested cancellation, current odds, minutes to post time, and any late changes such as track conditions or jockey (driver) changes. Any request to cancel such a ticket shall be reported to the Racing Commission on a form approved by the Racing Commission within 48 hours.

EMERGENCY ADOPTION

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE
OFFICE OF THE STATE MEDICAL EXAMINER

Autopsies and Death Investigations
Political Organ Donors

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 13:49-1.1 and 1.5

Adopted Emergency New Rule and Concurrent Proposed New Rule: N.J.A.C. 13:49-1.8

Emergency Amendments and New Rule Adopted and Concurrent Amendments and New Rule Authorized: October 18, 1994 by Geetha A. Natarajan, M.D., Acting State Medical Examiner.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 20, 1994.

Emergency Amendment and New Rule Filed: October 21, 1994 as R.1994 d.571.

Authority: N.J.S.A. 52:17B-80.

Concurrent Proposal Numbers: PRN 1994-616.

Effective Date: October 21, 1994.

Expiration Date: December 20, 1994.

Submit written comments by December 7, 1994 to:
Geetha A. Natarajan, M.D.
Acting State Medical Examiner
325 Norfolk Street
Newark, New Jersey 07103

The agency proposal follows:

Summary and Statement of Imminent Peril

The Office of the State Medical Examiner emergency adopts and concurrently proposes to amend N.J.A.C. 13:49-1 of the State Medical Examiner rules, which provide the standards for performing autopsies and conducting death investigations.

On December 13, 1993, the Legislature enacted the organ harvesting statute, P.L. 1993, c.276 (N.J.S.A. 52:17B-88.7), as part of the State Medical Examiner Act, P.L. 1967, c.234 (N.J.S.A. 52:17B-78 et seq.). The statute requires State and county medical examiners to perform an examination, autopsy or analysis of organs or tissue only in a manner and within a time frame compatible with their preservation for the purposes of transplantation. If the medical examiner concludes that organs or tissues subject to removal during the autopsy may be involved in the cause of death, the medical examiner must be present during the removal and may deny removal. The statute sought to balance the public interest in ensuring that death investigations are properly conducted and the public interest in preserving as many organs for transplantation as possible.

The Office of the State Medical Examiner has reviewed the current regulations and found that they need clarification and amendment to implement more fully the Legislature's intent in enacting the organ harvesting statute. The emergency adopted and concurrently proposed amendments and new rule contained herein set forth the procedures to be followed by State and county medical examiners when a deceased person whose death is under investigation is a potential organ donor.

These emergency amendments and new rule are necessary to institute uniform procedures for death investigations which involve an organ donor and to guarantee that State and county medical examiners are cognizant of and comply with the correct procedures. To delay the adoption of the emergency amendments and new rule would create confusion and inconsistency in death investigations throughout the State and risk the unavailability of organs which should otherwise be available for transplant.

The Office of the State Medical Examiner finds imminent peril to the public welfare if an organ donation is denied because a medical examiner is not guided by appropriate, uniform procedures or fails to comply with such procedures in a time compatible with organ procurement. In the matter of organ transplantation, time is of the essence. Absent appropriate guidelines in the form of regulations, organs otherwise suitable for transplantation would be lost. The public welfare is endangered because the demand for human organs and tissue far exceed the number of organ donations. Nationwide, over one person dies every four hours while awaiting an organ transplant.

Among the emergency adopted and proposed amendments and new rule to the autopsy and death investigation rules are:

1. N.J.A.C. 13:49-1.1(a), which mandates when an autopsy must be performed, has been amended to clarify, consistent with the organ harvesting statute, that the autopsy should be the least intrusive procedure consistent with proper forensic practice and the duty to preserve organs for transplant.

2. New subsection N.J.A.C. 13:49-1.1(b) establishes the investigative procedures to be followed by the medical examiner upon notice that there is a potential organ donor. The subsection defines the role of medical examiners, law enforcement agencies and the organ procurement agencies. It also requires that certain records be created and exchanged between the medical examiner's office and the organ procurement agency during and after the procurement and transplantation stages.

3. N.J.A.C. 13:49-1.5, which sets forth the standard for conducting an autopsy, has been amended to add new subsection (c) to clarify that autopsies must be performed with the least intrusive procedure consistent with proper forensic practice and the duty to preserve organs for transplant.

The previous subsection (c), which has been recodified as subsection (d), was amended to except autopsies performed on organ donors from otherwise standard autopsy practice.

Existing N.J.A.C. 13:49-1.5(c) through (h) have been recodified as (d) through (i), respectively.

New rule, N.J.A.C. 13:49-1.8 defines "proper forensic practice" and "involved in the cause of death."

Pursuant to its authority under N.J.S.A. 52:14B-4(c), the Office of the State Medical Examiner intends the concurrently proposed amendments to be permanently effective upon the filing of its notice of adoption with the Office of Administrative Law. The State Medical Examiner contemplates such filing will occur shortly after the expiration of the comment period on December 7, 1994.

Social Impact

The social impact of the amendments and new rule is substantial. Each organ properly and promptly released for recovery by the medical examiner may save, lengthen or exponentially improve the quality of a human life. Each time a potential donor is lost due to delay in a medical examiner's investigation, or due to a medical examiner's reliance on the existing medical examiner regulations, as many as seven organs may be lost. Clear regulatory guidelines will have the effect of maximizing organ recovery, while at the same time ensuring that no potentially relevant information or evidence is lost during the recovery process.

The concurrently proposed amendments and new rule will also have an impact on the availability and quality of information used to determine cause of death. A medical examiner may ascertain important information from tests performed on a functioning organ that would not otherwise have been learned from dissection of that organ. The amendments and new rule ensure that the medical examiner will have access to any such available information.

Economic Impact

The emergency and concurrently proposed amendments and new rule are not expected to create any significant increase in the cost of providing medical examiner services to the public. The amendments and new rule will clarify the procedures for conducting death investigations in organ harvesting cases. The budgets of the State and county medical examiners' offices do not impact on the overall State and county budgets in a significant fashion.

Regulatory Flexibility Statement

The Office of the State Medical Examiner finds that a regulatory flexibility analysis is not required under the provision of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The medical examiner regulations do not impose reporting, recordkeeping or other compliance re-

quirements on small businesses. The regulations impose duties and responsibilities upon medical examiners, law enforcement agencies and organ procurement agencies.

Full text of the emergency adopted and concurrent proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:49-1.1 Mandatory autopsies

(a) In the absence of an objection based on the religious beliefs of the decedent, autopsies shall be performed in all cases of human death occurring in the following circumstances; **however, the autopsy should be the least intrusive procedure consistent with proper forensic practice (as defined in N.J.A.C. 13:49-1.8) and the duty to preserve organs for transplant**:

1. All cases of apparent homicidal deaths;
2. All deaths occurring under suspicious or unusual circumstances;
3. All deaths from causes which might constitute a threat to public health;
4. All deaths of inmates of jail, prison, or penitentiary and all prisoners and suspects who were in the process of being detained, arrested or transported by guards, police and law enforcement or court officers unless the suspected cause of death is a known condition for which the inmate, prisoner or suspect is hospitalized and being treated at the time of death, and the medical examiner's investigation, review of hospital records, and examination of the decedent's body permit him or her to determine the cause of death beyond a reasonable doubt without an autopsy, and no other issues of public interest compel his or her conclusion that an autopsy is necessary;
5. All infants and children suspected of having been abused or neglected and children suspected of having died from sudden infant death syndrome (SIDS);
6. In all cases wherein the State Medical Examiner, the Attorney General, any assignment judge of the Superior Court, or the county prosecutor (of the county wherein the injury occurred or where the decedent expired) requests an autopsy[.];

7. In all cases otherwise under the Medical Examiner's jurisdiction where the decedent has been identified as a potential donor pursuant to P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall perform any necessary examination, autopsy or analysis of any organ or tissue in a manner and within a time period compatible with preservation of the organ or tissue for the purpose of transplantation.

(b) Upon notification that a deceased person whose death is under investigation is a donor under the Uniform Anatomical Gift Act, P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall commence an immediate investigation concerning the cause of death. The medical examiner, with the cooperation of the police, prosecutors and medical personnel, shall complete the preliminary investigation concerning cause of death within a time period compatible with preservation of organs for transplantation.

1. The medical examiner shall have access to and may request all necessary information, including copies of medical records, laboratory test results, x-rays and other diagnostic results. This information should be provided as expeditiously as possible, through reasonable means, to the medical examiner so the medical examiner can continue the investigation into the cause of death and complete the examination within a time period compatible with the preservation of the organ or tissue for purposes of transplantation.

2. The medical examiner shall release all requested organs and tissue which in his or her opinion are not involved in the cause of death (as defined in N.J.A.C. 13:49-1.8).

3. Should the medical examiner believe that a specific organ or area of tissue is involved in the cause of death, the medical examiner shall attend the removal procedure in order to make a final determination and allow recovery to proceed, request a biopsy or deny removal of said organ if in the medical examiner's judgment those tissues or organs may be involved in the cause of death.

4. The medical examiner or designee shall explain in writing the reasons for determining that organs or tissues for which authorization for removal was denied may be involved in the cause of death and shall include the explanation in the records and provide a copy to the organ procurement agency.

5. The medical examiner shall have access to medical records, pathology reports and to the body of the donor, post-removal. In the event an organ is not transplanted and there is no consent to donate the organ for research, the medical examiner shall be notified. The medical examiner who performed the autopsy shall make the determination as to whether and when the organ should be returned.

6. The harvesting team shall complete a surgical report form. Subsequently, information on the immediate functioning of the transplanted organ(s) and pathology reports, if available, shall be provided to the medical examiner.

7. If the medical examiner releases the organ for procurement, a pre-mortem blood sample (labelled and dated with time of blood draw), sample of catheterised urine, sample of bile if the liver is recovered for transplantation, and a biopsy specimen in fixative of the organs procured, as requested, shall be delivered to the medical examiner at the time of the transport of the body to the medical examiner's office.

13:49-1.5 Medical examiner autopsies

(a) Medical examiner autopsies shall be performed only in conjunction with investigations of reportable deaths in order to establish the cause of death; to provide medical facts upon which to base a determination of the manner of death; to collect evidence and medical specimens and documentation with probative value; to clarify investigation information, or to serve the needs of public health and safety and of the courts.

(b) Medical examiner autopsies shall not be performed solely to satisfy the academic interest of a hospital or medical staff, or to circumvent the lack of family permission for hospital autopsy.

(c) In the case of potential organ donors as defined by P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall perform the least intrusive procedure consistent with proper forensic practice and the duty to preserve organs for transplant in a manner and within a time period compatible with the preservation of the organ or tissue for the purpose of transplantation.

[(c) The] **(d) Except as provided in (c) above, the** autopsy standard for apparent homicides, suicides, suspicious deaths, and deaths with no visible anatomic cause shall include a complete inspection, removal and dissection of the cranial compartment and contents, the neck viscera and tongue, the thoracic, abdominal and pelvic compartments and viscera, and any additional dissections which may be indicated by the circumstances of death; and shall include the collection and preservation of body tissues for toxicological and microscopic examination and any additional examinations which may be required by the nature of the circumstances.

[(d)]**(e)** X-ray examination of the whole body shall be performed in all instances where child abuse or neglect is a possibility and in the investigation of human skeletal remains. X-ray examination shall also be undertaken in all gunshot injuries where indicated for complete recovery of evidence, and in conjunction with examination and identification of human bodies in an advanced state of decomposition, or unrecognizable bodies.

[(e)]**(f)** No person, technician, or aide shall perform any part of the postmortem dissection of the body, without the direct and immediate supervision and observation of the medical examiner or designated pathologist and then, only after proper training and guidance.

[(f) Microscopic] **(g) Except as provided in (c) above, microscopic** examination shall be conducted in the following circumstances:

1. In all cases of infant death;
2. Whenever an autopsy including toxicological testing fails to disclose a cause of death;
3. When the age of an injury requires further evaluation;
4. Whenever indicated by the circumstances of the death; and
5. Whenever else it is deemed necessary at the discretion of the medical examiner.

[(g)](h) The slides from microscopic examinations pursuant to [(f)] (g) above shall be retained permanently, properly labeled with medical examiner case number.

[(h)](i) Microbiologic, toxicologic, and or nuclear radiation tests, and any other pertinent examination and study shall be conducted where applicable in death investigations involving a threat to public health.

13:49-1.8 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Involved in the cause of death": an organ is involved in the cause of death when disruption to that organ's structure is a required element of the fatal sequence and/or provides the means of diagnosing the cause of death.

"Proper forensic practice" consists of those procedures which are required to perform the mandated role of medical examiner, which is to determine the cause and manner of death within a reasonable degree of medical probability; to identify and analyze evidence in criminal matters; to preserve organs for transplant and to otherwise preserve the public health.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking Shellfish Habitat and Shellfish Growing Water Classification—Prohibited

N.J.A.C. 7:7E-3.2 and 7:12-2.1

Petitioner: Levin and Hluchan, P.C.

Take notice that on September 26, 1994, the Department of Environmental Protection (Department) received a petition for rulemaking concerning amendments of the Department's Coastal Zone Management rules governing shellfish habitat and the Shellfish Growing Water Classification rules.

N.J.A.C. 7:7E-3.2(d) currently prohibits construction of a dock or boat moorings in shellfish habitat except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing; and
2. In waters which have been classified as "prohibited" for the purpose of harvesting shellfish.

The petitioner requests that the Department add a third exception to include riparian grants or tidelands leases to create an opportunity for single family homeowners to construct recreational docks and piers for their personal use and in particular in areas where a dock already exists on an adjacent property.

In addition, the petitioner requests that N.J.A.C. 7:12-2.1, Shellfish growing water classification—Prohibited, be amended to include all waters within 100 feet of marinas, anchorages of where docking or mooring facilities are provided for boats, and all waters within 100 feet of any storm sewer discharge. The petitioner asserts that proposed amendments would strike a balance by allowing homeowners to build their docks while preserving true shellfish habitats.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department will subsequently mail to petitioner and file with the Office of Administrative Law a notice of action on the petition.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on October 4, 1994, pursuant to the provisions of the New Jersey 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 Tri-County Water Quality Management Plan was adopted by the Department. This amendment modifies the Medford Township Wastewater Management (WMP) Plan by expanding the sewer service area of the Medford Lakes Borough Sewage Treatment Plant (STP) to include two proposed residential lots (Block 4807, Lots 2.02 and 2.03) in Medford Township. An existing home on Block 4807, Lot 2 (to be lot 2.01 after subdivision) is already served by the Medford Lakes Borough STP. The estimated wastewater flow from the two lots is 600 gpd. The amendment also updates the Medford Township WMP by correctly identifying all three lots as being within Medford Township, not Medford Lakes Borough, and will identify the existing service connection to the house on Lot 2.01. The project site lies within the Pinelands and can be considered to be consistent with the requirements of the Pinelands Comprehensive Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment proposal was submitted by the New Jersey Turnpike Authority (NJTA). The proposed amendment would include entire Block 5, Lot 8 of Cranbury Township on the south bound side of the Turnpike into the Middlesex County Utilities Authority (MCUA) sewer service area. Portions of Lot 8 are presently within the MCUA sewer service area. Wastewater flows from the Molly Pitcher Service Area (Service Area 7S) are presently conveyed to the MCUA sewage treatment plant via discharge into the Monroe Township Municipal Utilities Authority (MTMUA) sanitary system. The NJTA proposes to convey wastewater flows from the new Law Enforcement Communications/Patrol Center to MCUA via the MTMUA system. This proposal will amend and update the MTMUA Wastewater Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information relating to the WQM Plan, and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, 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 Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEP address cited above with a copy sent to Andrea E. Ward, Esq., New Jersey Turnpike Authority, P.O. Box 1121, New Brunswick, N.J. 08903. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(a)

CHILD LIFE PROTECTION COMMISSION

Notice of Grant Fund Availability
Children's Trust Fund

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Child Life Protection Commission (CLPC) hereby announces the availability of the following grant program funds for the Children's Trust Fund's (CTF) fiscal year July 1, 1995 to June 30, 1996:

Name of program: Children's Trust Fund ... to Prevent Child Abuse

Purpose: The Children's Trust Fund was established by the New Jersey Legislature to provide funds for programs designed to prevent child abuse and neglect. The Fund is administered by the Child Life Protection Commission, which is appointed by the Governor. The Children's Trust Fund is staffed by and located in, but not of, the Department of Human Services. Contracts with grantees are administered by the New Jersey Department of Human Services.

Amount of money in the program: The amount of money available for 1995-96 is dependent upon the total amount of monies derived from direct contributions, a state income tax check-off and a Federal Community-based Child Abuse and Neglect Prevention Grant. Grants, ranging from $3,200 to $56,000, have been awarded annually since 1987. In 1994, $555,415 was disbursed to 33 grantees, with the average grant about $20,000. In 1995, it is anticipated that approximately $800,000 will be available for CTF first year and continuation grants.

Organizations which may apply for funding under this program: Public agencies and private non-profit agencies with 501(c)(3) Federal tax determination letters may apply to develop community-based child abuse and neglect prevention programs. Documentation of 501(c)(3) status is required in the First Year Grant Application for private agencies.

Funding: Funding for all grantees is annual, with eligibility for funding consideration for three consecutive years. Second and third year funding follows a step-down policy, with local match requirements.

Qualifications needed by an applicant to be considered for funding: A recipient of a grant from the Children's Trust Fund shall use the grant funds only to fund primary or secondary child abuse and child neglect prevention programs. Grants from the Children's Trust Fund may not be used to meet the non-federal matching requirements of federal law. Priority is given to grant proposals that target populations at high risk of child abuse and neglect. Applicants are encouraged to consider successful prevention strategies when designing a Children's Trust Fund grant application. **Note:** Tertiary prevention programs, that is, treatment and/or programs targeting families with substantiated child abuse and neglect, are not eligible for funding.

Please note the Procedure for eligible organizations to apply: There is a different procedure with different forms for (A) first year funding applicants and for (B) continuation applicants.

A. First Year Funding Applications

First year funding applicants must complete a First Year Grant Application. Applications may be obtained by calling the Children's Trust Fund, (609) 633-3992, Monday through Friday from 9:00 a.m. to 5:00 p.m., by writing to the Children's Trust Fund, CN 711, Trenton, NJ 08625; or by accessing the Department of Human Services Online Bulletin Board (DHS Online BBS), 609-292-4566 or 1-800-366-5274. Applicants wishing to use DHS Online should call 609-633-6854 for information on connecting to the Bulletin Board.

First Year Grant Applications will be available for distribution commencing November 7, 1994. Completed First Year Applications must be received by January 13, 1995.

B. Continuation Applications

Current first and second year grantees must complete a Continuation Grant Application to be eligible for further funding consideration. The Child Life Protection Commission will mail these applications directly to current first and second year grantees on or about December 1, 1994. Grantees who wish to apply for continuation funding must submit the Continuation Grant Application by January 23, 1995.

Address to which and deadline by which applications must be submitted:

First Year Grant Applications must be received on or before January 13, 1995. They may be mailed to:

Children's Trust Fund
CN 711
Trenton, New Jersey 08625

or hand-delivered before 5:00 P.M. on January 13, 1995 to:

Children's Trust Fund Office
N.J. Department of Human Services
222 South Warren Street
5th Floor
Trenton, New Jersey 08625

or transmitted to Pat Derr, DHS Online Bulletin Board, 609-292-4566 or 1-800-366-5274.

Continuation Grant Applications must be received on or before January 23, 1995, in one of the three ways described above.

Date by which notices shall be mailed of approval or disapproval of applications:

First-Year Grant Applicants	April 21, 1995
Continuation Grant Applicants	April 21, 1995

Questions may be directed to the Children's Trust Fund, (609) 633-3992.

(b)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Notice of Availability of Grant Funds
Title of Grant: Advanced Research Fellowship Program

Take notice that, in compliance with N.J.S.A. 52:14-34 through 3 , the Department of Human Services anticipates the following availability of funds.

A. Name of the grant program that has funds available: Advanced Research Fellowship Program (FY96).

B. Purpose for which the grant program funds shall be used: The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities, anticipates the availability of funds to encourage and stimulate cooperative programs of research among State governmental departments and agencies, universities and private agencies. The purpose of the Advanced Research Fellowship Program is to attract and retain in New Jersey talented scientists who wish to pursue a career in research related to the prevention of mental retardation and other developmental disabilities. Fields of possible research include, but are not limited to, genetics, embryology, biochemistry, immunology, endocrinology, teratology, epidemiology, morphology, environmental, social sciences/behavioral, or other areas related to the causes of developmental disablities.

C. Amount of money in the grant program: A maximum of four fellowships in the amount of $25,000 per fellowship will be awarded. These funds can be used for stipend support only. Research costs for experimentation, data collection, fieldwork, computer searches and analyses, and equipment cannot be supported by these fellowships. Candidates must be prepared to begin their research on July 1, 1995 and to end on June 30, 1996.

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program: Candidates must be citizens of the United States and residents of New Jersey and must be prepared to conduct their research in New Jersey-based institutions of higher learning or other non-profit or public research entities.

E. Qualifications needed by an applicant to be considered for the grant program: Candidates must have been awarded their doctorate or medical degree or a master's degree in a related field such as public health. Candidates must demonstrate established institutional relationships and support for the proposed research within the application process.

F. Procedure for eligible entities to apply for fellowships: Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
222 South Warren Street, CN 700
Trenton, New Jersey 08625
609-984-3351

G. Address of division, office or official receiving application: Same as F above.

H. Deadline by which applications must be submitted to the office: Proposals must be submitted by March 10, 1995.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: Applicants shall receive notice of approval or disapproval by May 5, 1995.

INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Six Month Nonbinding Rulemaking Schedule

Take notice that the Department of Insurance is publishing the following nonbinding list of administrative rules that it intends to propose within the next six months. This action is taken to provide the public with as much advance notice as possible so as to encourage the filing of public comments on matters of interest.

Please note that this listing is for informational purposes and is not intended to prohibit the Department from proposing other rules not currently listed.

Rules to be Proposed Within Six Months:

1. Procedures for admission of life and health insurers.
2. Standards for pre-need funeral expense coverage.
3. Procedures for filing life/health policy forms.
4. Standards for approval of flexible factor policies.
5. Standards for approval of accelerated death benefit options.
6. Requirements for health insurance fraud prevention and detection plans.
7. Standards for premium discounts in individual health insurance policies.
8. Standard format for HMO financial filings.
9. Standard format for HMO rate filings.
10. Standard format for DPO rate filings.
11. Requirements for personal lines loss costs filings.
12. Repeal N.J.A.C. 11:3-31 and related amendments (auto insurer financial experience filing).
13. Repeal N.J.A.C. 11:3-16.12 and related amendments (special rate filings reflecting MTF assessments).
14. Repeal or amendment of various rules concerning role of the Division of Rate Counsel in rate filings.
15. Standards for insurer financial filings to implement the FEMS FAS and IRS systems.
16. Amendments to N.J.A.C. 11:3-28.13 and new rule N.J.A.C. 11:3-28.16 (UCJF excess medical benefits payments).
17. Amendments to N.J.A.C. 11:3-10 to permit auto physical damage coverage options.
18. Format for annual auto premium survey.
19. Standards and procedures for disclosure of material transactions.
20. Amendments to N.J.A.C. 11:3-2B (suspension of MTF claim payments) to codify MTF claim payment deferral program.
21. Standards for life/health actuarial opinions.
22. Amendments to N.J.A.C. 11:1-21, Loss Reserve Opinions.
23. Procedures for financial examination of the Fireman's Relief Association.
24. Standards for decreasing riders to the Standard Health Benefit Plans offered to small employers.
25. Standards for supplemental limited benefit insurance.
26. Standards for multiple employer arrangements.
27. Standard claim forms for all health insurers.
28. Loss ratio and referral reporting requirements for health benefit plans for small employers.
29. Format for standard health benefit plans premium comparison survey.
30. Enforcement of the eligibility rules for standard individual health benefit plans.
31. Amendments to N.J.A.C. 11:3-34 (eligible person definition and eligibility points schedule) and related rules regarding suspended operators.
32. Amendment to N.J.A.C. 11:10-1.3 (Dental Plan Organizations) to provide a definition for "capitation."
33. Standards for group specified disease disability income insurance.
34. Amendments to N.J.A.C. 11:4-11, Life Insurance Solicitation.
35. Amendments to N.J.A.C. 11:3-13 (deductibles for auto insurance collision and comprehensive coverages).

(b)

SURPLUS LINES EXAMINING OFFICE

Notice of Public Hearing on the Exportable List

N.J.A.C. 11:1-34

Take notice that the Department of Insurance, pursuant to N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34, will hold its annual public hearing on the Exportable List which is at N.J.A.C. 11:1-34. N.J.S.A. 17:22-6.43 provides that the Commissioner of Insurance may declare eligible for export any class or classes of insurance coverage or risk for which, after a hearing, he or she determines that there exists no reasonable or adequate market among authorized carriers in New Jersey. The hearing shall address any additions or deletions to the Department's Exportable List.

A public hearing on the Exportable List will be held on Friday, December 16, 1994 at 10:00 A.M. at:

Mary Roebling Building
2nd Floor Room No. 219
20 West State Street
Trenton, NJ

Persons who wish to testify at the hearing should contact the Department and provide a brief summary of the subject matter of their testimony no later than December 9, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street, CN-325
Trenton, NJ 08625

(c)

THE COMMISSIONER

Notice of Cancellation and Nonrenewal of Fire and Casualty Coverage

Take notice that Andrew J. Karpinski, Commissioner of Insurance, pursuant to the provisions of N.J.S.A. 17:29C-3, has recertified to the Legislature the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1994. The notice of cancellation and nonrenewal requirement is set forth at N.J.A.C. 11:1-5.2, which rule continues in full force and effect.

This notice is published as a matter of public information.

(d)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Notice of Action on Petition for Rulemaking

N.J.A.C. 11:20-1.1, Exhibit F

Petitioner: Scott Schwartz, Senior Attorney, Oxford Health Plans (NJ), Inc.

Take notice that on August 29, 1994, the New Jersey Individual Health Coverage Program Board (IHC) received a petition for rulemaking concerning N.J.A.C. 11:21-1.1, Exhibit F, the individual health benefits HMO policy form. Public notice of receipt of this petition was published in the October 17, 1994 New Jersey Register at 26 N.J.R. 4228(b).

The petition has been considered by the IHC Board, pursuant to law, and the IHC Board has decided to refer the matter to the IHC Board's Legal and Technical Advisory Committees ("TAC") for further deliberations in accordance with N.J.A.C. 1:30-3.6. The IHC Board will take final action by November 22, 1994 upon a recommendation from the Legal and TAC.

When the Legal and TAC recommendations have been considered by the IHC Board and a final decision has been made, the decision will be mailed to the petitioner and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(a)

THE COMMISSIONER

Public Notice

List of Municipalities Requiring Payment of Liens by Companies Writing Fire Insurance

Take notice that Andrew J. Karpinski, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities which have adopted said ordinances since the previous date of publication shall be designated by asterisk.

LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS BY COMPANIES WRITING FIRE INSURANCE

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of $2,500.

	Date Filed with the Department of Insurance
Aberdeen, Township of 07747 (Monmouth County)	September 8, 1980
Absecon, City of 08201 (Atlantic County)	July 5, 1983
Alloway, Township of 08079 (Salem County)	December 20, 1984
Asbury Park, City of 07712 (Monmouth County)	May 25, 1979
Atlantic City, City of 08401 (Atlantic County)	March 19, 1979
Barrington, Borough of 08007 (Camden County)	September 17, 1982
Bayonne, City of 07002 (Hudson County)	March 12, 1979
Belmar, Borough of 07719 (Monmouth County)	March 5, 1982
Berkeley, Township of 08721 (Ocean County)	May 22, 1979
Berlin, Borough of 08009 (Camden County)	October 18, 1979
Berlin, Township of 08091 (Camden County)	March 20, 1980
Bloomfield, Town of 07003 (Essex County)	March 26, 1979
Branchburg, Township of 08876 (Somerset County)	December 15, 1992
Brick, Township of 08723 (Ocean County)	May 2, 1980
Bridgeton, City of 08302 (Cumberland County)	April 30, 1979
Brigantine, City of 08203 (Atlantic County)	October 14, 1982
Buena, Borough of 08341 (Atlantic County)	November 1, 1982
Burlington, City of 08016 (Burlington County)	December 9, 1986
Butler, Borough of 07405 (Morris County)	November 14, 1980
Byram, Township of 07860 (Sussex County)	October 9, 1980
Camden, City of 08101 (Camden County)	May 4, 1979
Cape May, City of 08204 (Cape May County)	May 22, 1979
Carneys Point, Township of 08069 (Salem County)	July 2, 1979
Cedar Grove, Township of 07009 (Essex County)	August 10, 1979
Chatham, Township of 07928 (Morris County)	June 4, 1986
Chesterfield, Township of 08620 (Burlington County)*	September 16, 1994
Cinnaminson, Township of 08077 (Burlington County)	August 30, 1979
Clinton, Township of 08801 (Hunterdon County)	December 10, 1981
Delaware, Township of 08557 (Hunterdon County)	October 15, 1992
Delran, Township of 08075 (Burlington County)	August 30, 1979
Dover, Town of 07801 (Morris County)	April 16, 1980
Dover, Township of 08753 (Ocean County)	September 26, 1979
East Orange, City of 07019 (Essex County)	February 20, 1979
East Windsor, Township of 08520 (Mercer County)	December 23, 1991
Eatontown, Borough of 07724 (Monmouth County)	March 23, 1979
Edgewater Park, Township of 08010 (Burlington County)	July 24, 1979
Egg Harbor, Township of 08221 (Atlantic County)	September 24, 1979
Egg Harbor, City of 08215 (Atlantic County)	May 21, 1981
Elizabeth, City of 07201 (Union County)	April 30, 1979
Elmer, Borough of 08318 (Salem County)	November 19, 1991
Ewing, Township of 08618 (Mercer County)	November 10, 1981
Fairfield, Township of 07006 (Essex County)	August 21, 1980
Fair View, Borough of 07022 (Bergen County)	September 5, 1979
Fanwood, Borough of 07023 (Union County)	June 29, 1979
Farmingdale, Borough of 07727 (Union County)	May 18, 1981
Florham Park, Borough of 07932 (Morris County)	April 25, 1979
Fort Lee, Borough of 07024 (Bergen County)	August 27, 1979
Franklin, Township of 07826 (Somerset County)	June 20, 1980
Fredon, Township of 07860 (Sussex County)	October 28, 1980
Freehold, Borough of 07728 (Monmouth County)*	July 21, 1994
Freehold, Township of 07728 (Monmouth County)	October 8, 1992
Gloucester, City of 08030 (Camden County)	January 24, 1989
Green, Township of 07821 (Sussex County)	July 20, 1982
Hackensack, City of 07602 (Bergen County)	April 22, 1980
Haddon Heights, Borough of 08035 (Camden County)*	August 8, 1994
Hamilton, Township of 08330 (Atlantic County)	November 18, 1982
Hamilton, Township of 08650 (Mercer County)*	August 2, 1994
Hammonton, Town of 08037 (Atlantic County)	August 3, 1979
Hanover, Township of 07981 (Morris County)	January 7, 1986
Hightstown, Borough of 08520 (Mercer County)	September 3, 1980
Hillside, Township of 07205 (Union County)	June 4, 1979
Hoboken, City of 07030 (Hudson County)	October 15, 1979
Holland, Township of 08848 (Hunterdon County)	June 1, 1992
Holmdel, Township of 07733 (Monmouth County)	October 20, 1987
Hopewell, Township of 08302 (Cumberland County)	September 26, 1979
Howell, Township of 07731 (Monmouth County)	March 23, 1979
Irvington, Town of 07111 (Essex County)	March 20, 1979
Irvington, Township of 07111 (Essex County)	July 1, 1985
Jackson, Township of 08257 (Ocean County)	March 7, 1979
Jamesburg, Borough of 08831 (Middlesex County)	March 2, 1983
Jefferson, Township of 07981 (Morris County)	April 19, 1983
Jersey City, City of 07302 (Hudson County)	February 23, 1979
Keansburg, Township of 07734 (Monmouth County)	April 5, 1984
Kearny, Town of 07032 (Hudson County)	August 26, 1980
Keyport, Borough of 07735 (Monmouth County)	August 15, 1979
Kinnelon, Borough of 07405 (Morris County)	June 4, 1986
Lacey, Township of 08731 (Ocean County)	August 18, 1981
Lavallette, Borough of 08735 (Ocean County)	December 11, 1979
Lawrence, Township of 08648 (Mercer County)	April 24, 1979
Lindenwold, Borough of 08021 (Camden County)*	July 6, 1994
Little Silver, Borough of 07739 (Monmouth County)	April 5, 1984
Logan, Township of 08096 (Gloucester County)	January 2, 1990
Long Branch, City of 07740 (Monmouth County)	December 4, 1987
Loptacong, Township of 08865 (Warren County)	August 30, 1979
Lower, Township of 08024 (Cape May County)	June 5, 1979
Manchester, Township of 08733 (Ocean County)	September 21, 1982
Mannington, Township of 08079 (Salem County)	May 17, 1979
Maple Shade, Township of 08052 (Burlington County)	July 18, 1980
Maplewood, Township of 07040 (Essex County)	April 4, 1979
Matawan, Borough of 07747 (Monmouth County)	June 19, 1981
Maurice River, Township of 08332 (Cumberland County)	September 26, 1980
Medford Lakes, Borough of 08055 (Burlington County)	February 3, 1992
Mendham, Township of 07949 (Morris County)	January 16, 1985
Millburn, Township of 07041 (Essex County)	May 19, 1981
Millville, City of 08332 (Cumberland County)	April 10, 1979
Millstone, Township of 07726 (Monmouth County)	January 14, 1988
Montclair, Town of 07042 (Essex County)	April 5, 1979
Mount Holly, Township of 08060 (Burlington County)	January 29, 1980
Mount Laurel, Township of 08054 (Burlington County)	May 27, 1980
Neptune, Township of 07753 (Monmouth County)	January 4, 1982
Neptune City, Borough of 07712 (Monmouth County)	December 2, 1982
Newark, City of 07102 (Essex County)	March 16, 1979
New Brunswick, City of 08903 (Middlesex County)	January 30, 1986
North Plainfield, Borough of 07060 (Somerset County)	July 1, 1985
North Wildwood, City of 08260 (Cape May County)	August 24, 1979
Ocean, Township of 07755 (Monmouth County)	November 27, 1979
Ocean, Township of 08758 (Ocean County)	May 29, 1985
Orange, City of 07050 (Essex County)	July 2, 1979
Passaic, City of 07055 (Passaic County)	September 4, 1980
Paterson, City of 07050 (Passaic County)	February 16, 1979
Paulsboro, Borough of 08066 (Gloucester County)	May 7, 1981

Pemberton, Township of 08057 (Burlington County)	August 9, 1993
Penns Grove, Borough of 08069 (Salem County)	July 9, 1979
Phillipsburg, Town of 08865 (Warren County)	July 13, 1979
Pine Hill, Borough of 08021 (Camden County)	March 2, 1982
Piscataway, Township of 08854 (Middlesex County)	March 20, 1981
Pittsgrove, Township of 08318 (Salem County)	January 8, 1993
Plainfield, City of 07061 (Union County)	April 5, 1979
Pleasantville, City of 08232 (Atlantic County)	December 27, 1979
Plumsted, Township of 08533 (Ocean County)	November 16, 1992
Pohatcong, Township of 08865 (Warren County)	July 20, 1979
Princeton, Borough of 08540 (Mercer County)	July 16, 1980
Princeton, Township of 08540 (Mercer County)	September 25, 1980
Rahway, City of 07065 (Union County)	December 18, 1979
Randolph, Township of 07801 (Morris County)	May 10, 1979
Readington, Township of 08889 (Hunterdon County)	June 23, 1980
Red Bank, Borough of 07701 (Monmouth County)	September 9, 1980
Riverside, Township of 08075 (Burlington County)	May 10, 1979
Roosevelt, Borough of 08555 (Monmouth County)	March 3, 1992
Roselle, Borough of 07203 (Union County)	August 8, 1979
Roselle Park, Borough of 07204 (Union County)	March 5, 1981
Runnemede, Borough of 08078 (Camden County)	May 6, 1982
Salem, City of 08079 (Salem County)	June 20, 1979
Sayreville, Borough of 08872 (Middlesex County)	September 19, 1979
Scotch Plains, Township of 07076 (Union County)	August 22, 1979
Sea Bright, Borough of 07760 (Monmouth County)	April 10, 1979
Sea Girt, Borough of 07762 (Monmouth County)	March 12, 1991
Seaside Heights, Borough of 08751 (Ocean County)	June 21, 1991
Secaucus, Town of 07094 (Hudson County)	March 5, 1980
Somerdale, Borough of 08083 (Camden County)	July 28, 1982
Somers Point, City of 08244 (Atlantic County)	June 3, 1993
Somerville, Borough of 08876 (Somerset County)	March 23, 1979
South Amboy, City of 08879 (Middlesex County)	July 12, 1984
South Harrison, Township of 08039 (Gloucester County)	December 29, 1988
South Orange Village, Township of 07079 (Essex County)	August 19, 1980
South Plainfield, Borough of 07080 (Middlesex County)	September 26, 1980
South River, Borough of 08882 (Middlesex County)	March 16, 1979
Spotswood, Borough of 08884 (Middlesex County)	June 19, 1981
Stafford, Township of 08050 (Ocean County)	May 2, 1985
Sussex, Borough of 07461 (Sussex County)	October 24, 1979
Tenafly, Borough of 07670 (Bergen County)	June 17, 1980
Tewsbury, Township of 08833 (Hunterdon County)	August 21, 1992
Tinton Falls, Township of 07724 (Monmouth County)	June 20, 1980
Trenton, City of 08608 (Mercer County)	June 12, 1980
Tuckerton, Borough of 08087 (Ocean County)	February 2, 1989
Union City, City of 07087 (Hudson County)	April 23, 1979
Upper Deerfield, Township of 08302 (Cumberland County)	May 19, 1989
Upper Pittsgrove, Township of 08318 (Salem County)	October 15, 1979
Ventnor City, City of 08401 (Atlantic County)	March 30, 1982
Verona, Borough of, Township of 07044 (Essex County)	February 23, 1984
Victory Gardens, Borough of 07801 (Morris County)	August 15, 1979
Vineland, City of 08360 (Cumberland County)	July 6, 1979
Washington, Borough of 07882 (Warren County)	June 24, 1986
Washington, Township of 08214 (Burlington County)	March 12, 1979
Washington, Township of 07853 (Morris County)	May 30, 1979
Waterford, Township of 08004 (Camden County)	July 9, 1984
Wayne, Township of 07470 (Passaic County)	October 6, 1986
Weehawken, Township of 07087 (Hudson County)	August 14, 1986
Wenonah, Borough of 08090 (Gloucester County)	July 1, 1985
West Deptford, Township of 08086 (Gloucester County)	November 14, 1988
Westfield, Town of 07090 (Union County)	July 15, 1992
Westhampton, Township of 08060 (Burlington County)	June 4, 1979
West New York, Town of 07093 (Hudson County)	March 16, 1979
Westville, Borough of 08093 (Gloucester County)	March 18, 1988
West Orange, Town of 07052 (Essex County)	February 26, 1979
Westwood, Borough of 07675 (Bergen County)	November 28, 1991
Wildwood, City of 08260 (Cape May County)	December 5, 1984
Willingboro, Township of 08046 (Burlington County)	April 17, 1980
Winslow, Township of 08037 (Camden County)	November 13, 1980
Woodbury, City of 08086 (Gloucester County)	January 7, 1986
Woodlynne, Borough of 08107 (Camden County)	June 7, 1982
Woodridge, Borough of 07075 (Bergen County)	July 9, 1984
Woodstown, Borough of 08079 (Salem County)	September 8, 1983
Woolwich, Township of 08085 (Gloucester County)	March 28, 1994

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that C. Richard Kamin, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Nalco Chemical Company
One Nalco Center
Naperville, IL 60563-1198

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666 within 20 days (November 27, 1994) following the publication of an application.

(b)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that C. Richard Kamin, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Schwerman Trucking Co.
611 South 28th Street
P.O. Box 1601
Milwaukee, WI 53201

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666 within 20 days (November 27, 1994) following the publication of an application.

PUBLIC UTILITIES

(c)

DIVISION OF ENERGY PLANNING AND CONSERVATION

ENVIRONMENTAL PROTECTION

OFFICE OF AIR QUALITY MANAGEMENT

Notice of Public Workshop on Clean Fuel Fleets Program

Take notice that the Board of Public Utilities (BPU) and the Department of Environmental Protection (DEP) are holding a public workshop to obtain public input on the feasibility of creating incentives to encourage certain fleet owners, in addition to those required to do so by the Federal Energy Policy Act (EPAct), to use a percentage of alternatively fueled vehicles.

EPAct requires the use of alternative fuel vehicles in certain fleets, including those owned by the State, beginning in model year 1996. The EPAct definition of "alternative fuels" includes natural gas, propane, electricity, alcohol, and other fuels that are substantially non-petroleum and yield substantial energy security and environmental benefits. BPU is responsible for implementing the EPAct fleet requirements.

The Federal Clean Air Act (CAA) requires the DEP to establish a clean fuel vehicle fleet program for fleets of 10 or more vehicles that

can be centrally fueled and are owned or operated by a single person. Alternatively, DEP may "opt-out" of all or part of the required clean-fuel vehicle program if DEP can demonstrate that substitute emission reduction measures, not already required by the CAA, will provide equal reductions in air contaminant emissions. The CAA definition of "clean alternative fuel" is broader than the EPAct definition, and includes reformulated gasoline and diesel.

DEP held a public workshop on Clean Fuel Fleets on March 24, 1994. (See 26 N.J.R. 1251(b) for the notice of that workshop.) After the March workshop, the Department decided not to pursue a clean fuel fleets program, but to opt-out and obtain equivalent emissions reductions through a low emission vehicles (LEV) sometimes known as a "California cars" program. On May 15, 1994, the Department submitted to EPA a SIP revision proposing to obtain the emissions reductions through the LEV program which otherwise would have been obtained through a clean fuel fleets program.

DEP is now reconsidering the decision not to pursue a clean fuel fleets program. On July 1, 1994, a State government reorganization transferred the Energy Program from the DEP to the BPU. The BPU's Division of Energy Planning and Conservation is responsible for implementing the Alternative Fuels Demonstration Project, which is aimed at converting a portion of the State fleet to alternative fuels. The BPU is also currently coordinating the development of a new Energy Master Plan. These processes have the potential to bring new perspectives to bear on policy issues related to clean and alternative fuel fleets programs. Specifically, it may be possible for BPU to develop energy policies that would establish incentives which would achieve the air quality objectives of the CAA's clean fuel fleet provisions.

To obtain public input on this issue, the BPU and DEP are holding **a public workshop.** Specifically, the BPU and DEP are seeking input on such questions as:

- how could the BPU use its existing authorities to create incentives to encourage the use of alternatively fueled fleet vehicles?
- could such a program effectively address both the fuel diversity concerns of EPAct and the air quality goals of the CAA?
- in such a program, how would the EPAct and CAA requirements best be coordinated for maximum effect and minimum regulatory burden?

This public workshop will be held:

Monday, December 5, 1994 at 10:00 A.M. at
Board of Public Utilities
10th Floor
2 Gateway Center
Newark, New Jersey 07102

Further information may be obtained from Donna DuBois at the BPU at (201) 648-2160, fax: (201) 648-7420; or from Linda O'Hara at DEP's Office of Air Quality Management at (609) 777-1345, fax: (609) 633-6198.

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Applications Available For Organization Grants Fiscal Year 1996 (July 1, 1995-June 30, 1996)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program.

Name of program: Organization Grant Program, Fiscal Year 1996
General Operating Support
Special Project Support
Arts Basic to Education Expansion Project Support
Folk Arts Programs and Project Support
Major Impact Organization Designation

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support arts projects, programs and services and the operation of arts organizations during the fiscal year 1995/96 (July 1, 1995 to June 30, 1996).

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)3 or 4 by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars, Special Project applicants who are arts organizations, at least 1:1 match of applicant cash to NJSCA dollars; and Special Project applicants, who are **not** an arts organization, at least 3:1 match of applicant cash to NJSCA dollars. Indirect costs, however, may not be included.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than January 13, 1995 (5:00 P.M. if delivered in person to office). All prospective applicants that **are not** direct recipients of FY95 NJSCA grants must submit a Letter of Intent.

Letters of intent are due on December 1, 1994 (5:00 P.M. Receipt)—All organizations that are **not** FY95 NJSCA grantees must submit a letter of intent. The Letter of Intent is a form contained in the Guidelines and Application, which when completed briefly describes the prospective applicant organization and the purposes for which funds would be sought.

Decisions: Each complete application by eligible applicants will be evaluated by an independent panel of experts appropriate to the category or arts discipline of the applicant and by the NJSCA according to the published criteria for evaluation. The consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision immediately following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 17, 1994. Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306 Trenton, NJ 08625.

(b)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Applications Available For Fellowship Support Fiscal Year 1996 (July 1, 1995-June 30, 1996)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program:

Name of program: Fellowship Support Program, Fiscal Year 1996

Purpose: In recognition of outstanding artwork, Fellowships are granted to enable New Jersey artists to pursue their artistic goals. Fellowships are awarded in choreography, music composition, opera/musical theatre composition, theatre (mime), experimental art, graphics, painting, sculpture, design arts, crafts, photography, media arts (film/video/sound), prose, playwriting, poetry and interdisciplinary.

Eligible applicants: Artists who are residents of the State of New Jersey (all awards are subject to verification of New Jersey residency); artists who have not received a fellowship since FY1990-91; artists who are not matriculated students in a high school, undergraduate or graduate program at the time of application (fellowships do not provide funding for scholarships or academic study in pursuit of a college degree). NOTE: Artists may submit only one application, apply in one discipline and only in one category of a discipline.

Ineligible applicants: Artists who are residents in another state; are matriculated students in a high school, undergraduate or graduate program at the time of application; artists who received a fellowship during FY92, 93, 94 or 95.

Grant size: In the past three years grants have ranged between $5,000 and $12,000.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: This is a non-matching award.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than December 15, 1994 (5:00 P.M. if delivered in person to office).

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council further reviews the panel evaluations and final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision within three weeks following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1994. Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306, Trenton, NJ 08625.

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 6, 1994 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

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 15, 1994

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1994

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
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:7A	Department of Environmental Protection cases	26 N.J.R. 4124(a)		
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)	R.1994 d.451	26 N.J.R. 3705(a)
	Most recent update to Title 1: TRANSMITTAL 1994-4 (supplement August 15, 1994)			
AGRICULTURE—TITLE 2				
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biological products for diagnostic or therapeutic purposes	26 N.J.R. 3784(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:34	Equine Advisory Board rules	26 N.J.R. 3919(a)		
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program: cut flowers, fresh market tomatoes	26 N.J.R. 2831(a)	R.1994 d.485	26 N.J.R. 3828(a)
	Most recent update to Title 2: TRANSMITTAL 1994-5 (supplement August 15, 1994)			
BANKING—TITLE 3				
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds	26 N.J.R. 2832(a)	R.1994 d.558	26 N.J.R. 4347(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12	Secondary Mortgage Loan Act rules	26 N.J.R. 3920(a)		
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)	R.1994 d.562	26 N.J.R. 4348(a)
3:33	Acquisitions by out-of-State entities: application requirements	26 N.J.R. 3235(a)	R.1994 d.560	26 N.J.R. 4349(a)
3:38-1.1, 1.10, 5.3	Net worth of mortgage lenders	26 N.J.R. 4124(b)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:40-6	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
3:41-13.8–3.10	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)		
	Most recent update to Title 3: TRANSMITTAL 1994-6 (supplement August 15, 1994)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment	26 N.J.R. 3507(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:4-1.10	Personnel action freezes	26 N.J.R. 3510(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)	R.1994 d.507	26 N.J.R. 3941(a)
4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App.	Family and medical leave	26 N.J.R. 3511(a)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:7-1.3, 3.3, 3.4	Sexual harassment	26 N.J.R. 3507(a)		
4A:8	Layoffs	26 N.J.R. 3518(a)		
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5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)	R.1994 d.433	26 N.J.R. 3706(a)
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5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)	R.1994 d.435	26 N.J.R. 3706(c)
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)	R.1994 d.436	26 N.J.R. 3707(a)
5:23-10	Radon Hazard Subcode: administrative change	_____	_____	26 N.J.R. 3707(b)
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5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)	R.1994 d.506	26 N.J.R. 3941(b)
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6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)	R.1994 d.443	26 N.J.R. 3707(c)
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7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:5C	Endangered Plant Species Program	26 N.J.R. 3790(a)		
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7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:7E-5.5	Coastal zone management: administrative correction regarding development potential	———	———	26 N.J.R. 3943(a)
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)	R.1994 d.469	26 N.J.R. 3829(a)
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)	R.1994 d.482	26 N.J.R. 3833(a)
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:14A-2.15	NJPDES program: administrative correction regarding permit-by-rule authorization	———	———	26 N.J. 4182(b)
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7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)	R.1994 d.525	26 N.J.R. 4182(c)
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:22A	Sewage Infrastructure Improvement Act grants	26 N.J.R. 3793(a)		
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7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
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7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
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7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)	R.1994 d.502	26 N.J.R. 3943(b)
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7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-8.2	Air pollution control: administrative change regarding applicability of operating permits	———	———	26 N.J.R. 4184(a)
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
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7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)	R.1994 d.537	26 N.J.R. 4355(a)
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)	R.1994 d.501	26 N.J.R. 4030(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-3.12	Ionizing radiation-producing machines: application and annual registration renewal fees	26 N.J.R. 3797(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)	R.1994 d.449	26 N.J.R. 3715(a)
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8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)	R.1994 d.572	26 N.J.R. 4380(a)
8:18	Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements	26 N.J.R. 3805(a)		
8:23	Veterinary public health	26 N.J.R. 4129(a)		
8:23A	Veterinary public health	26 N.J.R. 4129(a)		
8:31	Health facilities construction plan review fee	26 N.J.R. 4135(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)	R.1994 d.488	26 N.J.R. 3839(a)
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)	R.1994 d.496	26 N.J.R. 4046(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)	R.1994 d.497	26 N.J.R. 4046(b)
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)	R.1994 d.535	26 N.J.R. 4380(b)
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
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8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b))	26 N.J.R. 1190(b)	R.1994 d.546	26 N.J.R. 4387(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a))	26 N.J.R. 1821(a)	R.1994 d.547	26 N.J.R. 4388(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b))	26 N.J.R. 1822(a)	R.1994 d.548	26 N.J.R. 4388(b)

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8:71	Interchangeable drug products (see 26 N.J.R. 3720(a))	26 N.J.R. 2723(a)	R.1994 d.545	26 N.J.R. 4386(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)	R.1994 d.549	26 N.J.R. 4390(a)
8:91	Health Access New Jersey	26 N.J.R. 2007(a)	R.1994 d.495	26 N.J.R. 3840(a)
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9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23	Educational Opportunity Fund Program	26 N.J.R. 3586(a)		
9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)	R.1994 d.452	26 N.J.R. 3722(a)
9:12-1.1, 1.4, 1.6–1.9, 1.16–1.21, 1.23, 2.5, 2.7, 2.8, 2.10	Educational Opportunity Fund Program	26 N.J.R. 3586(a)		
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10:15A	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15B	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)		
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46B	Division of Developmental Disabilities: placement of eligible persons	26 N.J.R. 3611(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)	R.1994 d.475	26 N.J.R. 3861(a)
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-5.2, 5.3, 5.4	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)	R.1994 d.524	26 N.J.R. 4184(b)
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:50-2.2	Transportation services for Medicaid recipients: provider reimbursement	26 N.J.R. 3929(a)		
10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E	Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing	26 N.J.R. 4136(a)		
10:51-1.12	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52-1.3, 1.7, 1.8	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Charity care component of Health Care Subsidy Fund	26 N.J.R. 3485(a)	R.1994 d.536	26 N.J.R. 4392(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)	R.1994 d.508	26 N.J.R. 4185(a)
10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		

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10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)		
10:61-1.3, 3.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:63	Long-Term Care Services	26 N.J.R. 3614(a)		
10:66-2.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:69A-5.3, 5.6, 6.2, 6.12	Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria	26 N.J.R. 3142(a)		
10:73-1.1, 1.2, 2.1, 2.6, 2.8–2.12, 3.1, 3.2	Medicaid program: case management services billing	26 N.J.R. 3350(a)		
10:81-2.6, 3.9, 3.10, 13.3	Public Assistance Manual: AFDC-N segment eligibility of aliens	26 N.J.R. 3930(a)		
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)	R.1994 d.463	26 N.J.R. 3729(a)
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82-2.3	Assistance Standards Handbook: administrative correction regarding income from noneligible individual	———	———	26 N.J.R. 4047(a)
10:82-2.3	Assistance Standards Handbook: AFDC-N segment eligibility of aliens	26 N.J.R. 3932(a)		
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-12	Food Stamp Program: income eligibility, deductions, coupon allotments	———	———	26 N.J.R. 3901(a)
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)	R.1994 d.561	26 N.J.R. 4394(a)
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1–9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)		
10:126-1.2, 1.4, 2.2–2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1–5.4, 5.6–5.10, 6.1–6.6, 6.8, 6.9, 6.13, 6.18, 6.20	Manual of Requirements for Family Day Care Registration	26 N.J.R. 3144(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)	R.1994 d.531	26 N.J.R. 4186(a)
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial reponse	26 N.J.R. 3355(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)	R.1994 d.530	26 N.J.R. 4186(b)
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)	R.1994 d.532	26 N.J.R. 4188(a)
	Most recent update to Title 10: TRANSMITTAL 1994-8 (supplement August 15, 1994)			
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10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)		
10A:31-1.3, 8.4, 8.6	Adult county correctional facilities: strip and body cavity searches	26 N.J.R. 2841(a)	R.1994 d.484	26 N.J.R. 3863(a)
10A:71	State Parole Board rules	26 N.J.R. 4150(a)		
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)	R.1994 d.510	26 N.J.R. 4190(a)
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)	Expired	
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)	R.1994 d.511	26 N.J.R. 4191(a)
	Most recent update to Title 10A: TRANSMITTAL 1994-7 (supplement August 15, 1994)			
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11:1-1.1	Organization of the Department of Insurance	Exempt	R.1994 d.557	26 N.J.R. 4405(a)
11:1-7	Medical malpractice reporting requirements	26 N.J.R. 1433(a)	R.1994 d.493	26 N.J.R. 3864(a)
11:2-27.3	Determination of insurers in a hazardous financial condition	26 N.J.R. 3589(a)	R.1994 d.550	26 N.J.R. 4407(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-28.2, 28.14–28.17	Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures	26 N.J.R. 2190(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)	Expired	
11:3-32	Automobile and motor vehicle insurers: certification of compliance with mandatory liability coverages	26 N.J.R. 1939(a)	R.1994 d.477	26 N.J.R. 3866(a)
11:3-33.2, 44.3, 44.4	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)		

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11:5-1.2, 1.4, 1.5, 1.19, 1.29	Real Estate Commission: licensing requirements	26 N.J.R. 3111(a)		
11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
11:5-1.43	Real Estate Commission: consumer information statement	26 N.J.R. 3113(a)		
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15	Group self-insurance	26 N.J.R. 2518(a)	R.1994 d.551	26 N.J.R. 4407(b)
11:15	Group self-insurance: extension of comment period	26 N.J.R. 3356(a)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:17-3, 5.1–5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)	R.1994 d.438	26 N.J.R. 3731(a)
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-9.6	Individual Health Coverage Program: good faith marketing report	26 N.J.R. 3809(a)	R.1994 d.509	26 N.J.R. 4193(a)
11:20-App. Exh. A–F, M, N, O, P	Individual Health Coverage Program: policy forms, PPO and POS standard plan provisions, schedule of benefits	26 N.J.R. 3356(b)		
11:21-1.2, 1.3, 2.2, 3A, 7.1, 7.2, 7.3, 7.5–7.9, 7.12, 7.13, 7A, App. Exh. N, O, Q, R, S, T	Small Employer Health Benefits Program: standard and non-standard plans	26 N.J.R. 3421(a)	R.1994 d.499	26 N.J.R. 4047(b)
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-9.1–9.4, 11, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, 16.7, Exh. BB, U	Small Employer Health Benefits Program: plan filings; informational rate filings; declaration and approval of carrier status; withdrawals of carriers from plan market	26 N.J.R. 3118(a)		
11:21-Exh. A–F	Small Employer Health Benefits Program: administrative correction	_____	_____	26 N.J.R. 3867(a)
11:11-Exh. A–AA	Small Employer Health Benefits Program: plan exhibits	26 N.J.R. 2843(a)	R.1994 d.498	26 N.J.R. 4066(a)
	Most recent update to Title 11: TRANSMITTAL 1994-8 (supplement August 15, 1994)			
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12:15-1.3–1.7	Unemployment compensation and temporary disability: 1995 maximum weekly benefit rates, contribution levels, and eligibility tests	26 N.J.R. 3592(b)	R.1994 d.552	26 N.J.R. 4410(a)
12:16-13.7	Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting	26 N.J.R. 2863(a)	R.1994 d.527	26 N.J.R. 4194(a)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:23-1, 2	Workforce Development Partnership Program: application and review process for customized training services	26 N.J.R. 2770(a)	R.1994 d.489	26 N.J.R. 3867(a)
12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)	R.1994 d.490	26 N.J.R. 3870(a)
12:41-1.2, 1.14	Job Training Partnership Act: non-criminal complaints and appeals	26 N.J.R. 2864(a)	R.1994 d.491	26 N.J.R. 3872(a)
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:90	Division of Workplace Standards: boilers, pressure vessels, refrigeration	26 N.J.R. 3810(a)		
12:100	Safety and Health Standards for Public Employees	26 N.J.R. 2776(a)	R.1994 d.492	26 N.J.R. 3872(b)
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
12:195-1.9	Carnival-amusement rides: inspection and permit fees	26 N.J.R. 3594(a)		
12:235-1.6	Workers' Compensation: 1995 maximum benefit rate	26 N.J.R. 3594(b)	R.1994 d.553	26 N.J.R. 4410(b)
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		
	Most recent update to Title 12: TRANSMITTAL 1994-4 (supplement August 15, 1994)			
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12A:10	Small businesses: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 4411(a)
12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		

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12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		
	Most recent update to Title 12A: TRANSMITTAL 1994-2 (supplement May 16, 1994)			
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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:19	Division of Motor Vehicles: Driver Control Service	26 N.J.R. 2738(a)	R.1994 d.468	26 N.J.R. 3873(a)
13:19-1.1	Division of Motor Vehicles: applicability of administrative hearings	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:21-6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.4, 16	Division of Motor Vehicles: permits, licenses, nondriver IDs	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:24	Division of Motor Vehicles: equipment for emergency and other specified vehicles	26 N.J.R. 2865(a)		
13:25-1.1, 2.1, 2.2, 3.1, 3.3	Division of Motor Vehicles: motorized bicycle permits and licenses	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)	R.1994 d.487	26 N.J.R. 3877(a)
13:31-1.11, 1.16	Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined	26 N.J.R. 2742(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)	R.1994 d.522	26 N.J.R. 4195(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)	R.1994 d.538	26 N.J.R. 4411(b)
13:35-3.12	Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies	26 N.J.R. 2742(b)	R.1994 d.539	26 N.J.R. 4418(a)
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: withdrawal of stay of operative date for hair replacement techniques	_____	_____	26 N.J.R. 4083(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)	R.1994 d.523	26 N.J.R. 4201(a)
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules: administrative correction to expiration date	_____	_____	26 N.J.R. 3878(a)
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)	R.1994 d.476	26 N.J.R. 3878(b)
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)	R.1994 d.442	26 N.J.R. 3737(a)
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)	R.1994 d.540	26 N.J.R. 4419(a)
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		

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13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)	Expired	
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:48	Charitable fund raising	26 N.J.R. 2746(a)	R.1994 d.494	26 N.J.R. 3882(a)
13:49-1.1, 1.5	State Medical Examiner: death investigations and potential organ donations	Emergency (expires 12-20-94)	R.1994 d.571	26 N.J.R. 4447(a)
13:59	State Police: criminal history background checks for non-criminal justice purposes	26 N.J.R. 3595(a)		
13:70-8.18	Thoroughbred racing: items included in jockey's weight	26 N.J.R. 3130(a)	R.1994 d.554	26 N.J.R. 4420(a)
13:70-8.28	Thoroughbred racing: overweight of jockey after race	26 N.J.R. 3130(b)	R.1994 d.555	26 N.J.R. 4420(b)
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)	R.1994 d.556	26 N.J.R. 4420(c)

Most recent update to Title 13: TRANSMITTAL 1994-8 (supplement August 15, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		

Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)	Expired	
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1A-1.2	Organization of Department of Transportation	Exempt	R.1994 d.453	26 N.J.R. 3740(a)
16:21A	Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities	26 N.J.R. 3246(a)	R.1994 d.544	26 N.J.R. 4421(a)
16:24	Public utility rearrangement agreements	26 N.J.R. 4160(a)		
16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)	R.1994 d.513	26 N.J.R. 4206(a)
16:28-1.10	Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46	26 N.J.R. 3600(a)		
16:28-1.18	Speed limit zones along Rising Sun Square Road-Old York Road in Bordentown Township	26 N.J.R. 3934(a)		
16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)	R.1994 d.465	26 N.J.R. 3887(a)
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)	R.1994 d.512	26 N.J.R. 4207(a)
16:28-1.53	Speed limit zone along Route 165 in Lambertville	26 N.J.R. 3602(a)		
16:28-1.77	Speed limits along Route 29 in Mercer and Hunterdon counties	26 N.J.R. 3821(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.79	Speed limits along Route 94 in Warren and Sussex counties	26 N.J.R. 3603(a)		
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)	R.1994 d.478	26 N.J.R. 3887(b)
16:28-1.158	Speed limits along Route 179 in Lambertville	26 N.J.R. 3820(b)		
16:28A-1.7	Restricted parking along U.S. 9 in Middle Township, Cape May	26 N.J.R. 3935(a)		
16:28A-1.19	Handicapped parking along Route 28 in Elizabeth	26 N.J.R. 3605(a)		

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16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)	R.1994 d.466	26 N.J.R. 3887(c)
16:28A-1.28	No stopping or standing zones along U.S. 40 in Pilesgrove Township, Salem County	26 N.J.R. 3936(a)		
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)	R.1994 d.479	26 N.J.R. 3888(a)
16:28A-1.33	No stopping or standing zone along Route 47 in Middle Township, Cape May	26 N.J.R. 3936(b)		
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	26 N.J.R. 4160(b)		
16:28A-1.38	No stopping or standing along Route 71 in Bradley Beach Borough	26 N.J.R. 4161(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)	R.1994 d.514	26 N.J.R. 4207(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)		
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)	R.1994 d.515	26 N.J.R. 4208(a)
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-3.12	Left turn center lane along Rising Sun Road, Bordentown	26 N.J.R. 3247(a)	R.1994 d.529	26 N.J.R. 4208(b)
16:30-7.4	Interstate highways: classes of traffic	26 N.J.R. 4162(b)		
16:30-9.14	Bidwells Creek bridge restrictions, Route 47 in Middle Township, Cape May	26 N.J.R. 3937(a)		
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)	R.1994 d.439	26 N.J.R. 3740(b)
16:31-1.8	Left turn prohibitions along Route 47 in Vineland	26 N.J.R. 3822(a)		
16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)		
16:31-1.17	Left turn prohibition along Route 73 in Berlin Township, Camden County	26 N.J.R. 3137(a)	R.1994 d.516	26 N.J.R. 4208(c)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington and Mercer counties	26 N.J.R. 2870(a)	R.1994 d.480	26 N.J.R. 3890(a)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington City	26 N.J.R. 3938(a)		
16:31-1.29	Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County	26 N.J.R. 3137(b)	R.1994 d.517	26 N.J.R. 4209(a)
16:31-1.35	U turn prohibitions along Route 42 in Gloucester County	26 N.J.R. 2750(a)	R.1994 d.467	26 N.J.R. 3890(b)
16:31-1.36	Turn prohibitions along U.S. 40/322 in Egg Harbor Township	26 N.J.R. 2871(a)	R.1994 d.481	26 N.J.R. 3891(a)
16:32	Truck operations within State	26 N.J.R. 4163(a)		
16:45	Construction control	26 N.J.R. 2547(b)	R.1994 d.454	26 N.J.R. 3740(c)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)	R.1994 d.526	26 N.J.R. 4209(b)
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)	R.1994 d.534	26 N.J.R. 4210(a)
	Most recent update to Title 16: TRANSMITTAL 1994-8 (supplement August 15, 1994)			
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17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)		
17:4-1.4	Police and Firemen's Retirement System: election of member-trustee	26 N.J.R. 3938(b)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		

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